

IN THE NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, HYDERABAD

IA No.763/2019
In
CP(IB)No.158/7/HDB/2018

In the matter of:-

Tata Capital Financial Services Limited

...Financial Creditor

Vs

M/s. CISCON Projects Private Limited
Flat No.604, Tirumala Shah Residency,
6th Floor, Yellareddyguda,
Ameerpet, Hyderabad - 16.
Rep by its RP, Mrs. Sandhya Tadla

...Corporate Debtor/Applicant

Order pronounced on: 12.12.2019

**Coram: Shri. K. ANANTHA PADMANABHA SWAMY, MEMBER JUDICIAL
Dr. BINOD KUMAR SINHA, MEMBER TECHNICAL**

Parties/Counsel Present:

For the Applicant:

Ms.Sandya.T, RP

For the Financial Creditor:

Ms.Kajal Kumari, Advocate

Per: K. Anantha Padmanabha Swamy, Member Judicial

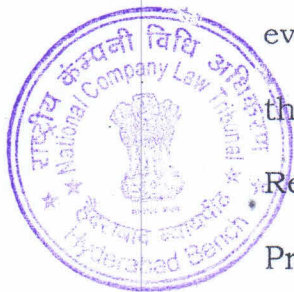
ORDER

1. Present Application bearing IA No.763/2019 is filed U/s.30 of I&B Code, 2016 r/w Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 praying this Adjudicating Authority to approve the Resolution Plan, with the following Reliefs/concessions as sought by the Resolution Applicant in his Plan:

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- i. The Department of Registration and Stamps and Governmental Authorities of Telangana, Andhra Pradesh, and such other States and geographies where the Corporate Debtor or the Resolution Applicant carries on its business and operations or where its assets are located;
- ii. The Ministry of Corporate Affairs; shall exempt the Resolution Applicant and the Corporate Debtor, from the levy of stamp duty and fees, applicable in relation to this Resolution Plan and its implementation.
- iii. All actions undertaken pursuant to implementation of the Resolution Plan approved by the Adjudicating Authority shall be deemed to be exempt from any Tax and stamp duty.
- iv. Upon approval of the Resolution Plan by the Adjudicating Authority, all Non-Compliances of the Corporate Debtor for the period prior to the approval of the Resolution Plan by Adjudicating Authority (including but not limited to those relating to Tax), shall be deemed to be waived by all the Governmental Authorities. In relation to any non-compliance arising under any tax, shall waive all such non-compliances by the Corporate Debtor without levying any fee, penalty or additional duty, and the Corporate Debtor shall be allowed sufficient time (and in any event not less than two years from the approval of Resolution Plan by the Adjudicating Authority, to fulfil its obligation under such tax. The Resolution Applicant shall be granted a waiver, from all actions, Proceedings or penalties and any applicable Law for any Non-compliances, for an additional period of 24 months starting from the day following the NCLT order approving the Resolution Plan.
- v. Upon approval of the Resolution Plan by NCLT, moratorium shall be deemed to have been granted to the Corporate Debtor from any actions/penalties under any laws for any non-compliance, which was existing on or prior to the NCLT Order approving the Resolution Plan



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- vi. Any contingent liabilities, Litigation, Court cases, Income tax Search / Survey proceedings, Investigation, Non deduction/Delay deduction/Non Payment of tax deducted/collected at Source, Provident Fund cases, Employee State Insurance Cases, Excise Duty, Custom Duty Cases, Various States Sales tax cases, Non-compliance of Registrar of Company filling, Income Tax Filling, Sales tax/ Laws, Inspection, Tax assessments, etc or any other proceeding pending agents "Ciscons Projects Private Limited" is deemed to be settled and none of this proceeding against shall be carried forward.
- vii. Proceeding for ROC Inspection, Non Compliance of various statutory provisions, and under various statutory provisions etc., shall be withdrawn & liability associated would be extinguished.
- viii. All previous agreement, contract, guarantee, undertaking, affidavit or any other document by whatever name called which is not in interest of company shall stand cancelled including corporate guarantee provided loan facility of subsidiary company etc.
- ix. Any corporate guarantee provided by the company shall be deemed to be cancelled/terminated.
- x. Brought forward losses under Income Tax including any business losses shall be allowed to be carried forward for set off against the taxable profits of future year's in spite of non-filing of returns/delayed filing of IT returns and change in shareholding.
- xi. The brought forward losses as per books of accounts shall be carried forward and allowed to be set off against future book profit for MAT purpose
- xii. A time of one year from vesting date shall be provided for filling of pending GST returns, TDS returns, IT returns, ESI returns, PF returns, ROC returns, ROC petitions, ROC applications or any other statutory returns without any penalties, interest, fees, charges etc.



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- xiii. The existing Statutory, Internal Auditor, Company Secretary, Cost accountant, Advocate etc shall stand terminated / deemed resigned and new auditor shall be appointed in EGM of the Company after approval of resolution proposal in NCLT and after Allotment of initial Subscription. Other professional / consultant shall be appointed as decided by RA.
- xiv. All the existing approval, agreements (beneficial to company), No objections (beneficial to company), applications, permissions, licenses, certification, registration shall continue without any additional cost or charges. No old dues of water, power, municipality, gram panchayat, statutory dues or any other charges shall be payable.
- xv. All the suits/applications filed against Ciscons Projects Private Limited of any nature pending in any court of law, including suites filed by Tata Capital Financial Services Limited and Reliance Capital Limited as mentioned in Information of Memorandum provided by Resolution Professional, shall be withdrawn & liability associated would be extinguished.
- xvi. Upon payment of the entire amount as per resolution plan, the charge on the all mortgage properties and all assets shall be released and the title deeds shall be handed over to Resolution Applicant. All Bank/Financial creditors/Committee of creditors to issue No Dues Letter and shall release/ satisfy any charge created with the Central Registry / Registrar of Company with respect to all the properties.

2. Brief facts of the CIRP as stated by RP are as under:
3. That the Corporate Debtor herein was admitted for CIRP vide order of this Adjudicating Authority dated 31.01.2019 and appointed Ms. Sandhya Tadla as the IRP and subsequently confirmed as RP.
4. That pursuant to Invitation for Expression of Interest, RP received an EOI from Indwell Constructions Pvt Ltd, however, during the fourth CoC meeting on 22.07.2019, TCFSL expressed that the said offer is very low for



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Financial Creditors and the same needs significant improvement for consideration. The First Resolution Applicant did not respond to the request of TCFSL for further discussion.

5. That subsequently, the RP received e-mail from Mr.Sasi Kanth Vallipalli, who was interested in submitting a Resolution Plan.
6. That on considering the documents submitted by Mr.Sasi Kanth Vallipalli, CoC in its meeting held on 27th July 2019, has further extended the time for submission of Resolution Plan upto 5th August, 2019.
7. That the RP at the instructions of CoC sought an extension of CIRP for 30 more days and this Adjudicating Authority approved the extension vide its order dated 2 August 2019 for 30 days.
8. That the RP received the Resolution Plan from Mr. Sasi Kanth Vallipalli on 5 August 2019. CoC in the meeting held on 17 August 2019 had a detailed discussion with the Resolution Applicant and in the e-voting on 24.08.2019, CoC approved the Resolution Plan with 100% voting.
9. Brief contents of Resolution Plan are as under:

Important points under the Resolution Plan dated 21 August 2019 are

a. **Fund Utilisation**

Rs in lakhs

CIRP Cost and payment to Creditors	429.89
Working Capital and Fixed Assets	150.00
	579.89

b. **Source of Funds**

Sl No	Particulars	Rs in lakhs	Rs in Lakhs
1	Resolution Applicant		
	- Secured Financial Creditors - Tata Capital Financial Services Limited	300.00	
	- Operational Creditors	12.85	

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	- Other Creditors	2.15	
	- Working Capital / Fixed Assets	150.00	465.00
2	Corporate Debtor (from the cash flows of CD)	30.00	
	- CIRP Cost		
	- Secured Financial Creditor - Corporation Bank	84.89	114.89
			579.89

c. Timeline for payment to stakeholders

Within 15 days (including CIRP Cost, Secured Creditors / Operational Creditors / Other Creditors)	366.39
Between 16 to 45 days (Financial Creditors)	63.50
Will be infused based on projects/fund requirement to the company	150.00
	579.89

d. Classification of Distribution

(Amount in Rs.Lakhs)

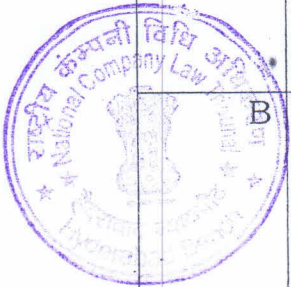
S.No.	Category of Stakeholder*	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount provided to the amount claimed (%)
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1.	Secured Financial Creditors					
A	Tata Capital Financial Services Limited	964.10	964.10	300.00	31.12%	
B	Corporation Bank	108.78	84.89	*84.89	78.03%	
2.	Unsecured Financial Creditors	--	--	--	--	
3.	Operational Creditors					
A	Commercial Tax Officer (Audit-1), Bellary, Karnataka	199.97	199.97	9.53	4.77%	
B	Satyam Dewatering Systems	157.64	69.67	**3.32	2.11%	
C.	Ciscons Constructions Private Limited	1044.51	1044.51	Nil	Nil	
	Government	Nil	Nil	Nil	Nil	
	Workmen	Nil	Nil	Nil	Nil	
	Employees	Nil	Nil	Nil	Nil	
4.	Other Debts and Dues					



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A	Income Tax Officer (TDS), Ward No.1(1), Hyderabad	44.93	44.93	2.15	4.77%
	Total	2519.93	2408.07	399.89	15.87%

* Amount will be paid out of the bank balance lying in the current account of the Corporate Debtor i.e., Ciscon Projects Private Limited.

** The Operational Creditor has submitted the claim for an amount of Rs. 157.64 for which the Resolution Professional admitted the claim for Rs. 69.67 lakhs after verification of records of the CD as per terms of the agreement. However, the Operational Creditor has filed the Application before NCLT for short admission of the claim by the Resolution Professional. An amount of Rs. 3.32 lakhs provided for the entire claim of Rs. 157.64 lakhs submitted to the Resolution Professional, irrespective of the NCLT order.

Treatment of Securities Available with Secured Creditors:

All existing securities of the corporate debtor and third parties, personal guarantees of promoters, directors given for the loans provided by secured creditors to the corporate debtor, for which any charge has been filed with MCA or not, shall be considered in toto and after full payment of Resolution Amount, no security of whatsoever nature will be enjoyed by Secured Lenders including personal guarantees of promoters / directors and shall stand released/transferred automatically upon release of consideration as proposed in the Resolution Plan. Also, any hypothecation created on equipment, Plant, machinery in favour of Tata Capital Financial Services and Reliance Capital Limited or with any other financial institutions shall be deemed to be ceased and hypothecation shall be released upon the receipt of final payments by the creditors.



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10. It is stated by Resolution Applicant that the revised Resolution Plan dated 21 August 2019 was submitted to Resolution Professional and on verification of the same on IBC compliance, Resolution Professional sought the approval of Plan from the CoC by electronic voting. CoC has given its 100% approval for the Resolution Plan dated 21 August 2019, submitted by Mr. Sasi Kanth Vallipalli.
11. It is stated that the Resolution Professional issued Letter of Intent dated 24 August 2019 declaring Mr. Sasi Kanth Vallipalli as Successful Resolution Applicant and the Resolution Plan dated 21 August 2019 submitted by him as Successful Resolution Plan.
12. Resolution Professional stated that the compliance of the Resolution Plan as under Section 30(2) of the Code and Regulation 38 of the CIRP Regulations is met with and the details of the compliance are provided in certificate (Form H) pursuant to Regulation 39.
13. That with regard to Performance Security, the Resolution Applicant has provided the same in form of NEFT of an amount of Rs. 31,50,000/- in the account of the Corporate Debtor.
14. The Resolution Professional stated that the Resolution Plan is subject to the contingencies that the concessions, waivers and exemption sought under the Resolution Plan are an integral part of the Resolution Plan and crucial to ensure the successful implementation of the Resolution Plan.
15. The Resolution Professional stated that this Application for the approval of the Resolution Plan is being filed before the expiry of the period of CIRP provide under Section 12 of the Code.
16. It is stated that the Resolution Professional has preferred this Application in furtherance to her duties as the RP of the Corporate Debtor and has complied with all the applicable regulations towards discharge of functions as the RP of the Corporate Debtor.



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17. Further, the RP also filed a memo dated 04.10.2019 in relation to compliance to the latest amendment of Sec.32(b) of the Code and the same has been perused.
18. Heard Resolution Professional and perused the Resolution Plan and other documents submitted along with the instant Application.
19. 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/her 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;
 - 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.



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20. 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.”

21. 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).

22. 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.

23. 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.



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e) The RP has certified that the Resolution Plan is not in contravention of 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 such other requirements specified by the Board.

24. In terms of Regulation 27 of CIRP Regulations, Liquidation value was ascertained through two registered valuers. The average Liquidation value as stated by the RP is Rs. 82,20,995/- and the Resolution Plan offers more than the average liquidation value of the Corporate Debtor.

25. 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.

26. The identity of the Resolution Applicant has 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 he is not ineligible U/s 29A of the IB Code, 2016.

27. 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.

28. Copy of Form-H (Compliance Certificate) filed by the RP along with the Plan has been perused and considered. The RP *inter-alia* has certified as under:

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 Mr. Sasi Kanth Vallipalli has submitted an affidavit pursuant to section 30(1) of the Code confirming its eligibility



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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 two votes i.e., 100% of voting share of financial creditors after considering its feasibility and viability and other requirements specified by the CIRP Regulations.

iv. RP sought vote of members of the CoC by electronic voting system which was kept open at least for 24 hours as per regulation 26.

29. The Resolution Plan includes a statement under regulation 38(1A) of the CIRP Regulations as to how it has dealt with the interest of the stakeholders in compliance with the Code and Regulations thereunder.

30. It is also evident that the Resolution Plan placed before this Adjudicating Authority, was approved by the Committee of Creditors by electronic voting system concluded on 24.08.2019 with 100% votes cast in favour of Approval of Resolution Plan.

31. 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.

32. 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



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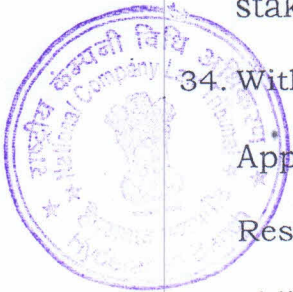
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is limited to scrutiny of the resolution plan "as approved" by the requisite percent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2) when the resolution plan does not conform to the stated requirements.

33. 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. 763 of 2019 filed in CP(IB) No. 158/7/HDB/2018 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.

34. With regards to the Reliefs and Concessions sought by the Resolution Applicant in the Resolution Plan, it is made clear that the approved Resolution Plan shall not construe any waiver to any statutory obligations/liabilities arising out of the approved Resolution Plan. We are of the considered view that if any concession/waiver is sought in the Resolution Plan, the same shall be subject to approval by the concerned Authorities. The same view has also been held by Hon'ble Principal Bench, NCLT in the case of *Parveen Bansal Vs. Amit Spinning Industries Ltd.* in CA No.360 (PB) 2018 in CP No (IB) 131 (PB)/ 2017.

35. Further, with regard to the clause 2(d) of the plan wherein it is stated that
'd. The existing employees/labor shall stand resign/terminated and new



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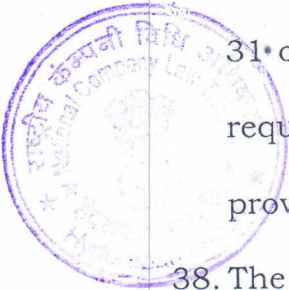
team of personnel shall be appointed for operation of the Company. Preference may be given to the existing employees or labor for re-appointment in the sites/office as deemed and fit by RA.,' it is observed that any automatic termination of employees/labour would defeat the very purpose of IB Code, i.e., protecting the interest of all the stakeholders as the employees/labour (work force) are one of the major stakeholder of any corporate entity. Therefore, Resolution Applicant is directed to undertake that there shall be no automatic termination of employee/labour upon approval of the Resolution Plan.

36. This, Adjudicating Authority orders for the Constitution of Monitoring Committee consisting of Mrs. Sandhya Tadla, RP, one representative nominated by the Resolution Applicant and one representative nominated by the Financial Creditors to supervise the implementation of the Resolution Plan and further Resolution Professional is directed to file status of implementation of Resolution Plan before this Adjudicating Authority from time to time.

37. 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 may be required under any law for the time being in force within the period as provided for in such law.

38. The approved 'Resolution Plan' shall become effective from the date of passing of this Order.


39. This Adjudicating Authority hereby directs 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.

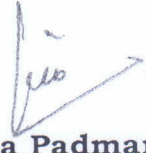


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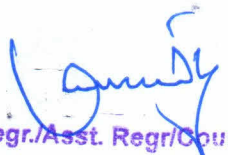
40. The order of moratorium passed by this Adjudicating Authority under Section 14 of the I&B Code, 2016 shall cease to have effect from the date of passing of this Order.
41. The Resolution Professional shall forward all record relating to the conduct of the CIRP and the 'Resolution Plan' to the IBBI along with Copy of this Order, so that the Board may record the same on its data-base.
42. The Resolution Professional shall forthwith send a copy of this Order to the participants and the Resolution Applicant.
43. With the above observations, IA No. 763 of 2019 stands disposed off.


12.12.19
Dr. Binod Kumar Sinha
Member Technical


K. Anantha Padmanabha Swamy
Member Judicial

SKRathi/Alekhya




Dy. Regr./Asst. Regr./Court Officer
National Company Law Tribunal, Hyderabad

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केस संख्या
CASE NUMBER. (P/B) No. 158/7/HDB/2018
निर्णय का तारीख
DATE OF JUDGEMENT... 12/12/19
प्रति तैयार किया गया तारीख
COPY MADE READY ON. 18/12/19