

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
DIVISION BENCH - I, CHENNAI**

IBA/883/2019 filed under Section 7 of
the Insolvency and Bankruptcy Code,
2016 r/w Rule 4 of the Insolvency and
Bankruptcy (Application to Adjudicating
Authority) Rules, 2016

In the matter of **M/s. Kamachi Industries Limited**

State Bank of India

Stressed Assets Management Branch,
Red Cross Building, 2nd Floor,
No.32, Montieth Road, Egmore,
Chennai - 600 008

... Financial Creditor

-Vs-

M/s. Kamachi Industries Ltd.

(formerly Kamachi Sponge & Power Corporate Limited)
No. 664, TH Road, Tondiarpet,
Chennai- 600 081.

... Corporate Debtor

Order Pronounced on 19th of February, 2020

CORAM :

R. VARADHARAJAN,
MEMBER (JUDICIAL)

ANIL KUMAR B,
MEMBER (TECHNICAL)

For Financial Creditor : R. Sugumaran & A. V. Arun Advocates
For Corporate Debtor : S. R. Rajagopal, Sr. Advocate

ORDER

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Per: R. VARADHARAJAN, MEMBER (JUDICIAL)

1. This Application has been filed by **State Bank of India** (hereinafter referred to as 'Financial Creditor') on 12.07.2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (I&B Code) r/w Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, against **M/s. Kamachi Industries Limited** (hereinafter referred to as 'Corporate Debtor'). The prayer made is to admit the Application, to initiate the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor, declare moratorium and appoint Interim Resolution Professional (IRP).
2. Heard Learned Counsel for the Financial Creditor and Learned Senior Counsel for the Corporate Debtor and perused the documents filed by the parties.
3. The Financial Creditor has claimed the total amount of Rs.492,53,00,849.74p as outstanding against the

Corporate Debtor as on 30.06.2019. Clause 2 of Part-IV of the Application discloses the details of the loan amount due to the Financial Creditor by the Corporate Debtor.

Submissions of Financial Creditor

4. The case of the Financial Creditor is that the Corporate Debtor namely Kamachi Industries Limited (formerly known as Kamachi Sponge and Power Corporate Limited) is engaged in the business of manufacture of iron and steel and other allied industries. The Corporate Debtor was enjoying credit facilities from the Industrial Finance Branch of the Financial Creditor from 2005 onwards. As the Corporate Debtor set for an expansion, during July 2010, the Corporate Debtor approached the Financial Creditor and other Banks for consortium lending arrangement. Considering the same, the Financial Creditor and the other Consortium Banks sanctioned credit facilities to the tune of Rs.145 Crores in August, 2010 to the Corporate Debtor. In consideration

of the said facility, the Corporate Debtor executed various loan documents in favour of the Financial Creditor besides Working Capital Consortium Agreement, on 25.08.2010 as security for due repayment.

5. The Corporate Debtor once again approached the Financial Creditor and other consortium members and submitted a proposal seeking for further credit facilities during April, 2011. Considering the same, the Financial Creditor and other consortium members sanctioned an overall limit of Rs.475 Crores. In order to secure the said loan, the Corporate Debtor executed various loan documents including the *pari passu* charge of the movable fixed assets and immovable properties of the Corporate Debtor in favour of the Financial Creditor, on 26.05.2011 and the Financial Creditor was also appointed as Security Trustee.

6. As the account of the Corporate Debtor slipped into "Special Mention Account" as per the guidelines issued by

RBI, a Joint Lenders Forum was formed involving all the lenders including the Financial Creditor and the consortium members and they have entered into a Master Joint Lenders' Agreement to avoid the Corporate Debtor's account becoming a Non-Performing Asset (NPA). Pursuant thereto, all the lending Banks offered a CDR package to enable the Corporate Debtor to come out of the incipient sickness. The Financial Creditor on its part and at the request of the Corporate Debtor renewed the credit facilities as per the Master Restructuring Agreement under CDR Package. Copy of Sanction Letter dated 22.03.2013 is placed at pages 16 to 37 of the typed set filed with the Application.

7. The terms and conditions of restructuring were accepted by the Corporate Debtor and in consideration of acceptance of the terms and conditions and as a security, the Corporate Debtor and the consortium members executed the following documents in favour of the Financial Creditor, on 26.03.2013:-

- i) Master Restructuring Agreement,
- ii) Consortium Working Capital Term Loan cum Hypothecation Agreement,
- iii) Supplementary Agreement for Reschedulement of Term Loan and
- iv) Inter Se Agreement amongst the lenders.

Copies of the above documents executed on 26.03.2013 are placed at pages 38 to 205 of the typed set filed with the Application.

8. Again the Corporate Debtor approached the Financial Creditor and other consortium members and submitted a proposal seeking for further renewal and enhancement of credit facilities. Considering the same, the Financial Creditor and other consortium members renewed the existing credit facilities and had also sanctioned further credit facilities subject to various terms and conditions. In order to secure the said credit facilities, the Corporate Debtor executed the following

documents, on 27.05.2013 :-

i. Consortium Term Loan cum Hypothecation Agreement and

ii. Consortium Working Capital Loan cum Hypothecation Agreement,

Copies of the above documents dated 27.05.2013 are placed at pages 206 to 294 of the typed set filed with the Application.

9. The Corporate Debtor further approached the Financial Creditor and the other consortium members during February-March, 2015 and submitted a proposal seeking for enhancement of credit facilities. The Financial Creditor and the other consortium members enhanced the existing credit facilities. In consideration of the said credit facilities, the Corporate Debtor executed the following documents, on 19.03.2015:-

i) Supplementary Consortium Working Capital cum

Hypothecation Agreement and

ii) Supplementary Inter Se Agreement

Copies of the above documents dated 19.03.2015 are placed at pages 295 to 354 of the typed set filed with the Application.

10. At the request of the Corporate Debtor, Andhra Bank (one of the consortium members) sanctioned Supply Bills Discounting facility to the tune of Rs.52 Crores to the Corporate Debtor. In consideration of the said facility, the Corporate Debtor executed an Agreement relating to Bill cum Hypothecation dated 05.08.2015 in favour of Andhra Bank, copy of which is placed at pages 387 to 430 of the typed set filed with the Application. For the above said arrangement, the other members of the consortium including the Financial Creditor executed a Ceding Letter dated 05.08.2015 agreeing for ceding second charge in respect of certain assets in favour of the Andhra Bank, copy of which is placed at pages 431 to

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434 of the typed set filed with the Application. The Financial Creditor and other consortium members executed Supplementary Inter Se Agreement amongst themselves for the sanction accorded by the Andhra Bank in favour of the Corporate Debtor on 05.08.2015, copy of which is placed at pages 435 to 465 of the typed set filed with the Application.

11. Besides above, on 08.01.2016, the Corporate Debtor executed a Revival Letter acknowledging its indebtedness to the Financial Creditor and other consortium lenders for the amounts outstanding as on that date, copy of which is placed at page 466 of the typed set filed with the Application.

12. The Corporate Debtor once again approached the Financial Creditor and other consortium members for enhancement of credit facilities and accordingly its request was considered and the Financial Creditor and its consortium lenders enhanced the credit facilities from

Rs.611.76 Crores to Rs.659.66 Crores out of which the Financial Creditor has a share of around Rs.391.57 Crores. The Corporate Debtor in its Board Meeting held on 25.04.2016 resolved to avail the enhanced facilities, copy of which is placed at pages 469 to 472 of the typed set filed with the Application. In consideration of the said enhanced facility, the Corporate Debtor executed Second Supplementary Working Capital Consortium cum Hypothecation Agreement on 02.05.2016, copy of which is placed at pages 473 to 535 of the typed set filed with the Application. Besides that, the Financial Creditor and other members of the consortium members executed Second Supplementary Inter Se Agreement on 02.05.2016, copy of which is placed at pages 536 to 566 of the typed set filed with the Application.

13. In addition, the Corporate Debtor deposited the title deeds in respect of its properties with intention to create an equitable mortgage over the same by executing Memorandum/ Letter relating to deposit of title deeds on

24.08.2016, 06.09.2013, 23.04.2005, 22.06.2005,
05.10.2006, 06.06.2008, 28.05.2011, 13.08.2013,
04.06.2013, 05.09.2013 and 27,08,2015, copies of which
are placed at pages 567 to 657 of the typed set filed with
the Application.

14. The Financial Creditor states that initially the operation of the facility by the Corporate Debtor was satisfactory, however, subsequently it became sluggish and has not shown any significant progress in spite the restructuring package and therefore, made a request to the lender of the consortium to recall the loan. As such, the Financial Creditor opted itself out of the consortium, the account was classified as NPA again on 29.12.2016 proceeded to take recovery action against the Corporate Debtor.

15. Subsequently, the Lead Bank viz., Punjab National Bank has initiated action under SARFAESI Act, 2002 and issued Demand Notice dated 10.08.2018 under Section

13(2) of the SARFAESI Act demanding the outstanding balance including the outstanding balance of the Financial Creditor due and payable by the Corporate Debtor, copy of which is placed at pages 658 to 667 of the typed set filed with the Application. Besides above, the Financial Creditor has placed on file the copy of Plaint in CS No.462/2018 filed by the Corporate Debtor and another against the Financial Creditor and consortium Banks for specific performance of the Understanding dated 05.03.2018 between the Corporate Debtor and the Financial Creditor and the consortium of banks as agreed, which according to the Financial Creditor is a clear admission by the Corporate Debtor of the various limits such as Working Capital Limits and the CDR package sanctioned by the Financial Creditor and the consortium. Copy of the Plaint is placed at pages 668 to 690 of the typed set filed with the Application.

16. The Financial Creditor has filed the Statement of Accounts along with Working Sheet at pages 691 to 939

of the typed set filed with the Application in relation to the Financial Creditor. Further, the Financial Creditor has placed on record the copy of OA- 10/2018 filed by the Financial Creditor against the Corporate Debtor and others under Section 19(1) of the RDDB&FI Act, 1993, before DRT-II, Chennai for recovery of debts due to the Financial Creditor. Copy of the OA is placed at pages 940 to 987 of the typed set filed with the Application.

17. Besides above documents, during the pendency of the Application, the Financial Creditor has filed the copies of Gazette Notifications No. G.S.R. Nos. 156(E), 157(E), 158(E), 159(E) and 160(E) dated 22.02.2017 issued by the Ministry of Finance, Department of Financial Services, New Delhi, for amalgamation of State Bank of Bikaner and Jaipur, State Bank of Hyderabad, State Bank of Mysore, State Bank of Patiala and State Bank of Travancore with State Bank of India w.e.f. 22.02.2017. Copies of the Notifications dated 22.02.2017 issued by the Ministry of Finance are placed at pages 1 to

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24 of the Index to additional documents filed with the Application. Besides above, the Financial Creditor has also filed the Independent Auditor's Report of the Corporate Debtor for the Financial Year ended 31.03.2019 at pages 25 to 66 of the Index to additional documents filed with the Application.

Submissions of the Corporate Debtor

18. The Corporate Debtor has filed a detailed Counter Affidavit along with typed set of documents wherein it is stated that the Corporate Debtor is primarily engaged in the business of manufacturing Sponge Iron, Billets, TMT Bars and generation of power at Pappan Kuppam in Gummidipoondi in the State of Tamilnadu. With a view to expand its business, the Corporate Debtor undertook a project for setting up an integrated Steel Plant including power plant for captive use. In this regard, the Financial Creditor had sanctioned a term loan of Rs.120 Crores on 19.03.2009 and in CDR Restructuring Working Capital

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Term Loan of Rs.64.49 Crores on 18.03.2013. Further, the Corporate Debtor was enjoying CC limit of Rs.59 Crores and LC limit of Rs.106.80 Crores as on 18.03.2018.

19. It is stated by the Corporate Debtor that the Corporate Debtor was making timely repayments as agreed. However, from the year 2012, the economy in India took a hit by global recession and ultimately there was a sever downfall in the Steel Industry which resulted in the deterioration of the Corporate Debtor's cash flow. It is further stated by the Corporate Debtor that the general slowdown in the economy along with the rupee depreciation against the dollar rate further contributed in the cash crunch faced by the Corporate Debtor.

20. It is further stated that the majority of their customers are engaged in the real estate sector and since the real estate sector has witnessed a steep decline owing to the change in government policies pertaining to the



conversion of agricultural lands into commercial lands resulted in the Corporate Debtor being unable to make timely repayments to the Financial Creditor. The delay in payments and longer credit periods requested by their customers resulted in a domino effect, and therefore, the Corporate Debtor was unable to repay the instalments as agreed between the Financial Creditor and the Corporate Debtor.

21. The Corporate Debtor states that the Corporate Debtor approached the Financial Creditor and other consortium banks which had sanctioned loans for restructuring the loans availed by it under the Corporate Debt Restructuring (CDR) mechanism and thereafter, on 15.02.2013, the CDR package was approved and availed by the Corporate Debtor. It is further stated that as per the Supplementary Inter-Se Agreement dated 05.08.2015, the CC limit revised to Rs.105 Crores from Rs.56 Crores and LC from Rs.106.80 Crores to Rs.156.70 Crores. However, the CC limit was never disbursed by Financial

Creditor which caused the loss and capital got eroded. The Corporate Debtor states that had the loan been disbursed as per agreement, the Corporate Debtor could not have suffered the liquidity crunch and enhanced the production and would have been at different level.

22. It is further stated that the Corporate Debtor filed a Suit in CS No.462/2018 before the High Court of Madras seeking i) Specifically perform the understanding dated 05.03.2018 recorded on 12.03.2018 between the Corporate Debtor and the Consortium, ii) Permanent Injunction restraining the Consortium, its men, agents assignees, executors, etc., from interfering with the Corporate Debtor's business activities in furtherance of the understanding dated 05.03.2018 recorded on 12.03.2018 between the Consortium and the Corporate Debtor and iii) Costs of the Suit. It is further averred that the OA-10/2019 has been filed by the Financial Creditor before the DRT-II, Chennai for recovery of a sum of Rs.392,10,692.60p and has simultaneously filed the

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instant Application as a sheer abuse of process of law. Therefore, the Corporate Debtor has prayed to dismiss the Application with exemplary costs.

Analysis

23. We have carefully considered the rival submissions as well as the pleadings and the documents as filed by both the parties before this Tribunal. During the course of arguments, the Learned Counsel for the Financial Creditor has brought to the notice of this Authority para-wise admission made by the Corporate Debtor in its Counter Affidavit for having availed the various credit facilities from the Financial Creditor and other consortium of Bank and the default made in repayment by the Corporate Debtor.

24. It is seen from the record that the Corporate Debtor was sanctioned various credit facilities besides CDR Package by way of renewal with enhancement and



approval of Reschedulement of Term Loans with special conditions stipulated therein with liberty to charge penal interest by the Financial Creditor on account of irregularities in the Cash Credit Account and delayed submissions of renewal data/non-submission, vide Sanction Letter dated 22.03.2013 and further the availing of the CDR package was admitted by the Corporate Debtor in its Counter Affidavit.

25. A perusal of the Inter-Se Agreement dated 26.03.2013 entered among Consortium of Banks shows that the Corporate Debtor has been availing credit facilities including TL, CC and LC facilities/Limits under Punjab National Bank (PNB) Consortium/s consisting of PNB, SBI (Financial Creditor), State Bank of Hyderabad, Canara Bank, State Bank of Travancore, Andhra Bank and Bank of India, of which PNB is the Lead Bank. Further, under Clause 4 of the said Inter Se Agreement, the parties have mutually agreed that the rights and obligations of each of the Lenders under the said

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agreement and the other transaction documents are several. Failure of any one or more of the Lenders to perform exercise its or their obligations/rights respectively in respect of their respective facility shall not relieve or absolve or prevent the other Lenders from its/their obligations/rights. No Lender is liable for the obligations of any other Lender. Further as held by the Hon'ble NCLAT in **Arun Kant Rai Vs. Allahabad Bank in Company Appeal (AT) (Insolvency) No.1257/2019** dated 11.02.2020, the *inter se* agreements are agreements between/amongst the Lenders and the Corporate Debtor cannot seek shelter under the said agreements to ward off the claims made by an individual bank after declaration of NPA.

26. During the course of arguments, the Learned Senior Counsel for Corporate Debtor has submitted that the instant Application filed by the Applicant/Financial Creditor is barred by limitation since the date of default even as per the Financial Creditor is shown as

02.01.2013 and the Application has been filed on 12.07.2019, to which the Learned Counsel for the Financial Creditor has submitted that initially the account of the Corporate Debtor was showing incipient sickness and was classified as Non-Performing Asset (NPA) on 02.01.2013, but thereafter, the Creditors thought that as the sickness seem to be temporary, they had recommended for granting CDR Packages in the year 2013. However, even after sanctioning the CDR Packages, the Corporate Debtor could not come out of the sickness which resulted in the failure of the CDR Packages and consequently account was once again classified as NPA on 19.12.2016, and hence, the instant Application is filed within the period of limitation. Therefore, the objection that the Application is barred by limitation is spurious and the Application has been filed within the period of limitation as stated above. Hence, the objection taken by the Learned Senior Counsel for the Corporate Debtor stands rejected.

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27. The second objection that has been raised by the Learned Senior Counsel for the Corporate Debtor is that the CC limit which was revised from Rs.56 Crores to Rs.105 Crores as per Supplementary Inter-Se Agreement dated 05.08.2015, was never disbursed by the Financial Creditor and due to which the capital got eroded and the Corporate Debtor suffered the liquidity crunch, and hence a huge loss has caused to the Corporate Debtor.

28. In reply, the Learned Counsel for the Financial Creditor has submitted that it is true that the CC Limit was revised from Rs.56 Crores to Rs.105 Crores vide Supplementary Inter-Se Agreement dated 05.08.2015 however, the said sanction was based on certain terms and conditions such as equity infusion of Rs.78.79 Crores by the Corporate Debtor and funding of cash losses etc., which the Corporate Debtor failed to comply with and hence, the CC limit was not disbursed. The reason given by the Learned Counsel for the Financial Creditor is plausible and accordingly, the issue stands decided in

favour of the Applicant/Financial Creditor and against the Corporate Debtor.

29. The Learned Senior Counsel for the Corporate Debtor has finally submitted that the Corporate Debtor was offered by the Consortium a 'Holding on Operations' arrangement for a period of three months with tagging arrangement of 10% of the net sale proceeds made by the Corporate Debtor which condition was also complied with by the Corporate Debtor, however, the said benefit was discontinued by the Financial Creditor which crippled a going concern, to which the Learned Counsel for the Financial Creditor has submitted that the 'Holding on Operations' was allowed on a temporary basis which was to facilitate the Corporate Debtor to come out of the NPA status and since the amount received through cutback was very meagre when compared to the outstanding and the interest thereon, the same could not be continued for eternity and nevertheless, the Corporate Debtor's operations also started deteriorating reducing the cutback



amount. The submissions made by the Learned Counsel of the Applicant/Financial Creditor appear to be plausible. Therefore, the objection raised by the Learned Senior Counsel for the Corporate Debtor stand rejected.

30. Be that as it may. It is pointed out by the Learned Counsel for the Financial Creditor that the Hon'ble NCLAT in the matter of **Dr. Esther Malini Victor -Vs- Oriental Bank of Commerce & Ors.** in *Company Appeal (AT) (Insolvency) No.822 of 2019*, wherein the similar set of issue came up for consideration before the Hon'ble NCLAT and the Hon'ble NCLAT, after examining the same, it was held that if the debt and default is proved, the Adjudicating Authority is bound to admit the Section 7 Application under I&B Code, 2016 and upheld the Order passed by NCLT, Chennai.

31. Moreover, as consistently held by Hon'ble Supreme Court both in **Innoventive Industries Ltd. -Vs- ICICI Bank and another**, (2018) 1 SCC 407 as well as **Mobilox**

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Innovations Pvt. Ltd.. -Vs- Kirusa Software Pvt. Ltd.
(2018) 1 SCC 353, after going through the Scheme of I&B Code, 2016 in depth in relation to an Application under Section 7 filed by a Financial Creditor where there is an existence of a 'financial debt' and its 'default' in excess of Rs.1,00,000/-, this Tribunal is bound to admit the Application and as a consequence trigger the Corporate Insolvency Resolution Process (CIRP). The plea of the Corporate Debtor that the Company is a solvent and going concern, cannot be made a ground for delaying the initiation of CIR Process or to keep in abeyance the instant Application as sought for as this Tribunal is required in case of a 'financial debt' which is due and in the event of 'default' as defined under I&B Code, 2016 is perforce required to admit the Application and the parties including the Corporate Debtor can have recourse during CIR process to submit a plan for restructuring if otherwise not disqualified.



32. Thus taking into consideration the facts and circumstances of the case as well as the position of law, we are of the view that the Application, as filed by the Financial Creditor is required to be admitted under Section 7 (5) of the I&B Code, 2016.

33. The Financial Creditor has proposed the name of **Mr. Vikas Gupta**, having Registration Number IBBI/IPA-007/IP-P00501/2017 - 2018/10889, as Interim Resolution Professional (IRP) and a written communication in the format prescribed under Form 2 of the Insolvency and Bankruptcy Board of India (Application to Adjudicating Authority) Rules, 2016 has been filed by the proposed IRP, who is appointed as the IRP to take forward the process of Corporate insolvency Resolution of the Corporate Debtor. The IRP appointed shall take in this regard such other and further steps as are required under the Statute, more specifically in terms of Sections 15,17,18 of the I&B Code, 2016 and file his report within 20 days before this Bench. The powers of

the Board of Directors of the Corporate Debtor shall stand superseded as a consequence of the initiation of the CIR Process in relation to the Corporate Debtor in terms of the provisions of I&B Code, 2016.

34. As a consequence of the Application being admitted in terms of Section 7 of the I&B Code, 2016, moratorium as envisaged under provisions of Section 14(1) and as extracted hereunder shall follow in relation to the Corporate Debtor;

(a) the institution of suits or continuation of pending suits or proceedings against the Corporate Debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the Corporate Debtor any of its assets or any legal right or beneficial interest therein;



- (c) any action to foreclose, recover or enforce any security interest created by the Corporate Debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
- (d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the Corporate Debtor.”

35. However during the pendency of moratorium period in terms of Section 14(2) and 14(3) as extracted hereunder;

- (2) The supply of essential goods or services to the Corporate Debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.
- (3) The provisions of sub – section (1) shall not apply to such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.”

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36. The duration of period of moratorium shall be as provided in Section 14(4) of the Code which is reproduced below for ready reference;

- (4) The order of moratorium shall have effect from the date of such order till the completion of the Corporate Insolvency Resolution Process

Provided that where at any time during the Corporate Insolvency Resolution Process period, if the Adjudicating Authority approves the Resolution Plan under sub – section (1) of Section 31 or passes an order for liquidation of Corporate Debtor under Section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.”

37. Based on the above terms, the Application stands **admitted** in terms of Section 7 of the I&B Code, 2016 and the Moratorium shall come into effect as of this date. A copy of the Order shall be communicated to the



Financial Creditor as well as to the Corporate Debtor above named by the Registry. In addition, a copy of the Order shall also be forwarded to IBBI for its records. Further, the IRP above named be also furnished with copy of this order forthwith by the Registry, who will also communicate the initiation of CIR Process in relation to the Corporate Debtor to the Registrar of Companies concerned.

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(ANIL KUMAR B)
MEMBER (TECHNICAL)

-SD-

(R.VARADHARAJAN)
MEMBER (JUDICIAL)

P. ATHISTAMANI