

**IN THE NATIONAL COMPANY LAW TRIBUNAL
“CHANDIGARH BENCH, CHANDIGARH”**

**CA No.287/2018
IN
CP (IB) No. 35/Chd/HP/2017**

**Under Section 60 (5) of the
Insolvency and Bankruptcy
Code, 2016.**

In the matter of :

Seashells Infrastructures Pvt. Ltd.

Versus.

Rajpur Hydro Power Private Limited(RHPPL)

AND

In the matter of:

Kirloskar Brothers Ltd.,
Udyog Bhavan, Tilak Road,
Pune-411 002,
through its Power of Attorney holder
Mr. Umesh M. Gosavi.
Associate Vice President & Head-Legal

....Applicant

Vs.

1. Mr. Sanjay Kumar Dewani,
Resolution Professional,
D-55, Defence Colony,
New Delhi-110 024.

2. Rajpur Hydro Power Pvt. Ltd.,
Plot No.246, First Floor,
Rd. No.78, Jubilee Hills,
Hyderabad-500 033.

....Respondents.

AND

CA No.100/2018

**Under Sections 30(6) and
31 of the Insolvency and
Bankruptcy Code, 2016.**

In the matter of:

Sanjay Kumar Dewani,
R/o 133, Bhagirathi Appts.,
Plot No.13/1, Sector-9,
Rohini, Delhi-110 085.

...Applicant/Resolution Professional

Order delivered on: 27.09.2018

**Coram: Hon'ble Mr. Justice R.P. Nagrath, Member (Judicial)
Hon'ble Mr. Pradeep R. Sethi, Member(Technical)**

For the applicant
M/s Kirloskar Brothers
Ltd.

: 1. Mr. Ashish Wad, Advocate.
2. Mr. Sokriti Jaggi, Advocate.
(in CA No.287/2018)

For the Resolution Professional

: 1. Mr. Atul V. Sood, Advocate.
2. Mr. Sanjay Kumar Dewani,
Resolution Professional.
(in CA Nos.100/2018 and 287/2018)

For the Resolution Applicant

: 1. Mr. Rakesh Gupta, Advocate.
2. Mr. Punit Jain, Advocate
(in CA Nos.100/2018)

For Financial Creditor
Member of COC PTC India
Financial Services Ltd.

Mr. Vijay Singh Bisht
(in CA No.100/2018)

Per: Pradeep R. Sethi, Member(Technical)

ORDER

CA No.287/2018

The present application is filed under Section 60(5) of the
Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code).

CA Nos.287/2018 and 100/2018 IN
CP (IB) No. 35/Chd/HP/2017

in respect of non-approval by the Resolution professional (RP) of claim of ₹35,42,18,964/- as on insolvency commencement date i.e. 11.07.2017. It is stated that contract agreement dated 17.02.2014 reference No. RHPPL/2014/E&M-KBL/Supplies was entered into between the applicant and Rajpur Hydro Power Pvt. Ltd. (Corporate Debtor) and that after the contract, the applicant started design and procurement process; the corporate debtor was irregular in releasing payments since the beginning; the corporate debtor was supposed to open a letter of credit in favour of the applicant before the commencement of manufacturing; this was not done and despite this, the applicant started manufacturing to support the project activities on assurance of the corporate debtor to release the payment. It is submitted that the applicant has already despatched certain material at site against which some ad hoc payment was released; the applicant insisted for the letter of credit of the entire value as per the contract conditions which the corporate debtor did not do so; the applicant has withheld the further supply of pending material of ₹6,94,22,164/- which is still lying idle at the works of the applicant; the said equipment are manufactured/procured after receiving manufacturing clearances and approvals from the corporate debtor; corporate debtor has even inspected some of the equipment; all the manufacturing clearances, approvals and inspections calls/reports from the corporate debtor were submitted to the RP during the submission and evaluation process of the claim.

2. It is submitted that on 27.11.2017, the applicant filed its proof of claim (Form B) with the RP for outstanding amount of ₹6,94,22,164/-; material inventory cost of ₹21,10,36,800/-; escalation cost of ₹6,33,60,000/-; overstay

cost of ₹90,00,000/-; watch and ward of ₹14,00,000/- and thus the total claim amounted to ₹35,42,18,964/-. It is stated that by e-mail dated 06.03.2018 the RP asked the applicant for some additional documents to provide sufficient back up for enabling to take a call in the matter and that response was sent by letter dated 15.03.2018 furnishing detailed reply with available supporting documents and that in response to e-mail dated 10.01.2018 received from the RP, the statement of the ledger account of the corporate debtor duly certified by the statutory auditor was also furnished. It is stated that the RP asked for supporting contractual provisions in support of the claims by the applicant which the applicant elaborately explained vide letter dated 26.03.2018 stated to be annexed and marked as Exhibit-5. However, Exhibit 5 enclosed with the application is only a copy of e-mail dated 26.03.2018 giving reference to attachment of letter dated 26.03.2018. Copy of the letter dated 26.03.2018 has not been enclosed.

3. It is submitted that vide e-mail dated 25.05.2018, the RP has stated that the decision communicated vide email dated 06.03.2018 remains unchanged; the corporate insolvency resolution process has been completed with Committee of Creditors (COC) approving the resolution plan; the resolution plan is filed with the NCLT, Chandigarh Bench and is under their active consideration and in case the applicant wishes to pursue the matter with the NCLT, Chandigarh Bench he may do so within the permissible time limitation.

4. It is submitted that the legality of the claim can only be decided by the Tribunal and therefore, the RP ought to give sufficient and cogent reasoning in his communication to come to a conclusion about insufficiency of

documents and that the correct and proper verification and admission of the operational claim of the applicant against the corporate debtor forms the very foundation of the applicant's rights as the lead operational creditor of the corporate debtor. The applicant has prayed that the RP be directed to verify and admit the entire claim of operational debt of the applicant amounting to ₹35,42,18,964/- on the insolvency commencement date and direct the RP not to constitute any meetings of the COC of the corporate debtor till the final disposal of the present application.

5. Vide order dated 31.07.2018, notice of the application was issued to the RP. The RP filed reply to the application by diary No.3297 dated 04.09.2018 stating that he has checked the books of account and financial statements of the corporate debtor in regard to the account of the applicant and from the perusal of the ledger and financial statements, it is very much clear that the corporate debtor has made a total payment of ₹2,95,66,024/- to the applicant and against this payment, the corporate debtor has received facilities/goods/material to the tune of ₹1,35,36,799/- only from the applicant and an amount of ₹1,60,29,225/- is still outstanding and recoverable from the applicant in the books of the corporate debtor. It is further submitted that the advance from the corporate debtor lying with the applicant of ₹1,60,29,129/- is also corroborated by certificate of Chartered Accountant Firm submitted by the applicant. It is stated that the RP acted as per the provisions of the Code and verified the claim as per the IBBI Regulations and found that the applicant is not entitled to get any claim since there was no clause in the agreements or documents supplied by the applicant which could support the alleged claim and that even in the present application, the applicant has failed to provide any

clause of the agreement on the basis of which the applicant is entitled to the claim.

6. During the course of the hearing, it was argued by the learned counsel for the applicant that despite furnishing of evidence, the RP had wrongly concluded that the applicant had failed to substantiate the claim with necessary documentary evidence and that nothing specific was pointed out. In response, the learned counsel for the RP argued that the applicant had failed to specify the clause in the agreement entitling it for the claim and that actually, advance from the corporate debtor of ₹1,60,29,129/- was lying with the applicant.

7. We have carefully considered the submissions and arguments of the learned counsel for the applicant and the Resolution Professional. We find that the claim has been divided into two parts by the applicant (refer column No.4 of Form B - Exhibit-1 of the application). The first part is in respect of outstanding amount of ₹6,94,22,164/-. It is an admitted fact that this outstanding amount is in respect of items which were not supplied to the corporate debtor and are in the possession of the applicant. The applicant's contention is that after the contract between the applicant and the corporate debtor was executed on 17.02.2014, the applicant started design and procurement process; the corporate debtor was irregular in releasing payments since the beginning; the corporate debtor was supposed to open a letter of credit in favour of the applicant before the commencement of manufacturing; it did not do this and despite this, the applicant started the manufacturing to support the project activities on assurance of the corporate debtor to release the payment. It is the further contention of the applicant

that it has already despatched certain material at site against which some ad hoc payment was released and that the applicant insisted for the letter of credit of the entire value as per the contract conditions which the corporate debtor did not do so and that the applicant withheld the further supply of pending material which is to the tune of ₹6,94,22,164/-, which is still lying idle at the works of the applicant in lieu of the letter of credit. The claim would therefore be more in the nature of a breach of contract. Claim is defined in Section 3(6) of the Code as follows:-

“claim” means –

(a) a right to payment, whether or not such right is reduced to judgement, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law or the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgement, fixed, matured, unmatured, disputed, undisputed, secured or unsecured.

8. Section 3(6) (a) would not be applicable since the applicant has not proved that he has a right to payment. We have noted above that the pending material of ₹6,94,22,164/- is stated by the applicant to be withheld and still lying idle at its works. There is no averment that under the terms of the agreement the ownership of the material of ₹6,94,22,164/- passed to the corporate debtor.

9. Section 3(6) (b) would not be applicable since there is no averment that the breach of contract, if any gives rise to a right to a payment.

10. Therefore, the applicant's contention of claim of operational debt of ₹6,94,22,164/- cannot be accepted.

11. The remaining part of the claim relates to material inventory cost (₹21,10,36,800/-); escalation cost (₹6,33,60,000); overstay cost (₹90,00,000); watch and ward (₹14,00,000) totalling to ₹28,47,96,800/-. These amounts appear to be in the nature of damages and would not be covered by the definition of claim (*supra*).

In result thereof, the application is rejected.

CA No.100/2018

12. The petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as Code) was filed by M/s Seashells Infrastructure Pvt Ltd. for initiation of the Corporate Insolvency Resolution Process (CIRP) against M/s Rajpur Hydro Power Pvt. Ltd. (hereinafter referred as Corporate Debtor). The petition was admitted and moratorium in terms of section 14 (1) of the Code was declared by order dated 11.07.2017. Subsequently on 13.07.2017, Shri Gurvinder Singh Sarin, bearing IP Regn. No. IBBI/IPA-002/IP-N00072/2016-17/10170 was appointed as Interim Resolution Professional. In view of decision taken by the Committee of Creditors (COC) in its 1st meeting on 10.08.2017, CA No.121 of 2017 was filed under Section 22 of the Code and Shri Sanjay Kumar Dewani bearing IP Regn. No. IBBI/IPA-001/IP-P00423/2017-18/10746 was appointed as Resolution Professional (RP) by order dated 01.09.2017.

13. The period of 180 days for completion of CIRP was expiring on 07.01.2018. On the basis of decision of Committee of Creditors (COC) taken in the 3rd meeting held on 07.12.2017, the CIRP was extended for 90 days in terms of Section 12 (3) of the Code for completion of the resolution process by order dated 20.12.2017.

14. The present CA No.100/2018 is filed by the Resolution Professional (RP) for approving and taking on record the resolution plan of Dolphin Energy Enterprises (Resolution Applicant) under Section 31 of the Code as approved with modifications by the full majority of members of the COC of the corporate debtor in the meeting held on 28.03.2018 through e-voting.

15. It is stated in the application that pursuant to appointment as Interim Resolution Professional, public announcement dated 14.07.2017 (published in newspaper on 15.07.2017) under Section 15 of the Code was issued and claims from the creditors of the corporate debtor were invited and on receiving the claims, the COC was constituted. It is further stated that Valuation Reports dated 27.10.2017 and 28.10.2017 were obtained from Dheeraj Basantani and Associates, Chartered Accountants and M/s S. Madnani and Associates, Chartered Accountants respectively.

16. It is stated that in the second meeting of COC on 9.11.2017, the minimum eligibility criteria for prospective resolution applicants was fixed and in the 4th meeting of COC on 25.01.2018, the RP informed the members of COC that pursuant to issue of Expression of Interest (EOI) on 11.11.2017, EOI was received from eight applicants and that after ensuring that the respective applicants met the eligibility criteria as laid in the EOI, the RP issued offer

documents to all the prospective resolution applicants with 12.01.2018 as the extended last date for submission of resolution plan. It is stated that consequent to promulgation of Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, which came into effect from 23.11.2017, all the prospective applicants who had obtained the offer documents were requested to furnish necessary undertaking on matters listed under Section 29A (a) to (j) of the Code to ensure that they are not adversely hit by the provisions of Section 29A of the Code and that till the end of day on 12.01.2018, the applicant received two resolution plans from (i) Kundan Rice Mills Ltd. (through Dolphin Energy Enterprises) and (ii) Group of Investors (Anil Sikka & Ors.). It is stated that the two plans were discussed and deliberated upon by the COC in the meeting held on 25.01.2018 and that the members of the COC were of the view that both the resolution plans were offering very low amounts towards due payment of the financial creditor/others. It is stated that the COC considered it advisable to go for another public advertisement for inviting resolution plans under Section 25 (2) (h) of the Code.

17. It is stated that the minimum eligibility criteria was kept the same as the criteria kept in the last EOI and expression of interest dated 31.01.2018 was issued. EOIs from 8 parties are stated to be received but further, on issuing offer documents to all prospective applicants meeting the eligibility criteria, only three resolution plans were received from (i) Dolphin Energy Enterprises (proprietor- Nishita Garg); (ii) Essel Infra Projects Ltd. and (iii) Mahalaxmi Continental Ltd. It is stated that the three prospective resolution applicants were given an opportunity to present their respective plans before the COC and submit clarification on the observations of the RP. It is stated

that revised/updated resolution plans were considered in the 6th meeting of COC on 28.03.2018 in which the RP informed the COC that based on the evaluation of the three resolution plans by the appointed financial consultants i.e. Feedback Infra Pvt. Ltd., the plan submitted by Essell Infra Projects Ltd. was not found to meet the requirements and that out of the remaining two plans, the resolution plan submitted by Mahalaxmi Continental Ltd. emerged as the highest bidder. It is stated that on the basis of the discussions in the COC meeting and subsequent clarifications, the COC decided that the resolution plan of Mahalaxmi Continental Ltd. had undergone certain changes i.e. necessary debt participation of PPC India Financial Services Ltd. (Financial Creditor having 99.6% voting share), limitation on the future liabilities of corporate debtor etc. and accordingly, the resolution plan submitted by Mahalaxmi Continental Ltd. did not find favour with the COC. The resolution plan submitted by Dolphin Energy Enterprises is stated to have been put up for voting of members of the COC and in the e-voting, the COC with a full majority of 100% of the voting share agreed for approval of the resolution plan submitted by Dolphin Energy Enterprises on 07.03.2018 read with clarification made vide e-mails dated 17.03.2018 and 28.03.2018. It is prayed that the resolution plan of Dolphin Enterprises may be approved.

18. During the course of hearing on 22.05.2018, it was noted that the members of COC be called for hearing and that the resolution professional filed requisite certificate for compliance of the provisions of the Code and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as Regulations). CA No.196/2018 was filed by Mr. Rajshekar Totakura promoter

director for supplying copy of resolution plan so that he can properly assist the Tribunal. By order dated 16.07.2018, the application was partly allowed permitting the applicant to intervene whereas the prayer or a direction to the RP to supply him a copy of the resolution plan was declined with liberty to the promoter director of the suspended Board of Directors of the corporate debtor to have inspection of the record. It was further clarified that permission to intervene will not imply that the applicant in CA No.196/2018 shall have the right to file reply to CA No.100/2018. By a simultaneous order dated 16.07.2018, for the purpose of enabling the applicant in CA No. 196/2018 to inspect the records, the proceedings in CA No.100/2018 were adjourned to 03.08.2018 for arguments.

19. During the course of arguments, the learned counsel for the RP submitted that in compliance with the order dated 22.05.2018 (supra), the requisite certificate from RP for compliance of the provisions of the Code and the Regulations have been placed on record by diary 1998 dated 04.06.2018. It was further stated that with reference to order dated 09.07.2018, the necessary certificate in view of the latest amendment in the Code and the Regulations framed thereunder was furnished by diary No.2800 dated 01.08.2018. The learned counsel for the RP has referred to the directions of the Tribunal by order dated 22.05.2018 (supra) for issue of notice to the members of the COC. The compliance affidavit is stated to be filed by diary No.1997 dated 04.06.2018 stating that there are two members of COC namely, PTC India Financial Services Ltd. and Seashells Infrastructures Pvt. Ltd. and that the notice to PTC India Financial Services Ltd. was accepted during the course of hearing on 22.05.2018 as noted in the order of that date.

The notice to the other member of COC i.e. Seashells Infrastructures Pvt. Ltd. is stated to be served by e-mail dated 01.06.2018 and in reply thereof, Seashells Infrastructures Pvt. Ltd. sent reply stating that they have already approved the plan and that on account of late information, they cannot attend the hearing and the RP represents the financial creditor. During the course of hearing on 08.08.2018, Mr. Vijay Singh Bisht representing PTC India Financial Services Ltd. appeared and stated that they have given their approval to the resolution plan submitted by Dolphin Energy Enterprises after detailed and complete consideration and examination. It was submitted by the learned counsel for RP that in view of the 100% voting share and detailed consideration of the resolution plan by the COC, the resolution plan of Dolphin Energy Enterprises be approved.

20. We have carefully considered the submissions of the learned counsel for the Resolution Professional, the learned counsel for the Resolution Applicant and the representative of financial creditor PTC India Financial Services Ltd. member of COC and have also examined the relevant records. The corporate debtor is stated to be engaged in the development and construction of 9.90 MW Hydro Energy Power Project at Noglikhad, Tehsil Rampur, District Shimla, Himachal Pradesh-172 021. The year of commencement is 2011 and as per Valuation Report of Dheeraj Basantani & Associates, Chartered Accountants (Annexure A-1 of diary No.1343 dated 01.05.2018 page 30), the year of commencement of construction is 2011 and the construction work is stated to be held up. The resolution plan submitted by M/s Dolphin Energy Enterprises is at Annexure A-10 of the application.

Regulation Section 39 (4) requiring filing of compliance certificate in Form H

of the Schedule by the RP. This compliance certificate was filed by diary No.2800 dated 01.08.2018. As per para 5 thereof, the list of financial creditors of the corporate debtor being members of the COC and distribution of voting share among them is given as under:-

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	PTC India Financial Services Ltd.	99.67%	Voted for Resolution Plan
2	Seashells Infrastructure Pvt. Ltd.	0.33%	Voted for Resolution Plan

21. In para No.7 of the compliance certificate in Form H (*supra*), the amount provided for the stakeholders under the resolution plan is given as under:-

Sl. No	Category of Stakeholder	Amount Claimed	Amount Admitted	Amount Provided under the Plan	Amount Provided to the Amount Claimed(%)
1	Dissenting Secured Financial Creditors	NIL	-	-	-
2	Other Secured Financial Creditors	7498.92	7498.92	941.88	12.56%
3	Dissenting Unsecured Financial Creditors	NIL	-	-	-
4	Other Unsecured Financial Creditors	27.87	24.87	3.12	11.19%
-	Operational Creditors	3969.30	149.80	NIL	-
	Government*	NIL	-	-	-
	Workmen	NIL	-	-	-
	Employees	NIL	-	-	-
6	Other Debts and Dues	NIL	-	-	-
Total		11496.09	7673.59	945.00	

(Amount in Rs. lakh)

*Post submission of Resolution Plan (approved by Committee of Creditor with a full majority of 100% of the voting share) with Hon'ble NCLT, Department of Excise and Taxation, Govt. of Himachal Pradesh submitted its claim which can

not be considered for verification as per Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution process for Corporate Persons) Regulations, 2016.

22. The liquidation value of the assets as on the insolvency commencement date i.e. 11.07.2017 is given in para 2 of Form H (supra) and is ₹3195.59 lacs. However, as noted above, the amounts provided for the stakeholders under the resolution plan totalled to ₹945 lacs. It has been explained in the resolution plan that on the basis of assessment of works already carried out and those which remained to be carried out made by Dr. Hutarew and partner (India) Ltd., the amount to be spent on civil and hydro mechanical works for making the project operational would be ₹6500 lacs and therefore, a consideration of ₹10 crores 10 lacs only is being offered by the resolution applicant to buy out the unit. In view of the vast difference between the liquidation value and the offer as per the resolution plan, we had called the members of the COC for hearing (order dated 22.05.2018). As noted above, the major voting share in COC is of PTC India Financial Services Ltd. (voting share 99.67%). The representative of PTC India Financial Services Ltd. attended the hearing before the Tribunal and stated that they had given their unqualified acceptance to the resolution plan after detailed consideration. As discussed above, the other financial creditor Seashells Infrastructures Pvt. Ltd. (voting share 0.33%) stated by e-mail dated 02.06.2018 that they have already approved the plan and the RP represents them. The liquidation value is not enough to cover the admitted claims of the two financial creditors and therefore, the liquidation value for the operational creditors and others is NIL. Both the financial creditors have voted for the resolution plan submitted by

Dolphin Energy Enterprises. The decision of the two financial creditors is based upon their commercial wisdom and is therefore, not to be interfered with.

Section 31 (1) of the Code reads as follows:-

“If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.”

[Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]

Section 30(2) of the Code is as follows:-

“The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the Corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.”

23. We further note that the RP furnished certificate under Regulation 39(4) of the Regulations vide diary 1998 dated 04.06.2018 certifying that the contents of the resolution plan of Dolphin Energy Enterprises meets the requirements of the Code and the Rules and Regulations made thereunder. Subsequent to the amendment in Regulation 39(4) by the Insolvency and

Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2018 dated 03.07.2018 requiring filing of compliance certificate in Form H of the Schedule before the Adjudicating Authority, the RP filed Form H vide diary No.2800 dated 01.08.2018. It was certified therein that the resolution plan complies with all the provisions of the Code and Regulations and does not contravene any of the provisions of the law for the time being in force and that the resolution applicant i.e. Dolphin Energy Enterprises has submitted an affidavit pursuant to Section 30(1) of the Code confirming its eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The compliance of the resolution plan as desired in para 9 of Form H has been given by the RP is as under:-

Section of the Code / Regulation No.	Requirement with respect to Resolution Plan	Clause of Resolution Plan	Compliance (Yes / No)
25(2)(h)	Whether the Resolution Applicant meets the criteria approved by the CoC having regard to the complexity and scale of operations of business of the CD?	Resolution Applicant met the criteria of minimum Net Worth fixed by CoC	Yes
Section 29A	Whether the Resolution Applicant is eligible to submit resolution plan as per final list of Resolution Professional or Order, if any, of the Adjudicating Authority?	Resolution Applicant is eligible to submit resolution plan	Yes

Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Resolution Applicant has submitted Undertaking under section 29A of the Insolvency and Bankruptcy Code, 2016 along with resolution plan (at Page 214-215 of Application)	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs?	The plan provides the payment of Resolution Process Costs immediately upon acceptance of the Resolution Plan.	Yes
	(b) provides for the payment of the debts of operational creditors?	In the plan, it is mentioned that the consideration amount is less than the liquidation value, so no payment is proposed to Operational Creditors. The waiver has been sought from Operational Creditors.	Yes
	(c) provides for the management of the affairs of the Corporate debtor?	Please refer to Page 202 of Application in which Resolution Plan is annexed, under para "Proposal relating to the management and control of the business of the Corporate Debtor during its term". In the plan, it is mentioned that the project shall be managed by a team of professional and organization chart is enclosed with Resolution Plan.	Yes

	<p>(d) provides for the implementation and supervision of the resolution plan?</p> <p>(e) contravenes any of the provisions of the law for the time being in force?</p>	<p>Please refer to Page 202 of Application in which Resolution Plan is annexed, under para "Proposal relating to adequate means for supervising its implementation".</p> <p>The Plan does not envisage any payment towards statutory dues. However, the Resolution Applicant have sought waiver for the statutory dues, failing which they have undertaken to settle statutory dues at their own cost.</p>	Yes
Section 30(4)	<p>Whether the Resolution Plan (a) is feasible and viable, according to the CoC?</p> <p>(b) has been approved by the CoC with 66% voting share?</p>	<p>CoC considered the resolution plan submitted by Resolution Applicant and thereafter approved the resolution plan.</p> <p>CoC with a full majority of 100% of the voting share consented and voted (through E-voting) in favour of agenda and agreed for approval of the Resolution Plan submitted by Dolphin Energy Enterprises on 07.03.2018 read with clarification made <i>vide</i> e-mails dated 17.03.2018 and 28.03.2018 in the matter of Corporate</p>	<p>Yes</p> <p>Yes</p>

		Debtor.	
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Please refer to Page 202 of Application in which Resolution Plan is annexed, under para "Proposal relating to adequate means for supervising its implementation".	Yes
Regulation 35A	Where the resolution professional made a determination if the corporate debtor has been subjected to any transaction of the nature covered under sections 43, 45, 50 or 66, before the one hundred and fifteenth day of the insolvency commencement date, under intimation to the Board?	Resolution Professional filed an Application with Hon'ble NCLT on 06.04.2018 under Section 43, 44, 45, 48, 49, 66 and 73 of Code.	Yes
Regulation 38 (1)	Whether the Resolution Plan identifies specific sources of funds that will be used to pay the - (a) insolvency resolution process costs? (b) liquidation value due to operational creditors? (c) liquidation value due to dissenting financial creditors?	Please refer to Page 200 of Application in which Resolution Plan is annexed, it is mentioned that Funds required will be sourced from NBFC Company i.e. Gogia leasing Ltd. In this respect, Letter of Intent from NBFC for approval to grant loan upto Rs. 50 Crore is also enclosed with Resolution Plan (at Page 206 of Application)	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Please refer to Annexure I attached to the Resolution Plan (at Page 210 of Application).	Yes

Regulation 38(2)	<p>Whether the Resolution Plan provides:</p> <p>(a) the term of the plan and its implementation schedule?</p> <p>(b) for the management and control of the business of the corporate debtor during its term?</p> <p>(c) adequate means for supervising its implementation?</p>	<p>Please refer to Page 201 of Application in which Resolution Plan is annexed, under para "Proposal relating to term of the Resolution Plan and its implementation schedule".</p> <p>Please refer to Page 202 of Application in which Resolution Plan is annexed, under para "Proposal relating to the management and control of the business of the Corporate Debtor during its term".</p> <p>Please refer to Page 202 of Application in which Resolution Plan is annexed, under para "Proposal relating to adequate means for supervising its implementation".</p>	<p>Yes</p> <p>Yes</p> <p>Yes</p>
38(3)	<p>Whether the resolution plan demonstrates that –</p> <p>(a) it addresses the cause of default?</p> <p>(b) it is feasible and viable?</p> <p>(c) it has provisions for its effective implementation?</p> <p>(d) it has provisions for approvals required and the</p>	<p>This Regulation came into force with effect from 04.07.2018 and shall apply to corporate insolvency resolution processes commencing on or after the said date. Therefore, not applicable in this matter</p>	-

	timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?		
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Resolution Professional filed an Application with Hon'ble NCLT on 06.04.2018 under Section 43, 44, 45, 48, 49, 66 and 73 of Code	Yes

24. We therefore, note that the RP has certified that the resolution plan conforms to the conditions provided for in Section 30(2) of the Code. The satisfaction of the requirements of 30(2) of the Code are further discussed as under:-

Section 30 (2) (a):- the insolvency resolution process costs are to be paid immediately upon acceptance of the resolution plan.

Section 30(2) (b):-As discussed above the liquidation value is NIL for the operational creditors. The resolution plan does not propose payment to operational creditors.

Section 30 (2) (c) & (d) :- The resolution plan states that the management and control will be with management committee headed by team of professionals; the operations team will be supervised by management committee and technical advisor; persons to be involved in the management will not attract any ineligibilities as stated under Section 29A of the Code; tie up made with Dr. Hutarew and partner (India) Ltd. for managing guiding and supervising the project implementation.

Organisation chart has been enclosed as Annexure-III of the resolution plan.

Section 30 (2) (e):- RP has stated that this condition is complied with. The RP has also stated that the plan does not envisage any payment towards statutory dues and that the resolution applicant has sought waiver for the statutory dues failing which they have undertaken to settle the statutory dues at their own cost. This request is examined later.

25. We have examined whether the resolution plan has provisions for its effective implementation. We find in the resolution plan, it is stated that the proprietor of the resolution applicant Ms. Nishita Garg (individual) has net worth of ₹12 crores and that additional funds required for project would be sourced from M/s Gogia Leasing Ltd. Letter of intent dated 20.02.2018 of Gogia Leasing Ltd. giving in principle approval for sanction of loan upto ₹50 cores for the 9.90 MW Hydro Project has been filed alongwith the resolution plan. It is further stated that loans from bank will also be sourced. As regards the management and control of business as well supervision of implementation, the proposal of the resolution applicant in this regard has been discussed above.

26. In para 12 of Form H (supra), the RP has drawn attention to certain concessions sought by the resolution applicant from the Adjudicating Authority. These concessions include waiver of statutory dues, directions to Ministry of New and Renewable Energy, entitlement for benefits or subsidies (State/Central), continuance of validity of existing approval/permission etc., directions to SDM Rampur etc. Such exemptions/directions can be sought

from the relevant authorities and therefore, no directions in this regard are being issued. We add here that by e-mail dated 28.03.2018, the resolution applicant has informed the RP that they agree to accept the decision of the Adjudicating Authority on the above points (refer para 12 of Form H) (supra).

27. We have already stated above that the financial creditors were called and have confirmed their acceptance of the resolution plan. We have also discussed above that Mr. Rajshekar Totakura promoter director of the corporate debtor undergoing resolution process filed an application for intervention (CA No.196/2018). It was held by order dated 16.07.2018 that the right of intervention by the applicant should not be denied in view of the scheme of the Code but the right to participate cannot be extended to the extent of a direction to the RP to supply copy of the resolution plan and since the applicant has been allowed to participate, he can inspect the record for the purpose of assisting the Tribunal. Subsequent adjournments were given on 16.07.2018 and 03.08.2018 for the purpose of enabling the intervener to inspect the record and make submissions. However, on the last date of 08.08.2018, there was no representation from the intervener. Therefore, despite opportunity given, no representation was received requiring consideration of the Adjudicating Authority while deciding the present application i.e. CA No.100/2018.

28. During the adjudication proceedings, no objections to the resolution plan have been brought to our notice. We have already discussed above that the RP has certified that the resolution plan of M/s Dolphin Energy Enterprises complies with all the provisions of the Code and the Regulations and does not contravene any of the provisions of the law for the time being in

force. We may add here that in para 15 of Form H the RP has stated that applications filed under Section 43 (preferential transactions) Section 45 (under valued transactions) and Section 66 (fraudulent transactions) were filed on 06.04.2018 with the Adjudicating Authority and the same are presently under consideration. We find that the relevant CA No.103/2018 is presently pending for further hearing.

29. We have examined the compliance of the conditions provided for in Section 31 (1) of the Code above and in view of the discussion made in the preceding paragraphs and the provisions of Sections 31 (1) of the Code, we approve the resolution plan submitted by M/s Dolphin Energy Enterprises subject to discussion as above in the case of the corporate debtor and the same is directed to be binding on the corporate and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

In view of Section 31(3) of the Code, we also direct as under:-

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

CA No.100/2018 stands disposed of.

Copy of this order be communicated to both the parties.

Sd/-

(Justice R.P. Nagrath)
Member (Judicial)

Sd/-

(Pradeep R. Sethi)
Member(Technical)

September 27, 2018
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