



IN THE NATIONAL COMPANY LAW TRIBUNAL

KOCHI BENCH

(SPECIAL)

IA(IBC)/308/KOB/2023

IN

CP(IB)/34/KOB/2021

(Under Section 31 of the IBC, 2016 read with Regulation 39(4) of CIRP Regulation)

In the matter of M/s. SD Pharmacy Pvt Ltd.

MEMO OF PARTIES:

CA JASIN JOSE

Resolution Professional of M/s. SD Pharmacy Pvt Ltd

IBBI/IPA-001/IP-P00695/2017-18/11225

Mookkanoor P O, Angamaly, Kochi – 683 577.

... Applicant

Coram:

Shri P. Mohan Raj : Member (Judicial)

Shri Satya Ranjan Prasad : Member (Technical)

Appearances (through video conferencing)

For Applicant : Mr. Akhil Suresh, Advocate

Mr. Jasin Jose, RP

Order reserved on: 02.08.2023

Order pronounced on: 13.10.2023

ORDER

1. This is an application filed under Section 30(6) read with Section 31(1) of the Insolvency and Bankruptcy Code, 2016 (“**the Code**”) for approval of a Resolution Plan in respect of SD Pharmacy Pvt Ltd, the Corporate Debtor (“**CD**”). The Resolution Professional filed the present application on 17.07.2023 for approval of the Resolution Plan, which was approved by the



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Committee of Creditors (“COC”) with a 100% voting share in its 12th meeting which was held on 26.06.2023.

2. The underlying Company Petition C.P. (IB) No. 34/KOB/2021, filed by ‘Dhanalaxmi Bank’ against the Corporate Debtor under Section 7 of the Code, was admitted by this Tribunal and Corporate Insolvency Resolution Process (“CIRP”) initiated against the Corporate Debtor on 02.04.2022. CA Jasin Jose, IBBI/IPA-001/IP-P00695/2017-18/11225, was appointed as the Interim Resolution Professional (“IRP”). The Committee of Creditors (“CoC”) in its first meeting held on 05.05.2022 resolved to appoint the IRP as the Resolution Professional (“RP”).
3. The Applicant submits that the public announcement as per Regulation 6 of the CIRP Regulations in Form A as prescribed under the schedule was made on 05.04.2022 regarding the initiation of the CIRP and inviting claims from the financial and operational creditors, workers and employees of the Company.
4. The Interim Resolution Professional constituted the Committee of Creditors in accordance with section 21(2) of the Code, as amended, on 25.04.2022, which comprised sole financial creditor i.e. M/s Dhanalaxmi Bank Limited holding 100% voting share. As stated in the **internal pages 5 to 7 of the Resolution Plan** (pages 44 to 46 of the application), the claims admitted and considered in the resolution plan are as follows:

Sl. No.	Category of claim	Amount admitted as per Information Memorandum	Amount proposed to be paid as per Plan
1.	CIRP Costs (approx.)		30,00,000
2.	Financial Creditor (Secured)	1,16,74,385	1,16,74,385



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3.	Financial Creditor (Unsecured)	-	-
3.	Workmen	15,91,676	15,91,676
	Employees	2,55,001	2,55,001
4.	Operational Creditors (Statutory dues)	1,27,75,582	1,27,75,582
	Operational Creditors (Other dues)	2,33,82,618	92,84,965
	Total	4,96,79,262	3,85,81,609

The Resolution Applicant (RA), Mr. Anoop N, one of the promoters of Dhanwanthari Vaidyasala and Group companies, proposes to acquire the corporate debtor as going concern through the resolution plan entailing a total proposed outlay of Rs. **3,85,81,609/-** for settling the creditors and CIRP Cost. The Resolution Applicant proposed to pay actual amount incurred towards the corporate insolvency resolution process cost payable in terms of Sections 30(2)(a) of the Code and Regulation 38(1)(a) of the CIRP Regulations as upfront payment, in priority to all other debts. As per the Plan, an amount of Rs. 30 lakhs have been apportioned towards CIRP cost with the undertaking that the Resolution Applicant shall in addition meet the cost upto 120 days from COC approval of the plan including the cost during the monitoring period. The Financial Creditor Dhanalaxmi Bank has undertaken that any other cost beyond 120 days shall be borne by them.

5. It was submitted by the applicant that the resolution plan had provided for full payment of admitted claims to operational creditors other than government dues, except to M/s Kerala Ayurveda Limited(KAL) who agreed for a negotiated settlement of Rs. 75 Lakhs against a total claim of Rs. 2,15,97,653/-. It is agreed between the RA and KAL that a further amount of Rs. 25 lakh can be considered in future business association with



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each other. The applicant has submitted a letter from KAL dated 30.06.2023 agreeing to the settlement.

6. The applicant-RP state that despite repeated requests, the suspended board of directors did not cooperate with the RP. As a result, section 19(2) applications were filed to receive books of accounts, assets of company and handover key to factory gate of CD along with other cooperation, and despite directions of this Tribunal, cooperation has not been properly extended to the applicant. The applicant submits that due to non-availability of document, the audit for period 2020-21 and 2021-22 could not be carried out so does the taking custody of records and assets of CD. It is stated that after multiple attempts, a third 19(2) application is pending adjudication before this Tribunal along with an application under section 70 of IBC for punishment for misconduct of CIRP. The RP state that CIRP has been excluded once vide order dated 17.11.2022 extended 2 times upto 330 days till 27.06.2023. Subsequent to filing of this application, this Tribunal extended the period beyond 330 days till 18.07.2023 to approve the resolution plan. A total of 12 CoC meetings have been held during CIRP.
7. The resolution professional appointed two sets of valuers on 19.05.2022 as required under Regulation 27. It is stated that as per their valuation reports, the fair value of the corporate debtor was assessed as Rs.9,52,26,926.28/-, and the liquidation value of the corporate debtor was assessed as Rs.5,09,37,152/- Crores in terms of Regulation 35 of the CIRP Regulations. It is further stated that the difference in fair value and liquidation value derives from the value of financial assets i.e, majority of receivables which are outstanding from sister concerns of CD which is also prior to lookback period and remains as bad debts which cannot be recovered. RP further state that valuation for land measuring 34 cents, which apparently belongs to CD could not carried out by valuers due to non-availability of documents and title deeds.



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8. Invitation in Form 'G' for Expression of Interest ("EoI") from potential resolution applicants was published on 06.12.2022, and then reissued with COC approval on 28.12.2022 and on 14.03.2023 for submission of resolution plans for the Corporate Debtor, in terms of the provisions of Section 25(2)(h) of the Code read with Regulation 36A (1) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.
9. The Applicant submits that pursuant to the publication of Form-G, two prospective resolution applicants, i.e., Mr Anoop N and Mr Balkishan Goyal, submitted EOI. In accordance with Regulation 36A(10) of IBBI (CIRP) Regulations, 2016, the Applicant issued a provisional list of eligible prospective resolution applicants on 10.04.2023. As per Regulation 36A(11) of CIRP Regulations, objections, if any, to the inclusion or exclusion of a prospective resolution applicant in the provisional list were to be filed within five days from the date of issue of the above provisional list i.e. up to 15.04.2023. However, no objection to the provisional list was received by the applicant. That in terms of provisions of sub-regulation (12) of Regulation 36A of the CIRP Regulations, the applicant issued a final list of eligible prospective resolution applicants on 25.04.2023.
10. The Request for Resolution Plan (RFRP) and the Evaluation Matrix were approved and the Resolution Professional prepared Information Memorandum (IM) as required under section 25(2)(g) and section 29(1) of IBC, 2016, read with Regulation 36 of IBBI (CIRP) Regulations, 2016. This Information Memorandum was provided to the CoC members and prospective resolution applicants after their execution and submission of a Confidentiality Undertaking and affidavit dated 30.03.2023 duly stamped and notarized to the applicant produced in **pages 128 to 135** of the application. In terms of Regulation 36B of CIRP Regulations, the applicant issued the Information Memorandum, Evaluation Matrix, and Request for



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Resolution Plan on 26.04.2023. The last date of submission of resolution plan was 30.05.2023.

11. The resolution plan was received by the Applicant from the prospective resolution applicant namely:- 'Mr Anoop N and Mr Balkishan Goyal. It is stated that the Plan submitted by Mr Balkishan Goyal was found to be non-compliant with IBC, i.e, that the operational creditors were proposed a settlement of only 0.1% of total debts and was not reasonable in terms of liquidation value derived by the applicant, and subsequently they withdrew the Plan. An extract of the communication between the PRA and RP is produced in the application.
12. The Applicant submits that the prospective resolution applicant, Mr Anoop N, submitted their revised resolution plan after due negotiations which was placed before CoC in their 12th Meeting held on 26.06.2023. In terms of section 30(3) of the IBC, 2016, the applicant presented the revised resolution plan thereby confirming that the applicant/resolution professional has examined the resolution plan and found it in accordance with the clauses specified in section 30(2) of the Code.
13. The CoC evaluated the resolution plan submitted by the PRA in terms of Regulation 39 of the IBBI (CIRP) Regulations as per the Evaluation Matrix. The resolution plan considering that only one 'Mr Anoop N' submitted a viable resolution plan, the CoC approved the resolution plan on 26.06.2023 submitted by Mr Anoop N (hereon "Successful Resolution Applicant" or "SRA") with 100% voting rights cast in favour of it. A copy of the minutes of the 12th CoC meeting is given on **pages 74 to 104** of the application.
14. The Resolution Plan dated 23.06.2023 as approved by the CoC is given on **pages 40 to 60** of the application.
15. The successful resolution applicant had duly accepted the "Letter of Intent" which was issued by the Resolution Professional as per the provisions of RFRP on 23.06.2023.



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16. The Applicant further submits that the successful resolution applicant has submitted Annexure A2 performance bank guarantee required under sub-regulation (4A) of regulation 36B in pages 61 to 65. The successful resolution applicant has submitted the Performance bank guarantee no. 1694IBG137818 dated 11.07.2023 for Rs. 1,50,00,000.00 (Rupees One Crore Fifty lakh only) issued by Corporate Thodupuzha West branch of The Federal Bank Limited having validity till 10.11.2023.
17. The Applicant has submitted the details of various compliances as envisaged by the Code and the CIRP Regulations which a Resolution Plan is required to adhere to, as follows:

Section of the Code/Reg.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?		Yes
29A	Whether the Resolution Applicant is eligible to submit a resolution plan as per final list of Resolution Professional or Order, if any, of the	Notarised affidavit given as 'Annexure 8'	Yes



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	Adjudicating Authority?		
30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Notarised affidavit given as 'Annexure 8'	Yes
30(2)	Whether the Resolution Plan-		
	(a) Provides for the payment of insolvency resolution process costs?	3.3, 3.4 & 3.5	Yes
	(b) Provides for the payment to the operational creditors?	3.3, 3.6 & 3.7	Yes
	(c) provides for the payment to the financial creditors who did not vote in favor of the resolution plan?	3.3, 3.7 & 3.8	Yes
	(d) provides for the management of the affairs of the corporate debtor?	3.11 & 4.4	Yes
	(e) provides for the implementation and	4.1, 4.3 & 4.5	Yes



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	supervision of the resolution plan? (f) contravenes any of the provisions of the law for the time being in force?		No
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	- -	Yes Yes with 100% vote
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	3.12, 4.1, 4.4 & 4.5	Yes, Implementation period is 180 days as per Plan but is reduced to 90 days after negotiation and passed in 12 th COC
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has	-	Yes, Section 66 application filed before NCLT on 13.07.2023



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	been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?		
Regulation 38(1)	Whether the amount due to the operational creditors under the resolution plan has been given priority in payment over financial creditors?	3.3, 6.6 & 3.7	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	3.3, 3.4 & 3.5	Yes
Regulation 38(1B)	i. Whether the Resolution Applicant or any of its related parties has failed to implement or		No Undertaking given



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	<p>contributed to the failure of implementation of any resolution plan approved under the Code.</p> <p>ii. If so, whether the Resolution Applicant has submitted the statement giving details of such non-implementation?</p>		NA
Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p>	<p>4.5</p> <p>4.3</p>	<p>Yes, Implementation period is 180 days as per Plan but is reduced to 90 days after negotiation and passed in 12th COC</p> <p>Yes</p>



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	(c) adequate means for supervising its implementation?	4.3 & 4.4	Yes
Regulation 38(3)	Whether the resolution plan demonstrates that – (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	2.1, 2.2 & 2.3 3.1 3.11, 4.3, 4.4 & 6.1 -	Yes Yes Yes No No
Section 39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	-	Yes



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Regulation 39(4)	Provide details of performance security received, as referred to in sub-regulation (4A) of regulation 36B.	4.5	Yes, Performance Bank Guarantee No. 1694IBG137818 dated 11.07.2023 for Rs. 1,50,00,000.00 (Rupees One Crore Fifty lakh only) issued by Corporate Thodupuzha West branch of The Federal Bank Limited having validity till 10.11.2023. Copy of PBG is given as 'Annexure A2'
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18. As required by Section 30(1) read with Regulation 39(1)(a) of the CIRP Regulations, the Applicant submits that the successful resolution applicant has submitted a certificate of eligibility under **Section 29A** of the Code vide notarized affidavit dated 30.05.2023 at pages 121-125 of the application and additional affidavit dated 23.06.2023 at pages 66 to 69 of the application. In terms of Regulation 39(1)(c) of the CIRP Regulations, an **undertaking** has been submitted by the successful Resolution Applicant, disclosed at page 60 of the application.



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19. The applicant has filed a Compliance Certificate in prescribed form i.e., Form "H" in compliance with regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) regulations 2016, along with evidence of receipt of performance security as required under regulation 36B(4A) is disclosed as Annexure A5 in pages 105 to 116 and annexure A2 at pages 61-65 of the application respectively.
20. The Resolution Applicant requests, proposes and prays for the following reliefs and concessions to be granted to the Corporate Debtor and/or the Resolution Applicant, as the case may be, on the Approval Date.

S. No.	Relief/Concessions/Waiver sought	Status
1.	Request exemptions and relief from compliances of extinguishment of the shares of the current shareholders of Ms. S D Pharmacy Private Limited.	Approved
2.	Request exemptions and relief for Fresh allotment of shares in the name of Resolution Applicant and persons nominated by the Resolution Applicant.	Approved
3.	Request exemptions and relief from all debts and dues, liability or obligations which are included in the Resolution Plan shall be deemed to have been irrevocably waived and permanently	Approved



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	extinguished and written off in full, with effect from the effective date.	
4.	Request exemptions and relief to seek the benefits of all Income Tax Exemptions from the appropriate authorities as available to IBC companies.	The Resolution applicant shall make necessary applications to the concern authorities in this regard and obtain orders.
5.	Request exemptions and relief to settle all legal proceedings pending against the Corporate Debtor in any court or tribunal or tax authorities and other contingent liabilities irrevocably and unconditionally as on the effective date.	Approved
6.	Request exemptions and relief from all contingent liabilities from all the organizations, local authorities, Government Institutions, especially from ESIC, Income Tax, Local Panchayath, GST department, Office of Labour Commissioner, any claims related to Gratuity Payable, etc.	Approved
7.	Request permission to recover advance amounts stated in the Audited Balance Sheet of 31.03.2020, specified in above point number 2.3 (Loans and advances	Approved subject to law of Limitation etc.



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	to related parties) amounting to Rs.386.99 Lakhs.	
8.	Request possession and title of all fixed assets, movable or immovable, which are part of the Specified Land, Building, Plant and Machinery on successful completion of Resolution Plan.	Approved
9.	Request exemptions and relief to absolve the Resolution Applicant from any liability arising due to the outcome of any legal proceedings on any legal cases pending against the Corporate Debtor as on the Effective Date.	Approved
10.	Request exemptions and relief to Extinguish all liabilities in relation of corporate guarantees, indemnities, etc provided by the Corporate Debtor as on effective date.	Approved
11.	Request exemptions and relief from all claims and rights of the erstwhile shareholders against the Corporate Debtor shall stand irrevocably and unconditionally extinguished.	Approved
12.	Request exemptions and relief to release all encumbrances, charges, security interest etc., created on the	Approved



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	assets of the Corporate Debtor on the Effective Date.	
13.	Request exemptions and relief for Revocation of all Power of Attorneys provided by the Corporate Debtor to any person as on the effective date.	Approved
14.	Request exemptions and relief to Terminate without liability all outstanding negotiable instruments issued by the Corporate Debtor or any other person on behalf of the Corporate Debtor.	Approved
15.	Request exemptions and relief for all actions with regard to the assets/claims/rights etc. as mentioned in the Balance Sheet of the Corporate Debtor, as well as off Balance Sheet items of assets, as on the effective date shall be the assets/claims/rights of the Resolution Applicant and shall be dealt with at its sole discretion.	Approved
16.	Request exemptions and relief to permit amendment of the constitutional documents of the Corporate Debtor.	Approved
17.	Request exemptions and relief from defaulted compliances and filings of all	The Resolution



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	Government Authorities, including Registrar of Companies, GST, KVAT, ESI, EPFO, Income Tax Department, ITR Forms, QTDS forms, Annual TDS Filings, etc. Therefore, the Resolution Applicant can file fresh forms with all Statutory Authorities without hindrances and penalties.	applicant shall make necessary applications to the concern authorities in this regard and obtain orders.
18.	Request specific exemptions and relief from defaulted filing of Satisfaction of Charge by the Federal Bank Limited with Registrar of Companies.	Approved
19.	Request to remove all the attachment to the company properties especially attachments of PF department and all other Govt Departments, Revenue Recovery attachments against the company property.	Approved

21. Regarding the reliefs/waivers pertaining to the domain of various departments/governmental authorities, it is further clarified that this Adjudicating Authority has no power to sanction these waivers, etc. and the Successful Resolution Applicant is at liberty to approach the competent authorities/courts/legal forums/office(s) Government or Semi-Government/State or Central Government for appropriate relief(s) sought in the plan. Approval of the Resolution Plan does not mean automatic waivers.

22. It is directed that any relief sought in the resolution plan, where the



contract/agreement/understanding/proceedings/actions/notice etc. is not specifically identified or is for future and contingent liability, is at this moment not acceded to.

DETAILS OF RESOLUTION PLAN/PAYMENT SCHEDULE

23. The applicant submits the relevant information with regard to the amount claimed, amount admitted, and the amount proposed to be paid by the Resolution Applicant, under the said resolution plan is tabulated as under:

Particulars	Amount (Rs.)	In %
CIRP Cost (Proposed; to be settled as per Actuals)	30,00,000	100
Payment to Secured Financial Creditors	1,16,74,385	100
Payment to Employees/Workmen	1,84,677	100
Payment to Operational Creditors (Dues to Government/ Statutory Bodies)	1,27,75,582	100
Payment to Operational Creditors (Other dues)	92,84,965	39.7
TOTAL	3,85,81,609	

24. The resolution plan defines “Approval Date” as the date on which the Adjudicating Authority approves the resolution plan. Under the resolution plan, it was provided that the payments to the creditors would be made within 180 days of approval of the Resolution Plan by the Adjudicating Authority however the period was reduced to 90 days by RA with approval of COC at 12th meeting which is stated on page 23 to



25 of the application. It is further stated that the applicant has received belated claims which has been not considered by the RP except as by directions from this Tribunal and there is also no provision provided in the Plan to meet the belated claims. It is stated that the with regard to transactions identified by RP under section 43, 45,50 and 66, the RA shall pursue the proceedings after approval of the Plan and to take the proceed of any. It is stated that the with regard to compliances under regulation 39B (meeting liquidation costs), regulation 39C (sale of CD as going concern), regulation 39D (Fee of liquidator), it was resolved at 12th COC to discuss and finalize the same when such situation arises. The payments of Insolvency Resolution Process cost upto 30 lakh in addition cost upto 120 days shall be paid by RA whereafter the Dhanalaxmi Bank shall bear the cost. The monitoring cost shall be borne by RA. The business of CD shall be handed over to the RA after making first tranche payment, i.e, PBG of Rs. 1.5 crore and another 1 crore.

FINDINGS

25. On hearing the submissions made by the Ld. Counsel for the Resolution Professional, and perusing the records, we find that the Resolution Plan has been approved with 100% voting share. As per the CoC, the Plan meets the requirement of being viable and feasible for the revival of the Corporate Debtor. By and large, all the compliances have been done by the RP and the Resolution Applicant for making the Plan effective after approval by this Bench.
26. On perusal of the documents on record, we are also satisfied that the Resolution Plan is in accordance with sections 30 and 31 of the Code and also complies with regulations 38 and 39 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. No circumstances exist that militate against grant of approval for the Resolution Plan.
27. As far as the question of granting time to comply with the statutory



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obligations/seeking sanctions from governmental authorities is concerned, the Resolution Applicant is directed to do the same within one year as prescribed under section 31(4) of the Code.

28. Therefore, subject to the observations made in this Order, the Resolution Plan in question is hereby approved by this Bench. The Resolution Plan shall form part of this Order.
29. The Resolution Plan is binding on the Corporate Debtor, its employees, members, and all its creditors including but not limited to secured, unsecured, financial and operational creditors, guarantors, government and statutory and local authorities and other stakeholders involved so that revival of the Corporate Debtor can come into force with immediate effect.
30. The Moratorium imposed under section 14 shall cease to have effect from the date of this order.
31. The Resolution Professional shall stand discharged from his duties with effect from the date of this Order. However, he shall perform his duties in terms of the Resolution Plan as approved by this Adjudicating Authority
32. The Resolution Applicant shall have access to all the Corporate Debtor's records, documents, assets and premises with effect from the date of this order.
33. The Resolution Professional is further directed to handover all records, documents and properties of the Corporate Debtor to the Resolution Applicant to enable the Resolution Applicant to finalize the further line of action required for starting of the operations.
34. In case of non-compliance of this order or withdrawal of Resolution Plan, the CoC shall forfeit the performance security amount already paid by the Resolution Applicant.



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35. Liberty is hereby granted for moving any Application if required in connection with implementation of this Resolution Plan.
36. Certified copy of this Order be issued on demand to the concerned parties, upon due compliance of requisite formalities.
37. A copy of this Order is to be submitted by the Resolution Applicant in the Office of the Registrar of Companies, Cuttack.
38. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel / Authorized Representatives for information and for taking necessary steps.
39. IA (IB) No. 308/KOB/2023 is allowed as above and the main Company Petition i.e., C.P. (IB) No. 34/KOB/2021 shall stand disposed of accordingly.

SATYARANJAN PRASAD Digitally signed by SATYARANJAN PRASAD
Date: 2023.10.13 14:49:49 +05'30'

Satya Ranjan Prasad
Member (Technical)

PANDIAN MOHAN RAJ Digitally signed by PANDIAN MOHAN RAJ
Date: 2023.10.13 17:32:30 +05'30'

P. Mohan Raj
Member (Judicial)

Signed on this , the 13th day of October, 2023.

Rohit.