

NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

CA (IB) No.194/KB/2019

CA(IB) No. 964/ KB/2019

CA(IB) No.848/KB/2018

IN

C.P. (IB) No. 187/KB/2018

In the Matter of:

An application under Section 30(6) read with Section 31 of the Insolvency & Bankruptcy Code, 2016 read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

And

In the Matter of:

Shri Krishna Agri Projects Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 17A, Ratan Sarkar Garden Street, 2nd Floor, Room No. 202, Kolkata – 700 007

... **Operational Creditor**

-Versus-

In the Matter of:

Feedatives Pharma Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 46, Chanditala Street, Uttarpara, Hooghly – 712 258.

... **Respondent/Corporate Debtor**

And

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In the Matter of:

Sanjay Kumar Agarwal, Resolution Professional for Feedatives Pharma Private Limited appointed under Section 22(3)(b) of the Insolvency and Bankruptcy Code, 2016.

... Applicant /
Resolution Professional

Coram: Shri Jinan K.R., Hon'ble Member (Judicial) & Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsels on Record:

1. Mr. S. Mitra, Advocate }
2. Mr. A. Bhalotia, Advocate } ... For Petitioner
3. Mr. T. Saraf, Advocate }

Mr. Gaurav Singh, Advocate } ... For Resolution Professional

Date of pronouncing of the Order: 06.08.2019

ORDER

Per Shri Jinan K.R., Member (Judicial)

1. This is an application filed under sub-section 6 of Section 30 read with Section 31 of the Insolvency & Bankruptcy Code, 2016 (in short "the Code") read with Regulation 39(4) of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (in short "the IBBI") for approval of the Resolution Plan approved by the Committee of Creditors by 100% voting share of the members of Committee of Creditors.
2. The Company Petition was admitted vide order dated 18.09.2018 by ordering Corporate Insolvency Resolution Process (in short "CIRP") as against the corporate debtor *Feedatives Pharma Private Ltd* and Mr.

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Sanjy Kumar Agarwal was appointed as IRP and the appointment was later confirmed as Resolution Professional (in short "RP). The RP filed this application praying for approval of the resolution plan submitted by Ms. Basu Chicks and feed Pvt Ltd which has been approved by the CoC by 100% in the 14th CoC meeting held on 02.07.2019.

3. The Ld. Senior Counsel for the Resolution Professional has submitted that in the 14th meeting of the Committee of Creditors ("the CoC") held on 02.07.2019, the modified resolution plan submitted by M/s. Basu Chicks and Feeds Pvt. Ltd. was placed before the committee for approval and that resolution plan was discussed in detail by the committee. As requested by the CoC, the resolution applicant had revised the resolution plan which has been considered finally by the CoC in the aforesaid meeting held on 2nd July 2019. Being found feasible and viable, voted by the CoC with 100% voting in favour of the resolution plan. According to the Ld. Sr. Counsel the resolution applicant had the capability to implement the resolution plan; that the applicant was not ineligible to submit a resolution plan under Section 29A of the Code; the Plan provides specific source of funds to pay insolvency resolution process costs payable in priority to payment of other debts; liquidation value due to operational creditors and that the resolution plan balancing the interest of all stakeholders of the Corporate Debtors and that the plan did not contravene any of the provisions of law and therefore, the resolution plan deserve approval.
4. In compliance of Regulation 39(4), a certificate in Form H of the Schedule as laid down in Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 has been annexed along with the resolution plan. The Affidavit under Section 29A of the Resolution Applicant has

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also submitted along with the resolution plan. Therefore, the resolution professional has meted out all the requirement to be meted out under section 30)6) of the Code. Argued by the Ld. Sr. Counsel.

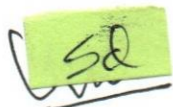
5. At this juncture, two objectors turned up objecting the approval of the resolution plan. One of the objectors is Shri Krishna Agri Projects Private Limited/operational creditor (OC) who had filed this Company Petition for initiating the CIRP process. The operational creditor raised objection by filing CA(IB) No.194/KB/2019.
6. Ld. Counsel appearing for the operational creditor submits that the order of rejection of the entire claim of the applicant / operational creditor is contrary to the provisions of the code and therefore, its claim is liable to be accepted. Though the resolution professional has objected this application at the time of hearing, the Ld. Counsel appearing for the successful resolution applicant showed his readiness to accept the claim of the operational creditors to the tune of Rs. 10,85,040/- plus interest Rs.96,206/- @ 12% per annum and further agreed that the applicant will be given payment at par with percentage of the admitted claim of the operational creditors as agreed in the resolution plan under consideration. A supplementary affidavit to that effect also was filed by the resolution applicant Basu Chicks and Feed Pvt. Ltd. The offer of the resolution applicant submitted before the Bench has been readily admitted by the applicant herein and Ld. Counsel for the applicant agreed to accept the distribution of fund to the operational creditor @ 8.40% as provided in the resolution plan. Accordingly, the application CA(IB) No. 194/KB/ 2019, requires no further consideration.
7. In view of the above said circumstances, a direction is to be issued to the resolution applicant to modify the resolution plan by making provision

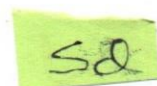
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for payment of the amount agreed to pay to the operational creditor in this application @ 8.40% of the total claim admitted by the CoC in addition to the bid amount already offered as per the resolution plan.

8. One another objection was seen raised by the promoter director Mr. Anirban Chatterjee. He filed an application, CA(IB) No. 964/KB/2019 on 31.07.2019 when this case was taken up for hearing. According to the Ld. Counsel for the applicant, the applicant was not given an opportunity to participate in the resolution process subsequent to the rejection of resolution plan in the CoC meeting held on 3rd June 2019. The Ld. Counsel for the applicant further submitted that subsequent to rejection of the resolution plan submitted by the applicant in consortium with M/s. Basu Chicks and M/s. Feed Pvt. Ltd., no opportunity was given to the applicant but given opportunity to Basu Chicks and Feed Pvt. Ltd. to submit a fresh plan without extending the date of submission of the resolution plan and it is illegal, fraudulent and in absolute contravention of law.
9. Ld. Senior Counsel appearing for the resolution professional has objected to this application on two grounds; firstly, it is submitted by the Ld. Senior Counsel that the attempt of the applicant / promoter director of corporate debtor is to protract the proceedings further. The order of rejection of the resolution plan submitted by Basu M/s. Chicks and Feed Pvt. Ltd. in consortium with Mr Anirban Chatterjee, the applicant herein, was on 8th June 2019. According to him the delay in filing this application was not at all explained by the applicant and that CIRP period has already expired on 14.06.2019 and therefore, it is liable to be dismissed. Secondly he submits that, the applicant is not at all a resolution applicant, and not chosen to file any resolution plan and that no fresh plan was ever asked for submission by the successful resolution





applicant and therefore there is no irregularity or contravention of any of the provisions of the Code.

10. At the outset we do not find any merit in the submission put forward on the side of the applicant. No valid explanation forthcoming as to the delay in approaching this Bench in time. If the applicant was denied any of his valuable right, nothing prevent him to approach us in time before the expiry of the period of CIRP. So late coming give rise an indication of lack of bonafide on the side of the applicant.
11. It has come in evidence that he is not a resolution applicant selected by the CoC during the final stage. What he did is he filed Expression of Interest (EOI) along with two other resolution applicants namely, Akash Feeds & Chicks Pvt. Ltd. and Basu Chicks & Feed Pvt. Ltd. (successful resolution applicants). He did not submit any independent resolution plan. On the other hand, he joined with Basu Chicks & Feed Pvt. Ltd., forming a consortium with it, filed the resolution plan. It is that plan was rejected by way of e-voting held on 03.06.2019 to 08.06.2019. Since the State Bank of India, one of the financial creditors, voted against the plan, the resolution plan fails and thereby the resolution plan was rejected by the CoC.
12. However, immediately after the rejection, M/s. Basu Chicks & Feed Pvt. Ltd. come forward on the next day itself agreeing to modify the resolution plan as per the request of the resolution professional and he showed readiness to modify the resolution plan. So, the plan which has been finally approved on 02.07.2019 is not a fresh plan but a modified plan submitted by M/s. Basu Chicks & Feed Pvt. Ltd. who had participated in the process upto the final round. It is significant to note here that there was only one plan submitted by the M/s. Basu Chicks &

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Feed Pvt. Ltd in consortium with the applicant. It is that plan was rejected by the CoC.

13. It at this juncture the CoC had decided to proceed further because the resolution applicant agreed to modify the plan and the CIRP period was not expired when they have decided to proceed further with the modified plan submitted by the sole resolution applicant. That being so, the resolution plan under consideration by the CoC as evidenced from the extract of minutes of 13 CoC meeting held on 13.06.2019 is not a fresh plan but a modified plan submitted by the very same resolution applicant independently, with out in consortium with the applicant. Since the CoC did not call for any fresh EOI or called for any fresh or new plan from any of the resolution applicants, it appears to us that the neither the CoC nor the RP contravened any of the provisions of the Code or Regulations.
14. The Ld. Counsel for the applicant/objector relying upon Regulation, 36B (5) & (7) of IBBI (IRP for corporate Persons) Regulations, 2016 attempted to show that what is called for is a fresh plan from M/s. Basu Chicks & Feed Pvt. Ltd. after the rejection of a plan jointly submitted by the applicant along with M/s. Basu Chicks & Feed Pvt. Ltd. According to him, any request for modification of a resolution plan is deemed to be a fresh issue and therefore denial of opportunity to the applicant for submission of resolution plan is contrary to Regulation 36(B) (5) & (7). He would further submits that the applicant herein would have invited by the RP for submission of a resolution plan after rejection of a plan jointly submitted by him along with M/s. Basu Chicks & Feed Pvt. Ltd. Since he mainly relied on the above refereed Regulations to show that the RP committed violation of the provisions of the Regulation it is fair and good to read 36B (5) & (7):

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36B (5) "Any modification in the request for resolution plan or the evaluation matrix issued under sub-regulation (1), shall be deemed to be a fresh issue and shall be subject to timeline under sub-regulation (3)".

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36(7) "The resolution professional may, with the approval of the committee, re-issue request for resolution plans, if the resolution plans received in response to an earlier request are not satisfactory, subject to the condition that the request to all prospective resolution applicants in the final list':

[Provided that provisions of sub-regulation (3) shall not apply for submission of resolution plans under this sub-regulation.]

- 14 Reading the above said regulations, what we understood, is that within the timeline prescribed the CoC empowers to make a request to the resolution applicants whose name is in the final list to submit a modified plan. The applicant in the case in hand has not submitted any resolution plan independently. Though he had filed EOI, the plan was submitted by M/s. Basu Chicks & Feed Pvt. Ltd. joined with the applicant herein, as a consortium partner. It appears to us that upon rejection of the plan submitted by M/s. Basu Chicks & Feed Pvt. Ltd. along with the applicant herein the M/s. Basu Chicks & Feed Pvt. Ltd. agreed to proceed further independently. The reason for the failure of the consortium is not known to us. The CoC is also not burdened to enquire into the reason for the failure of consortium and filing of a modified plan without the juncture of the applicant. Vide order in CA(IB) No.680/KB/2019 we had excluded 23 days from the CIRP period, thereby the 270 days expired on the day of approval of the modified

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resolution plan submitted by the M/s. Basu Chicks & Feed Pvt. Ltd. The timeline to be followed by the RP is therefore seen followed by him. Therefore, we do not find any merit in the submission of the Counsel for the applicant. This application requires no consideration and deserve an order of dismissal.

15. The CoC in its meetings held on 02.07.2019 approved the resolution plan of M/s. Basu Chicks & Feed Pvt. Ltd. by 100% voting share of the members of the CoC. We failed to take note of any violation of the provisions of the Code as well as Regulation as attempted to establish on the side of the Ld. Counsel appearing for the promoter director of erstwhile corporate creditor. No other objectors come forward to object the resolution plan.
16. Admittedly, the Corporate Debtor is an MSME registered company. The Corporate Debtor company is doing business in Poultry. The company is having four numbers of breeding units dealing in Breeder Broiler Farming and Layer Eggs Production. Two of the units are totally closed and abandoned and two units are operating. Though the resolution professional has faced so many hurdles in running the farm as a going concern due to shortage of working capitals, he was successful in managing the affairs of the Corporate Debtor company and is running the two units of the company effectively and maintained positive cash flows and maintained the Corporate Debtor as a going concern throughout the CIRP period and is successful in getting approval of a resolution plan for a bid amount above the liquidation value, and little above the faire value.
17. The liquidation value approved by the CoC is Rs. 5.90, Crores and the fair market value comes to Rs. 8.17 Crores. The resolution applicant

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here in this case has offered Rs. 8.43 Crores which include 8.00 Crores to secured Financial Creditors and 0.43 Crores to operational creditors. In addition to that, the resolution applicant agreed to admit the claim of the operational creditor Shri Krishna Agri products Pvt. Ltd. and agreed to offer 8.40% of the admitted claim of the operational creditors in addition to the amount already offered as per the approved resolution plan.

18. Workmen and employees not preferred any claim and nobody from the side of the stakeholders other than two objectors referred to above not come forward to object this resolution plan. We are satisfied that the plan complies with all the provisions of Code and Regulations and does not contravene any of the provisions of the law for the time being in force. The resolution applicant has submitted an affidavit in compliance of section 30(1) of the Code confirming that it is eligible under section 29A of the Code. The statement filed under regulation 38(1) of the CIRP regulations proves that all stakeholders were treated in compliance of the provisions of the Code and Regulations. The CoC has expressed its gratitude to the resolution professional for his hard work and congratulated him for his efforts to complete the CIRP within the extended period of 270 days. We also do not find any adverse remarks against the resolution professional but would like to endorse the view expressed by the CoC as this is a unique case wherein a Farm dealing with Poultry has been successfully run by him enabling him to get a resolution applicant to takeover the assets above the fair market value and the financial creditors have voted the resolution plan with 100%.
19. Having stood the aforesaid circumstances, we are of the considered view that this resolution plan deserves an order of approval.

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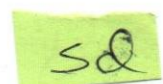
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Accordingly we pass an order of approval of the resolution plan upon the following among orders:

ORDER

- (i) The Resolution Plan of M/s. Basu Chicks & Feed Pvt. Ltd. which is approved by the CoC with 100% voting share of the financial creditors is hereby approved under Section 31(1) of the Insolvency and Bankruptcy Code, 2016, which will be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan.
- (ii) The revival plan of the company in accordance with the approved Resolution Plan with such modification by adding the fund agreed to provide to the operational creditor Shri Krishna Agri Projects Pvt. Ltd, in addition to the fund already agreed to provide as per the plan under consideration, shall come into effect upon submission of the modified plan, preferably within 3 days from the date of this order.
- (iii) The moratorium order passed under Section 14 shall cease to have effect.
- (iv) The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.
- (v) CA (IB) No.194/KB/2019 is disposed of accordingly. CA(IB) No. 964/KB/2019 is dismissed.





- (vi) Accordingly, CP(IB) No. 187/KB/2018 along with all the CAs filed and /or pending, if any, in this context is disposed of.
- (vii) Free copy of this order to be issued to the Operational creditor, financial creditors, the resolution professional and to the resolution applicant forth with by way of email.

Certified copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.



(Shri Harish Chander Suri)
Member (Technical)



(Jinan K.R.)
Member (Judicial)

Signed on this, the 6th day of August, 2019

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NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CA(IB) No.680/KB/2019

IN

C.P. (IB) No. 187/KB/2018

In the Matter of:

An application under Section 60(5)(c) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 33 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

And

In the Matter of:

Shri Krishna Agro Projects Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 17A, Ratan Sarkar Garden Street, 2nd Floor, Room No. 202, Kolkata – 700 007

... **Operational Creditor**

-Versus-

In the Matter of:

Feedatives Pharma Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 46, Chanditala Street, Uttarpara, Hooghly – 712 258.

... **Respondent/Corporate Debtor**

And

In the Matter of:

Sannjay Kumar Agarwal, Resolution Professional for Feedatives Pharma Private Limited appointed under Section 22(3)(b) of the Insolvency & Bankruptcy Code, 2016

... **Applicant/ Resolution Professional**

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Coram: Shri Jinan K.R., Hon'ble Member (Judicial) & Shri Harish Chander Suri, Hon'ble Member (Technical)

Counsel on Record:

Mr. Joy Saha, Sr. Advocate } ... For Petitioner

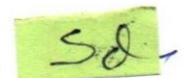
Date of pronouncing of the Order: 06.08.2019

ORDER

Per Shri Jinan K.R., Member (Judicial)

1. This is an application filed by the Resolution Professional ("RP") under Sec. 60(5) of the Insolvency & Bankruptcy Code, 2016 ("IBC") for execution of 90 days from 5/3/2019 to 3/6/2019 for the purpose of computation of 270 days of Corporate Insolvency Resolution Process ("CIRP").
2. Heard Ld. Sr. Counsel for the RP. Ld. Counsel submitted that CIRP process in this case has been initiated vide order dated 18/9/2019 by appointing Sanjeev Jhunjhunwala. However, after convening the meeting of Committee of Creditors ("CoC") in the third CoC held on 16/11/2018 the CoC proposed replacement of IRP by the present Sanjay Kumar Agarwal who has filed this application and the proposal replacement of IRP by Sanjay Kumar Agarwal approved by the Adjudicating Authority ("AA") vide order dated 31/12/2018, i.e. 105 days in the period of 180 days of initial period has been expired and that the IRP who has managed to continue the process for the remaining period has got an order extension of CIRP u/s 12 of the IBC Code and thereby





CIRP period was extended upto 6/6/2019. However, he was unsuccessful in getting approval of a resolution plan for the reason of rejection of only one resolution plan under consideration of the CoC.

3. But immediately on 9/6/2019 the resolution applicant agreed to submit a modified resolution plan, and before completing the finalisation the period of CIRP expires and CoC filed this application seeking exclusion of the un utilised period. This application came up for hearing on today.
4. It is submitted that the modified resolution plan submitted by the RP approved after due deliberation by 100% voting share on 02.07.2019. The corporate debtor company is running a poultry business.
5. According to the Ld. Sr. Counsel for the applicant, the above said period is to be excluded otherwise the corporate debtor, a going concern would be liquidated and thereby the employees of the farm will lose there job.
6. Having heard Ld. Sr. Counsel and going through the minutes brought to our notice dated 8/6/2019 we are satisfied that there are certain unutilised period by the present RP and thereby in the interest of justice demands, this application is liable to be allowed, by excluding the period from 9/6/2019 to 2/7/2019. Accordingly, this application is allowed as above.



(Harish Chander Suri)
Member (Technical)



(Jinan K.R.)
Member (Judicial)

Signed on this, the 6th day of August, 2019

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NATIONAL COMPANY LAW TRIBUNAL

KOLKATA BENCH

KOLKATA

CA(IB) No.175/KB/2019

IN

C.P. (IB) No. 187/KB/2018

In the Matter of:

An application under Section 60(5)(c) of the Insolvency & Bankruptcy Code, 2016 read with Regulation 33 of the Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

And

In the Matter of:

Shri Krishna Agro Projects Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 17A, Ratan Sarkar Garden Street, 2nd Floor, Room No. 202, Kolkata – 700 007

... **Operational Creditor**

-Versus-

In the Matter of:

Feedatives Pharma Private Limited, a company incorporated under the provisions of the Companies Act, 1956 having its Registered Office at 46, Chanditala Street, Uttarpara, Hooghly – 712 258.

... **Respondent/Corporate Debtor**

And

In the Matter of:

Sanjeev Jhunjunwala, erstwhile Interim Resolution Professional, having office at Room No.134, 1st Floor, Siddha Weston, 9 Siddha Weston, Kolkata 700001

... **Applicant/Interim Resolution Professional**





**Coram: Shri Jinan K.R., Hon'ble Member (Judicial) & Shri Harish Chander Suri,
Hon'ble Member (Technical)**

Counsels on Record:

1. Ms Ankita Baid, Advocate } ... For IRP
2. Mr Joy Saha, Sr. Advocate } ... For RP

Date of pronouncing of the Order: 06.08.2019

ORDER

Per Shri Jinan K.R., Member (Judicial)

1. This is an application filed by the Interim Resolution Professional ("IRP"), Sanjeev Jhunjunwala for realisation of fees of erstwhile IRP for the first 30 days of Corporate Insolvency Resolution Process ("CIRP").
2. It is submitted by the Ld. Counsel appearing for the Resolution Professional ("RP") that this Adjudicating Authority ("AA") appointed him as the IRP vide order dated 18/9/2018 and vide order dated 31/12/2018 this Bench, as requested by the CoC replaced the IRP by Sanjay Kumar Agarwal but not paid the fees payable to the IRP for the first 30 days of CIRP period. Since the CoC has declined to pay fees due to the IRP for the first 30 days of CIRP and also cost of public announcement, the IRP has compelled to file this application.
3. In reply to the application Ld. RP has submitted that payment of fees and other expenses payable after initial 30 days amounting to Rs.5,40,873/- was approved by the CoC and subsequently paid to the IRP. The details of the payment as shown in the reply affidavit has not

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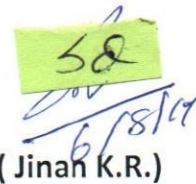
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been filed on the side of the RP who is continuing with the process of CIRP.

4. It is further submitted on the side of the RP that the CoC has paid the IRP fees to the tune of Rs.50,000/- for the 30 days and the cost of public announcement of Rs.13,910/-. That being so, there is nothing found due to the IRP as claimed for. The CoC here in this case seems to have fixed the fees and expenses by the IRP in accordance to the Regulation and we do not find any reason to interfere with the fixation of fees for the first 30 days at Rs.50,000/- which according to the IRP is too low.
5. Being satisfied with the payment of the CoC, we do not find any justifiable reason to allow this application awarding Rs. 2 lakhs as the remuneration for the first 30 days, as submitted by the Ld. Counsel for the IRP.
6. In view of the above said reasons this application requires no consideration. Accordingly liable to be dismissed.
7. In the result the application is dismissed. No order as to costs.



(Harish Chander Suri)
Member (Technical)



(Jinan K.R.)
Member (Judicial)

Signed on this, the 6th day of August, 2019

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