

**IN THE NATIONAL COMPANY LAW TRIBUNAL  
HYDERABAD BENCH, COURT - II**

**I.A. No.6 OF 2024**

**in**

**CP(IB) NO. 420/7/HDB/2018**

*[U/s. 30(6) and Section 31(1) of the I&B Code, 2016 r/w Regulation 39(4) of the IBBI (IRPCP) Regulations, 2016]*

**In the matter of**

**Axis Bank Limited vs. M/s. Lanco Amarkantak Power  
Limited**

**In the matter of:**

Mr. Saurabh Kumar Tikmani  
Resolution Professional of  
M/s. Lanco Amarkantak Power Limited

.... Applicant

**Vs.**

Committee of Creditors of  
M/s.Lanco Amarkantak Power Limited & Anr.

... Respondents

**Order Pronounced on : 21.08.2024**

**Coram:**

**Hon'ble Shri Rajeev Bhardwaj, Member (Judicial)**  
**Hon'ble Shri Sanjay Puri, Member (Technical)**

**Parties / Counsels Present:**

For the Applicant : Ms. Rubaina S. Khatoon &  
Ms. Lisa Mishra, Advocates  
For the Respondent : Mr. Palash Agarwal, Advocate

**[PER : BENCH]**

**ORDER**

1. The instant Application bearing IA No. 6/2024 has been filed on behalf of the Resolution Professional of the Corporate Debtor (**CD**) M/s Lanco Amarkantak Power Limited, under Section 30(6) and 31(1) of **IBC**<sup>1</sup>, r/w regulation 39(4) of the applicable **Regulations**<sup>2</sup>, seeking approval of the **Resolution Plan**<sup>3</sup>, submitted by the Successful Resolution Applicant (**SRA**) M/s Adani Power Limited (**APL**) duly approved with 95.40% voting share by the Committee of Creditors (**COC**), at their 69<sup>th</sup> meeting held on 13.02.2024 and concluded on 04.03.2024 with publication of the voting results.
2. The Company Petition CP(IB) No. 420/7/HDB/2018 filed by Axis Bank, the Financial Creditor (**FC**) was admitted by this Authority u/s 7 of IBC, vide Order dated 05.09.2019 ordering commencement of CIRP<sup>4</sup> against M/s Lanco Amarkantak Power Limited, the **CD** by appointing Mr Saurabh Kumar Tikmani as the Interim Resolution Professional, who was subsequently confirmed as the Resolution Professional (**RP**), in the 1<sup>st</sup> COC Meeting held on 11.10.2019 that concluded on 16.10.2019.

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<sup>1</sup> Insolvency & Bankruptcy Code, 2016

<sup>2</sup> IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016

<sup>3</sup> Resolution Plan dated 01.11.2022 along with an Addendum dated 15.02.2024, consolidated as the '**Comprehensive Resolution Plan**' submitted through Affidavit dated 30.07.2024

<sup>4</sup> Corporate Insolvency Resolution Process

3. Public Announcement<sup>5</sup> of the commencement of CIRP was made in Form-A on 16.09.2019 in the newspapers<sup>6</sup>, where the Registered office and the Principal Office of the CD was situated, inviting claims from the creditors of the CD. In response, claims were received from the Financial Creditors.
4. After collating all the claims received and determining the financial position of the CD, the RP constituted the COC, comprising of the following Financial Creditors:

<b>S.No.</b>	<b>Name of the Financial Creditor</b>	<b>Voting Share (%)</b>
1.	Power Finance Corporation	21.78%
2.	Rural Electrification Corporation	20.02%
3.	IDBI Bank	10.02%
4.	Indian Overseas Bank	8.38%
5.	Axis Bank	8.31%
6.	Union Bank of India*	8.14%
7.	Punjab National Bank (and United Bank of India)	7.03%
8.	Life Insurance Corporation of India	6.77%
9.	Bank of India	4.37%
10.	Edelweiss ARC	3.14%

<sup>5</sup> Pages 346-349 of the Application

<sup>6</sup> Economic Times & Times of India (English); Nai Dunia & Nav Bharat Times (Hindi), and Andhra Jyoti (Telugu) the Regional newspaper

11.	Canara Bank (and Syndicate Bank)	1.17%
12.	Indian Bank (and Allahabad Bank)	0.58%
13.	SIDBI	0.25%
14.	UCO Bank	0.06%
<b>Total</b>		<b>100%</b>

\* Claim admitted in the name of Andhra Bank. However, Andhra Bank got merged with Union Bank of India.

5. The RP appointed M/s Grant Thornton Bharat LLP as Transaction Auditors for determining the avoidance transactions of the CD. After reviewing all the transactions, the Transaction Auditors submitted their Report<sup>7</sup> dated 23.01.2020 confirming that there have been no avoidance transactions.
6. The RP appointed Registered Valuers on 22.10.2019, viz. Mr. Puneet Tyagi, Mr. Dharam Pal Bhatia and Ms. Gunjan Agarwal, C/o. Adroit Valuations (“Adroit”), for valuation of Land & Buildings, Plant & Machinery and Securities & Financial Assets of the CD respectively and the Registered Valuers have submitted their reports on 25.09.2020, 23.09.2020 and 28.09.2020 respectively.
7. On 22.10.2019, the RP appointed M/s BDO Valuation Advisory LLP (“**BDO**”) for assessment of Fair Value and

<sup>7</sup> Annexure A-7 at pg.353-401 of the application

Liquidation Value of all asset classes of the CD and submitted its report dated 25.09.2020.

8. The RP conducted a total of Sixty Nine (69) meetings of the COC during the CIRP.
9. The RP invited Expression of Interest (**EOI-1**) from Prospective Resolution Applicants (**PRAs**), by issuing Form-G on 18.11.2019. The last date for submission of Expression of Interest was extended from time to time and finally it was fixed as 01.03.2020. In response, Expression of Interests were received from the following eleven (11) PRAs.
  - (i) Aditya Birla ARC Limited
  - (ii) Adani Power Limited
  - (iii) Vedanta Limited
  - (iv) Edelweiss Asset Reconstruction Company
  - (v) International Asset Reconstruction Company Private Limited
  - (vi) iLabs India Special Situations Fund
  - (vii) Fort Canning Investments Pte. Ltd
  - (viii) Jindal Power Limited
  - (ix) Andhra Pradesh Power Generation Corporation Limited
  - (x) Prudent ARC Limited
  - (xi) Asset Reconstruction Company (India) Limited

The RP then provided all the aforesaid PRAs with the

Request for Resolution Plan (**RFRP**) and the Information Memorandum (**IM**) of the CD. Other relevant details of the CD were also shared with the PRAs through a Virtual Data Room (**VDR**).

10. Pursuant to several extension requests received from PRAs after **EOI-1**, out of the eleven PRAs, only two submitted their Resolution Plans as on 30.09.2020:

1. Vedanta Limited
2. iLabs India Special Situations Fund

11. In the meanwhile, after obtaining advice from the COC’s legal counsel, the COC took note of three (3) Distribution Mechanisms and decided that two Alternative Distribution Mechanisms should be put to vote, which are as follows:

<b>Alternative 1: Distribution in ratio of Liquidation Value</b>		<b>Alternative 2: Distribution of Resolution Plan proceeds in ratio of LV (i.e. as per admitted claims of respective creditors)</b>	
Step 1:	Entire Resolution Plan value and cash <u>distributed in the ratio of Liquidation Value (LV) (which is allocated among respective Financial Creditor as per their Security Structure)</u> to all the FCs (restricted to total admitted claim of any particular FC)	Step 1:	Entire Resolution Plan value and cash distributed to Financial Creditors (FCs) in the ratio of the liquidation value (which is allocated among respective <u>Financial Creditor in ratio of admitted claims</u> ) of FCs.
Step 2	Any balance (in case, value distributed in Step 1 exceeds the admitted claims) is		

	redistributed in ratio of balance outstanding admitted claim of the remaining FCs.		
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After detailed discussions, the COC approved with 84.80% voting share the '**Alternative 2**' Distribution Mechanism above.

12. After multiple rounds of discussions with two PRAs, the Applicant commenced voting from 11.10.2021 for approval of the Resolution Plans, which were rejected by the COC stating that the commercial value offered for the CD was not aligned with the true realisable value of the CD and COC also rejected the settlement proposal offered by the erstwhile promoters of the CD under Section 12A of IBC.
13. The RP had filed two IAs, (i) IA No.1/2022 for seeking additional time of 150 days for completion of CIRP; and (ii) IA No.2/2022 seeking to permit for issuing fresh EOI and thereafter consider the Resolution Plans submitted including a lenders' backed resolution plan. These IAs were allowed, vide orders dated 04.01.2022 and 18.01.2022 respectively.
14. Subsequently, the RP issued fresh invitation for Expression of Interest (**EOI-2**) to Prospective Resolution Applicants in Form 'G' on 25.01.2022. Eleven (11) PRAs submitted their expression of interest. These were:

- (i) Adani Power Limited
- (ii) Hindustan Thermal Projects Ltd
- (iii) iLabs India Special Situations Fund
- (iv) India FPI Xi Holdings Singapore PTE Ltd
- (v) Jindal Power Limited
- (vi) Reliance Industries Ltd.
- (vii) Tamil Nadu Generation and Distribution Corp Ltd.
- (viii) Twin Star Technologies Ltd.
- (ix) Consortium of KLJ Resources Ltd. and KLJ Plasticizers Ltd.
- (x) Consortium of Power Finance Corporation Ltd., REC Ltd. and NTPC Ltd.
- (xi) Consortium of Power Mech Projects Ltd., Power Mech Infra Ltd. and Sudhakara Infratech Pvt. Ltd.

15. On 28.02.2022, the RP shared a fresh RFRP and IM with the PRAs. Later, on 04.08.2022, a revised and updated RFRP was shared with the PRAs. In response to EOI-2, out of the eleven (11) PRAs, the following three (3) submitted their Resolution Plans:

- i. Adani Power Limited (**APL**)
- ii. Reliance Industries Ltd (**RIL**)
- iii. Consortium of PFC Projects Ltd and REC Ltd (**PFC Consortium**)

After several rounds of deliberations and negotiations with these PRAs, they submitted revised Resolution Plans. Resolution Applicants suggested fresh distribution mechanism, but the COC decided to continue with the



distribution mechanism decided in the 28<sup>th</sup> COC Meeting.

16. In response to the letter issued by the 'Consortium' for conducting of challenge process, the COC conducted the challenge process in its 53<sup>rd</sup> meeting held on 30.11.2022 and the Consortium submitted an addendum to the Resolution Plan with revised and improved commercial offer. On 13.12.2022, the Resolution Plan amounting to Rs.3,020 crores submitted by 'Consortium' was approved by the COC, vide voting result published on 09.01.2023.
17. On 09.01.2023, the RP issued 'Letter of Intent' (LoI) to the Consortium of PFC Projects Ltd. and REC Ltd. ("Consortium") declaring them as Successful Resolution Applicant (**SRA**). They were requested to comply with the terms of the LOI and submit the Performance Security.
18. At the request of SRA seeking additional time for complying the terms of the LOI, the Applicant had filed an IA seeking extension of time, which was allowed by granting extension of CIRP period by 21 days from 02.02.2023.
19. Subsequently, the Consortium complied with the terms of the LOI by 06.02.2023 and the Applicant had filed an IA No.327/2023 on 11.02.2023 before this Authority seeking for approval of the Consortium's Resolution Plan.
20. It is noted that when the voting on the approval of the

Resolution Plan submitted by the 'Consortium' was pending, certain COC Members viz. Edelweiss Asset Reconstruction Private Limited ("Edelweiss"), Canara Bank and UCO Bank filed IAs, No.477/2021, No. 632/2021 and No. 270/2022, inter alia, challenging the decision of the other members of the COC in respect of the distribution mechanism and re-assessment of liquidation value etc.

21. These IAs were disposed of on 19.10.2022 with a split verdict, and eventually rejected by the Third Member, vide Order dated 02.11.2023.

22. Aggrieved by the Orders dated 19.10.2022 and 02.11.2023, Edelweiss Asset Reconstruction Private Limited ("Edelweiss"), Canara Bank and UCO Bank preferred an Appeal before the Hon'ble NCLAT in Company Appeal (AT)(CH.) (Ins.) No.400 of 2023, which is pending for final adjudication. Hon'ble NCLAT however directed vide order dated 21.11.2023, that—

*"In the meanwhile, any order in CP (IB) No.420/7/HYD/2018 passed by the Tribunal at Hyderabad shall be subject to the final outcome of this Appeal. In the meantime, the plan approval proceedings, to be undertaken by the Tribunal, shall be subject to the final outcome of the present appeal"*

23. During the pendency of IA No. 327/2023 (seeking approval of the Consortium's Resolution Plan), the Applicant

received various unsolicited letters from Adani Power Limited (APL), Jindal Power Ltd (JPL) and Megha Engineering Infrastructure Limited (MEIL) proposing to offer a superior financial proposal than that contemplated under the Consortium's Resolution Plan. These proposals were shared with the COC, and discussed at length in the 62<sup>nd</sup>, 63<sup>rd</sup> and 64<sup>th</sup> CoC meetings held on 02.11.2023 & 29.11.2023, 12.12.2023 and 19.12.2023 respectively.

24. Adani Power Limited (APL) issued a letter dated 27.10.2023 stating that it was willing to make an offer of a total resolution amount of Rs.3,645 crs. Later this offer was increased to Rs.4,101 crs on 15.12.2023. APL also furnished a Bank Guarantee of Rs.100 crores to back its offer.

25. In the 64<sup>th</sup> COC meeting held on 19.12.2023, the COC unanimously agreed to conduct a challenge mechanism amongst those resolution applicants who had submitted the resolution plans. The RP accordingly filed IA No. 67/2024 seeking permission to consider the eligible offers received and to conduct fresh challenge process, along with extension of 60 days for completion of CIRP. This IA was allowed<sup>8</sup> by this Authority on 10.01.2024.

26. After availing the extensions and exclusions allowed periodically<sup>9</sup>, the last date for completing the CIRP was set

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<sup>8</sup> Annexure-A20 at pg.739 of the application

<sup>9</sup> Para 4.74 of the Application

at 10.03.2024.

27. Pursuant to the order dated 10.02.2024, in the 68<sup>th</sup> meeting of the COC held on 06.02.2024, the challenge process was undertaken, in which, APL was the sole participant, which submitted its financial proposal. Accordingly, APL was declared as H1 bidder. An addendum dated 08.02.2024 was submitted, which was restated through addendum<sup>10</sup> dated 15.02.2024.
28. M/s.BDO India LLP was appointed by the COC for undertaking evaluation of resolution plans, who submitted their report<sup>11</sup> dated 16.02.2024 and confirmed the feasibility and viability of Resolution Plan submitted by APL.
29. In the 69<sup>th</sup> COC Meeting held on 13.02.2024 which was concluded on 15.02.2024, the COC discussed upon the compliance, feasibility and viability of the revised Resolution Plans as well as the distribution mechanism and approved the Resolution Plan submitted by M/s Adani Power Limited (APL) with 95.40% voting share in the electronic voting concluded on 04.03.2024 subject to approval by the Competition Commission of India (“**CCI**”) of the proposed acquisition. The voting share is detailed as follows:

<b>S.No.</b>	<b>Name of the Financial</b>	<b>Voting</b>	<b>Voting for</b>
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<sup>10</sup> Annexure A-22 (colly.) at pg. 742 – 799 of the application

<sup>11</sup> Annexure A-23 at pg. 800 – 915 of the application

	<b>Creditor</b>	<b>Share %</b>	<b>Resolution Plan (Voted for/ Dissented / Abstained)</b>
1.	Power Finance Corporation	21.78%	<b>Voted for</b>
2.	REC Limited	20.02%	<b>Voted for</b>
3.	IDBI Bank	10.02%	<b>Voted for</b>
4.	Indian Overseas Bank	8.38%	<b>Voted for</b>
5.	Axis Bank	8.31%	<b>Voted for</b>
6.	Union Bank of India* (erstwhile Andhra Bank)	8.14%	<b>Voted for</b>
7.	Punjab National Bank (and United Bank of India**)	7.03%	<b>Voted for</b>
8.	Life Insurance Corporation of India	6.77%	<b>Voted for</b>
9.	Bank of India	4.37%	<b>Voted for</b>
10.	Edelweiss ARC	3.14%	Abstained
11.	Canara Bank (and Syndicate Bank)	1.17%	Dissented
12.	Indian Bank (and Allahabad Bank)	0.58%	<b>Voted for</b>
13.	SIDBI	0.25%	Dissented
14.	UCO Bank	0.06%	Dissented

30. The Applicant has further submitted that as the approved Resolution Plan meets all the requirements envisaged under IBC and Rules/Regulations made thereunder, the

RP on 04.03.2024, issued 'Letter of Intent' (**LoI**)<sup>12</sup> to M/s Adani Power Limited (APL) declaring them as Successful Resolution Applicant (SRA).

31. In response, APL vide email dated 06.03.2024 shared unconditionally accepted LOI dated 04.03.2024 and performance security by way of Bank Guarantee No.W47GPGE240665002, dated 06.03.2024, amounting to **Rs.100 crores** (Rupees one hundred crores only), valid upto 05.03.2025 with further claim period upto 05.03.2026 with acceptance of LOI<sup>13</sup>.
32. APL filed application under Sub-Regulation 5 r/w Regulation 28 of the CCI (Procedure in regard to the transaction of business relating to combinations) Regulations, 2011 seeking for approval of the combination proposed under the Resolution Plan, and the same was approved by the CCI, vide order dated 26.03.2024. **A copy of the Order dated 26.03.2024 passed by CCI is filed by way of a memo dated 15.04.2024.**
33. The salient details of the Resolution Plan, submitted by APL and as approved by the CoC, are as follows:
- i. APL is India's largest private power producer with total installed thermal power capacity of 15,250 MW. Over the past years, APL has developed strong capabilities in Engineering, Procurement,

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<sup>12</sup> Annexure A-25 at pg. 919 – 922 of the application

<sup>13</sup> Annexure A-26 (colly.) at pg. 923 – 933/Vol.6 of the application

Construction, Commissioning, Operations and Maintenance of large supercritical units and also built expertise in construction and operations of large capacity, high voltage AC/DC transmission lines.

- ii. APL is part of the Adani Group, which is a leading business conglomerates and the largest integrated infrastructure group in India. The Adani Group is India's largest private power sector player with leadership across all three verticals of generation, transmission and distribution. The Adani Group has 10 listed entities on Indian Stock Exchanges with a combined market cap of over US\$ 75 billion (as on 3<sup>rd</sup> August 2023).
- iii. APL backed by promoters and management who have a strong record of accomplishment of acquisition and turnaround of distressed companies post acquisitions. APL has also accomplished record of executing large and complex projects, viz. Mundra Thermal Power Plant (4,620 MW), Kamuthi Solar Project (648 MW), Mundra Port (150 MMT Cargo in FY 2022) and Godda Thermal Power Plant.
- iv. The amounts provided for the stakeholders under the Resolution Plan<sup>14</sup> are as under:

(Rs. in crores)

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<sup>14</sup> Form-H (Sr. No. 7) on Page 941-943 of the Application

**National Company Law Tribunal, Hyderabad Bench, Court-II**

I.A. No. 6/2024 in  
C.P.(IB) No.420/7/HDB/2018  
Date of Order: 21.08.2024

Sl. No.	Category of Stakeholder	Sub-Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan#	Amount Provided to the Amount Claimed (%)	Amount provided to the Amount Admitted
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)
1	Secured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	N.A.	N.A.	N.A.	N.A.	N.A.
		(b) Creditors not having a right to vote on account of non-admissibility of claim	1476.53	NIL	NIL	NIL	NIL
		(b) Other than (a) and (b) above:					
		(i) who did not vote in favour of the Resolution Plan	687.82	674.42	100.87	14.67%	14.96%
		(ii) who voted in favour of the resolution plan	15813.75	13957.29	4000.13	25.30%	28.66%
		<b>Total [(a) + (b)+ (c)]</b>	<b>17978.10</b>	<b>14631.71</b>	<b>4101.00</b>	<b>22.81%</b>	<b>28.03%</b>
2	Unsecured Financial Creditors	(a) Creditors not having a right to vote under sub-section (2) of section 21	N.A.	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:					
		(i) who did not vote in favour of the resolution Plan (ii) who voted in favour of the resolution plan	N.A.	N.A.	N.A.	N.A.	N.A.
		<b>Total[(a) + (b)]</b>	N.A.	N.A.	N.A.	N.A.	N.A.
3	Operational Creditors	(a) Related Party of Corporate Debtor	N.A.	N.A.	N.A.	N.A.	N.A.
		(b) Other than (a) above:					
		(i) Government	1514.92	551.97	NIL	NIL	NIL
		(ii) Workmen	--	--	--	--	--
		(iii) Employees	.0793	.0792	NIL	NIL	NIL
		(iv) Other Creditors	13.59	6.37	NIL	NIL	NIL



		<b>Total[(a) + (b)]</b>	<b>1528.59</b>	<b>558.42</b>	<b>NIL</b>	<b>NIL</b>	<b>NIL</b>
4	Other debts and dues		<b>NIL</b>	<b>NIL</b>	<b>NIL</b>	<b>NIL</b>	<b>NIL</b>
Grand Total			<b>19506.69</b>	<b>15190.13</b>	<b>4101.00</b>	<b>21.02%</b>	<b>27.00%</b>

**A copy of the approved Resolution Plan dated 11.08.2022, along with the addendum dated 15.02.2024 are filed as Annexure-A-1 at pg. nos.64 to 258 of the application.**

For the sake of clarity, a ‘**Comprehensive Resolution Plan**’ consolidating the terms of the resolution plan dated 11.08.2022 (as amended on 01.11.2022) and the addendum 15.02.2024 was submitted by the Applicant RP on 30.07.2024.

- v. **Effective Date**<sup>15</sup>: The implementation of the Resolution Plan shall commence from such date on which the copy of the order approving the Resolution Plan is made available to the Resolution Applicant. The Resolution Applicant will take necessary steps as set out in Section 3 of the Resolution Plan (**Acquisition as a going concern**) to implement the Resolution Plan, which shall not be later than 60 days from the date on which the copy of the order approving the Resolution Plan is made available to the Resolution Applicant.
- vi. The **indicative timeline**<sup>16</sup> of events for implementation of the Resolution Plan is detailed as follows:

<b>INDICATIVE ACTIVITY SCHEDULE</b>		
<b>Sl.No.</b>	<b>Activity</b>	<b>Indicative</b>

<sup>15</sup> Section 8.3 of the Resolution Plan: Page 87 of the ‘Comprehensive Resolution Plan’

<sup>16</sup> Section 8.8 of the Resolution Plan: Page 89 of the ‘Comprehensive Resolution Plan’

		<b>Timeline (days)</b>
<b>I – Approval Process</b>		
1)	Application before the Competition Commission of India	To be completed prior to NCLT approval of the Resolution Plan.
2)	Presentation of Resolution Plan to the COC	
3)	Approval of Resolution Plan by COC	
4)	Application to the NCLT for approval of the Resolution Plan	
5)	Approval of Resolution Plan by the NCLT (such date being the <b>NCLT Approval Date</b> is hereinafter referred to as “T”)	T
6)	Formation and appointment of the Implementation and Monitoring Committee.	
7)	Intimation to all Financial Creditors and Operational Creditors, existing shareholders and other stakeholders.	T+1
<b>II – Infusion of Funds and Acquisition Actions (T+60 days=E)</b>		
8)	Upfront Equity Infusion and Fund Infusion	E
9)	<b>Payment of CIRP Costs, Interim Period Cost and all other mandatory payments required to be made in accordance with the Code and Financial Creditor Payments</b>	E
10)	Handover of No Dues Certificate simultaneously with the Financial Creditor Payments	E
11)	Issuance and allotment of equity in accordance with Clause 3.2 of Section 3 (Acquisition as a going concern) of the Resolution Plan and Capital Reduction (i.e. for the acquisition of control of the Corporate Debtor by the Resolution Applicant)	E
<b>III - Management</b>		
12)	Both the Implementation and Monitoring Committee and the existing Suspended Board of the CD will be dissolved and the Resolution Applicant will constitute a new Board of the Corporate Debtor.	E, but after payments to/settlement of dues payable to Financial Creditors.

- vi. **Management of the Corporate Debtor**<sup>17</sup>: Upon the occurrence of the NCLT Approval Date, a committee shall be constituted which shall comprise of one nominee on behalf of the Designated Lender, the Insolvency Professional and one nominee of Resolution Applicant (“Implementation and Monitoring Committee”). On and from the NCLT Approval Date and till the Effective Date, the management and affairs of the Corporate Debtor shall be managed by the Implementation and Monitoring Committee and it shall stand dissolved on and from the Effective Date without any further action or deed required from the CD. No financial liability shall arise on the Designated Lender on account of its nominee member of the Implementation and the Monitoring Committee.
- vii. **Source of Funds**<sup>18</sup>: The Fund Infusion shall be funded from the internal accruals of the Resolution Applicant.
- viii. **Acquisition Steps**<sup>19</sup>: Some of the steps involved in Acquisition and implementation of the Resolution Plan, which shall occur on or before the Effective Date, i.e within 60 days of NCLT approval date, are:

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<sup>17</sup> **Section 7 of the Resolution Plan** : Pg. 83 to 86 of the ‘Comprehensive Resolution Plan’.

<sup>18</sup> **Section 1.7 of the Resolution Plan** : Page 28 of the ‘Comprehensive Resolution Plan’

<sup>19</sup> **Section 3 of the Resolution Plan**: Pg.71 of ‘Comprehensive Resolution Plan’

- a) The Authorised Share Capital of the CD shall stand increased to Rs.17,400 crores (comprising of 1,740 crore equity shares of Rs.10/- each), if required, and the Articles of Association and/or Memorandum of Association of the CD shall stand altered as may be required for such increase in Authorised Share Capital.
- b) The SRA shall fund the 'Upfront Equity Infusion', (i.e. towards subscription of 1,00,000 equity shares of the Corporate Debtor of Rs.10/- each) and the Corporate Debtor shall issue equity shares for such Upfront Equity Infusion such that the SRA shall hold 100% of the equity shares in the Corporate Debtor.
- c) All debts,<sup>20</sup> barring CIRP Costs, Interim Period Costs and Financial Creditors' debts (to the extent of amount payable to them under the Resolution Plan), shall stand converted into equity shares and shall be simultaneously subjected to Capital Reduction
- d) Pre-CIRP issued equity share capital existing as on the Effective Date shall be extinguished.
- ix. **Mandatory Payments:** CIRP Costs and Interim Payment Costs shall be paid out of the Cash

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<sup>20</sup> owed towards Operational Creditors, Employees, Workmen, Statutory Authorities etc.

Balance<sup>21</sup> of the CD, and if the Cash Balance is insufficient for satisfying the CIRP Costs and Interim Payment Costs, the SRA will pay the remainder amount as part of Fund Infusion<sup>22</sup>. Payment to Financial Creditors<sup>23</sup> shall however be made from the Total Resolution Amount.

- x. **Compliance of mandatory contents of Resolution Plan under IBC and CIRP Regulations:** The Applicant is stated to have conducted a thorough compliance check of the Resolution Plan in terms of Section 30(2)(a), (b) & (c) of IBC as well as Regulations 38 & 39 of the CIRP Regulations and has submitted Form-H under Regulation 39(4). A copy of the **Form-H** has also been filed.<sup>24</sup> It is submitted that the Resolution Applicant has filed an Affidavit pursuant to Section 30(1) of IBC confirming that they are eligible to submit the Plan under Section 29A of IBC and that the contents of the said Certificate are in order. The **Fair Value** and **Liquidation Value** as submitted in Form-H are stated to be Rs.3,632 crores and Rs.2,241 crores respectively.
- xi. The Resolution Plan provides that the Distribution

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<sup>21</sup> **Clause 1.8** of the Resolution Plan: Page 28 of the Comprehensive Resolution Plan'

<sup>22</sup> Item 8 of the Table in **Clause 1.2 of Financial Proposal** in the Resolution Plan: Page 25 of the Comprehensive Resolution Plan'

<sup>23</sup> **Treatment of Financial Creditors – Clause 2.3** of the Resolution Plan: Page 48-54 of the Comprehensive Resolution Plan'

<sup>24</sup> Page nos. 934-953 of the Application

Mechanism is subject to orders of NCLT/NCLAT/Supreme Court.<sup>25</sup>

**34. Reliefs & Concessions:** Besides seeking approval of the Resolution Plan submitted by APL, the Applicant has also prayed for grant of reliefs, waivers and concessions<sup>26</sup> to the Resolution Applicant, as set out in SECTION-6 of the Resolution Plan. The prominent reliefs, waivers & concessions sought, along with the citation of precedents, are:

- (i) On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, a restraint on and prohibition of, all Adverse Actions shall be deemed to be declared until the Effective Date.<sup>27</sup>
- (ii) Exemption of 3 years from the Effective Date to correct, amend and remedy for (i) 100% utilisation of fly ash; CSR Expenses, as required under the Environmental Clearance issued by the relevant Governmental Authorities.<sup>28</sup>
- (iii) The Ministry of Environment and Forest to waive all past Non-Compliances of the Corporate Debtor. The time period provided to Corporate Debtor to install flue gas desulfurization system (FGD) for Unit 1 & Unit 2 shall be extended to 30 months and 33 months respectively from the Effective Date and no coercive action be taken against the Corporate Debtor or Resolution Applicant for Non-

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<sup>25</sup> Page 25 of the 'Comprehensive Resolution Plan' Affidavit: Clause 1.2.2

<sup>26</sup> **Section 6 - Reliefs and Waivers:** Page 81 of the 'Comprehensive Resolution Plan'

<sup>27</sup> **Relying on :** Omkara Assets Reconstruction Pvt. Ltd. vs. Rajesh Sureshchandra Sheth, 2023 SCC OnLine NCLT 99 [Para 11.1 (Sl.No.1)]; Sauria Constructions vs. Kohinoor Pulp & Paper Pvt. Ltd. I.A.(IBC) 1055/KB/2023 in CP(IB) No.511/KB/2019, DATED 10.01.2024 [Para 3.6 (Sl.No.32)].

<sup>28</sup> **Relying on:** ICICI Bank vs. Essar Power MP Ltd. 2021 SCC OnLine NCLT 23284 [Para 16 (vii), 92]

Compliance during such period.<sup>29</sup>

- (iv) CSIDC to allow name change of the Corporate Debtor pursuant to implementation of the Resolution Plan, without any further costs or expenses in relation thereto<sup>30</sup>.
- (v) Notwithstanding any provision to the contrary contained in any consents, licenses, approvals, clearances (including any environmental clearances or any other requisite clearances in relation to the Plant), rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled or accustomed, and provided that in case of consents, licenses, approvals, rights, entitlements, benefits and privileges that have expired or lapsed, notwithstanding that they may have already lapsed or expired due to any breach, Non-Compliance or efflux of time, be deemed to continue without disruption for the benefit of the Corporate Debtor, or a period of 12 (twelve) months from the Effective Date or such other period as required under Applicable Law, whichever is later.<sup>31</sup>
- (vi) pursuant to the approval of the Resolution Plan by the Adjudicating Authority, the Ministry of Coal shall be deemed to have granted extension for long-term coal linkage under the Existing FSAs for Phase II (Unit and 4 (2\*660 MW) for a period from the CIRP Commencement Date till the Effective Date (both days inclusive), with effect from the Effective Date.<sup>32</sup>
- (vii) pursuant to the approval of the Resolution Plan by the Adjudicating Authority, the Corporate Debtor shall be deemed to have been granted extension for Environmental Clearance and such other approval or clearance as may be required for construction and development of Unit 3 and Unit 4 and any other associated infrastructure that

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<sup>29</sup> **Relying on:** Vedanta Limited vs. Athena Chattisgarh Power Ltd. in CP(IB) No.616/7/HDB/2018 (Order dt. 17.07.2023) [Para 5.1 (Sl.No.20)]; ICICI Bank vs. Essar Powers M.P.Ltd. 2021 SCC OnLine NCLT 23284 [Para 16 (viii) & (xii), 92]

<sup>30</sup> **Relying on:** Ricoh India Limited, 2019 SCC OnLine NCLT 14844 [Para 35 (Sl.No.6.5),40]

<sup>31</sup> **Relying on:** Vedanta Limited vs. Athena Chattisgarh Power Ltd. in CP(IB) No.616/7/HDB/2018 (Order dt. 17.07.2023) [Para 5.1 (Sl.No.8.1)]; Vijaya Bank vs. Castal Extrusion Pvt. Ltd. in CP(IB) No.438/KB/2018 (Order Dt.29.06.2022) [Para 26.2].

<sup>32</sup> *Supra*

may be required for the Power Plant.<sup>33</sup>

- (viii) On and from the NCLT Approval Date, by order of the NCLT sanctioning this Resolution Plan, all Related Party contractual arrangements entered into by the Corporate Debtor shall be deemed to be terminated, with such Termination being effective from the NCLT Approval Date. Any claims or liabilities arising as a consequence of such Termination shall be deemed to be relinquished, cancelled and written-off on the NCLT Approval Date.<sup>34</sup>
- (ix) Any financial claims against the guarantor banks who have issued bank guarantees in respect of the Provisional Mega Power status related benefits availed by the Corporate Debtor, pertaining to the period prior to the NCLT Approval Date, shall stand extinguished and the guarantees issued by the said guarantor banks shall stand discharged by virtue of the approval of the Resolution Plan by the Adjudicating Authority.<sup>35</sup>
- (x) Any stamp duty liabilities or Tax liability arising pursuant to the transactions contemplated under this Resolution Plan shall be exempted or waived off.<sup>36</sup>

It is also averred that GST is not payable upon transfer of a business as a going concern (as is contemplated in the Resolution Plan herein).<sup>37</sup>

35. In the above backdrop, we have heard the Learned Counsel

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<sup>33</sup> *Supra*

<sup>34</sup> **Relying on:** ICICI Bank vs. Essar Power MP Ltd. 2021 SCC OnLine NCLT 23284 [Para 16 (v), 92]

<sup>35</sup> **Relying on:** S. Rajendran Resolution Professional of Vasan Health Care Private Limited in IA(IBC) 288/(CHE) 2022 in CA/1/1b/2017 (Order Dt.03.02.2023) [Para 10.1.11]

<sup>36</sup> **Relying on:**

*For exemption of Stamp Duty Liability:* Ganapati Stocks Private Limited vs. Indus Integrated Information Management Ltd. in CP(IB) No.406/(KB)/2021(28.02.2024) [Para 9(2), 25]; SBI vs. JSSI Hydraulics Pvt. Ltd. in CP(IB) No.66 (ND) 2022 (29.04.2024) [Para 3,20(iii)].

*For exemption of Tax Liability:* Modtech Tradecom Pvt. Ltd. vs. Basu & Co. Road Contractors Pvt. Ltd. in IA(IB) No.64/KB/2022 in CP(IB) No.2050/KB/2019 (Order Dt.16.06.2022)[para 30(j)].

<sup>37</sup> **Relying on:** Notification No.12/2017-Central Tax (Rate) dated 28.06.2017 [Sl.No.2] and as acknowledged in the case of M/s. Rajashri Foods Pvt. Ltd. – Advance Ruling No.KAR ADRG 06/2018, dated 23.04.2018 [Para 7.34-10],



for the Applicant and perused the records. The matter was also fixed for clarification on 25.07.2024, where it was directed that –

*“The Resolution Plan comprises of 2 parts i.e. Original Resolution Plan and Addendum dated 15.04.2024. When both the documents are read together, proper interpretation is not possible due to lack of clarity. For better understanding, clarity and further to avoid any dispute in future, it is better that both the documents/parts are put in one document. Therefore, the Comprehensive Resolution Plan is directed to be put up. Matter is adjourned to 05.08.2024”.*

Accordingly, the RP submitted the “**Comprehensive Resolution Plan**” on 01.08.2024, consolidating the terms of the resolution plan dated 11.08.2022 (as amended from time to time till 15.02.2024).

36. It was submitted that this ‘Comprehensive Resolution Plan’ is as per the plan approved by the CoC, and it meets the requirement of Section 30(2) of IBC and Regulation 38 of CIRP Regulations, as under:

a) CIRP & Interim Payment Costs:

CIRP Costs and Interim Payment Costs shall be paid out of the Cash Balance. If the Cash Balance is insufficient for satisfying the CIRP Costs and Interim Payment Costs, the SRA will pay the remainder amount as part of ‘Fund Infusion’.<sup>38</sup>

b) Operational Creditors –

The Liquidation Value is insufficient to even satisfy

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<sup>38</sup> pg.15 of the ‘Comprehensive Resolution Plan’ Affidavit

the claims of the Financial Creditors in full and therefore, the amounts payable to the Operational Creditors (other than Employees and Workmen and Government and Statutory Authorities) i.e. “Other Operational Creditors” in compliance with Section 30(2)(b) of IBC would be ‘Nil’.<sup>39</sup>

c) Financial Creditors:

Payment to Secured Financial Creditors shall be made from the Total Resolution Amount in the following manner<sup>40</sup>, before the effective date i.e within 60 days of passing of this order.

Total Payment Rs.	Financial Creditor	Admitted Amount Rs.	Paid Amount Rs.	Recovery %
4,101 cr.	Assenting	13,957 crs.	4,000 crs.	28.66%
	Dissenting	674 crs.	101 crs.	14.96%

The detailed list of Financial Creditors<sup>41</sup> is as follows:

Sl. No.	Name of the Financial Creditor	Amount Claimed Rs.	Amount of Claim Admitted Rs.	Amount of Contingent Claim Rs.	Amount of claim not admitted Rs.
1)	Power Finance Corporation	3186,43,58,225	3186,43,58,225		
2)	Rural Electrification Corporation	2929,52,75,944	2929,52,75,944		
3)	IDBI Bank Limited	1466,01,92,795	1466,01,92,795		
4)	Indian Overseas	1226,65,44,990	1226,65,44,990		

<sup>39</sup> pg.21 of the ‘Comprehensive Resolution Plan’ Affidavit

<sup>40</sup> pg. 48-54 of the ‘Comprehensive Resolution Plan’ Affidavit

<sup>41</sup> Pg.121 of the ‘Comprehensive Resolution Plan’ Affidavit

**National Company Law Tribunal, Hyderabad Bench, Court-II**

I.A. No. 6/2024 in  
C.P.(IB) No.420/7/HDB/2018  
Date of Order: 21.08.2024

	Bank				
5)	Axis Bank Limited	1215,82,66,371	1215,80,54,255	--	2,12,166
6)	Union Bank of India (erstwhile Andhra Bank)	1431,06,72,811	1190,44,66,983	--	240,62,05,828
7)	Punjab National Bank (and UBI)	2625,81,25,438	1027,89,02,876	1	1597,92,22,562
8)	Life Insurance Corporation of India	990,13,94,021	990,13,94,021	--	--
9)	Bank of India	640,19,29,228	639,86,21,276	--	33,07,952
10)	Edelweiss ARC	458,79,57,092	458,79,57,092	--	--
11)	Canara Bank (and Syndicate Bank)	176,06,39,022	171,15,39,022	--	4,91,00,000
12)	Indian Bank (and Allahabad Bank)	102,07,35,635	84,50,85,635	--	17,56,50,000
13)	SIDBI	44,63,92,069	36,15,33,499	--	8,48,58,570
14)	UCO Bank	8,31,65,686	8,31,65,686	--	--
15)	Kotak Mahindra Bank	131,82,88,862	--	--	131,82,88,862
16)	ICICI Bank	1344,70,34,169	--	--	1344,70,34,169
	<b>Total</b>	<b>17978,09,72,358</b>	<b>14631,70,92,298</b>	<b>1</b>	<b>3346,38,80,059</b>

d) Reliefs & Concessions:

According to the Applicant RP, the Resolution Applicant has sought the reliefs/concessions as mentioned in the SECTION 6 of the Resolution Plan.<sup>42</sup>

<sup>42</sup> Pg. 81 & 82 of the 'Comprehensive Resolution Plan' Affidavit

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**ORDER**

37. We have carefully considered the present application seeking approval of the resolution plan submitted by the Resolution Applicant M/s Adani Power Limited on 11.08.2022 (as amended from time to time till 15.02.2024) and presented as a 'Comprehensive Resolution Plan' through an Affidavit dated 31.07.2024.
38. While reviewing the resolution plan as aforesaid, we have taken into account the judgment in the case of **K. Sashidhar v. Indian Overseas Bank**<sup>43</sup> where the Hon'ble Supreme Court has held that:

*“if 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. On receipt of such 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”.*

And held further in para 35 of the judgement that –

*“the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan “as approved” by the requisite percent of voting share of*

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<sup>43</sup> In *K. Sashidhar v. Indian Overseas Bank & Others* (in Civil Appeal No. 10673/2018) decided on 05.02.2019: (2019) 12 SCC 150

*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”.*

39. The Hon’ble Supreme Court reiterated this view in the case of **Essar Steel**<sup>44</sup> by holding that:

*“...it is clear that the limited judicial review, which can in no circumstances trespass upon a business decision of the majority of the CoC, has to be within the four corners of section 30(2) of the Code, insofar as the Adjudicating Authority is concerned....”.*

40. Reinforcing the above, the Hon’ble Supreme Court more recently has held in **Vallal RCK vs M/s Siva Industries**<sup>45</sup> that:

*“21. This Court has consistently held that the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC. It has been held that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed*

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<sup>44</sup> Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. in Civil Appeal No.8766-67/2019, decided on 15.11.2019: **(2020) 8 SCC 531**

<sup>45</sup> Vallal RCK vs M/s Siva Industries and Holdings Limited & Ors. in Civil Appeal No.1811-1812/2022, decided on 03.06.2022: **(2022) 9 SCC 803**

*resolution plan and assessment made by their team of experts.*

Emphasizing yet again, that

*“27. This Court has, time and again, emphasized the need for minimal judicial interference by the NCLAT and NCLT in the framework of IBC.”*

and, by referring to an earlier judgment in the case of **Arun Kumar Jagatramka**<sup>46</sup>, added a note of caution that

“...However, we do take this opportunity to offer a note of caution for NCLT and NCLAT, functioning as the adjudicating authority and appellate authority under the IBC respectively, from judicially interfering in the framework envisaged under the IBC. As we have noted earlier in the judgment, the IBC was introduced in order to overhaul the insolvency and bankruptcy regime in India. As such, it is a carefully considered and well thought out piece of legislation which sought to shed away the practices of the past. The legislature has also been working hard to ensure that the efficacy of this legislation remains robust by constantly amending it based on its experience. Consequently, the need for judicial intervention or innovation from NCLT and NCLAT should be kept at its bare minimum and should not disturb the foundational principles of the IBC.....”

41. Therefore, when tested on the touch stone of the rulings, and considering the facts of the case, we are of the view that the Resolution Plan satisfies the requirements of

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<sup>46</sup> Arun Kumar Jagatramka v. Jindal Steel & Power Ltd. (2021) 7 SCC 474] : (SCC p. 533, para 95)

Section 30 (2) of IBC and Regulations 37, 38 & 39 of CIRP Regulations. We also find that the Resolution Applicant is eligible to submit the Resolution Plan under Section 29A of IBC. A copy of the Affidavit filed by the Resolution Applicant and Section 29A Diligence Review Report on Resolution Applicants are filed at pg. nos. 954 to 957 & 958 to 1005 of the application respectively.

42. It is also to be clarified that approval of the resolution plan shall not be construed as waiver of any statutory obligations/ liabilities of the Corporate Debtor and shall be dealt with by the appropriate Authorities in accordance with law. Any waiver sought in the resolution plan, shall be subject to approval by the Authorities concerned. As regards to the reliefs sought, the Corporate Debtor has to approach the authorities concerned for such reliefs and we trust the authorities concerned will do the needful. *“Approval of this plan by NCLT shall be deemed to be sufficient notice which may be required to be given to any person for such matter and no further notice shall be required to be given”* as per the view taken by the Hon’ble Supreme Court in the case of **Ghanashyam Mishra**.<sup>47</sup>
43. With the above remarks, we hereby approve the Resolution Plan submitted by the Resolution Applicant M/s Adani Power Limited on 11.08.2022 (as amended

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<sup>47</sup> Ghanashyam Mishra and Sons Private Limited Versus Edelweiss Asset Reconstruction Company Limited in Civil Appeal No.8129/2019 with Civil Appeal No.1554/2021 and 1550-1553/2021, decided on 13.04.2021.: (2021) 9 SCC 657

from time to time till 15.02.2024) and presented as a 'Comprehensive Resolution Plan' through an Affidavit dated 31.07.2024, and order as under:

- i. The 'Comprehensive Resolution Plan' along with annexures and schedules forming part thereof shall be binding on the Corporate Debtor, 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 is due, guarantors and other stakeholders involved in the resolution plan.
- ii. All crystallized liabilities and unclaimed liabilities of the Corporate Debtor as on the date of this order shall stand extinguished on the approval of this Resolution Plan.
- iii. If the SRA fails to pay the amount as envisaged in the 'Comprehensive Resolution Plan' to the stakeholders within the timeline fixed in the Plan, the entire amount paid by the SRA shall be forfeited.
- iv. It is hereby ordered that the Performance Bank Guarantee furnished by the Resolution Applicant shall remain in force till the amount proposed to be paid to the creditors under this plan is fully paid off



and the plan is fully implemented.

- v. The Memorandum of Association (MoA) and Articles of Association (AoA) shall accordingly be amended and filed with the Registrar of Companies (RoC), Hyderabad 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. Henceforth, no creditors of the erstwhile Corporate Debtor can claim anything other than the liabilities referred to in the resolution plan.
- vii. The moratorium under Section 14 of IBC shall cease to have effect from the date of this order.
- 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. The Applicant shall forthwith send a copy of this order to the CoC and the Resolution Applicant.
- x. The Registry is directed to furnish free copy to the parties as per Rule 50 of the NCLT Rules, 2016.
- xi. The Registry is directed to communicate this order to

the Registrar of Companies, Hyderabad for updating the master data and also forward a copy to IBBI.

Accordingly, **IA 6/2024 in CP(IB) No.420/7/HDB/2018** is allowed and disposed of.

**Sd/-**

**SANJAY PURI  
MEMBER (TECHNICAL)**

**Sd/-**

**RAJEEV BHARDWAJ  
MEMBER (JUDICIAL)**

Syamala