

SL. No.101

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH
COURT HALL NO: II

Video Conference

CORAM: HON'BLE BHASKARA PANTULA MOHAN-MEMBER JUDICIAL
HON'BLE DR. BINOD KUMAR SINHA- MEMBER TECHNICAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL,
HYDERABAD BENCH, HELD ON 10.01.2022 AT 10:30 AM THROUGH VIDEO CONFERENCE

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|----------------------------------|---|
| TRANSFER PETITION NO. | |
| COMPANY PETITION/APPLICATION NO. | IA .(IBC).338/2021 CP (IB)No.326/7/HDB/2020 |
| NAME OF THE COMPANY | Svec constructions ltd |
| NAME OF THE PETITIONER(S) | State bank of india |
| NAME OF THE RESPONDENT(S) | Svec constructions ltd |
| UNDER SECTION | 7 of IBC |
| | |

Counsel for Petitioner(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |

Counsel for Respondent(s):

| Name of the Counsel(s) | Designation | E-mail & Telephone No. | Signature |
|------------------------|-------------|------------------------|-----------|
| | | | |

ORDER

IA746/2021- Learned Counsel for Resolution Professional appeared via video conference.

Orders Pronounced vide separate sheets. Resolution Plan stands approved.


Member(T)

Ajay


Member(J)

**IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD**

IA No. 746 of 2021

In

CP (IB) No: 326/7/HBD/2020

**IN THE MATTER OF
M/s. S.V.E.C. CONSTRUCTIONS LIMITED**

BETWEEN:

M/s S.V.E.C construction Limited
1014, Raghava Ratna Towers,
Chirag Ali Lane, Abids, Hyderabad – 500001.
Rep by Resolution Professional,
DOMMETI SURYA RAMA KRISHNA SAIBABA
IBBIA Regn. No.: IBBI/ IP- N000165/ 2018-2019/ 12106
Flat No. A-105, Mahindra Ashvita, Hafeejpet Road,
Near Hi-Tech City MMTS Railway Station,
KPHB Colony, Hyderabad, Telangana- 500085
E-mail ID: dsrk39@yahoo.com

... Petitioner/Resolution Professional

AND

STATE BANK OF INDIA
Having Registered office at:
State Bank Bhavan, Madam Cama Road,
Nariman Point, Mumbai, Maharashtra – 400021

... Respondent/ Financial Creditor

Date of Order: 10.01.2022

**Coram: Shri Bhaskara Pantula Mohan, Member Judicial
Dr. Binod Kumar Sinha, Member Technical**

Parties/Counsels present:

For the Applicant: Mr. Dommeti Surya Rama Krishna Saibaba, RP
Mr. A. Chandra Shekar, Counsel

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Per: Bench

ORDER

1. Under consideration is an Application filed U/s. 30(2) of the I&B Code, 2016, by the Resolution Professional, inter-alia, seeking following reliefs:-
 - a. To pass an order/orders approving the proposed Resolution Plan as contemplated under Section 31(1) of the Code in the interest of the revival of the Corporate Debtor ; and
 - b. To grant the reliefs and concessions sought by the Successful Resolution Applicant M/s. Harsha Constructions Pvt. Ltd.
2. Brief facts of the case as stated by the Applicant are as under:-
 - a. That this Adjudicating Authority vide order dated 08.01.2021 admitted the Corporate Debtor into CIRP and appointed Mr. Dommeti Surya Rama Krishna Saibaba as the Interim Resolution Professional (IRP). Subsequently the Applicant herein was appointed as Resolution Professional.
 - b. The following claims were received from the various creditors and admitted by IRP as under:-

Financial Creditors:

(Amount in Rupees)

| S. No. | Name of Financial Creditor | Amount of Claim | Amount Admitted by IRP |
|---------------|------------------------------------|------------------------|-------------------------------|
| 1. | State Bank of India | 3,68,54,47,056 | 3,68,54,47,256 |
| 2. | IDBI Bank Limited | 2,31,49,63,100 | 2,31,49,63,100 |
| 3. | UCO Bank (Asset Management Branch) | 17,38,14,812 | 17,38,14,812 |
| Total | | 6,17,42,24,968 | 6,17,42,24,968 |

Operational Creditors:

(Amount in Rupees)

| S. No. | Name of the Operational Creditor | Amount of Claim | Amount Admitted by IRP |
|---------------|--|------------------------|-------------------------------|
| 1. | Employees Provident Fund Organization | 40,09,102 | 18,46,674 |
| 2. | Goods and Services Tax | 7,12,98,098 | 7,12,98,098 |
| 3. | Exercise and Taxation Officer, Panchkula | 64,54,711 | 64,54,711 |

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| | | |
|---------------------------|----------------|----------------|
| Total (ii) | 8,17,61,911 | 7,95,99,483 |
| Grand Total (i+ii) | 6,25,59,86,879 | 6,25,38,24,451 |

That besides these claims no other claims were received within the stipulated time.

- c. That valuation of the Corporate Debtor as ascertained from the Registered Valuers by the RP is as under:-

| S. No. | Asset Class | Name of the Valuer | Liquidation Value in (Rs.) | Average Liquidation Value in (Rs.) |
|--|---------------------|---------------------------------|----------------------------|------------------------------------|
| 1. | Land and Building | Aradhi Venkata Rama Krishna Rao | 1,12,37,000 | 1.16.69.500 |
| 2. | Land and Buildings | Sai Vara Prasad Siddabathuni | 1,21,02,000 | |
| 3. | Plant and Machinery | Poinasetty Kanak Rao | 19,88,261 | 19,59,521 |
| 4. | Plant and machinery | P Madhu | 19,30,780 | |
| 5. | Financial Assets | Gotta Koteswara Rao | 2,68,23,266 | 2,65,78,377 |
| 6. | Financial Assets | Kasi Srinivas | 2,63,33,488 | |
| Average Liquidation Value of the Enterprise | | | | 4,02,07,398 |

- d. The final list of prospective Resolution Applicants (PRAs) in terms of Regulation 36A (12) of CIRP Regulations, 2016 was placed before CoC , the details of which are as follows:

- a) M/s. Harsha Constructions Pvt Ltd and
- b) M/s PNC Infratech Limited.

- e. That upon Application on 01.07.2021, the extension of CIRP period by 90 days was granted beyond the stipulated period of 180 days.
- f. That in the sixth COC meeting held on 27.09.2021 , M/s. Harsha Constructions Pvt. Ltd. presented their resolution plan to COC members.

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- g. That COC discussed improved Resolution Plan submitted by M/s Harasha Constructions Pvt. and advised them to further improve the offer in the 7th COC meeting held on 12.10.2021. That COC discussed improved Resolution Plan submitted by M/s Harsha Pvt. Ltd. and advised them to further improve the offer in the 8th COC meeting held on 27.10.2021.
- h. That in the instant case, the Revised Final Resolution Plan submitted by M/s. Harsha constructions Pvt. Ltd. On 01.11.2021 has been examined by the Resolution Professional and has been found to be complying with the mandatory provisions of Section 30(2) of the IBC, 2016 read with Regulation 38 of the IBBI (Insolvency Resolution Process for Corporate Persons).
3. The salient features of the resolution plan submitted by M/s. Harsha Constructions Pvt. Ltd are as under:-

| S. No | Category of Stakeholder | Amount claimed (Rs) | Amount Admitted (Rs) | Amount Provided under the Plan | Amount Provided to the Amount Admitted (%) |
|-------------|-----------------------------|---------------------|----------------------|--------------------------------|--|
| 1. | Secured Financial Creditors | 6,17,42,24,968 | 6,17,42,24,968 | 5,50,00,000 | 0.89% |
| 2. | Operational Creditor | 8,17,61,911 | 7,95,99,483 | 20,00,000 | 2.51% |
| 3. | CIRP expenses | NA | NA | 30,00,000 | NA |
| Grand Total | | 6,25,59,86,879 | 6,25,38,24,451 | 6,00,00,000 | 0.96% |

| Source of Funding | Amount (Rs.) (In Crore) |
|--|-------------------------|
| EMD deposited by Resolution Applicant | 0.50 |
| Payment of Resolution plan amount - 30 days after the approval of Resolution Pan by Adjudicating Authority | 5.50 |
| Total payment offered to financial creditors/operational creditor/CIRP expenses | 6.00 |

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- a. That Demand Draft bearing number 525668 dated 01.12.2021 for Rs. 2,00,00,000/- was submitted in lieu of Performance Bank Guarantee on approval of Resolution Plan by the COC.
- b. The Resolution Applicant undertakes to protect 100% Bank Guarantees that have already been issued by the financial creditors and are in force as on the date of CIRP of Corporate Debtor admitted by NCLT.
- c. To protect the interest of the financial creditors for the BGs that are live, Resolution Applicant should make a deposit of Rs.3.00 Cr in a separate no lien account to be opened for this purpose in the name of Corporate Debtor with lead bank i.e, State Bank of India and the funds in this account should be used only for meeting any eventuality of invocation of Bank Guarantees.
- d. That the COC discussed the final Resolution Plan dated 01.11.2021 and the same was up for voting in the 9th COC meeting held on 09.11.2021. The applicant submits that the window for voting on the above-mentioned resolution was kept open from 10:00AM of 15.11.2021 to 5:00 PM of 01.12.2021.
- e. That the Resolution No. 1 viz. the Resolution Plan submitted by M/s. Harsha Construction Pvt. Ltd. was voted in favor by 97.18% voting share of COC. As a result M/s. Harsha Constructions Pvt. Ltd is declared as successful resolution applicant.
- f. That as required under Section 30 (2), the Applicant Resolution Professional has examined the Successful Resolution Plan and confirms that it complies with the provisions of the Code.
- g. That the Successful Resolution Applicant is incorporated under the provisions of Companies Act, 2013 bearing corporate identity number U45309TG2020PTC143678 and has its registered office at 4-8-83, IIND Floor, BGR Towers Opp Congress Bhavan, Hanamkonda Warangal, TG - 506001.
- h. The Resolution Professional states that the successful resolution plan is an “unconditional” Resolution Plan that is not

contingent/incumbent on occurrence of events and/or any factor that is not contemplated by the Code and jurisprudence there under as necessary steps precedent of any Corporate Debtor undergoing CIRP.

- i. The Applicant also states that the contents of the said Successful Resolution Plan submitted by the said Successful Resolution applicant meets all the requirements of the Code and the pertinent Regulations framed thereunder and does not contravene any of the provision of law for the time being in force as confirmed by the Successful Resolution Applicant and the undertaking appended to the Resolution Plan. The Resolution Plan accommodates the interest of the various stakeholders.
 - j. That the Resolution Applicant has also issued the certificate of compliance under section 29A of the Code.
 - k. That the Resolution Plan, if implemented will be in the best interest of the Corporate Debtor as well as all the stakeholders and it will commensurate with the objectives of the Code and will revive the Corporate Debtor and will keep it as a going concern. It will also ensure that the Corporate Debtor can combat the financial crisis and can turnaround the entire condition of the Corporate Debtor.
4. Counsel for the Applicant/Resolution professional filed an Application bearing No. IA(IBC)/3/2022, inter-alia bringing certain facts for consideration of the Resolution Plan submitted for approval by this Adjudicating Authority and has stated as under:-
- a. That the machinery and equipment have not been in use for the last many years; these have become rusted and only have junk value.
 - b. The land and building consist of land at some rural hamlets which were earlier acquired by the Corporate Debtor for using as stock yards and without any proper approach these land masses are said to have little value.

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- c. The buildings of the Corporate Debtor consist of camp sites at different locations which have become obsolete.
- d. The inventory/stock are NIL as per books of account as on CIRP Commencement date. There is only Rs.20 Lakh receivable from one M/s. BSCPL Infrastructure Ltd, which can be realized only after persuasion.
- e. That the other current assets comprising of Rs.2.55 Cr of security deposit pertaining to two projects given to Government Departments can be recovered only after infusion of additional funds to mobilise/ deploy necessary plant and machinery to complete work.
- f. That the current assets include an amount of Rs.1.31 Cr as loans and advances given to sub-contractors by the Corporate Debtor. As the projects for which these amounts were given as advances were held up, thus recovery of this amount depends on execution and completion of said project, which is very remote and uncertain.
- g. The Corporate Debtor has to receive TDS of Rs.0.31 Cr from IT Department and Rs.1.59 Cr from GST authorities as input credit. The refund of TDS on pending assessments and the GST input credit can be realized and adjusted only towards future GST liability, provided the company gets new orders and executes the same.
- h. The current assets of Corporate Debtor includes unbilled work in progress amounting to Rs.4.20 Cr. This unbilled project pertains to a project which is standstill and realization of this amount is dependent on Government closing/terminating the project with/without liquidated damages.
- i. The Financial Creditor had already adjusted the margin money deposits pertaining to Bank Guarantee and hence, there is hardly any bank balance available with the Corporate Debtor. Thus, it is

observed that the chances of putting to use the fixed assets and recovery of the current assets of the Corporate Debtor to rotate in working capital assets is fraught with many uncertainties and the realisable value of the assets is marginal.

- j. That the Resolution Plan amount offered as part of the plan is the best which is offered under the given circumstances as explained. Upon negotiations with the CoC, the Resolution Applicant increased the Plan amount to Rs.6 Crore (from Rs.5 Cr), agreed to deposit upfront Rs.3 Cr to secure the Banks against BG invocations and undertaking to indemnify the banks against any losses. That no other bidder came forward with a resolution plan after perusing the Information Memorandum and enquiring the current state of affairs of the Corporate Debtor.
- k. In addition to the Resolution Plan amount of Rs. 6 Crores, the Resolution Applicant has also committed to undertake the liability of uninvoked Bank Guarantees amounting to Rs. 29.93 Crores, issued by the financial Creditors to various beneficiaries. The Resolution Applicant has also undertaken to adjust the BG Liability crystallised, if any within 30 days period from the date of invocation of any BG.

Reiterating above, counsel for the Applicant prayed to allow the Application bearing IA No. 746/2021 as prayed for.

5. Heard counsel for the Resolution Professional/Applicant and perused the Resolution Plan and other documents submitted along with Application.
6. Section 30(2) of the Code as amended w.e.f. 06.08.2019 enjoins upon the resolution professional to examine each resolution plan received by him to confirm that such plan –
- a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor;

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- b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than-
 - i. the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
 - ii. the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the Corporate Debtor.
- c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;
- d) the implementation and supervision of the resolution plan;
- e) does not contravene any of the provisions of the law for the time being in force
- f) Confirms to such other requirements as may be specified by the Board.

7. Section 30(4) of the Code as it stands at present after the amendment reads as follows: -

“(4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six percent. of voting share of the financial creditors, after considering its feasibility and viability, the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor and such other requirements as may be specified by the Board.”

8. Section 30(6) of the Code enjoins the resolution professional to submit the resolution plan as approved by the committee of creditors to the

Adjudicating Authority. Section 31 of the Code deals with the approval of the resolution plan by the Adjudicating Authority, if it is satisfied that the resolution plan as approved by the committee of creditors under section 30(4) meets the requirements as referred to in section 30(2).

9. Thus, before approving the Resolution plan, it is the duty of the Adjudicating Authority that it should satisfy itself that the Resolution plan as approved by the COC meets the requirements as referred to in sub-section (2) of Section 30.
10. On perusal of the Resolution Plan, this Adjudicating Authority has observed that the Resolution plan placed for consideration provides for the following:

- a) Payment of CIRP Cost as specified U/s 30(2)(a) of IBC, 2016.
- b) Repayment of Debts of Operational Creditors as specified U/s 30(2)(b) of IBC, 2016.
- c) Provides for management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of IBC, 2016.
- d) The implementation and supervision of Resolution Plan shall be done by Insolvency Resolution Professional and by the COC as specified U/s 30(2)(d) of IBC, 2016.
- e) The Resolution Plan is not in contravention to any of the provisions of Law, for the time being in force, as specified U/s 30(2)(e) of IBC, 2016.
- f) The Resolution plan conforms to other requirements specified by the Board.

11. In terms of Regulation 27 of CIRP Regulations, Liquidation value was ascertained through two registered valuers. The Liquidation value as ascertained by RP is Rs.4,02,07,398/- and the fair market value is Rs.7,06,62,736/-.

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12. The RP has complied with the code in terms of Section 30(2)(a) to 30(2)(f) and Regulations 38(1), 38(1)(a), 38(2)(a), 38(2)(b), 38(2)(c) & 38(3) of CIRP regulations.
13. The identity of the Resolution Applicants have been duly verified by the RP and affidavit as per section 30(1) of the Code has been obtained from the Resolution Applicants stating that it is not ineligible U/s 29A of the IB Code, 2016.
14. The Plan also provides for keeping the Company as a going concern and operate in its normal course of business upon implementation of Resolution Plan. There is no objection filed by any other person in this regard.
15. The RP has inter-alia filed the following Certificate in Form H:-

"I have examined the Resolution Plan received from Resolution Applicant, M/s Harsha Constructions Private Limited and approved by Committee of Creditors (CoC) of M/s. SVEC Constructions Ltd.

I hereby certify that-

- i. The said Resolution Plan complies with all the provisions of the Insolvency and Bankruptcy Code 2016 (Code), the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and does not contravene any of the provisions of the law for the time being in force.*
- ii. The Resolution Applicant, M/s. Harsha Construction Pvt. Ltd. has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility under section 29A of the Code to submit resolution plan. The contents of the said affidavit are in order.*
- iii. The said Resolution Plan has been approved by the CoC in accordance with the provisions of the Code and the CIRP Regulations made thereunder. The Resolution Plan has been approved by 97.18% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.*

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- iv. *I sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per the regulation 26.”*
16. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors in its meeting dated 09.11.2021 with 97.18% votes cast in favour of Approval of Resolution Plan.
17. In *K Sashidhar Vs. Indian Overseas Bank & Others*, decided on 05.02.2019 in Civil Appeal No.10673/2018 with CA Nos.10719/2018, 10971/ 2018 and SLP(C) No.29181/2018, the Hon'ble Supreme Court, noticing the provisions of section 30(4), held that if the CoC had approved the resolution plan by requisite percent of voting share, then as per section 30(6) of the Code, it is imperative for the resolution professional to submit the same to the adjudicating authority (NCLT). On receipt of such a proposal, the adjudicating authority (NCLT) is required to satisfy itself that the resolution plan as approved by CoC meets the requirements specified in Section 30(2). No more and no less.
18. In the said judgment, in para 35, the Hon'ble Supreme Court held that the discretion of the adjudicating authority is circumscribed by Section 31 and is limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2) when the resolution plan does not conform to the stated requirements.
19. In the recent judgement in *Essar Steel* (Civil Appeal No.8766-67 of 2019) the Hon'ble Apex Court clearly laid down that the Adjudicating Authority will not have power to modify the Resolution Plan as approved by the CoC in their Commercial Wisdom. In para 42 of the said judgment, Hon'ble Apex Court has observed as under:

“Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and

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section 32 read with section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Shashidhar (supra).”

20. In view of the discussions in the foregoing paragraphs, the ‘Resolution Plan’ filed with the Application meets the requirements of Section 30(2) of the I&B Code, 2016 and Regulations 37, 38, 38(1A) and 39 (4) of IBBI (CIRP) Regulations, 2016. The ‘Resolution Plan’ is also not in contravention of any of the provisions of Section 29A. Hence, this Adjudicating Authority is satisfied that the Resolution Plan is in accordance with Law. Therefore, the ‘Resolution Plan’ annexed with Application bearing IA No. 746 of 2021 filed in CP(IB) No.326/7/HDB/2020 is hereby approved, which forms part of this Order and which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.
21. However, the Resolution Plan approved shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan and the same shall be dealt in accordance with the appropriate Authorities as per relevant Laws. We are of the considered view that if any waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same has also been held by Hon’ble Supreme Court in the case of *Ghanashyam Mishra and Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited*.
22. Accordingly, the MoA and AoA shall be amended and filed with the RoC for information and record as prescribed. While approving the ‘Resolution Plan’, as mentioned above, it is clarified that the Resolution Applicant shall pursuant to the Resolution Plan approved under Sub-Section (1) of Section 31 of the I&B Code, 2016, obtain all the necessary approvals as

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- may be required under any law for the time being in force within the period as provided for in such law.
23. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.
 24. This Adjudicating Authority hereby directs constitution of a Monitoring Committee comprising of one Representative of the Financial Creditors, one representative of the Resolution Applicant and the Resolution Professional. The RP to supervise the implementation of the Resolution Plan and file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.
 25. The order of moratorium passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing of this Order.
 26. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with Copy of this Order, so that the Board may record the same on its data-base.
 27. The Registry is directed to communicate this order to the Registrar of Companies, Hyderabad for updating the master data and to IBBI.
 28. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
 29. Accordingly, IA No.746 of 2021 is disposed of as allowed and Application bearing IA No. 03/2022 stands disposed.



Dr. Binod Kumar Sinha
Member Technical



Bhaskara Pantula Mohan
Member Judicial

SKRathi