

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
BENGALURU BENCH**

**(Exercising powers of Adjudicating Authority under  
the Insolvency and Bankruptcy Code, 2016)  
(Through web-based video conferencing platform)**

**CP (IB) No.53/BB/2022**

**U/s. 7 of the IBC, 2016**

**R/w Rule 4 of the IBC (AAA) Rules, 2016 &**

**IN THE MATTER OF:**

**M/s. Orix Leasing and Financial Services India Ltd**

R/o: Plot No. 94, Marol Co-operative Industrial Estate,  
Andheri-Kurla Road, Andheri (East),  
Mumbai – 400 059

... Applicant/Financial Creditor

**VERSUS**

**M/s. Beloorbayir Biotech Limited**

R/o: 4112, Utkarsha, K.R Road,  
Banashankari 2<sup>nd</sup> Stage,  
Bangalore – 560 070

... Respondent/Corporate Debtor

**Order delivered on: 15<sup>th</sup> December, 2022**

**CORAM:**

Hon'ble Shri Kishore Vemulapalli, Member (Judicial)

Hon'ble Shri Manoj Kumar Dubey, Member (Technical)

**PRESENT:**

For the Petitioner

: Ms. Manoranjini, Adv.

For the Respondent

: None

**ORDER**

**Per: Manoj Kumar Dubey, Member (Technical)**

1. The present Petition is filed, under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'IBC/Code') on 10.03.2022 by M/s. Orix Leasing and Financial Services India Ltd (hereinafter referred to as 'Applicant/Financial Creditor') to initiate the Corporate Insolvency



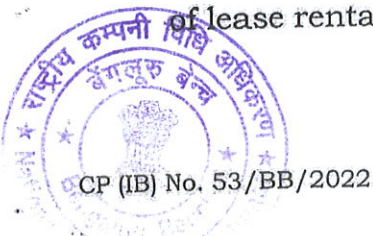
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Resolution Process ('CIRP') against M/s. Beloorbayir Biotech Limited. (hereinafter referred to as 'Respondent/Corporate Debtor').

2. The Corporate Debtor namely M/s. Beloorbayir Biotech Limited is a Company incorporated on 02.03.2005 under the provisions of the Companies Act, 1956 with CIN:U73100KA2005PLC035741 having its registered office at 4112, Utkarsha, K.R Road, Banashankari, 2<sup>nd</sup> Stage, Bangalore - 560070, which falls within the territorial jurisdiction of this Adjudicating Authority. The Authorised Capital of the Respondent/Corporate Debtor is Rs.67,00,00,000/- and the Paid-Up Share Capital is Rs.39,94,07,500/- as per the Company Master Data attached at Annexure-A02 of this application.
3. The present application has been filed by the Financial Creditor against the Corporate Debtor in respect of the default amount of Rs.2,69,96,500/- (Rupees Two Crores, Sixty Nine Lakhs, Ninety Six Thousand and Five Hundred only).
4. It is submitted that the Corporate Debtor approached the Financial Creditor for availing the financial assistance to purchase various machineries and entered into Master Lease Agreement with the Financial Creditor for an amount of Rs.5,00,00,000/-. Then, as per the instructions of Corporate Debtor and the document signing memos between the parties an amount of Rs.4,61,48,418/- was disbursed by the Financial Creditor to nine of Corporate Debtor's vendors towards purchase of various machineries on different dated between 22<sup>nd</sup> December 2017 to 01<sup>st</sup> June 2018. Lease rentals were to be paid by the Corporate Debtor as per the repayment schedule agreed upon in the document signing memo.
5. As per agreement, there is a repayment schedule in the form of monthly lease rentals for the amount disbursed as a lease finance assistance and the Corporate Debtor is supposed to pay the stipulated lease rentals regularly and punctually without any abetments and deductions (except statutory deductions). However, the Corporate Debtor grossly neglected in the payment of lease rentals during the lease tenure causing an event of default under the

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agreement with effect from July 2019. Even the postdated cheques issued by the Corporate Debtor to the Financial Creditor against the lease rentals towards discharge of liability to repay the lease amount as contained in the Agreement have been dishonoured due to insufficient funds in the Corporate Debtors bank account.

6. It is further submitted that the Financial Creditor then issued a legal notice dated 25.09.2020 demanding the Corporate Debtor to make the payments due and the Corporate Debtor replied to the same on 21.10.2020 *inter-alia* admitting to have entered into the Lease Deed Agreement dated 20.12.2017 with the Financial Creditor for financial assistance. The Corporate Debtor also admitted that the Financial Creditor had provided Lease Financial Assistance for its purchase of various machineries as pre the lease deed. Further, the Corporate Debtor approached the Financial Creditor for an amicable settlement and paid an amount of Rs.74,50,000/- on 30.11.2020 against the outstanding amount and assured to regularize the lease rentals for the balance lease period without any further default. Accordingly, on 01.01.2021 both the parties entered into a settlement cum restructuring of their original Lease Agreement dated 20.12.2017.
7. It is also submitted that as on 01.01.2021, the total outstanding amount due was Rs.54,21,065/- against which Rs.33,06,805/- was paid by the Corporate Debtor and for the balance Rs.20,89,260/-, they have issued 6 postdated cheques each for an amount of Rs.3,48,210/- which were again dishonoured due to insufficient funds in Corporate Debtor's Bank account. Further, the Financial Creditor without terminating the Agreement provided an opportunity to the Corporate Debtor and kept the Master Lease Agreement dated 20.12.2017 revived based on the assurance that Corporate Debtor will regularize the payment of lease rental effective 01.01.2021 as per the terms and conditions as stated in the master lease agreement and schedules without abetment and deductions.

8. It is submitted that inspite of providing ample opportunities, the Corporate Debtor has again failed to honour its commitment to make payment to the



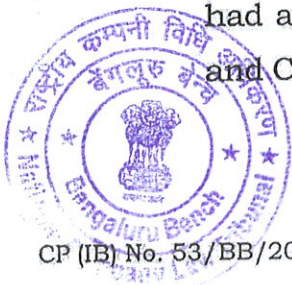
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Financial Creditor and thus committed an act of default under the said Agreement, leading to premature Termination of Agreement. That the Financial Creditor as a final attempt to get its outstanding dues again sent a legal notice dated 29.12.2021 calling upon the Corporate Debtor to pay an amount of Rs.2,69,96,500/-. However, the Corporate Debtor neither replied to that legal notice nor made the payment towards the outstanding amount.

9. The Respondent/Corporate Debtor opposed the C.P., vide Diary No. 2188 dated 23.05.2022 by *inter alia* contending as under:

- (1) It is submitted that the Applicant has not disclosed material and relevant facts before this Hon'ble Tribunal, the present application is liable to be dismissed for the non-disclosure of material facts.
- (2) The Respondent Company is engaged in manufacturing and marketing of select Active Pharmaceutical Ingredients, Nutraceutical Ingredients and Botanical Extracts. It is also submitted that the Respondent are accredited with certifications such as WHO cGMP, EU GMP, NSF, AYUSH, FSSAI, ISO 22000:2005, ISO 9001:2008, HALAL & Kosher and the Company has become leader in the Nano technology segment and most of its future products is based on this platform redefining dosage forms and bioavailability.
- (3) It is further submitted that the Respondent, due to COVID-19 lockdown where all the export import business were closed, has undergone a huge loss which was unbearable beyond the control of the Respondent and National Disaster had been declared by the Govt. of India. Further, the Applicant was well aware about this situation and there was several discussions on that for the non-payment on scheduled time, and there is no proper demand raised in so far as the present proceedings is concerned. On this ground alone the present application deserved to be dismissed.
- (4) It is also submitted that prior to filing the present petition, the Applicant had approached the Hon'ble High Court of Delhi under the Arbitration and Conciliation Act, 1996 seeking appointment of Sole Arbitrator under



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settlement agreement dated 01.01.2021 and the same was disposed of vide order dated 28.04.2022 by appointing Ms. Bimla Makin, former District and Sessions Judge, Delhi as the Sole Arbitrator to adjudicate the claims and counter-claims between the parties. It is stated that the Applicant is estopped from approaching this Tribunal due to this reason. But the Applicant nowhere in its Application filed before this Hon'ble Tribunal has stated anything related to the arbitration proceedings initiated by it.

- (5) The Respondent submits that there are no defaults of payments from the Respondent except on account of the Covid-19 lockdown and consequential events beyond the control of the Respondent. And also there was a pre-existing dispute between the parties under the master agreement and the subsequent settlement deed entered into between the parties for the appointment of arbitrator before the Hon'ble Delhi High Court. It is the Applicant itself who approached the Hon'ble Delhi High Court for Arbitration. The Hon'ble Delhi High Court has also allowed the Petition and appointed Arbitrator vide order dated 28.04.2022 to adjudicate the same claims.
- (6) It is submitted that the Applicant has not clearly explained as to how it has come to the conclusion that there is a due of Rs.2,69,96,500/- from the Respondent. The Applicant has not stated if this amount is derived after resorting to the calculation method in clause 9 in the schedule appended to the master agreement dated 20.12.2017. The claim of the applicant does not meet the standards stipulated under the code and no default has occurred as per the terms of the master agreement and the settlement deed. In the absence of occurrence of default by the Respondent, the present application is not maintainable and deserves to be dismissed.

10. The Petitioner filed its rejoinder by *inter alia* further stating as under:

- (1) It is stated that the Corporate Debtor has an exclusive product range for Covid treatment. Therefore, while the Covid scenario has brought an

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increase in the demand for such therapeutic products world over, Corporate Debtor being in that space, seems like could not utilise the opportunity due to its distressed position and is unable to pay the bonafide dues to its creditors. Further, the Applicant after making several requests for payment, the Applicant even sent two legal notices dated 25.09.2020 and 01.01.2021.

- (2) It is submitted that after Legal Notice dated 25.09.2020 was issued, the Respondent approached the Applicant for an amicable settlement and consequently, a Deed of Settlement dated 01.01.2021 was executed by the parties, wherein the Respondent confirmed and undertook to make payments to the Applicant in accordance with the agreed payment schedule and to regularise the payment of lease rentals becoming due effective 01.01.2021 on their respective due dates as specified in the Master Lease Agreement and its Schedules. Further when the Respondent failed to abide by the terms of the Deed of Settlement and failed to clear the balance outstanding dues as agreed, the Applicant in order to recover its dues, as per clause 11 of the Deed of Settlement, invoked arbitration and filed an application before Hon'ble High court of Delhi, U/s. 11 of the Arbitration and Conciliation Act, 1996 and subsequently, the Applicant filed the instant Section 7 Application in order to trigger the CIRP for the Corporate Debtor.
- (3) It is further submitted that as per Section 10A of the Code and subsequent notifications issued by eth MCA dated 24.09.2020 and 22.12.2020 no application for initiation of the CIRP of a Corporate Debtor shall be filed for any defaults arising between 25.03.2020 to 24.03.2021, but the amount defaulted by Corporate Debtor even after excluding the Section 10A period is Rs.2,48,13,982/- and thus this Application filed U/s.7 of IBC is maintainable.
- (4) It is submitted that the Respondent being party to the Master Lease Agreement is well aware that the outstanding amount of Rs.2,69,96,500/- is computed as per the calculation method provided in the lease summary schedule. Also after receiving the legal notice



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dated 25.09.2020, the Corporate Debtor had approached for settlement, executed settlement deed with Applicant and paid amounts of Rs.74,50,000/-, Rs.33,06,805/- and also issued 6 post-dated cheques each for Rs.3,48,210/- which were dishonoured due to insufficient funds were computed using the same calculation method as provided in the lease summary schedule.

(5) The Applicant has relied upon certain judgements which state that U/s. 7 of the Code there is no bar to initiate CIRP even if the arbitration proceedings are pending, that the Hon'ble Adjudicating Authority has a duty to advert to contentions put forth on the Application filed U/s. 7 of the IBC, examine the material placed before it by the Financial Creditor and record a satisfaction as to whether there is default or not and that it would not be correct to contend that mere pendency of the Section 7 proceedings and that too at pre-admission stage would be an embargo for the Court not to entertain a Petition filed U/s. 11 of the Arbitration and Conciliation Act. The judgements relied by the Applicant are as follows:

- i. CP No. 156(PB)2017 in *Reliance Commercial Finance Limited Vs. Ved Cellulose Limited*.
- ii. CA (AT) (Ins) No. 802 of 2020 in *Hasan Shafiq Vs. CT- Technologies ApS and Anr. Order by Hon'ble NCLAT, Principal Bench, New Delhi*.
- iii. Commercial Arbitration Application No. 1242 of 2022 in *Jasani Realty Pvt Ltd Vs. Vijay Corporation*.

11. In compliance to the order dated 26.07.2022, the learned Counsel has filed memo duly enclosing NESL Report and other documents vide Diary No. 3723 dated 05.09.2022 and the same are taken on record.

12. Heard Shri Ms. Manoranjini, learned Counsel for the Petitioner and none for the Respondent and perused the pleadings on record.

13. The Hon'ble Supreme Court of India in *M/s. Innoventive Industries Ltd. vs. ICICI Bank & Anr. in Civil Appeal Nos.8337-8338 of 2017* observed as under:



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“27. The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins. Default is defined in Section 3(12) in very wide terms as meaning non-payment of a debt once it becomes due and payable, which includes non-payment of even part thereof or an instalment amount. For the meaning of “debt”, we have to go to Section 3(11), which in turn tells us that a debt means a liability of obligation in respect of a “claim” and for the meaning of “claim”, we have to go back to Section 3(6) which defines “claim” to mean a right to payment even if it is disputed. The Code gets triggered the moment default is of rupees one lakh or more (Section 4). The corporate insolvency resolution process may be triggered by the corporate debtor itself or a financial creditor or operational creditor. A distinction is made by the Code between debts owed to financial creditors and operational creditors. A financial creditor has been defined under Section 5(7) as a person to whom a financial debt is owed and a financial debt is defined in Section 5(8) to mean a debt which is disbursed against consideration for the time value of money. As opposed to this, an operational creditor means a person to whom an operational debt is owed and an operational debt under Section 5 (21) means a claim in respect of provision of goods or services.

28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor – it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in part III, particulars of the financial debt in part IV and documents, records and evidence of default in part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the “debt”, which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.”



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14. Section 7(5)(a) of the Code is as follows:-

*"5) Where the Adjudicating Authority is satisfied that-*

*(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application."*

15. On 19.10.2022, the learned Counsel appearing for the Petitioner was directed to file an index showing the date of relevant documents with page numbers and also to file written submissions about the limitation in not more than two pages within one week. In pursuant to the above, the learned Counsel for the Petitioner has filed Written Submissions on the limitation of the instant C.P. vide Diary No. 4603 dated 27.10.2022 and the same is taken on record. It is explained as under:

*"5. It is submitted in terms of clause 2.3 of the lease master lease agreement, CD is supposed to pay the stipulated lease rentals regularly without any abetments and deductions (except statutory deductions) however CD has grossly neglected in the payment of lease rentals thereby causing an event of default wef July 2019 and the application is maintainable and in compliance on limitation as tabled hereunder:*

SNO.	Date	Document details	Page No.
1	29.12.2017	Maste Lease Agreement	25-41
2	22.12.2017 to 01.06.2018	Dates of Disbursement of amounts to the vendors of the CD as per the instructions of CD.	96, 97, 98, 99 ,100, 101, 102 ,103 & 104
3	21.10.2020	In reply to the legal notice issued by FC, CD through its Counsel acknowledged debt and default by stating that due COVID pandemic and poor recovery they could not make the payment.	109-111
4	01.01.2021	At the request & assurances given by CD, FC provided an opportunity by reviving the master agreement to regularize the payment of lease rentals. Accordingly, both parties entered into a deed of	112-119



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		settlement and CD paid Rs.33 lakhs against the total outstanding of 54 lakhs and issued 6 postdated cheques for the balance of Rs.21 lakhs.	
5	29.12.2021	Legal notice issued by FC to CD	120-131
6	10.03.2022	Application CP (IB) No. 53/7/BB/2022 filed u/s 7 by the FC against CD	

6. It is submitted that the FC as directed by this Hon'ble Adjudicating Authority got the Record of Default in Form D authenticated by NeSL and the same has been efiled on 02.09.2022 and is also filed with the Registry."

16. In view of the above enunciation of law, it is sufficient for this Adjudicating Authority in order to accept or reject the Application filed U/s. 7 of the IBC, 2016, if the debt and default are proved. In the instant case, the occurrence of default is evidenced by the details furnished by the Petitioner including the record of financial information (Form -D) issued by NESL in respect of the debt of the Corporate Debtor. (Enclosed as Annexure A01 to the memo filed vide Diary No. 3723 dated 05.09.2022). The Corporate Debtor has nowhere in reply has denied the facility availed by the Financial Creditor nor denied the Master Lease Agreement and Deed of Settlement entered between the Parties.

17. The other issue for consideration is whether present application is filed within limitation. The date of default of the debt is well within the 3 years period from the date of filing of the C.P., as discussed above. Therefore, the Petition has been filed within the period of limitation.

18. The application filed in the prescribed Form No.1 is found to be complete.

19. The Learned Counsel appearing on behalf of the Petitioner has relied upon the Hon'ble NCLAT, New Delhi Judgment in the matter *Hasan Shafiq Vs. CT Technologies ApS and Anr. bearing CA (AT) (Ins) No. 802 of 2020* decided on 14.02.2022 in paragraph 16 inter-alia stating as follows:

"The Section 238 of the Code is as follows:

238. Provisions of this Code to override other laws- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith



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*contained in any other law for the time being in force or any instrument having effect by virtue of any such law."*

This Bench has observed that the fact of this particular Judgment and in view of the same, the Bench finds that the Petition filed by the Financial Creditor is liable to be admitted as there is no bar to initiate CIRP even if the arbitration proceedings are pending.

20. In the given facts and circumstances, the present petition being complete and having established that the default in payment of the Financial Debt for the default amount of above Rs.1,00,00,000/-, the petition is **admitted** in terms of Section 7(5) of the IBC and accordingly, moratorium is declared in terms of Section 14 of the Code. As a necessary consequences of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:
- (a) The institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in
  - (b) any court of law, tribunal, arbitration panel or other authority;
  - (c) Transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;
  - (d) Any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
  - (e) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the Corporate Debtor;
  - (f) It is further directed that the supply of essential goods or services to the Corporate Debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period;
  - (g) The provisions of Section 14(3) shall however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a Corporate Debtor;



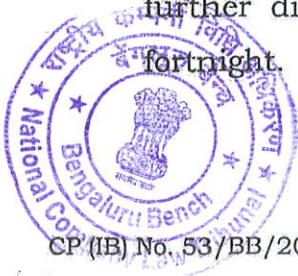
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(h) The order of moratorium shall have effect from the date of this order till completion of the Corporate Insolvency Resolution Process or until this Bench approves the Resolution Plan under sub-section (1) of Section 31 or passed an order for liquidation of Corporate Debtor under Section 33 as the case may be;

21. In Part-III of Form No.1, Mr. Murali Prasad Nalam bearing Registration No. IBBI/IPA-001/IP-P00933/2017-2018/11537 has been proposed as Interim Resolution Professional (IRP). Form No.2 dated 05.03.2022 has been filed along with the C.P are found at Page Nos.142-143 of the Petition. The Law Research Associate of this Tribunal has checked the credentials of Mr. Murali Prasad Nalam and there is nothing adverse against him. In view of the above, we appoint Mr. Murali Prasad Nalam bearing Registration No. IBBI/IPA-001/IP-P00933/2017-2018/11537, having registered address at Villa 67, Road No.3, Dollar Meadows, Bowrampet, Hyderabad 500043, email-[murali.advice@gmail.com](mailto:murali.advice@gmail.com) and Contact No. 9849073076, as the Interim Resolution Professional. The IRP is directed to take the steps as mandated under the IBC, specially under Sections 15, 17, 18, 20 and 21 of IBC, 2016.
22. The Financial Creditor shall deposits a sum of Rs.2,00,000/- (Rupees Two Lakhs Only) with the IRP to meet the expenses arising out of issuing public notice and inviting claims. These expenses are subject to approval by the Committee of Creditors.
23. The Interim Resolution Professional shall after collation of all the claims received against Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report, certifying constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene first meeting of the Committee within seven days for filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every

fortnight.



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24. A copy of the order shall be communicated to both the parties. The learned Counsel for the Petitioner shall deliver copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send the copy of this order to the Interim Resolution Professional at his e-mail address forthwith.

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(**MANOJ KUMAR DUBEY**)  
**MEMBER (TECHNICAL)**



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(**KISHORE VEMULAPALLI**)  
**MEMBER (JUDICIAL)**

**CERTIFIED TO BE TRUE COPY  
OF THE ORIGINAL**

*[Handwritten Signature]*

**DEPUTY/ASST. REGISTRAR  
NATIONAL COMPANY LAW TRIBUNAL  
Bengaluru Bench**

