

**NATIONAL COMPANY LAW TRIBUNAL**  
**"CHANDIGARH BENCH, CHANDIGARH"**  
*(through web-based video conferencing platform)*

CA No. 77/2020, 1192/2019 & IA No.239/2020

IN

CP (IB) No.7/Chd/Hry/2018  
(Admitted matter)

Under Section 31 of the  
Insolvency and Bankruptcy Code,  
2016 read with Regulation 39 of  
the Insolvency and Bankruptcy  
Board of India (Insolvency  
Resolution Process for Corporate  
Persons) Regulations, 2016.

**In the matter of:**

M/s Shiva Shakti Elmech Private Limited. ...Petitioner-Operational Creditor.  
Vs.

M/s Drake and Scull Water & Energy India ...Respondent-Corporate Debtor.  
Private Limited.

**And in the matter of:** CA No. 77/2020, 1192/2019 & IA No. 239/2020:-

**Shiv Nandan Sharma,**  
Resolution Professional of  
Drake and Scull Water & Energy India  
Private Limited.

...Applicant-Resolution Professional.

**Order delivered on: 03.12.2020**

**Coram: HON'BLE MR. AJAY KUMAR VATSAVAYI, MEMBER (JUDICIAL)**  
**HON'BLE MR. RAGHU NAYYAR, MEMBER (TECHNICAL)**

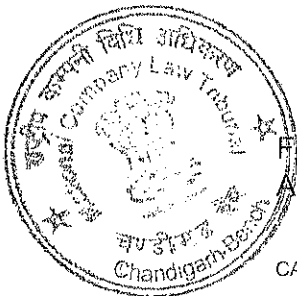
**Present through Video Conferencing :-**

For the Applicant -  
Resolution Professional :

1. Mr. Rohit Khanna, Advocate
2. Mr. Raghav Kapoor, Advocate
3. Mr. Shiv Nandan Sharma,  
Resolution Professional in  
person

For the Resolution  
Applicant :

1. Mr. Nikhil Kohli, Advocate
2. Mr. Gaurav Gupta, Advocate
3. Mr. Gunjan Tejwani, Advocate



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Per: Ajay Kumar Vatsavayi, Member(Judicial)

ORDER

CA No. 77/2020 :

The instant CA has been filed by the applicant-Resolution Professional to place on record the revised Form H, dated 13.11.2019 and copy of minutes of the 14<sup>th</sup> meeting of the Committee of Creditors, dated 13.11.2019.

2. In the circumstances, the instant CA is allowed and the aforesaid documents are taken on record. CA No.77 of 2020 stands disposed of accordingly.

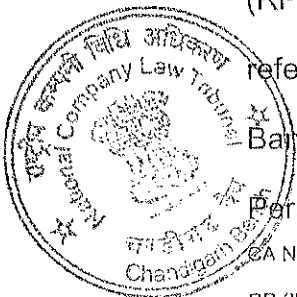
IA No. 239/2020 :

This interim application has been filed to place on record the additional affidavit of Mr. Shiv Nandan Sharma, the Applicant-Resolution Professional and Board resolution of the Resolution Applicant in compliance with the order dated 13.02.2020. A copy of confirmation of extension of Performance Bank Guarantee letter has also been annexed with this IA as Annexure A-2.

2. In the circumstances, the above documents are taken on record and IA No.239/2020 stands disposed of accordingly.

CA No. 1192/2019 :

The present application is filed by Resolution Professional (RP) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the Code) read with Regulation 39 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as the **Regulations**) seeking



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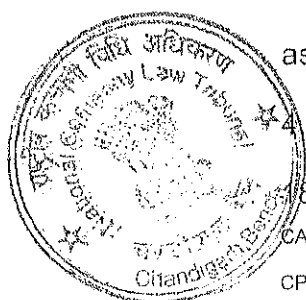
sanction of resolution plan as approved in the meeting of Committee of Creditors (CoC) held on 13.11.2019.

2. It has been submitted that the insolvency petition was filed by the Operational Creditor i.e. M/s Shiva Shakti Elmech Private Limited under Section 9 of the Code for initiation of Corporate Insolvency Resolution Process (CIRP) in the case of M/s Drake and Scull Water & Energy India Private Limited (Corporate Debtor) and the same was admitted vide order dated 30.10.2018 and the CIRP of the Corporate Debtor was initiated. It is submitted that Ms. Nisha Malpani was appointed as Interim Resolution Professional (IRP) vide order dated 30.10.2018 and within three days of the appointment order, the IRP issued a public announcement as per Regulation 6 of the Regulations read with Section 15 of the Code in Form A in two newspapers i.e. Financial Express, (English) and Jansatta (Hindi), both dated 02.11.2018 thereby inviting claims from the creditors of the Corporate Debtor as envisaged in the Code.

3. It is submitted that till the last date for the submission of claims as per the public announcement i.e. 13.11.2018, the IRP received claims from secured Financial Creditors and Operational Creditors and basing on the collated claims, the IRP constituted the Committee of Creditors (CoC) on 26.11.2018 and subsequently re-constituted the CoC on 17.12.2018 (on account of withdrawal of claims by ICICI Bank on 17.12.2018 and AbhuDhabi Commercial Bank on 18.12.2018) and submitted the revised report with this Tribunal on 21.12.2018 and 24.12.2018. The document for constituting the CoC is attached and annexed as Annexure A-4 of the application.

It is stated that in the 2nd meeting of the CoC held on 18.12.2018, the CoC resolved to replace Ms. Nisha Malpani with the proposed

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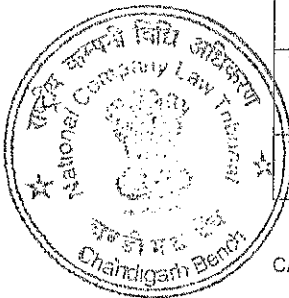
RP i.e. Mr. Shiv Nandan Sharma and accordingly, this Authority vide order dated 24.12.2018 in CA No.622/2018 appointed him as Resolution Professional (RP).

5. It is submitted that the applicant as RP has also appointed two valuers namely; Apex Valuers and Pratik Sharma & Associates to determine the fair value and liquidation value of the corporate debtor in accordance with Regulation 35 of the Regulations and the liquidation value as assessed on the basis of these reports as per unamended Regulation 35 which are as follows:-

**Valuation Summary by Apex Valuers**

(Rs. In Lakhs)

Particulars	WDV as on 30 <sup>th</sup> October, 2018	Fair Value as on 30 <sup>th</sup> October, 2018	Liquidation Value as on 30 <sup>th</sup> October, 2018
Land	910000	2100000	1890000
Computer	70000	70000	35000
Building	0	0	0
Plant & Machinery	210000	10500	10500
Furniture & Fixture	0	0	0
Vehicles	140000	140000	70000
Office Equipment	70000	70000	35000
Software	160000	0	0
<b>Sub total (A)</b>	<b>1560000</b>	<b>2390500</b>	<b>2040500</b>
Capital WIP	24090000	17000000	11900000
Non current assets	2640000	40000	40000
Trade Receivables (Non-current)	561940000	61387533	15346883
Trade Receivables (Current)	480460000		



Other Non Current Assets	110000	0	0
Cash & Bank balances	2920000	1370000	1370000
Short term loans and advances	345350000	65350000	19605000
Other Current Assets	459080000	0	0
<b>Sub total (B)</b>	<b>1876590000</b>	<b>145147533</b>	<b>48261883</b>
<b>Total (A+B)</b>	<b>1878150000</b>	<b>147538033</b>	<b>50302383</b>

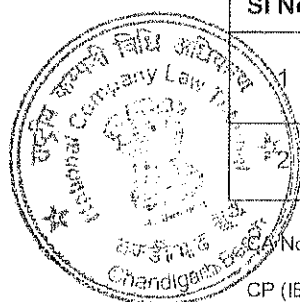
**Valuation Summary by Pratik Sharma & Associates**

*INR in Millions*

Particulars	Book Value	Fair Value	Liquidation value
<b>Non-Current Assets</b>			
Tangible Assets	1.40	2.74	2.17
Intangible Assets	0.16	-	-
Capital Work in Progress	24.09	19.27	13.49
Non-Current Investments	2.64	1.84	0.92
Trade & Other Receivables	561.94	-	-
Long-term Loans & Advances	0.11	0.06	0.04
<b>Current Assets</b>			
Trade & Other Receivables	480.46	61.60	12.32
Cash & Bank Balance	2.92	1.37	1.37
Short Term Loans & Advances	345.35	59.44	17.83
Other Current Assets	459.08	-	-
<b>Total Assets</b>	<b>1,878.14</b>	<b>146.32</b>	<b>48.15</b>

6. It is stated that the shares of the members of CoC after incorporating all the claims of all creditors is as follows:-

Sl No.	Party Name	Amount claimed	Amount Admitted	Voting %age
1	RBL Bank Limited	288,125,779	288,125,779	50.03%
2	Axis Bank	287,783,590	287,783,590	49.97%



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3	Passavant Energy & Environment India Private Limited*	267,174,815	267,174,815	0.00%
				100%

\*Existing claim from Passavant Energy and Environment India Pvt. Ltd. shall continue as it is in the books of corporate debtor from the approval of the plan and no interest shall be accrued/paid for the same during the tenure of this plan.

7. It is further submitted that in the 4th meeting of the CoC held on 12.01.2019, the Information Memorandum (IM) prepared by the applicant-RP was shared with the CoC members after receiving undertaking of maintaining confidentiality of the IM. It was also resolved to appoint Transaction Auditors for the period ranging from 01.04.2016 to 30.10.2018, in case of Corporate Debtor.

8. It is also stated that CoC in its 5<sup>th</sup> meeting dated 24.01.2019, the CoC deliberated and approved the eligibility criteria for inviting Expression of Interest (EOI) from the prospective applicants. It was resolved to approve the appointment and fees of M/s K.G. Somani & Co. as Transaction Auditor of the Corporate Debtor.

9. It is submitted that the Expression of Interest (EOI) has been called from eligible resolution applicants on 25.01.2019 as prescribed in Regulation 36 (A) of the Regulations by publishing Form G in 'Financial Express (English), Mumbai and Delhi Edition and Jansatta (Hindi), Delhi Edition.'

10. It is submitted that CoC in its 6<sup>th</sup> meeting took note of invocation of non-fund based instruments and effect of such invocation on the reconstitution of CoC and pursuant to the reconstruction, the shareholding is as

under :-



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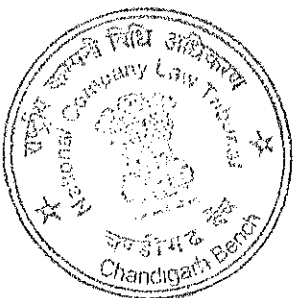
Sr.No.	Name of Creditor	Voting Share (%)	Claim Admitted
1	RBL Bank Limited	50.03%	288125779/-
2	Axis Bank	49.97%	287783590/-

11. It is also submitted that the CoC in its 6<sup>th</sup> meeting was informed that after publication of Form G, since six persons have shown interest, but none of the parties have submitted EOI till the last date of submission i.e. 10.02.2019, it was resolved to publish revised Form G to enable the above parties and any other potential party to submit the EOI. Accordingly, revised Form G was published on 25.02.2019, wherein the last date of submission of EOI was extended to 03.03.2019.

12. It is further stated that CoC in its 7<sup>th</sup> meeting dated 04.04.2019, approved the eligibility criteria for inviting fresh Expression of Interest and also the request for resolution plan (RFRP) & evaluation matrix prepared by the RP in CIRP of the Corporate Debtor. It was also resolved to publish the revised Form G on 05.04.2019 in the same newspapers wherein the earlier Form G was published.

13. It is further submitted that CoC in its 7<sup>th</sup> meeting resolved and directed the applicant-RP to file an application before the Adjudicating Authority seeking an extension of the CIRP by 180 days. This Tribunal vide its order dated 29.10.2019 was pleased to extend the period of CIRP in respect of Corporate Debtor by 90 days.

14. It is submitted that revised Form G was again published on 05.04.2019 wherein the last date for receipt of Expression of Interest was extended to 20.04.2019. It is further mentioned that in the meanwhile an email



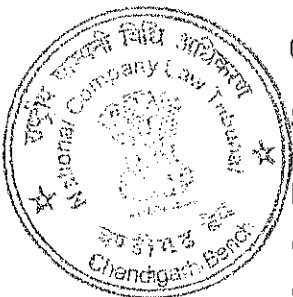
request from the prospective resolution applicants was received to extend the date of EOI from 20.04.2019 to 26.04.2019 without any changes in the timeline. Accordingly, a corrigendum was published in newspapers 'Financial Express', Mumbai & Delhi English Edition and 'Jansatta' Hindi extending the last date of EOI to 26.04.2019.

15. It is further stated that the CoC in its 8<sup>th</sup> meeting ratified the approvals taken via email by the RP in relation to the extension of EOI and timeline to submit the resolution plan.

16. It is stated that the CoC in its 8<sup>th</sup> meeting was informed that two resolution applicants i.e. (i) Passavant Energy & Environment GmbH (R1) and (ii) Maa Pahari Mercantiles Private Limited (R2) have submitted their proposal on 02.07.2019 by hand in sealed envelopes and the resolution plans were opened in front of CoC in its 8<sup>th</sup> meeting. It is further submitted that both the resolution applicants were advised for removal of deficiencies in plans and to clarify observations of Process Advisors on Section 29A qualification in the 9<sup>th</sup> meeting of CoC held on 12.07.2019.

17. The resolution plans submitted by R1 & R2 were further reconsidered & reviewed in 10<sup>th</sup>, 11<sup>th</sup>, 12<sup>th</sup> and 13<sup>th</sup> meeting of the CoC held on 20.07.2019, 30.10.2019, 05.11.2019 and 09.11.2019 respectively. The CoC has also advised both R1 & R2 to revise their resolution plans to their satisfaction in the meetings.

18. It is further stated that in the 13<sup>th</sup> meeting of CoC dated 09.11.2019, the Resolution Plan submitted by R2 was found deficient under Section 30(2) (a) of the code. It is stated that the Plan submitted by R2 does not propose full payment of CIRP costs that may be incurred till the approval of the



plan by this Tribunal which is in contravention to the statutory provision under Section 30 (2) (a) of the Code. It is stated that the plan of R2 was found to be deficient in terms of Section 30 of the Code and the financial proposal is also stated to be inferior in comparison to the plan submitted by R1.

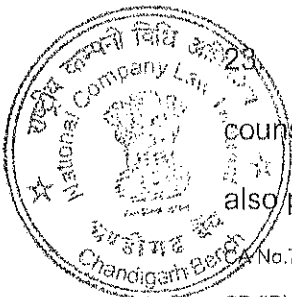
19. It is mentioned that both R1 & R2 were given time to submit final revised and compliant plans based on the negotiations/discussions with the CoC but only R1 submitted the revised plan within the timeframe and therefore, only one plan submitted by R1 remained in contention then.

20. It is submitted in the 14<sup>th</sup> meeting of CoC held on 13.11.2019, the resolution plan by Passavant Energy & Environment GmbH (R1) was approved with 100% voting in its favour. Copy of the complete resolution plan is at Annexure A-25 (Colly) of the application.

21. It is also submitted that CoC while accepting the bid had taken care of all the provisions and Regulations. It is prayed that the application may be allowed and resolution as approved by the CoC in the CIRP of the Corporate Debtor be approved.

22. The learned counsel for the RP submitted that as per the Amended Form H (Annexure A-1 of Diary No.7388, dated 24.12.2019), all the provisions of the Code and Regulations were complied with and that the approval of the resolution plan was made by 100 % voting share of the financial creditors in the meeting of the CoC held on 13.11.2019 and therefore, resolution plan submitted by Passavant Energy & Environment GmbH be approved.

We have carefully considered the submissions of the learned counsel for the RP and the learned Counsel for the resolution applicant and have also perused the record.



24. The corporate debtor was incorporated on 16.12.2011 and the CIRP proceedings were initiated against the corporate debtor by order delivered on 30.10.2018. The present application is filed for approval of the resolution plan submitted by M/s Passavant Energy & Environment GmbH (Resolution Applicant). The approval has been sought under the provisions of Section 31 (1) of the Code.

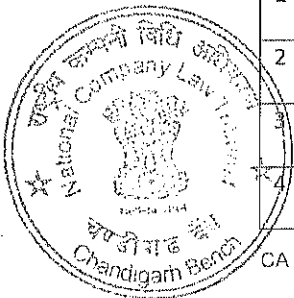
25. We may first of all state that after receipt, verification and collation of claims as discussed above, the IRP constituted the CoC as per the provisions of Section 21 of the Code. The details of the financial creditors, the distribution of voting share among them and the position of voting for the resolution plan is as under (para No.5 of Revised Form H):-

S.No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	RBL Bank Limited	50.03%	Voted for
2	Axis Bank	49.97%	Voted for
3	Passavant Energy & Environment India Private Limited	0.00%	
		100.00%	Voted for

26. The details of stakeholders under the resolution plan are given in Para 7 of Revised Form H (Diary No. 7388 dated 24.12.2019) :-

(Amount in Rs. Crores)

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	0	0	0	0
2	Other Secured Financial Creditors	57.59	57.59	6.46#	11.22%
3	Dissenting Unsecured Financial Creditors	0	0	0	0
4	Other Unsecured Financial Creditors	26.72	26.72	0	0



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5	Operational Creditors	122.01	13.63	0.30#	0.25%
	Government	0	0	0	0
	Workmen	0.42	0.42	0.08#	19.05%
	Employees	0	0	0	0
6	Other Debts and Dues	0.00	0.00	0.20#	-
Total		206.74	98.46	7.04#	3.41%

27. The compliance of the resolution plan has been given in Para No. 9 of Revised Form H are as follows:-

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 submitted proofs as part of expression of Interest.	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?	Affidavit confirming that the resolution applicant is not ineligible under Section 29A has been obtained. Confirmation of this is also provided in Part II clause 6 of the resolution plan.	Yes
Section 30(1)	Whether the Resolution Applicant has submitted an affidavit stating that it is eligible?	Affidavit in this regard has been submitted along with the resolution plan	Yes
Section 30(2)	Whether the Resolution Plan: (a) provides for the payment of insolvency resolution process costs? (b) provides for the payment of the debts of operational creditors? (c) provides for the management of the affairs of the Corporate debtor? (d) provides for the implementation and supervision of the resolution plan? (e) contravenes any of the provisions of the law	Relevant Clauses of resolution plan are: (a) Clause 1 of Part II (b) Clause 2 of Part II (c) Clause 5 of Part II (d) Clause 12 of Part II (e) Clause 8 of Part II	Yes

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	for the time being in force?		
Section 30(4)	Whether the Resolution Plan (a) is feasible and viable, according to the CoC? (b) has been approved by the CoC with 66% voting share?	It has been approved by CoC in its 14 <sup>th</sup> meeting held on 13 <sup>th</sup> Nov, 2019. It has been approved with 100% mandate of CoC members.	Yes
Section 31(1)	Whether the Resolution Plan has provisions for its effective implementation plan, according to the CoC?	Clause 12 of Part II and Part VI of the plan as noted by CoC.	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?	The matter was discussed in the 5 <sup>th</sup> CoC meeting leading to appointment of Transaction and Forensic auditors. The same has been minuted.	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?	Part IV of the resolution plan	Yes
Regulation 38(1A)	Whether the resolution plan includes a statement as to how it has dealt with the interests of all stakeholders?	Clause 3 of Part II	Yes
Regulation 38(2)	Whether the Resolution Plan provides: (a) the term of the plan and its implementation schedule? (b) for the management and control of the business of the corporate debtor during its term?	Clause 4 of Part II and detailed mechanism in Part VIII of the resolution plan	Yes



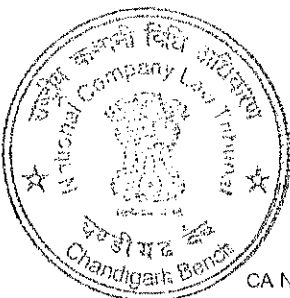
	(c) adequate means for supervising its implementation?		
38(3)	Whether the resolution plan demonstrates that - (a) it addresses the cause of default? (b) it is feasible and viable? (c) it has provisions for its effective implementation? (d) it has provisions for approvals required and the timeline for the same? (e) the resolution applicant has the capability to implement the resolution plan?	Clause 11 of Part II	Yes
39(2)	Whether the RP has filed applications in respect of transactions observed, found or determined by him?	Transaction audit report has not identified any such transactions.	No

\*Transaction audit of corporate debtor allotted to M/s K G Somani & Co. and there transaction audit report has not identified any preferential/undervalue/fraudulent/extortionate transaction

28. The approval of the resolution plan has been sought under Section 31 (1) of the Code, reading 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, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, 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."*



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29. The conditions provided for in Section 31(1) of the Code for approval of resolution plan are therefore:-

- (a) *The Resolution Plan is approved by the CoC under Section 30(4) of the Code;*
- (b) *The Resolution Plan so approved meets the requirements as referred to in Section 30(2) of the Code;*
- (c) *The Resolution Plan has provisions for its effective implementation.*

The satisfaction of the conditions is discussed below.

30. It is submitted by the RP that the resolution plan has been approved by a vote of 100% of voting share of the financial creditors and therefore, the conditions provided for by Section 30(4) of the Code are satisfied.

31. The provisions of Section 30(2) of the Code are 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 debts of operational creditors in such manner as may be specified by the Board which shall not be less than—*

*(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or*

*(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.*



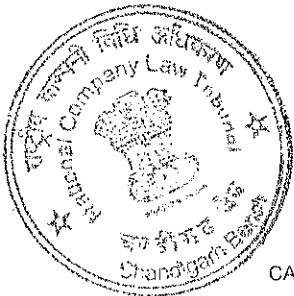
*Explanation 1.—For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.*

*Explanation 2.—For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—*

- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;*
  - (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or*
  - (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;*
- (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) *confirms to such other requirements as may be specified by the Board."*

32. The compliance of Section 30(2) of the Code is given in para No.9 of Form H (*supra*). The same is being further examined as under:-

- (a) **Section 30(2)(a):** The resolution plan (page 187 of the application and Clause 1 of Part II of the Resolution Plan) states that payment of insolvency resolution process cost estimated as on 30.06.2019 is ₹5.70 Crores and the Resolution Applicant proposes to pay ₹2 Crores within 30 days from the date of approval of resolution plan by the Adjudicating Authority. The Resolution Plan proposes to pay



the total cost in full by the Resolution Applicant within 270 days from the approval of the plan by the Adjudicating Authority. It is also stated in the plan that the CIRP Costs (to the extent unpaid) shall be paid in priority to any other creditors of the Corporate Debtor in the manner and from the source of funds as set forth in this Plan.

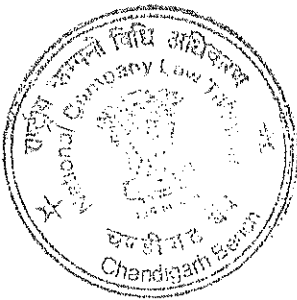
(b) **Section 30(2)(b):**The resolution plan (Page 187 of the application and Clause 2 of Part II of the Resolution Plan) states that the Liquidation Value does not even cover the outstanding debt of Secured Financial Creditors. Therefore, in the event of Liquidation, there would be no sum payable to the Operational Creditors (other than Workmen & Employee) or Liquidation value for them would be NIL. It is also stated that in the plan that the amount that would have been paid to such Operational Creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub section (1) of Section 53 is also assumed as NIL. The resolution plan proposes payment of Rs. 0.30 crores against the admitted amount of Rs. 13.63 crores, which is more than the Liquidation value as well the amount receivable by them as per Section 53 of the Code.

(c) **Section 30(2)(c):** Under Clause 1.4 of Part VII of the resolution plan (page 234 of the application), it is stated that the Resolution Applicant shall acquire 100 % shares of the



Corporate Debtor and upon the approval of the proposed resolution plan, the existing shares of the company will be extinguished. It is also stated that as per the resolution plan, all existing shareholders/promoters/founders shall stand fully diluted and extinguished. It is further stated that there would be reconstitution of the Board of Directors of the Corporate Debtor where in the directors as nominated by Resolution Applicant shall constitute the Board of Directors of the Corporate Debtor and the Resolution Applicant shall identify suitable talent for corporate debtor, set up strong internal control system and shall take charge of the management of corporate debtor from the CoC / Resolution Professional. The Resolution Applicant shall also retain key existing professionals of the corporate debtor besides bringing in relevant talent from its own set of employees or from its associates.

- (d) **Section 30(2)(d):** Under Clause 1.4 of Part VII of the resolution plan (Page 236 of the application), it is stated that in order to ensure that the Resolution Plan is implemented in accordance hereof and that the obligations undertaken herein are adhered to in letter and spirit, an appropriate supervisory committee shall be appointed within 10 Business Days of the approval of the plan by this Adjudicating Authority. Also, the CoC shall constitute the supervisory committee, which may comprise one representative of the Resolution Applicant,



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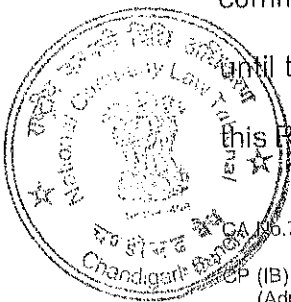
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(Admitted matter)

representative of the COC and a qualified Insolvency Resolution professional (which may or may not be RP) to be appointed by CoC in consultation with the resolution applicant, which shall monitor the implementation of the plan after the Effective Date and until closing date.

- (e) **Section 30(2) (e):** In Clause 8 of the Part II of Resolution Plan (Page No.190 of the application), it is stated that the Resolution Applicant confirms that this Plan is not in contravention of the provisions of any Applicable Law.

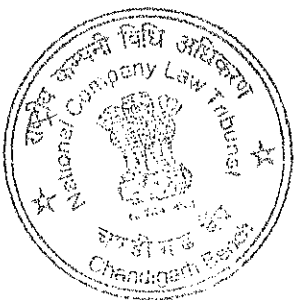
33. We are now examining the compliance of the proviso to Section 31(1) of the Code that the resolution plan has provisions for its effective implementation. Part VII (Revival Plan, Implementation and Management Control) of the resolution plan discusses that an appropriate supervisory committee shall be appointed within 10 Business Days of the approval of the plan by this Adjudicating Authority for the effective implementation of the resolution plan. It is also stated that the CoC shall constitute the supervisory committee, which may comprise one representative of the Resolution Applicant, representative of the COC and a qualified Insolvency Resolution professional (which may or may not be RP) to be appointed by CoC in consultation with the resolution applicant, which shall monitor the implementation of the plan after the Effective Date and until closing date. It is also submitted that the monitoring committee so appointed shall provide regular updates to the financial creditors, until the financial creditors receive the amounts payable to them as proposed in this Resolution Plan, would also ensure that all the assets of the Company remain



vested in the Company on an as is basis & free from all encumbrances. The Monitoring Committee, as stated in the plan, would issue an certificate that the Resolution Plan has been duly implemented and the payments contemplated in this Resolution Plan have been duly completed. It is also stated that the issuance of certificate by this committee shall be a discharge of the Resolution Applicant from their obligation to implement this Resolution Plan in accordance with its term.

34. We have discussed above that the requirements under Section 31(1) of the Code are satisfied in the present case. In para 4 of Form H the RP has certified 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. The RP has also certified that Mr. Mokhtar Haddad, Acting Managing Director of the resolution applicant M/s Passavant Energy & Environment GmbH submitted an affidavit pursuant to Section 30(1) of the Code confirming their eligibility under Section 29A of the Code to submit the resolution plan and the contents of the said affidavit are in order. The aforesaid affidavit is a part of Diary No.846, dated 30.01.2020. The RP has submitted that the resolution plan has been approved by the CoC with 100% voting share in accordance with the provisions of the Code and CIRP Regulations made there under and after considering the feasibility and viability and other requirements specified by the CIRP Regulations.

35. We shall now discuss the requirements of Regulation 39(4) of the Regulations. An Copy of Letter of Intent (LOI) dated 13.11.2019, duly accepted by M/s Passavant Energy & Environment GmbH, has been found



attached with the application wherein it is stated that the resolution applicant shall furnish an unconditional & irrevocable performance bank guarantee in India for an amount equivalent to 10 % of the total bid amount within 1 day of approval of plan by CoC for implementation of the resolution plan (Annexure A-28 of application). As per the requirement of performance security, a Bank Guarantee covering letter dated 10.12.2019 issued by RBL Bank for an amount of Rs.1,32,40,000/- as Bank Guarantee (Bank Guarantee No.PBGI00701900863) is placed on record and is a part of Diary No. 846 dated 30.01.2020. The copy of Bank Guarantee Amendment covering letter (dated 12.05.2020) confirming the extension of the Performance Bank Guarantee is also placed on record vide Spl. Diary No.68, dated 01.06.2020. The RP should ensure that the performance security is received as per the decision of the CoC.

36. It is also stated that the Resolution Professional have formed an opinion on the basis of Transaction Audit Report of M/s K G Somani & Co. that no transaction has been discovered or determined in the case of the Corporate Debtor under Sections 43,45,50, and 66 of the Code (Para 15 of the Resolution Plan).

37. When the matter was listed on 27.01.2020, the Resolution Professional was directed to file Form H with appropriate page numbers referring the plan and copy of the Bank Guarantee by day after tomorrow and the orders were reserved in CA No.1192/2019 and 77/2020. During the perusal of record, some clarifications were sought for and the following order was passed on

02.2020 :-



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(Admitted matter)

**"CA No.1192/2019 & 77/2020**

CA Nos.1192/2019 and 77/2020 are pertaining to the approval by the Adjudicating Authority to the Resolution Plan submitted by Passavant Energy and Environment GMBH for the Corporate Debtor Company i.e. Drake & Scull Water & Energy India Pvt. Ltd.. The orders in the said CAs were reserved on 27.01.2020. However during the course of further examination, it is noticed that at page 28 of the Resolution Plan (page 207 of CA No.1192/2019), it is stated that the existing claim from Passavant Energy and Environment India GMBH shall continue as it is in the books of corporate debtor from the approval of the plan and no interest shall be accrued/paid for the same during the tenure of this plan. However, at page 29 of the resolution plan, it is stated that the entire debt due to the Secured and Unsecured CoC Members shall stand satisfied, settled and extinguished, and no claims whatsoever, of any nature, either towards the principal dues, interest or penalty, shall subsist against the Corporate Debtor or the new promoters/management post payment. Passavant Energy and Environment India GMBH appears to be connected to the resolution applicant and it also appears that there is a contradiction between the statements made at pages 28 and 29 of the resolution plan. Further clarification is necessary from the Resolution Professional.

2. At page 39 of the resolution plan (page 218 of CA No.1192/2019), the resolution applicant has requested the NCLT for reliefs and concessions and has also stated that by approving resolution plan, the NCLT shall approve the waivers, reliefs and concessions asked for. However, in the application, the RP has not discussed whether the waivers, reliefs and concessions can ipso facto be treated as allowed on approval of the resolution plan. The matter therefore, requires clarification from the Resolution Professional.

4. In view of the same, the matter is listed for re-hearing today. At the request of counsel for the applicant to address the observations, list the matter on 27.02.2020."

38. IA 239 of 2020 was filed by the Applicant-Resolution Professional in order to clarify the above observations made by this Bench in the order dated 13.02.2020. The Resolution Professional enclosed the certified true copy of the Board Resolution dated 06.03.2020 of the Resolution Applicant and its affidavit dated 06.03.2020. The affidavit of the Resolution Professional dated 22.05.2020 is also appended to the said IA. The Resolution Applicant in its board meeting dated 06.03.2020 passes the following resolutions:-



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(Admitted matter)

**"Resolved That** the claim of M/s Passavant Energy and Environment India Pvt. Ltd. on M/s Drake & Scull Water & Energy India Private Limited shall be treated in accordance with law without any discrimination vis-à-vis other such creditors (if any) in the same class. Therefore, a clear clarification that no payment is proposed and shall be made to Passavant Energy and Environment India Pvt. Ltd. under this Resolution Plan and its claim shall stand extinguished.

**Resolved Further That** the Company clarifies that 'Reliefs and Concessions' sought in the Part V of the Resolution Plan are for keeping the commercial viability for revival of the Corporate Debtor. These concessions are not deemed to be allowed ipso facto and are subject to approval as may be granted/modified and allowed by Hon'ble Adjudicating Authority (NCLT, Chandigarh)."

The Resolution Applicant has filed affidavit dated 06.03.2020 confirming the said Board resolution. The Resolution Professional in its affidavit dated 22.05.2020 also confirmed the Board Resolution and affidavit of the Resolution Applicant to the effect that the claim of Passavant Energy and Environment India Pvt. Ltd. has also extinguished on approval of the Scheme and that the reliefs and concessions which was specifically granted only by this authority forms part of the Scheme.

39. As per part V of the resolution plan (page 218 of the application), the Resolution Applicant has prayed for various reliefs and concessions. It is observed that these reliefs and concessions cannot be granted as a matter of right to the Successful Resolution Applicant and would only be allowed if they are in accordance with the subsisting law on the present subject. Hence, it is clarified that only the reliefs and concessions, which are permissible under the Code pursuant to the approval of resolution plan by this Adjudicating Authority can be granted and the rest cannot be considered.

In view of the above discussion, the resolution plan submitted by M/s Passavant Energy & Environment GmbH as approved by the CoC under



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Section 30 (4) of the Code is hereby approved subject to comments in para No. 35 to 39 regarding performance security and reliefs and concessions as provided in the plan. The resolution, plan so approved shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

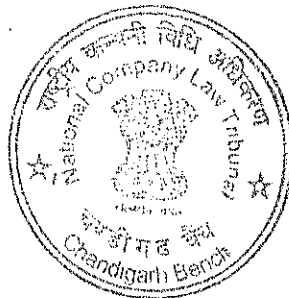
41. Under the provisions of Section 31 (3) of the Code, we also direct as under:-

- a) The moratorium order passed by the Adjudicating Authority under Section 14 of the Code on 30.10.2018 shall cease to have effect; and
- b) The RP shall forward all records relating to the conduct of the CIRP and the resolution plan to the Board to be recorded on its database.

CA No.1192/2019 is disposed of.

Sd/-  
(Raghu Nayyar)  
Member (Technical)

December 3rd, 2020  
AK



Sd/-  
(Ajay Kumar Vatsavayi)  
Member (Judicial)

**MINISTRY OF CORPORATE AFFAIRS**  
**RECEIPT**  
**G.A.R.7**

SRN : R78888294

Service Request Date : 29/12/2020

Payment made into : ICICI Bank

Received From :

Name : roc filings  
Address : 19, Barakhamba Road  
  
New Delhi, Delhi  
India - 110001

Entity on whose behalf money is paid

CIN: U40101HR2011PTC044592  
Name : DRAKE & SCULL WATER & ENERGY INDIA PRIVATE LIMITED  
Address : Unit No. 632, 633 & 634, 6th Floor,  
BTP Park Centra-Tower-B Building, Secto r-30  
Gurgaon, Haryana  
India - 122001

Full Particulars of Remittance

Service Type: eFiling

Service Description	Type of Fee	Amount(Rs.)
Fee For Form INC-28	Normal	600.00
<b>Total</b>		<b>600.00</b>

Mode of Payment: Credit Card- ICICI Bank

Received Payment Rupees: Six Hundred Only

Note: The defects or incompleteness in any respect in this eForm as noticed shall be placed on the Ministry's website ([www.mca.gov.in](http://www.mca.gov.in)). In case the eForm is marked as RSUB or PUCL, please resubmit the eForm or file Form GNL-4(Addendum), respectively. Please track the status of your transaction at all times till it is finally disposed off. (Please refer Rule 10 of the Companies (Registration offices and Fees) Rules, 2014) It is compulsory to file Form GNL-4 (Addendum) electronically within the due date whenever the document is put under PUCL, failing which the system will treat the document as invalid and will not be taken on record in accordance with Rule 10(4) of the Companies (Registration offices and Fees) Rules, 2014

Note : Filing is not done within the due date. Condonation of delay is required in this case.

**MINISTRY OF CORPORATE AFFAIRS**  
**RECEIPT**  
**G.A.R.7**

SRN : R79048245

Service Request Date : 29/12/2020

Payment made into : ICICI Bank

**Received From :**

**Name :** roc filings  
**Address :** 19, Barakhamba Road  
  
New Delhi, Delhi  
India - 110001

**Entity on whose behalf money is paid**

**CIN:** U40101HR2011PTC044592  
**Name :** DRAKE & SCULL WATER & ENERGY INDIA PRIVATE LIMITED  
**Address :** Unit No. 632, 633 & 634, 6th Floor,  
BPTP Park Centra-Tower-B Building, Secto r-30  
Gurgaon, Haryana  
India - 122001

**Full Particulars of Remittance**

Service Type: eFiling

Service Description	Type of Fee	Amount(Rs.)
Fee For Form INC-28	Normal	600.00
<b>Total</b>		<b>600.00</b>

**Mode of Payment:** Credit Card- ICICI Bank**Received Payment Rupees:** Six Hundred Only

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**Note :** Filing is not done within the due date. Condonation of delay is required in this case.

**Company Master Data**

CIN	U41000HR2013FTC049114
Company Name	PASSAVANT ENERGY & ENVIRONMENT INDIA PRIVATE LIMITED
ROC Code	RoC-Delhi
Registration Number	049114
Company Category	Company limited by Shares
Company SubCategory	Subsidiary of Foreign Company
Class of Company	Private
Authorised Capital(Rs)	12500000
Paid up Capital(Rs)	4572840
Number of Members(Applicable in case of company without Share Capital)	0
Date of Incorporation	10/05/2013
Registered Address	Unit No.- 110, First Floor, BPTP Park Centra Building, Sector-30 Gurgaon Gurgaon HR 122001 IN
Address other than R/o where all or any books of account and papers are maintained	-
Email Id	chandra.sekhar@passavant-ee.com
Whether Listed or not	Unlisted
ACTIVE compliance	ACTIVE compliant
Suspended at stock exchange	-
Date of last AGM	30/09/2019
Date of Balance Sheet	31/03/2019
Company Status(for e filing)	Active

**Charges**

Assets under charge	Charge Amount	Date of Creation	Date of Modification	Status
Movable property (not being pledge)	2008000	26/04/2018	-	CLOSED
Movable property (not being pledge); Entire current and movable fixed assets	550000000	18/03/2015	03/01/2018	OPEN
Movable property (not being pledge); Charge over the Aurangabad Project Receivables	309666000	07/10/2016	12/10/2018	OPEN

**Directors/Signatory Details**

DIN/PAN	Name	Begin date	End date	Surrendered DIN
08081288	RAJAS ARJUN GOLATKAR	26/02/2018	-	
08544137	SAADEDINE BAKLOUTI	23/08/2019	-	
08544415	CHANDRA SEKHAR JAIN	23/08/2019	-	