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4th November, 2019

The Secretary – Listing Department,
Bombay Stock Exchange Limited,
Floor 25, P J Towers,
Dalal Street,
Mumbai – 400 001.

Stock Code: 504961

Website: listing.bseindia

Re: Corporate Insolvency Resolution Process

Dear Sir,

This is to inform that the petition of COC for removal of Mrs. Vinita Agrawal as the Resolution Professional has been allowed by NCLT and Mr. Anish Agarwal (IP Registration No.: IBBI/IPA-001/IP-P-01497/2018-2019/12256) (the undersigned) as proposed by the COC has been appointed as the Resolution Professional vide order dated October 30, 2019.

Please find attached the downloaded order copy for the same. Certified copy is awaited.

This information is being submitted pursuant to Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 as amended.

You are requested to kindly take the same on record.

Yours faithfully,
For TAYO ROLLS LIMITED

(Anish Agarwal)

Resolution Professional

IP Registration No.: IBBI/IPA-001/IP-P-01497/2018 -2019/12256



(TAYO Rolls Limited is under Corporate Insolvency Resolution Process of the Insolvency and Bankruptcy Code 2016. Its affairs, business and assets are being managed by the Resolution Professional, Mr. Anish Agarwal (IP Registration No.: IBBI/IPA-001/IP-P-01497/2018 - 2019/12256) vide order dated October 30, 2019

TAYO ROLLS LIMITED

Regd. Office : 3, Circuit House Area (North-East), Road No. 11, P.O. & P.S. - Bistupur, Jamshedpur-831 001, Jharkhand, INDIA

Works Office : Large Scale Industrial Estate, Gamharia-832 108, Jharkhand, INDIA

Office Phone : 91-657-2227821/2423412/6627183, E-mail : tayoregd@tayo.co.in

Website : www.tayo.co.in, Corporate Identity Number : L27105JH1968PLC000818

A **TATA** Enterprise

**In the National Company Law Tribunal
Kolkata Bench
Kolkata**

**C.P. (IB) No. 701/KB/2017
C.A. (IB) Nos. 840, 970 & 1008/KB/2019**

In the matter of:

An application for initiation of corporate insolvency resolution process by an Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 read with Rule 6 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

And

In the matter of:

MR. SURESH NARAYAN SINGH, (Authorised Representative of 284 workers) residing at 47, P -Road, Bistupur, Jamshedpur, Dist: East Singhbhum, Jharkhand – 831004.

... Operational Creditor

AND

In the matter of :

M/S. TAYO ROLLS LIMITED, a Company incorporated under the Companies Act, 1956 having its registered office at 3, Circuit House Area (North East), Road No. 11, P.O. & P.S. – Bistupur, Dist: East Singhbhum, Jamshedpur – 831001.

.....Corporate Debtor

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In the matter of :

JHARKHAND BIJLI VITRAN NIGAM LIMITED, having its registered office at Engineering Building, HEC, P.O. & P.S. Dhurwa, Dist: Ranchi, Jharkhand.

... Petitioner

AND

In the matter of :

VINITA AGARWAL, Insolvency Resolution Professional appointed by Adjudicating Authority, NCLT, Kolkata vide Order dated 05/0-4/2019, Reg. No. IBBI/IPA-001/IP-P00914/2017-18/11520, resident of B-301, Royal Palms, Near Memko More, Dhaiya, Dhanbad – 826004, E-mail: sushil.vinita@gmail.com

... Respondent

Date of pronouncement of order : 30/10/2019

**Coram: Shri Jinan K.R, Hon'ble Member (Judicial) &
Shri Harish Chander Suri, Hon'ble Member (Technical)**

Counsel on Record :

- | | | |
|------------------------------------|---|--------------------------|
| 1. MR. A.K. SRIVASTAVA, Advocate |] | |
| 2. MR AKASH SHARMA, Pr. CS |] | For Operational Creditor |
| 1. MR. AJIT KUMAR, Sr. Advocate |] | |
| 2. MR. NAVIN KUMAR, Advocate |] | |
| 3. MS. APRAJITA BHARDWAJ, Advocate |] | |
| 4. MR. UMESH KUMAR |] | For JBVNL |

1. MR AJAY GAGGAR, Advocate]
2. MS. RAKHI PURNIMA PAUL, Advocate] For IDBI Bank Ltd.

1. MS. ANINDITA DAS, Advocate]
2. MS. TRISHA SAHA, Advocate] For Bank of India

1. MS. VINITA AGRAWAL] Resolution Professional

1. MR. SIDDHARTHA MURARKA, CS]
2. MR. ABHIJIT NAGEE] For Resolution Professional

O R D E R

Per Shri Harish Chander Suri, Hon'ble Member (T).

1. This Company Application No. **C.A. (IB) No. 970/KB/2019** is filed by **Jharkhand Bijli Vitran Nigam Limited (JBVNL)**, the Applicant, praying for replacement of the Resolution Professional Ms. Vinita Agarwal by Sri Anish Agarwal.

2. It is submitted that M/s. JBVNL is a Distribution Licensee in the State of Jharkhand. It is submitted that in the case of the Corporate Debtor, vide order dated 5th April, 2019 moratorium was declared and Corporate Insolvency Resolution Process was directed to be initiated. This applicant is questioning the action of the Resolution Professional for drastically reducing the claim filed by the Applicant from Rs. 414.00 crores to Rs. 34.00 crores allegedly without following due process of law prescribed under Sections 13 & 14 of the Code.





3. It is submitted that JBVNL is a Distribution Licensee in the State of Jharkhand under the provisions of the Indian Electricity Act, 2003. It is stated that the Corporate Debtor was having a Roll Manufacturing Unit and its Machine Shop comprises of several heavy duty machine tools. It is stated that the Corporate Debtor had a contract demand of 12,500 KVA and the Corporate Debtor had entered into an agreement for the same in the year 1968 with the Bihar State Electricity Board. Subsequently on 1st April, 1979 the Corporate Debtor reduced its contract demand by way of a fresh agreement for 10,500 KVA. It is stated that the Corporate Debtor had been making payments of the electricity bill from time to time raised on the basis of 1993 Tariff of the Electricity Board. It is stated that certain disputes arose between certain members of the Bihar Steel Manufacturers Association, who were indulging into large scale theft of electricity and many FIRs were lodged against these consumers and their lines were also disconnected.
4. It is stated that in the year 2000 the Corporate Debtor had filed a writ petition being C.W.J.C. No. 852 of 2000 (R) which was decided against the Corporate Debtor. A review petition No. 40/2013 was also filed and the same was also dismissed on 17th July, 2013. It is submitted that the Electricity Board issued notice to the Corporate Debtor on 15th December, 2014 for a sum of Rs. 2,65,82,94,490/- stated to be due and payable on account of consumption of electricity energy for the periods January 2000 to March 2013 and that the said

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payment has not been made by the Corporate Debtor. Once again, a notice dated 19th January, 2015 was issued for payment of Rs. 2,63,60,97,051/- within 15 days from the date of receipt of the notice. It is stated that the Certificate Officer issued a notice to the Corporate Debtor under Section 7 of the Bihar and Orissa Public Demand Recovery Act, 1914 and the said case was registered as case No. 38/2014-15. The said Certificate was challenged by way of a separate writ petition being W.P. (C) No. 3801/2013 in the Hon'ble Jharkhand High Court and the same was dismissed vide order dated 22.05.2015. Thereafter, after hearing both the parties in details, the Learned Certificate Officer vide its order dated 12.12.2015 passed final order. Thereafter, pursuant to the order of Ld. Certificate Court, the respondent JBVNL issued a revised bill of Rs. 218,03,67,289/- for payment of the Corporate Debtor. Against the order of the Hon'ble Jharkhand High Court an LPA No. 217/2013 was also filed in which an Interim order dated 28.10.2015 was passed that no coercive action shall be initiated against the Corporate Debtor.

5. It is further submitted that the Applicant Company had written an objection to the said Ld. RP with regard to the irregularities in Committee of Creditor's meetings (COC meetings) and reduction of the claims. It is stated that the said RP resorted to a vague reply which shows her biasedness towards the Corporate Debtor. It is stated in the Second meeting of the COC reduced the claim of the Applicant

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Company from Rs.414.00 crores (approx.) to Rs. 34.00 crores in a clandestine manner.

6. It is stated that the Resolution Professional might be removed and the claims of the Operational Creditors might be “re-verified and extension of time for entire period criminally wasted in the illegal and fraudulent proceedings initiated and carried on by the IRP.”
7. **C.A. (IB) No. 1008/KB/2019 in C.P.(IB) No. 701/KB/2017.** By way of this C.A. also filed by Jharkhand Bijli Vitran Nigam Limited, the applicant prayed for appointment of a Resolution Professional to be appointed and for removal of Ms. Vinita Agarwal, the present RP as per the provisions of Section 27 of the Insolvency & Bankruptcy Code.
8. It is submitted that the CoC on 27th July, 2019 has voted in favour of Sri Anish Agarwal to be appointed as RP in place of the existing R.P. The said R.P. was assented with 82.24% voting as per the Fifth COC meeting (**Annexure “A”**).
9. **CA (IB) No. 840/KB/2019.**
By way of this C.A. it is submitted that this Bench declared moratorium of the Corporate Debtor vide its order dated 05.04.2019 appointing the existing IRP Ms. Vinita Agarwal. It is submitted that the IRP sought claims vide its Public announcement dated 08.04.2019 seeking the Operational Creditor to file their claims by 22.04.2019. In

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as much as the Petitioners didn't have any details of PF dues which is available only with the Corporate Debtor and further they had to calculate the entire dues under Section 25(O), sub-section 6 of the Industrial Disputes Act, 1947, the Petitioners took reasonable time to prepare their claim. The Hon'ble Bench vide order dated 05.04.2019 accepted the claim of the Petitioners for Rs.2,19,83,760/- as default of wages and Rs.21,98,37,600/- as compensation aggregating Rs.24,18,21,360/- without any demur from the Corporate Debtor and the same was an admitted claim.

10. It is submitted that the IRP had convened the first purported meeting of COC on 03.05.2019 without any intimation to the Petitioners about the formation of COC and allowed the purported COC to vote by including some purported Operational Creditors. It is submitted that the IRP constituted the COC by including State Electricity Board against which dues of Rs. 218 crore is disputed and the Audited Balance Sheet for the Financial Year 2015-16 has been admitted as **"Contingent Liabilities and Major Obligations"**.

11. It is alleged that the IRP had planned the entire omissions and commissions of her's in relation to the first purported meeting of COC in consultation with the Corporate Debtor and Tata Steel to assist them in their sinister design to liquidate the Corporate Debtor, allowing misappropriation of public wealth worth more than Rs. 1000 crore.

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12. It is submitted that on 28th May, 2019 the IRP informed the applicants that their claim had been admitted to the tune of Rs.20.72 crores. It is submitted that the order dated 5th April, 2019 admitted the debt to the tune of Rs.24,18,21,360/- whereas the IRP admitted only Rs.20.72 crores. It is submitted that if the IRP had sought the details of dues of PF from the Corporate Debtor, their dues of the applicants would have been more than Rs.40 crores.
13. It is further submitted by the applicant that the IRP has failed to apply her mind that the Corporate Debtor has closed its operations in October, 2016 and stopped making payment of wages and salaries to the workmen and employees with effect from October, 2016. It is submitted that the IRP had acted in gross violation of the provisions of Section 21 of IBC and had usurped powers as contemplated under the provisions of Section 23 of the IBC. It is submitted that the IRP is trying to treat her appointment as a source of profit to the gross detriment of the interests of the hapless workmen which is highly deplorable.
14. It is further alleged that the IRP misrepresented and manipulated the minutes of the meeting. The applicants further raised objections as to the "Evaluation Matrix" which reflects "Future Prospect of Revival" at 10%". It is submitted that the IRP has committed monumental fraud in complete connivance with the erstwhile management of Corporate Debtor under the control of Tata

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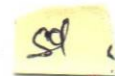
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Steel, holding Company of the Corporate Debtor. The Applicants in the present case have prayed that the IRP might be removed and another RP might be appointed. It is further submitted that the CIRP time might be extended with the directions that disciplinary proceedings against the existing IRP be initiated by the IBBI.

15. In reply to the application C.A. (IB) No. 970/KB/2019 the Respondent RP has submitted that the application is infructuous and not maintainable having been filed without complying with the mandatory provisions of Section 27(2) & (3) of the Code because these provisions require approval of Committee of Creditors by way of at least 66% voting share.

16. The main grievance of the applicant is non-admission of their claim amount in entirety. It is submitted that the claim of Rs.440.00 crores originally submitted by the applicant was admitted to the extent of Rs.218.00 crores which was subject to further proof of claim/clarification, as mentioned by the RP/Respondent herein, in her report on Constitution of COC filed before this Tribunal on 29th April, 2019. However, subsequently on receipt of such clarification through e-mail dated 18th May, 2019, the claim was reduced to Rs. 34.00 crores, in accordance with Regulation 14 of the CIRP Regulations with due intimation to the applicant, the CoC and the Tribunal by way of Progress Reports.





17. It is submitted that the application has been filed for removal of the RP/Respondent on the ground of non admission of claims in entirety which is an act of vindictiveness and vengeance and not bona fide, in spite of the fact that the RP had done her duties with utmost integrity, independence and sincerity and in accordance with the Code.
18. While dealing with the application **CA(IB) No. 1008/KB/2019** the RP has submitted that the sole reason and grievance for filing the present application is non-admission of amounts claimed by the two largest members of COC viz., JBVNL and the Workers who collectively hold about 83% in the COC. The RP has submitted that the Application has been filed in abuse of process of law.
19. It is submitted that the applicant and the workers have made the Corporate Debtor a non-compliant entity and the Corporate Debtor does not even have a Statutory Auditor in place. It is stated that the RP has been requesting the CoC to either re-appoint the Statutory Auditor or to appoint a new Auditor but the largest two members have neither reappointed the existing auditor nor appointed any another firm and due to non co-operation of the applicant and the Workers the timeline prescribed under the Code has been violated.
20. It is submitted that since the Second Meeting of the CoC held on 6th June, 2019, the RP had been requesting the CoC to approve Form G and detailed invitation for EOI but the same has not been approved.

It is submitted that the RP has been requesting the CoC to appoint Forensic Auditor which would have helped in determining Preferential Transactions, Avoidable Transactions etc. and even that has not been appointed till date.

21. It is further submitted that the Workers led by One Mr. Akhilesh Kumar Shrivastava have intimidated the RP on various occasions such as on 6th May, 2019 within the premises of Hon'ble NCLT, Kolkata Bench and also on 27th July, 2019 at the 5th meeting of CoC. These are matters of record and further evidence can also be adduced. It is submitted that Mr. Shrivastava has been writing derogatory and defamatory posts on websites and social media about the RP, Hon'ble Members of NCLT, NCLAT and entire judicial system of the Country.
22. It is submitted that the workers are habitual litigants who have filed various frivolous and infructuous applications and appeals before various forums and the Corporate Debtor had to spend lot of money which is against the interest of all stakeholders. The present application for removal of the RP has been filed on the ground that the RP has not admitted their claims in entirety and to arm-twist the RP and to appoint a stooge who can act at the whims and fancies of the Applicant and the Workers. They have proposed the name of Mr. Anish Agarwal as RP in spite of certain serious allegations purportedly pending against him. The RP has submitted that she has performed her duties as prescribed under the Code.

23. Respondent/RP in reply to the present application CA(IB) No. 840/KB/2019 has submitted that this Tribunal at the time of admission of the application on 5th April, 2019 directed the applicant herein to pay a sum of Rs. 50,000/- as advance fee of IRP in accordance with Regulation 33(2) of CIRP Regulations. However, despite repeated reminder and requests from the RP, the Applicant did not pay the same. It is submitted that the RP had made public announcement under Section 15 of the Code read with Regulation 6 of CIRP Regulations and the last date for submission of the claims was 22nd April, 2019 which was extended to till 4th July, 2019.
24. It is submitted that the confirmation of the RP from IRP was made by CoC unanimously in its First meeting held on 3rd May, 2019. It is submitted that the applicant had submitted its claim in wrong form on 26th April, 2019 which was communicated by the RP to the applicant vide e-mail dated 29th April, 2019 but the applicant did not submit claim in proper form till 3rd May, 2019 when the First meeting of the CoC was held. It is submitted that the applicant and his Associates had pressurized the RP to instantly receive the claims and give an acknowledgement of verification and admission of the same. The RP, however, accepted the same and gave them an acknowledgment of receipt only but on verification admitted certain portion of the application and informed the same to them.

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25. It is submitted that when the notice for calling and convening the Second CoC meeting was sent to the members of the CoC including the Applicant vide an e-mail dated 3rd June, 2019. The Applicant started sending very long and disturbing emails to the RP, making allegations on her conduct as RP, challenging the decisions of the CoC taken on its First meeting and asking innumerable questions to the RP. It is further submitted that the main grievance of the applicant is that they had submitted a claim amount of Rs.190.04 crores (approx.) whereas the RP admitted their claim only to the extent of Rs.20.72 crores. It is clarified by the RP that the difference in the amount claimed by the Applicant and the amount admitted by the RP is the reason for all the grievances, grudges and unsubstantiated allegations made by the Applicant against the R.P.

26. It is submitted that the Applicant had challenged the order of admission passed by this Tribunal on 5th April, 2019 but the appeal was dismissed on 18th July, 2019 stating that the appeal was frivolous and made following concluding remarks in the last para of the Order while dismissing the Appeal, which is reproduced hereunder:-

“For the reasons aforesaid, no interference is called for against the order of admission which has been passed in the light of the direction of this Appellate Tribunal. The appeal is dismissed. Though, we are of the opinion that this is a frivolous appeal for which cost

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should be imposed, but in view of the fact that Mr. Suresh Narayan Singh is representing 284 workers, we are not imposing any cost."

27. The R.P. Ms. Vinita Agarwal has filed the Progress Reports including the Fifth Progress Report having been filed on 21st October, 2019.
28. We have heard the Ld. Counsel for all the Applicants in all the 3 applications and the RP herself who was present in the court along with her practicing professional. After going through the contents of the applications and hearing the Counsel for the Applicants, one thing is very much clear that the main grievance of the Applicants and the reason for filing these applications for removal of the Resolution Professional and praying for replacement of the RP are mainly that their claims have not been admitted in its entirety. All other allegations seem to have been made only to support their main grievance of non acceptance of their claims in full. Since the CoC consists of two major creditors, they, of course, had full authority under Section 27 of the Code to replace the R.P. and appoint a person of their own choice. In the perspective of a prudent man, the allegations attempted to assert against the RP would have been reasonably avoided. Those allegations are unwarranted in an applications under consideration.
29. Without going into the reasons for replacement of the RP, we are bound to allow replacement of Mr. Anish Agarwal in place of Ms.

Vinita Agrawal as the RP as per the resolution passed in its meeting dated 27th July 2019. The only question that remains for consideration is whether there was any proper justification and genuineness in the allegations made in the applications leveled against the RP Ms. Vinita Agrawal and whether the RP had really misconducted herself or violated any Rules or Regulations under the Code as has been tried to be made out. So far as we could gather from the records placed before us by both the parties i.e. the Applicants in these applications on the one hand and the existing Resolution Professional on the other hand there appears to be a complete mismatch. We do not find any serious irregularities, illegalities or inaction in conducting the affairs and in the performance of duties as assigned by the Code to the R.P. The gist of the applications is that the claims relating to Jharkhand Bijli Vitran Nigam Limited and those of the workers have not been admitted by the RP in full, which has ignited the spark in the mind of the CoC members leading to a big fire, thereby making false allegations as serious as “assisting the Corporate Debtor and Tata Steels Limited in their sinister design to liquidate the Corporate Debtor, allowing misappropriation of public wealth worth more than Rs.1000 crores”, and “IRP has committed monumental fraud in complete connivance with the erstwhile management of the Corporate Debtor under the advice and control of Tata Steel, the holding company of the Corporate Debtor”.

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30. It is submitted by the RP that she had reduced the claim of the Applicant M/s. Jharkhand Bijli Vitran Nigam Limited (Applicant in C.A. (IB) No. 970/KB/2019) only after taking advice from Tariff Regulatory Authority and thereafter it was admitted as "Contingent Liability". The RP in her reply affidavit has denied all the other allegations of the applicants being frivolous and baseless.

31. Without going into all the averments of the Applicants, we would like to make it clear that in the light of the existing law, under Section 27 of the Code, the CoC even otherwise have authority to replace the RP because the Two CoC members have more than the required majority of 66%. There was no need to use derogatory and defamatory language *without any plausible evidence* to support those allegations. Even if they had any genuine grievance, they could have made complaint to the IBBI for redressal of their grievances. We are not convinced with any of the allegations made in the applications which are being disposed of by this order. **The application CA(IB) No. 1008/KB/2019 being filed under section 27 of the Code, and that CoC in its meeting held on 27th July, 2019 by a vote exceeding 66% of voting shares, resolve to replace the RP who was confirmed as RP under section 22 with another resolution professional, we have no other alternative other than to allow the application.**

32. We, however, have not given any weightage in taking this decision, to the baseless allegations made by the Applicants in the

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applications **C.A. (IB) No. 840/KB/2019 and CA(IB) No. 970/KB/2019** .

If at all there has been any lapse anywhere on the part of the RP, it may be an un-biased human error but in no case, it can be termed as a “deliberate illegal act or fraud” as has been tried to be made out by the Applicants. The outcome of the hearing adds strength to the submissions on the side of the RP in person that she was working hard for resolving the stressed assets of the corporate debtor by preserving its value. Inaction if any cannot be ruled out for the reason of non co operation by the members of the CoC who are none other than the applicants. Nothing shows that the RP tried to overpower the CoC. But factors brought to our notice show that the RP tried to act objectively, impartially but with fear, apprehension or undue influence from the applicants.

33. Before parting with this case, we are unable to reconcile with the way the Applicants have dealt with the Resolution Professional who is a Lady professional, and in her reply to the applications has made serious allegations against the Workers lead by Mr. Akhilesh Kumar Shrivastava, Advocate, who are stated to have intimidated her on more than two occasions. It is significant to note here that neither RP’s remuneration has been fixed nor advance amount of RS.50,000/- as directed by the Tribunal in the order dated 5th April, 2019 has been paid to her. At this juncture, it shall not at all be out of context to refer to the celebrated judgment in **T.Arivandandam Vs. T.V.Satyapal and another (1977) 4 SCC 467**, authored by **Hon’ble Mr.Justice Krishna**

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lyer in respect of the principal laid therein *that 'if clever drafting has created the illusion of a cause of action, the same ought to be nipped in the bud'*". We do not approve of such an unwarranted behavior on the part of any of the applicants or the advocate. We, therefore, are of the considered view that **C.A. (IB) No. 840/KB/2019 and CA(IB) No. 970/KB/2019 are liable to be dismissed by** imposing a cost of Rs. 1,00,000/- (Rupees One Lakh Only) each, by the applicants to the RP.

34. In view of the above said we are passing the following Orders:-

ORDERS

- i) **C.A. (IB) No. 840/KB/2019, and CA(IB) No. 970/KB/2019 is dismissed by** imposing a cost of Rs. 1,00,000/- (Rupees One Lakh Only) each, to be payable by the applicants to the RP within one month from the date of this order.
- ii). **CA(IB) No. 1008/KB/2019** is allowed by ordering replacement of **Mr. Anish Agarwal** in place of **Ms. Vinita Agarwal** as the RP .
- lii). The RP is directed to hand over all the records in her hand within one week from the date of the receipt of this order to the new RP.

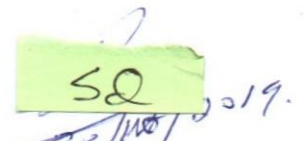
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- iv). The CoC is directed to pay the eligible fees and cost already spent by her within two week of the date of the receipt of the order.
- v). The incoming RP is directed to complete the CIRP as early as possible in strict compliance of Regulation 40A from the stage the outgoing RP was forced to stop functioning as RP.
- vi) Certified copy/free copy of the order may be issued to all the concerned parties, if applied for, upon compliance with all requisite formalities.
- vii) Registry is directed to forward a copy of the order by way of email to the applicants, RP and to the IBBI with in one week.



(Harish Chander Suri)
Member (T)



(Jinan K.R.)
Member (J)

Signed on this, the 30th day of October, 2019.

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