

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH
(Virtual Hearing)**

**PRESENT: SHRI RAJEEV BHARDWAJ – MEMBER (JUDICIAL)
: SHRI SANJAY PURI – MEMBER (TECHNICAL)**

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 03.05.2024 AT 02:00 P.M.

TC/CP. Nos.	CA/IA No.	Section / Rule	Name of Parties
CP(IB)/74/7/AMR/2022	Admitted	7 of IBC	Prudent ARC Limited Vs Yona Smelters Limited
	IA(IBC)/188/2023	Sec 30(6) of IBC	Mr. Jagadees Kumar Morri, RP of M/s Yona Smelters Limited

ORDER

IA (IBC)/188/2023:

Present: Mr. M. Rama Rao, Ld. Counsel for the Applicant.

Mr. Jagadeesh Kumar Morri, RP.

Orders pronounced. IA (IBC)/188/2023 is allowed and Resolution Plan approved subject to the conditions mentioned in the order and Recorded in Separate Sheets. **Accordingly, IA(IBC)/188/2023 is disposed of.**

Sd/-

**SANJAY PURI
MEMBER (TECHNICAL)**

Sd/-

**RAJEEV BHARDWAJ
MEMBER (JUDICIAL)**

**NATIONAL COMPANY LAW TRIBUNAL
AMARAVATI BENCH**

*** **

**IA (IBC)/188/2023
IN
CP (IB)/74/7/AMR/2022**

[Under Section 30(6) and 31(1) of Insolvency and Bankruptcy Code, 2016
Read with Regulation 39 (4) of Insolvency and Bankruptcy Board of India
(Insolvency Resolution for Corporate Persons) Regulations, 2016 Read with
Rule 11 of NCLT Rules, 2016]

And

In the matter of M/s. YONA SMELTERS LIMITED

BETWEEN:

Mr. Jagadees Kumar Morri,
RP of M/s Yona Smelters Limited
Reg. No. IBBI/IPA/001/IP-P00398/2017-2018/10716
10-5-7, Sri Sai Surya Complex, Sevasadan School,
Ramnagar, Visakhapatnam 530013, Andhra Pradesh
cajagadeesh@gmail.com, Ph: 9666829111

... Applicant/Resolution Professional

AND

1. APIIC Ltd, Industrial Estate,
Kusalapuram, Srikakulam District 532410
Phone# 9705688880; Email: zmsklm.apiic@ap.gov.in
2. Andhra Pradesh Eastern Power Distribution Company Ltd
Operation Circle- Vizianagaram
Phone#9440812447; sao_vzm@apeastrnpower.com

... Respondents/Respondents

Orders pronounced on: 03.05.2024

Sd/-

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CORAM:

SHRI RAJEEV BHARDWAJ, MEMBER (JUDICIAL)
SHRI SANJAY PURI, MEMBER (TECHNICAL)

Appearance:

For Applicant/RP : Ms. M. Manoranjani, Advocate

For 1st Respondent : Mr. P.H. Pannagasai, Advocate

For 2nd Respondent: *Exparte*

ORDER
(Per: Bench)

1. This application is filed by the Resolution Professional (in short the RP) in respect of M/s. Yona Smelters Limited (the Corporate Debtor) under Section 30(6) & 31(1) of Insolvency and Bankruptcy Code, 2016 Read with Regulation 39(4) of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 seeking for the following reliefs are as under:
 - a) To approve the Resolution Plan submitted by **M/s.Sahara Ferro Alloys Pvt Ltd**, which has been approved by COC with 93.52% voting rights and
 - b) To direct the Zonal Manager, Srikakulam, APIIC, or any other appropriate representative of the APIIC, to allow the Successful Resolution Applicant to unconditionally register the factory premises land allotted to the Company

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immediately and prior to the Date of Approval of this Tribunal, without imposing any cost, fee, interest, penalty or any other amount in the same nature on the Resolution Applicant for such registration of the factory premises land allotted to the Company;

- c) To direct the Superintending Engineer, APEPDCL, Operation Circle, Vizianagaram, or any other appropriate representative of the APEPDCL, to provide the HT Electricity connection at the factory premises of the company located at APIIC Growth Centre, Bobbili immediately and prior to the Date of Approval of this Tribunal, without imposing any charges or any fee, cost, interest, penalty, fine or any other amount in the same nature from the Successful Resolution Applicant for providing the requisite HT Electricity connection at the factory premises of the company located at APIIC Growth Centre, Bobbili.

2. The brief facts leading to the Application, are as under:

- i) This Bench, vide its order dated 18.08.2022 in CP(IBC)/74/7/AMR/2020 admitted the Company Petition filed by M/s. Prudent ARC Limited and initiated Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor (CD) M/s. Yona Smelters Limited and appointed Mr. Jagadees Kumar Morri as Interim Resolution

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Professional (IRP) and the Moratorium was declared and further the IRP issued public announcement and constituted the Committee of Creditors (CoC). In the 1st CoC meeting was held on 16.09.2022, the CoC appointed the IRP as Resolution Professional (RP).

- ii) On 01.10.2022. the Applicant appointed registered valuers for valuing the assets of the CD and the registered valuers after verification of the properties submitted their detailed report as under:

S.No	Type of Asset	Name of the Valuer	Fair Value in Lakhs	Liquidation value in Lakhs
1	Machinery	Mr PA Srinivas	182.00	137.00
		Mr. Raj Sarda	198.00	148.00
2	Land & Buildings	RV Associates	474.00	355.75
		Mr. KK Prasad	502.59	376.94
Average fair & liquidation value of Total Assets is (Rs. in Lakhs)			678.30	508.85

- iii) In the 3rd CoC meeting held on 28.10.2022, the CoC passed resolution for issuance of publication in Form G. On 01.11.2022, the Applicant issued an Expression of Interest (EoI) in Form G for inviting EoIs from the Prospective Resolution Applicants (PRAs) with the last date of submission as 16.11.2022.
- iv) In the 4th CoC meeting held on 11.11.2022, CoC approved the resolution for appointing M/s. Vadlmani & Co as statutory auditor to the statutory audit on the books of accounts of the CD from FY 2016-2017 to 2021-2022.

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- v) In response to the issuance of Form G, the Applicant received (5) five EoIs from 5 (five) PRAs and on 11.12.2022, the Applicant released the final list of PRAs, i.e., i) M/s. Eloquent Steel Pvt Ltd; ii) M/s. MS Agarwal Foundries Pvt Ltd; iii) M/s. Sahara Ferro Alloys Pvt Ltd; iv) Shanti GD Ispat and Power Pvt Ltd and v) M/s. United Biotech Pvt Ltd.
- vi) In the 6th CoC meeting, the Statutory Auditors submitted and deliberated their audit report to the CoC. The Applicant after obtaining KYC and confidential undertakings from PRAs, issued Information Memorandum (IM), Evaluation Matrix (EM) and Request for Resolution Plans (RFRP) from the PRAs with last date of submission as 31.12.2022. On the last date of submission, only one Resolution Plan was received from one PRA i.e., M/s. Sahara Ferro Alloys Pvt Ltd.
- vii) In the 7th CoC meeting held on 04.01.2023, the RP/Applicant opened a sealed cover in front of CoC, which contained the Resolution Plan along with supporting documents and Bank Guarantee of Rs.3 Crores as Earnest Money Deposit (EMD). After discussions and deliberations, CoC proposed for an increase in Financial Consideration and approved the resolution to appoint M/s. Signalx for assisting in conducting due diligence. After several

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discussions, deliberations and negotiations between the CoC and the sole eligible PRA, M/s. Sahara Ferro Alloys Pvt Ltd, revised the financial consideration to Rs.6,82,76,474/-.

viii) In the 13th CoC meeting held on 17.04.2023, the CoC approved the Resolution Plan with financial consideration of **Rs.6,82,76,474/-** submitted by M/s.Sahara Ferro Alloys Pvt Ltd with 93.52% voting share and on 21.04.2023, the Applicant has issued a Letter of Intent (LOI) to the Successful Resolution Applicant (SRA). The SRA, M/s. Sahara Ferro Alloys Private Limited is in the business of manufacturing of silico manganese and 40 years' experience in manufacturing in Ferro Allys and net-worth of the company as on 31.03.2022 is Rs.5,494.30 Lakhs.

ix) Examination of Resolution plan in terms of Section 30 of IBC, read with Regulation 38 of IBBI(Insolvency Resolution Process for Corporate Persons) Regulations, 2016 are as under:

S. No.	Category of Creditor	Admitted Claims		Offered Amount in Lakhs	%
		No. of Claims	Amount in Lakhs		
1	CIRP Costs			55.00	100.00
2	FC- Secured	1	5747.19	600.00	10.44
3	FC- Unsecured	1	398.47	1.99	0.50
4	OCs (Govt.)	7	3003.17	18.36	0.61
5	OCs (Others)	7	1481.89	7.41	0.50
Total		16	10630.72	682.76	

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- x) The salient features of the Resolution Plan, and Restructuring proposal, as detailed below:

The Plan offers an amount of Rs.6,82,76,474/-

S. No.	Creditor Category	Admitted claim Amount in Lakhs	Amount Offered (Rs. In lakhs)	% of Admitted Amount	Terms
A.	CIRP Costs		55.00	100	Total amount will be paid in priority within 90 days from the date of the NCLT Order.
B. SECURED FINANCIAL CREDITOR					
1	Prudent ARC Limited	5747.19	600.00	10.44	Total Rs.600.00 lakhs will be paid to the Secured Creditor within 90 days from the date of the NCLT Order.
C. UNSECURED FINANCIAL CREDITOR					
1	Mr.D. Madhusudhana	398.47	1.99	0.50	Total Rs.1,99,263/- will be paid to the Unsecured Creditor within 90 days from the date of the NCLT Order.
D. OPERATIONAL CREDITORS (GOVERNMENT DUES)					
1	Commissioner of Customs, Visakhapatnam	92.25	0.46123	0.50	Total amount of Rs.18.36 Lakhs will be paid within 90 days from the date of the NCLT Order.
2	Assistant Commissioner (ST) Parvathipuram Circle	239.71	1.19855	0.50	
3	APIIC, Srikakulam Zone	21.79	0.10894	0.50	

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4	The Income Tax Officer, TDS, Ward-2, Visakhapatnam	0.48	0.00238	0.50	
5	APEPDCL	1726.28	8.63138	0.50	
6	Sub-Regional Office, ESIC, Visakhapatnam	3.36	3.36391	100	
7	Assistant Commissioner of Income Tax, Circle 3 (1), Visakhapatnam	919.30	4.59648	0.50	
E. OPERATIONAL CREDITORS (OTHER THAN WORKMEN AND EMPLOYEES AND GOVERNMENT DUES)					
1.	Times Ferro Alloys Pvt Ltd	85.32	0.42661	0.50	Total amount will be paid within 90 days from the date of the NCLT Order.
2	SRG Industries Pvt Ltd	92.06	0.46013	0.50	
3	SRG Minerals and Metals	231.04	1.15520	0.50	
4	United Mansions Pvt Ltd	777.25	3.88625	0.50	
5	Bell Infra Projects and Constructions	224.37	1.12185	0.50	
6	Maharashtra Carbon Pvt Ltd	21.95	0.10977	0.50	
7	Shakun Logistics	49.90	0.24951	0.50	
Total		10,630.72	627.76474		

- xi) The RP submitted the Compliance Certificate in Form-H under Regulation 39(4) of the Regulations showing the compliances of the Plan with mandatory requirements under the Code. The Regulations and the Plan were approved by the CoC.
- xii) The constitution of the Monitoring Committee consisting of Three (3) members for implementation of the Resolution Plan as proposed by SRA and approved by the CoC, as given below:-

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- a) Mr. Jagadees Kumar Morri, Resolution Professional, shall be the Chairman of the Monitoring Committee.
 - b) One Representative of the Successful Resolution Applicant.
 - c) One Representative of the CoC
4. Respondent No.1 and Respondent No.2 were impleaded as parties vide order dated 14.02.2024 and order dated 21.02.2024, the counter filed in IA(IBC)/234/2023 was treated as counter in IA(IBC)/188/2023. Respondent No.2 was *set-exparte*.
5. On the basis of newly added parties, following new facts were submitted by the Applicant:-
- i. On 27.04.2009, the CD and 1st Respondent entered into an Agreement of Sale for Plot No 209, measuring 19,200 Sq Mts (4.74 Acres) situated at Growth Centre, Bobbili, Vizianagaram District, Andhra Pradesh for a total value of Rs.52,80,000/- at Rs.275/- per Sq Mtr.
 - ii. It is submitted that on 01.09.2022, the Applicant had received a claim in Form B for a total amount of Rs.5,53,51,403/- from the 1st Respondent, out of which an amount of Rs.5,31,72,600/- as the difference in land acquisition cost, EMD forfeited charges, and occupation charges, stating that the corporate debtor had not complied with the conditions of allotment of the land, specifically, clause 8(c) of the agreement entered into between APIIC

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and the company, i.e., commencement of commercial production within 2 years of being put in possession of the land (before 28.04.2011). Further, the 1st Respondent had claimed that the company had not approached for execution of the sale deed, i.e., land registration, after the commencement of regular production.

- iii. It is stated, that after examination of the balance sheet of the company for the year ended 31.03.2011, electricity notice sent to the company by the APEPDCL pertaining to the year 2010-11, and invoice-cum-challan dated 04.11.2010 containing details of excise duty paid and other details pertaining to the manufacturing and supply of goods by the company, it was evident that the company had commenced commercial production with duly erected machinery and regular power supply at the allotted land well before 27.04.2011. As such, therefore the company had complied with clause 8(c) of the agreement, as well as all the other conditions of allotment of the land stipulated in the agreement, and hence the company was not liable for such claims. Therefore, the RP informed to the Zonal Manager, Srikakulam, APIIC, that the land allotted to the company by the APIIC was not registered due to the negligence of the erstwhile management and suspended Board of Directors of the CD and the said negligence is only a procedural lapse, and hence, could not be considered as non-compliance with the agreement entered into between the CD and APIIC. The

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RP also submitted the evidences i.e., Sales and expenditure statement in the audited Balance Sheet for the year ended 31.03.2011, Electricity demand notice, Sample of the Invoice raised by the CD, acknowledgement by Govt. of AP for the memorandum for manufacturing enterprise filed by the CD, to demonstrate that CD was doing commercial production during the period of April 2010 to March 2011.

- iv. It is further submitted that despite several requests and reminders for clarification on the above documents, there is no response from the 1st Respondent and hence the RP has rejected the claim amount of Rs.5,31,72,600/- pertaining to the claims for the difference in land acquisition cost, EMD forfeited charges, and occupation charges, and admitted the claims for water charges and property tax totalling Rs.21,78,803/-.
- v. It is averred that vide letter dated 30.01.2018, the 2nd Respondent had terminated the HT electricity connection at the factory premises of the CD located at APIIC Growth Centre, Bobbili, with effect from 24.01.2018.
- vi. On 01.09.2022, RP has received another claim for Rs.17,26,27,630.52 in Form B from the 2nd Respondent and after verification the same was admitted and certified that 2nd Respondent as a non-voting member of the CoC. But the SRA has offered to pay 0.5% of the claim admitted as part

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of the Resolution Plan to all the operational creditors including 2nd Respondent which amounts to Rs.8,63,138/- only and the same is approved by the COC with 93.52%.

6. R1 filed counter, denying the averments and allegations made in the amended application and submitted that on payment of Rs.52,80,000/- by the CD, Plot No.209, Admeasuring 19,200.00 Sq. Mts (Ac. 4.74 Cents) @275/- per square meter was allotted. A sale agreement was also executed on 27.04.2009 in favour of the CD and possession of the same was handed over to the CD on 28.04.2009. It is further submitted that at the request of the Andhra Bank, Dwarakanagar Branch, on 08.05.2009 R1 has issued NOC for land mortgage. On 22.06.2009, the CD has requested the 1st Respondent for providing building plan approval. It is submitted that the CD failed to comply with the conditions of the registered sale agreement and also failed to produce any documentary evidence or proof of implementation of the set-up of the unit "Ferro Alloys" as such, and therefore, the sale deed has not been executed in favour of the CD. It is further submitted that:

6.1 It is ready to register the property in the name of SRA, only if the dues of water charger and property tax totalling to Rs.26,76,854/- are paid and the following documents in support of implementation of the project are submitted:

- a. The Company should be in working stage,
- b. The Company has to submit the documents as per APIIC Circular No.10, dated 17.04.2022.

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- c. Basing the date of commencement of production (EOT fee/delay condonation has to be paid as per the APIIC regulations)
- d. The Company has to utilize minimum 50% of allotted land for Industry purpose and 1/6th of the allotted land should be made as a built-up area
- e. The realised investment after implementation should be greater than or equal to the committed investment as per DPR
- f. The realized Employment should be greater than or equal to the committed as per DPR employment.

6.2 It is further contend that without considering the other items mentioned in the Form B, the RP has admitted only Rs.21,78,803/-(water dues and property taxes) and the Applicant did not fulfil the mandate provisions of the conditions mentioned in the registered sale agreement and it is relied upon the judgment of Hon'ble Supreme Court in the case of K.C.Ninan vs. Kerala Electricity Board & Ors, which categorically held that the corporations are entitled for the past dues of the CD from the resolution and they cannot escape by seeking shelter from the NCLT. Hence, in view of the above facts and circumstances, this application is liable to be dismissed.

- 7. The Applicant filed rejoinder, denying averments, contentions, assertions, claims and counter claims made by the 1st Respondent and submitted that the 1st Respondent is conflating two different

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issues, one being the execution of the sale deed, which has already been clarified vide emails dated 03.09.2022, 05.09.2022, 08.09.2022, 20.09.2022, 06.10.2022, and 19.10.2022 and the other being claim for water charges and property tax, for an amount of Rs.21,78,803/- has also already been admitted by the RP as per the record.

7.1 It is submitted that the non-submission of evidence for implementation, which has already submitted to the 1st Respondent. Further contending that the submission of the 1st Respondent is that the SRA, is liable to pay all the dues, it is a gross violation of the provisions of the Code. The intent of the legislation is to provide for the revival of the CD, and a key aspect of the resolution process is that the Success Resolution Applicant shall, upon payment of claims as approved by the COC in the Resolution Plan, not be liable for any further dues pertaining to the period prior to CIRP. Furthermore, it is vital to note that the entire commercial value of the CD lies in the operation of the factory situated on the said land, and therefore, it would be impossible to implement the approved resolution plan without the land being registered in favour of the SRA.

7.2 It is further submitted that the above case relied by the 1st Respondent, i.e., KC Ninan Vs Kerala Electricity Board & Ors is not of relevance in this case as it no way connected or related to the provisions of the Code and more particularly for the approval of Resolution Plan. The cited case has no

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bearing in the instant case since in the present instance it is a proceeding under the provisions of the Code and the letter and spirit of the Code envisages revival of the CD with the key element being that the SRA shall not be liable for the past dues pertaining to the period prior to the CIRP as it would defeat the entire purpose of the legislation. In fact, it is pertinent to mention that the Hon'ble Supreme Court, in the matter of *Paschimanchal Vidyut Vitran Vs. Raman Ispat Pvt Ltd*, observed that, in the case of *Innoventive Industries Ltd. v. ICICI Bank & Anr*, it held that Section 238 of the IBC overrides the provisions of the Electricity Act, 2003, despite the latter containing specific provisions that commence with non-obstante clauses. The Supreme Court further dismissed the appeal and directed the liquidator to decide the claim exercised by the Appellant in the manner prescribed under the Code.

8. We have heard the Applicant, 1st Respondent and perused the Resolution Plan and related documents submitted along with the Application. We are of the view that the Resolution Plan submitted by the Resolution Applicant is meeting all the requirements of IBC and the applicable Regulations.
9. However, so far as, question of registration of the land allotted to the CD by Andhra Pradesh Industrial Infrastructure Corporation (APIIC) is concerned, it is seen that the said land was not registered in the name of the CD. The title in this land was never conveyed in favour of CD and the registration of land in favour

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of CD was contingent upon certain conditions to be fulfilled as outlined in the Sale Agreement dated 27.04.2009 between APIIC and the CD.

10. The Information Memorandum clearly indicated the status of the said land and it required the registration of the land to be carried out by the Successful Bidder. That being the case, the Successful Resolution Applicant (SRA) can approach APIIC and initiate the process of registration of land in favour of the CD after fulfilling the conditions agreed on behalf of the CD in the Sale Agreement of 27.09.2009.
11. So far as the HT Electricity connection to the factory premises of the CD is concerned, the SRA may obtain a fresh connection after making an application in that regard on payment of the applicable charges.
12. On perusal of the Resolution Plan, it is observed that the Resolution Plan provides for the following:
 - a) Payment of CIRP Cost as specified u/s 30(2)(a) of the Code.
 - b) Repayment of Debts of Operational Creditors as specified u/s 30(2)(b) of the Code.
 - c) For management of the affairs of the Corporate Debtor, after the approval of Resolution Plan, as specified U/s 30(2)(c) of the Code.
 - d) The implementation and supervision of Resolution Plan by the RP and the CoC as specified u/s 30(2)(d) of the Code.

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- e) The RP has certified through affidavit that 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 the Code.
13. In terms of Regulation 27 of the Regulations, Fair value is Rs.6,78,15,355/-, Liquidation value was ascertained through registered valuers as Rs.5,08,90,886/- while the Resolution Plan offers Rs.6,82,76,474/-.
14. The RP has complied with the requirement of the Code in terms of Section 30(2) (a) to 30(2) (f) and Regulations 38(1), 38(1-A), 38(1-B) 38(2) & 38(3) of the Regulations. The Plan also provides for keeping the Company as a going concern and to operate in its normal course of business upon implementation of Resolution Plan. No objection has been filed by anyone in this regard.
15. The RP has filed Compliance Certificate in Form-H along with the Plan. On perusal, the same is found to be in order. The Resolution Plan includes a statement under regulation 38(1A) of the Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and the Regulations. Hence ordered.

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ORDER

16. The Application IA(IBC)/188/2023 in CP(IB)/74/7/AMR/2022 is allowed. The Resolution Plan annexed to the Application is hereby approved. It shall become effective from this date and shall form part of this order.

(i) It shall be binding on the Corporate Debtor, its employees, members, creditors, including the Central Government, Income Tax Department 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 is due, guarantors and other stakeholders involved in the Resolution Plan.

(ii) The 1st Respondent is directed to allow the Successful Resolution Applicant to register the factory premises land allotted to the Company subject to fulfilment of the conditions outlined in the sale agreement dated 27.04.2009 between Respondent No.1 - APIIC and the CD.

(iii) The 2nd Respondent is directed to provide new the HT Electricity connection at the factory premises of the company located at APIIC Growth Centre, Bobbili, for which the SRA can make a fresh application and make payment of the applicable charges.

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- (iv) All other claims which are not a part of Resolution Plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not a part of the Resolution Plan.
- (v) The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Andhra Pradesh for information and record. The Resolution Applicant, for effective implementation of the Plan, shall obtain all necessary approvals, under any law for the time being in force, within such period as may be prescribed.
- (vi) The moratorium under Section 14 of the Code shall cease to have effect from this date.
- (vii) The Applicant shall supervise the implementation of the Resolution Plan and file status of its implementation before this Authority from time to time, preferably every quarter.
- (viii) The Applicant shall forward all records relating to the conduct of the CIRP and the Resolution Plan to the IBBI along with copy of this Order for information.
- (ix) Liberty is hereby granted for moving any application if required in connection with the implementation of the Resolution plan.

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(x) The Applicant shall forthwith send a copy of this Order to the CoC and the Successful Resolution Applicant.

17. A certified copy of this order, if applied for, be issued upon compliance with all requisite formalities.

Accordingly, IA(IBC)/188/2023 in CP(IB)/74/7/AMR/2022 is disposed of.



SANJAY PURI
MEMBER (TECHNICAL)



RAJEEV^U BHARDWAJ
MEMBER (JUDICIAL)

Swamy Naidu (PS)