

IN THE NATIONAL COMPANY LAW TRIBUNAL

PRINCIPAL BENCH, NEW DELHI

C.P. No. IB-1101 (PB)/2020

Item No. 104

SECTION: Under Section 7 of The Insolvency and Bankruptcy Code, 2016, read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 (for brevity 'the Rules')

IN THE MATTER OF

ICICI Prudential Venture
Capital Fund Real Estate Scheme-I
represented by its investment manager
ICICI Prudential Asset Management Company Limited

.... Petitioner/Financial Creditor

VERSUS

M/s Anand Divine Developers Private Limited

.... Respondent/Corporate Debtor

Order Pronounced on: 25.03.2022

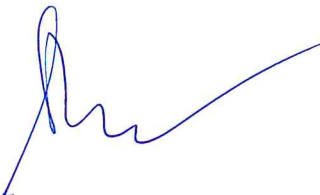
**JUSTICE RAMALINGAM SUDHAKAR
HON'BLE PRESIDENT**

**SH. AVINASH KUMAR SRIVASTAVA
HON'BLE MEMBER (TECHNICAL)**

PRESENT:

For the Petitioner : Mr. Rohan Rajadhyaksha, Mr Mohit Singh,
Mr. Chetan Chawla, Advocates
For Respondent/CD : Mr. Rishab Kumar, Proxy Counsel.

C.P. No. IB-1101 (PB)/2020

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MEMO OF PARTIES

ICICI Prudential Venture

Capital Fund Real Estate Scheme-I

represented by its Investment manager

ICICI Prudential Asset Management Company Limited

Having its Registered Office:

12th Floor, Narain Manzil,
23, Barakhamba Road,
New Delhi – 110001.

.... Applicant/Financial Creditor

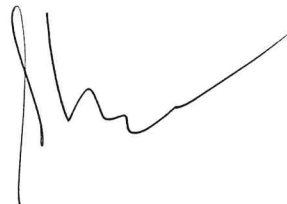
Versus

M/s Anand Divine Developers Private Limited

Having its Registered Office:

711/92, Deepali,
Nehru Place,
New Delhi – 110019.

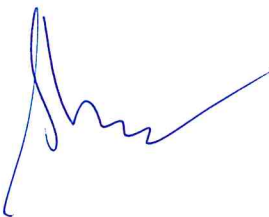
.... Respondent/Corporate Debtor

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ORDER

PER- ORAL ORDER: RAMALINGAM SUDHAKAR, PRESIDENT

1. The present Application is filed under section 7 of Insolvency and Bankruptcy Code, 2016 ('for brevity IBC, 2016') read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the Petitioner/ Financial Creditor ICICI Prudential Venture Capital Fund Real Estate Scheme I through its Investment manager of M/s. ICICI Prudential Asset Management Company Limited.
2. ICICI Prudential Venture Capital Fund Real Estate Scheme I, is a scheme under ICICI Prudential Venture Capital Fund, which is a venture capital fund established under the provisions of Securities & Exchange Board of India (Venture Capital Fund) Regulations 1996 acting through investment Manager of M/s. ICICI Prudential Asset Management Company Limited (for brevity "IPRU AMC"). IPRU AMC has been appointed as the Investment Manager of the Financial Creditor to act on behalf of the Financial Creditor, including to

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institute and to conduct legal proceedings for and on behalf of the Financial Creditor.

3. The Financial Creditor has been established as a trust under the provisions of the Indian Trusts Act, 1882, by M/s. ICICI Prudential Trust Limited as a general-purpose fund, with the objective of seeking capital commitments from contributors under multiple schemes and investing such contributions in accordance with the investment objective of each scheme.
4. The trustee, ICICI Prudential Trust Limited, has entered into an Investment Management Agreement (for brevity "IMA") dated 15.10.2012, with IPRU AMC, appointing it as the Investment Manager of the Financial Creditor. Further, the IMA, *inter alia*, authorized and empowered the Investment Manager to institute and to conduct legal proceedings for and on behalf of the Financial Creditor.
5. The Corporate Debtor is a private limited company incorporated on 27.04.2011 having the CIN No. U70101DL2011PTC218192 under the provisions of the Companies Act, 1956. The Corporate Debtor is engaged in the business of real estate development.

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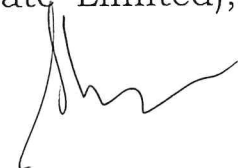
6. It is further stated that, on 24.07.2014, (a) the Financial Creditor (acting through IPRU AMC), (b) the Corporate Debtor, (c) ATS Infrastructure Limited (Promoter) and (d) Mr. Getamber Anand (Promoter & Personal Guarantor) executed an Investment Agreement dated 24.07.2014 ("IA"), Pursuant to this Investment Agreement, the Financial Creditor subscribed to 75,00,000/- (Seventy Five Lacs only) unlisted, secured, cumulative, redeemable and optionally convertible debentures ("Debentures") issued by the Corporate Debtor having a face value of INR 100/- (Rupees One Hundred only) each, aggregating to a total of INR 75,00,00,000/- (Rupees Seventy Five Crore only) subject to the terms and conditions set out under the IA. Further on 24.07.2014 itself, the Corporate Debtor executed the Debenture Trust Deed with IDBI Trusteeship Services Limited appointing IDBI Trusteeship Services Limited as the Debenture Trustee.

7. The Financial Creditor transferred the aforesaid amount aggregating to INR 75,00,00,000/- (Rupees Seventy-Five Crore only) ("Debenture Subscription Amount") to the account of the Corporate Debtor on 25 July 2014.

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8. The Debentures and obligations of the Corporate Debtor were secured. *inter alia*, by (i) a mortgage (ranking second) over property situated at Village Dhanwapur, Sector-104, Gurgaon, Haryana admeasuring approximately 14.09 acres ("ATS Triumph Land"); (ii) hypothecation of receivables from the said property/ project to be constructed thereon, (iii) the development rights of the Corporate Debtor pertaining thereto on which the Corporate Debtor is undertaking a residential project with saleable area of approx. 12,10,286 square feet ("Project ATS Triumph"); and (iv) personal guarantee of director of the Corporate Debtor; namely Mr. Getamber Anand (who has represented himself to be the promoter of the Corporate Debtor).

9. The Corporate Debtor and the landowners of the property registered the charge created over the property with the Ministry of Corporate Affairs pursuant to which the Ministry of Corporate Affairs issued certificate of registration of charge on (i) 19 September 2014 (charge identification no. 10520519 – Corporate Debtor); (ii) 26.08.2014 (charge Identification no. 10515838 - Kaanha Infrastructure Private Limited); and (iii)

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26.08. 2014 (charge Identification no. 10515840-Wonderworld Infratech Private Limited).

10. Further, the Corporate Debtor issued 15 (fifteen) debenture certificates in favour of the Financial Creditor as detailed below, aggregating to INR 75,00,00,000 (Rupees Saventy-Five Crore Only):

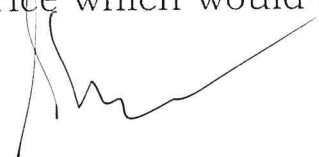
Sr. No.	Debenture Certificate No.	Debenture Certificate dated	No. of Debenture	Face value of the Debenture	Amount of the Debenture
1.	D-01	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
2.	D-02	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
3.	D-03	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
4.	D-04	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
5.	D-05	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
6.	D-06	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
7.	D-07	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
8.	D-08	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
9.	D-09	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
10.	D-10	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
11.	D-11	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
12.	D-12	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
13.	D-13	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
14.	D-14	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000
15.	D-15	25.07.2014	5,00,000	INR 100 each	INR 5,00,00,000

11. Further, on 03.05.2017, the Financial Creditor, the Corporate Debtor, ATS Infrastructure Limited and Mr. Getamber Anand entered into an Amendment Agreement dated 03.05.2017 pursuant to which certain terms of the Investment Agreement ("IA"), were amended as detailed therein, including the returns



payable on the Debentures and the repayment date of the Debentures was agreed to be of 30.09.2018 (The Amendment Agreement").

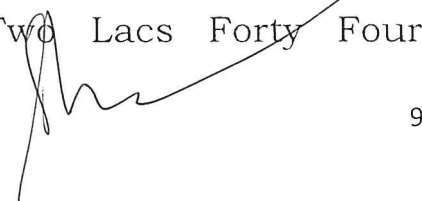
12. In terms of clause 3 of Schedule IV of the Investment Agreement, the Debentures carried an Interest at the rate of 14% (fourteen percent) per annum ("Interest") on the face value of the Debentures, payable by the Corporate Debtor on a bi-annual basis.
13. In terms of clause-6 of Schedule IV of the Investment Agreement, the Corporate Debtor was required to repay the amounts due in connection with the Debentures as and when they become payable and redeem the Debentures on the repayment date by payment of the Debenture Subscription Amount along with any accrued but unpaid Interest on the outstanding Debentures. In terms of clause 1(f) of the Amendment Agreement, whereby Annexure-I of Schedule IV of the Investment Agreement was amended to the effect that the Debentures were required to be re-paid by 30.09.2018 ("**Repayment Date**").
14. In terms of clause 1 of the Amendment Agreement, whereby clause 4.2 (ii) of the IA was amended to the effect that the Debentures had to be redeemed at a price which would entitle



the Financial Creditor to receive the Revised Return (*as defined under the Amendment Agreement*) i.e.,(i) an IRR of 22.50% on the Debenture Subscription Amount calculated from the Closing Date (i.e., 25 July 2014) till 30.11.2015 ("**First Hurdle Amount**") and (ii) an IRR of 20.00% on the First Hurdle Amount from 01.10.2015 till the date of redemption of the Debentures.

15. It is further submitted that on 30.12.2017, the Corporate Debtor (through L&T Infrastructure Finance Company Limited) paid the Financial Creditor, an aggregate amount of INR 92,51,38,658 (Rupees Ninety Two Crore Fifty One Lac Thirty Eight Thousand Six Hundred and Fifty Eight Only) towards (a) principal amount of INR 65,62,50,000/- (Rupees Sixty Five Crore Sixty Two Lac Fifty Thousand Only) towards face value of 65,62,500 Debentures, (b) an amount of INR 5,26,43,336 (Rupees Five Crore Twenty Six Lacs Forty Three Thousand Eight Hundred and Thirty Six Only) towards Interest (*inclusive of TDS*) on the Debentures due as on 30.09.2017 and (c) a gross amount (inclusive of TDS) of INR 21,62,44,822/- (Rupees Twenty One Crore Sixty Two Lacs Forty Four

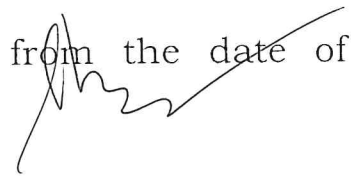
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Thousand Eight Hundred Twenty Two Only) towards part payment of the Revised Return (*as defined under the Amendment Agreement*). Post redemption of such 65,62,500 Debentures by the Corporate Debtor, the Financial Creditor is currently holding 9,37,500 (Nine Lac Thirty-Seven Thousand Five Hundred) Debentures of the face value of INR 100/- each ("Outstanding Debentures"), thus aggregating to INR 9,37,50,000/- (Rupees Nine Crore Thirty-Seven Lac Fifty Thousand Only) ("**Outstanding Debenture Subscription Amount**") as on 30.12.2017.

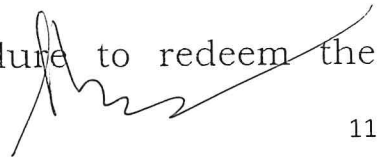
16. A default under the Investment Agreement occurred on 31 March 2018, when the Corporate Debtor failed to pay Interest due for the period 01.10.2017 to 31.03.2018 in terms of the Investment Agreement.

17. On account of such default by the Corporate Debtor, the Financial Creditor, by way of a notice dated 08.05.2018 ("Interest Payment Notice") called on the Corporate Debtor to make payment of the outstanding Interest due and payable as the Outstanding Debentures for the period from 01.10.2017 to 31.03.2018, within seven (07) days from the date of the

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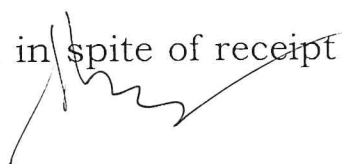
issuance of Interest Payment Notice. The Corporate Debtor, in spite of receipt of the Interest Payment Notice, not only failed to make payment of the Interest in respect of the Outstanding Debentures but also failed to reply to the Interest Payment Notice.

18. Despite the aforesaid notice, the Corporate Debtor continued to default in making payment of the outstanding amounts in respect of the Outstanding Debenture under the Investment Agreement. The interest payable on the Outstanding Debentures remained unpaid by the Corporate Debtor despite repeated reminders, follow-ups and demands by the Financial Creditor.
19. In any event, the Corporate Debtor was required to redeem the Outstanding Debentures on the Repayment Date i.e. 30.09.2018 as per the Investment Agreement, however, the Corporate Debtor failed to redeem the Outstanding Debentures.
20. Accordingly, the Financial Creditor issued another notice on 11.12.2019 ("Default Notice No. 1"), to the Corporate Debtor stating that the Corporate Debtor's failure to redeem the

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outstanding debentures and failure to make payment of the outstanding amounts due to the Financial Creditor constitutes an event of Default under the Investment Agreement. The Financial Creditor called upon the Corporate Debtor to redeem the outstanding debentures and to make payment of the Outstanding Debentures Subscription amounts along with the Revised Return within 14 (fourteen) days from the date of the Default Notice No. 1. The Financial Creditor also stated that due to the occurrence of the Event of Default, if the Corporate Debtor fails to make the payment within the given timelines, then the Corporate Debtor shall be liable to make payment of the Outstanding Debate Subscription Amount along with the default internal rate of return @ 30% (**“Default IRR”**) till the date of actual payment, as per the Investment Agreement.

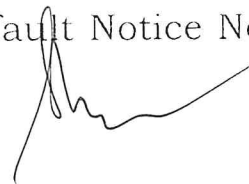
21. The Corporate Debtor, however, failed to make payment of the Outstanding Debenture Subscription Amount along with the Revised Return/Default IRR to the Financial Creditor in accordance with the Default Notice No. 1, issued by the Financial Creditor. The Corporate Debtor, in spite of receipt of

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the aforesaid Default Notice No. 1, also failed to reply to the said Default Notice No 1. Consequently, on 26.10.2020, the Financial Creditor (*jointly with AIF II, acting through IPRU AMC*) issued default notice dated 26 October 2020 Default Notice No. 2), to *inter alia* the Corporate Debtor and called upon the Corporate Debtor to make payment of INR 25,16,82,462/- (Rupees Twenty Five Crore Sixteen Lac Eighty Two Thousand Four Hundred and Sixty Two Only) due as on 26.10.2020 in respect of the Outstanding Debentures along with the Default IRR thereon, within 7 (seven) days of the Default Notice No. 2.

22. The Corporate Debtor in response to the Default Notice No. 2 issued a letter dated 02.11.2020 to the Financial Creditor (Response to Default Notice No. 2"). The said Response to Default Notice No. 2 raises frivolous issues as an afterthought and shows the malafide intent of the Corporate Debtor in honouring its payment obligations in respect of the Outstanding Debentures in accordance with the terms of the Investment Agreement. The defence sought to be made by the Corporate Debtor in the Response to Default Notice No. 2 is a

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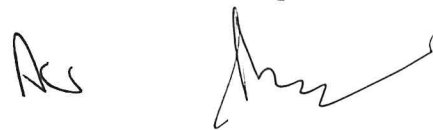


moonshine defence which has been made with the futile intent of denying its liability.

23. Accordingly, on 17.11.2020, the Financial Creditor replied to the response to Default Notice No. 2, responding to the allegations made by the Corporate Debtor therein which were entirely baseless and outrightly rejected by the Financial Creditor.

24. Therefore, by not fulfilling the payment obligations set out under the Investment Agreement, the Corporate Debtor has acted in utter violation of the Investment Agreement. Further, Section 71 (8) of the Companies Act, 2013 makes it obligatory for the Company (Corporate Debtor herein) to pay interest and redeem the Debentures in accordance with the term and conditions of their issues.

25. Consequently, by not paying the outstanding amounts, which has become due and payable, the Corporate Debtor has committed an 'Event of Default' under the provisions of the Investment Agreement and 'default' under the provisions of the Code.

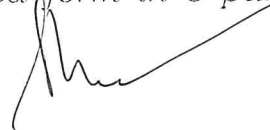
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26. It is to be noted that the Corporate Debtor is liable to pay to the Financial Creditor, a total outstanding sum of INR 25,46,33,221/- (Rupees Twenty-Five Crore Forty-Six Lacs Thirty-Three Thousand Two Hundred Twenty-One Only) as on 20.11.2020, which includes the Default IRR. The Default IRR shall continue to add up till the date of realization of the payment from the Corporate Debtor.

27. Therefore, in the light of the Judgment of Hon'ble Supreme Court in ***Innovative Industries Limited. vs. ICICI Bank and another*** in Civil Appeals Nos. 8337 of 2017, decided on 31.08.2017 **(2018) 1 Supreme Court Cases 407**, which reads as follows:

“28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor - it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which

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requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

29. *The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence*

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of a default, to first deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing-i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. *On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."*

28. In the present case, the corporate debtor has not filed any reply and written submissions till now. However, in view of the debt and default clearly mentioned in the part IV of the application u/s 7, this bench is inclined to admit the present petition.

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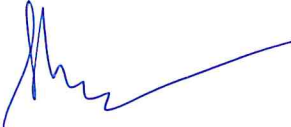
29. The petitioner has proposed the name of Insolvency Resolution Professional, Mr. Harish Taneja, having registration no. IBBI/IPA-002/IP-N00088/2017-18/10229, and the E-mail harishtaneja@gmail.com. A written communication sent by her in terms of Rule 9(1) of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 has also been placed on record. There is a declaration made by him that no disciplinary proceedings are pending against him in the Insolvency and Bankruptcy Board of India or ICSI. In addition, further necessary disclosures have been made by Mr. Harish Taneja as per the requirement of the IBBI Regulations. Accordingly, he satisfies the requirement of Section 7 (3) (b) of the Code. Hence, we appoint Mr. Harish Taneja as the IRP of the Corporate Debtor.

30. In pursuance of Section 13 (2) of the Code, we direct that Interim Insolvency Resolution Professional to make public announcement immediately with regard to admission of this Petition under Section 7 of the Code. The expression 'immediately' means within three days as clarified by

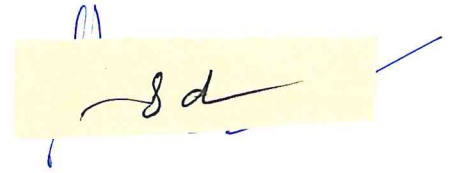
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Explanation to Regulation 6 (1) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

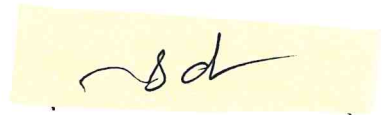
31. As a consequence of the application being admitted in terms of Section 7(5) of IBC, 2016 moratorium as envisaged under the provisions of Section 14(1) of the Code, shall follow in relation to the Respondent as per proviso (a) to (d) of section 14(1) of the Code. However, during the pendency of the moratorium period, terms of Section 14(2) to 14(3) of the Code shall come in force.
32. We direct the petitioner to deposit a sum of Rs. 2 lacs with the Interim Resolution Professional Mr. Harish Taneja to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The needful shall be done within three days from the date of receipt of this order by the Petitioner. The amount however, will be subject to adjustment by the Committee of Creditors as accounted for by Interim Resolution Professional and shall be paid back to the Petitioner.
33. The registry is directed to communicate a copy of the order to the Petitioner, the Corporate Debtor, the Interim Resolution

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Professional and the Registrar of Companies, NCR, New Delhi at the earliest but not later than seven days from today. The Registrar of Companies shall update his website by updating the status of 'Corporate Debtor' and specific mention regarding admission of this petition must be notified.

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**RAMALINGAM SUDHAKAR
(PRESIDENT)**

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**AVINASH KUMAR SRIVASTAVA
MEMBER (TECHNICAL)**