

**IN THE NATIONAL COMPANY LAW TRIBUNAL
MUMBAI BENCH, COURT – III**



I.A. No. 4135/2024

IN

C.P. NO. 4087(IB)/MB/2018

Under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 read with Rule 11 of the National Company Law Tribunal Rules, 2016.

In the matter of

Dolphin Offshore Enterprises (India) Ltd.

Unit No. 301, Zillion Junction of LBS Marg, CST Road, Kurla (W), Mumbai, Maharashtra, India – 400070.

[CIN: L11101MH1979PLC021302]

.... Applicant

Versus

Oil and Natural Gas Corporation Limited

Plot No. 5A- 5B Nelson Mandela Road, Vasant Kunj, South West Delhi, India, 110070.

[L74899DL1993GOI054155]

... Respondent 1

Office of the Assistant Commissioner of Central GST & Central Excise,

Belapur - III, Division, Commissionerate, Belapur 6th Floor, CGO Complex, CBD Belapur Navi Mumbai – 400614.

... Respondent 2

In the matter between:

Under Section 9 of the Code.

Supreme Hydro Engineering Pvt Ltd.

505/506, Man Excellenza, S.V.Road, Vile Parle (W), Mumbai - 400056.

[CIN: U74210MH1999PTC118698].

.... Operational Creditor

Versus



Dolphin Offshore Enterprises (India) Ltd.

Unit No. 301, Zillion Junction of LBS
Marg, CST Road, Kurla (W), Mumbai,
Maharashtra, India – 400070.

[CIN: L11101MH1979PLCO21302].

.... Corporate Debtor

Order Pronounced on: 05.02.2026

Coram:

Hon'ble Smt. Lakshmi Gurung, Member (Judicial)

Hon'ble Shri Hariharan Neelakanta Iyer, Member (Technical)

Appearances:

For Applicant:

Adv. Amir Arsiwala, Adv. Amey Hadwale,
Adv. Geeta Lundwani, Adv. Anjali Yadav.

For Respondent No.1

Adv. Niyati Merchant, Adv. Pulkit Awasthi i/b
MDP Legal

For Respondent No.2

Adv. Vijay Dubey, Adv. Abhishek R. Mishra

PER: MS. LAKSHMI GURUNG, HON'BLE MEMBER (JUDICIAL)


ORDER

I.A. NO. 4135 of 2024

1. This application has been filed by, **Dolphin Offshore Enterprises (India) Ltd ('Corporate Debtor'/ CD)**, under the new management after being acquired by the SRA under the insolvency proceedings. The application has invoked provisions of Section 60(5) of the Insolvency and Bankruptcy Code, 2016 (**'the Code/IBC'**) read with Rule 11 of the National Company Law Tribunal Rules, 2016, under residual jurisdiction, seeking the following prayers:

a) *Allow the present Application;*

b) *Pending hearing the present application Respondent No.2 shall be restrained from taking any measures for recovering any amounts from Respondent No.1 which are payable to Corporate Debtor.*

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- c) *Pass order(s) and/or directions(s), declaring that the Pre - CIRP dues of the Respondent No.2 are fully settled and or extinguished in terms of the Resolution Plan approved by this Tribunal.*
 - d) *Pass order(s) and/or directions(s) against Respondent No. 2 to withdraw its letters dated 30.01.2020 and 05.04.2024 issued to Respondent No.1.*
 - e) *Pass order(s) and/or directions(s), invoking the inherent powers of this Tribunal under Rule 11 of the NCLT Rules, and directing the Respondent No. 1 herein to immediately clear the outstanding dues of the Corporate Debtor, amounting to Rs. 1,75,02,553.57/- plus USD 1,07,678.15 in relation to Contract No. 2; and Rs. 22.14 Crores in relation to Contract No. 1 along with interest for delayed period.*
 - f) *Pass any other order or direction that this Tribunal deems fit and proper, in facts and circumstances of the present case.*

Brief Facts:


2. Shorn of unnecessary details, the brief facts required to be noticed are:

2.1 The Corporate Debtor was awarded following two contracts by the Oil and Natural Gas Corporation Ltd. (**Respondent No. 1/ R-1**):

- a) Notification of Award Ref No. MR/OW/MM/OGIP power to ESP/26/2011 dated 22.03.2012 read with agreement dated 12.04.2012 - Contract for OGIP-Power to ESP Project for interconnectivity through sub-sea composite power cable from 03 process platforms to 12 wellhead platforms where ESPs were proposed to be installed. The value of the contract was EURO 17,368,832 + INR 1,534,879,030/- (**Contract 1**).
- b) Notification of Award Ref No. MR/N&H/LSTK/08/15- 16/Structural Repair-HC Platform/N15MC15003 dated 16.05.2016 read with agreement dated 14.06.2016 for under water structural repair of HC Platform for USD 39,94,540.58/- (**Contract 2**).



3. With regards to Contract 2, an amount of Rs. 1,75,02,553.57/- plus USD 1,07,678.15 was payable by the R-1 to the Corporate Debtor. The same has also been admitted by R-1 in its reply.
4. With regards to Contract 1, the Corporate Debtor had claimed balance payment of Rs. 139.27 crores from Respondent No. 1, However, Respondent No.1 had disputed this amount.
5. In the meantime, Department of GST (**The Department/Respondent No. 2/ R-2**) had passed Order-In-Original No.24/New/RKM/Commr/2018-19 dated 31.10.2018 determining tax liability amounting to Rs.33,43,24,903/- along with applicable interest at appropriate rate and penalty of Rs.33,43,24,903/- and other penalty of Rs.20,500/- against the Corporate Debtor.
6. The Corporate Debtor had filed an appeal against the Order-In-Original No.24/New/RKM/Commr/2018-19 dated 31.10.2018 which was dismissed by Hon'ble CESTAT, Mumbai vide order No. IO/44/2019 dated 25.04.2019. Despite dismissal of the said appeal, the Corporate Debtor neither made any payment to the Department nor filed any appeal against the said order of Hon'ble CESTAT even after completion of 180 days.
7. The Assistant Commissioner (Anti Evasion) CGST & Central Excise Belapur Commissionerate, in exercise of power conferred upon him under Section 87(b)(ii) of Finance Act, 1994 relating to recovery from third party read with Section 174 of CGST Act, 2017 issued notice dated 30.01.2020 (**'Garnishee Notice'**) at R-1 directing that an amount of Rs.66,86,70,306/- payable to the Corporate Debtor be paid to CGST Department and in case of failure to comply with the said notice if any payment is released to the Corporate Debtor after receipt of the said notice then R-1 shall be deemed to be 'Assessee in Default'.
8. Therefore R-1 withheld the amount of Rs. 1,75,02,553.57/- plus USD 1,07,678.15, payable to the Corporate Debtor under Contract 1.

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9. Subsequently, Corporate Debtor was admitted the Corporate Debtor into CIRP vide an order dated 16.07.2020.
 10. During the Insolvency Process, Deep Industries Limited emerged as the Successful Resolution Applicant (**'SRA'**) whose plan was approved by the CoC in the meeting held on 07.02.2022.
 11. The Adjudicating Authority approved the Resolution Plan vide order dated 29.09.2022. As per the Resolution plan, R-2 was given Rs. 7,65,259/- (Service Tax Rs. 7,50,446/- + GST Rs. 14,813/-) towards their full and final settlement.
 12. R-1 in its routine course of action, had sent letter dated 13.01.2023, seeking balance confirmation from the Corporate Debtor stating that Rs. 1,75,02,553.57/- plus USD 1,07,678.15/- is payable to the Corporate Debtor as on 31.12.2022. R-2 sought confirmation by return mail and copy be marked to the statutory auditor, M/s S. Bhandari and Company LLP. The Corporate Debtor sent a letter dated 02.03.2023, confirming the aforementioned amount as outstanding from the R-1, and sought payment of the same.
 13. The Department filed I.A. bearing No. 1291/2023 seeking admission of their claim amounting to Rs.196,27,51,325/- and interest of Rs. 127,05,70,297/- & penalty Rs 59,90,57,395. This Tribunal vide order dated 11.04.2023, dismissed the said IA, as the resolution plan had already been approved and as per section 31(1) of the Code, all claims of the R-2 stood extinguished.
 14. The Corporate Debtor, vide a letter dated 21.04.2023, apprised the R-1 about the extinguishment of claims of the GST Department and requested the R-1 to release the outstanding payments of the Corporate Debtor.
 15. Meanwhile, for resolution of disputes in relation to claim submitted by Corporate Debtor under Contract 1, R-1 vide its notice dated 28.08.2023 constituted an Outside Expert Committee (**'OEC'**) to conciliate and help the parties to reach an amicable settlement. The OEC after detailed consideration



of the matter provided a recommendation report that R-1 shall refund Corporate Debtor an amount of Rs. 22.14 Crore as against the Corporate Debtor's claim of Rs 139.27 under Contract 1.

16. No payment was received, therefore Corporate Debtor sent letters dated 31.05.2023, 26.06.2023, 23.08.2023 and 02.09.2023 to the R-1, seeking payment of the outstanding dues. After repeated requests of Corporate Debtor, the R-1, vide a letter dated 27.12.2023, sought clarifications from the Respondent No.2 regarding the validity of the notice dated 30.01.2020, on account of which the R-1 had been withholding the outstanding payments.
17. The R-2 vide reply dated 28.03.2024 confirmed that, the service tax and GST dues of the Corporate Debtor had been paid as per the approved resolution plan and that the notice dated 30.01.2020 did not hold ground. Hence, the R-1 was informed of the removal of all impediments in releasing the payment of outstanding dues to the Corporate Debtor.
18. The Corporate Debtor, once again vide letter dated 10.04.2024 requested the Respondent no.1 to pay the outstanding dues. The R-1, vide a letter dated 26.06.2024, advised the Corporate Debtor to obtain order from appropriate court including NCLT for release of payment.
19. In the meantime, the R-2 sent letter dated 31.07.2024 to R-1 stating that they are in process of taking legal opinion in the matter and till that time its earlier notice dated 30.01.2020 issued under 87 of the Finance Act 1994 will be in force.
20. Under the above background the Applicant has filed the present application seeking reliefs as mentioned in Para 1 above. The R-1 and R-2 have filed their respective replies and have not disputed the factual matrix of the present case.
21. While R-1 has submitted that they are willing to release the payment to the Applicant on any order passed by this Tribunal. R-2's stand is that if pre-



CIRP dues are extinguished then SRA cannot claim the amount due to the Corporate Debtor for the work done prior to the CIRP, violating the payment of Service tax/GST dues.

FINDINGS/OBSERVATIONS

22. Heard the Learned Counsels for the parties and have perused the material on record.
23. Learned Counsel for the Applicant would submit that the resolution plan, once approved, is binding on all stakeholders including the Central Government, any State Government or any local authority to whom a debt is due.
24. Learned Counsel for the Applicant would further submit that on account of hindrances created by R-2, R-1 is unwilling to release outstanding dues of the Corporate Debtor which is in violation of clause 9.4.1 of the approved resolution plan.
25. Learned Counsel for the Applicant would further submit that, despite order dated 11.04.2023 passed by this Tribunal, R-2 is taking measures to recover the said amount from the debtors of the Corporate Debtor. In spite of producing certified copies of the order of this Tribunal and the resolution plan, the R-1 refuses to pay the outstanding dues to the Corporate Debtor. Therefore, the applicant is seeking directions to R-1 to release the dues of the Corporate Debtor.
26. Learned Counsel for the R-1 would submit that, R-1 has withheld the amount of INR 1,75,02,553.57/- plus USD 1,07,678.15 payable to the Corporate Debtor in view of the notice dated 30.01.2020 received from Respondent No.2. The R-1 has submitted that it is willing and ready to pay the aforesaid amount on directions of this Tribunal.
27. Learned Counsel for the R-2 would submit that the present petition is not maintainable, as the dues of the Department are of the Pre CIRP-period and no efforts or endeavours were made by the Resolution Professional during



CIRP to repatriate the Pre-CIRP amount to the corporate debtor which in turn would have been paid to the Department.

28. Learned Counsel for the R-2 would further submit that SRA shall also not be entitled to claim or recover such amount which belong to Pre-CIRP period wherein recovery of such amount has been duly initiated under the statutory creation as laid down in the Finance Act as it would lead to a revenue ramification and erosion of revenue to the government.
29. Having heard the parties, we are of the view that the facts of the case are squarely covered by the judgment of Hon'ble Supreme Court in the case of ***Ghanshyam Mishra & Sons (P) Ltd. vs. Edelweiss Asset Reconstruction Co. Ltd. (2021 SCC Online SC 313)***.
30. It is pertinent to note that R-2 had filed an I.A bearing No.1291 of 2023, after approval of the plan requesting this Tribunal to accept the claims of Respondent No.2. However, this Tribunal vide order dated 11.04.2023 dismissed the IA of the Respondent No.2 in following terms:

“Since the Resolution Plan has been already approved by this Tribunal vide its order dated 29.09.2022 all claims subsequent to approval of Resolution Plan automatically stands extinguish as per law laid down by the Hon'ble Supreme Court in the case of Ghanashyam Mishra And Sons ... vs Edelweiss Asset Reconstruction. In view of the above position the above Interlocutory Application is not maintainable and liable to be rejected. Accordingly, the above Interlocutory Application bearing No. 1291/2023 is rejected.”

31. Subsequently, the R-2 vide its letter dated 21.04.2023 informed the R-1 about extinguishment of their claim and requested the R-1 to release the payments of Corporate Debtor under Contract 2. The R-2 further, vide letter dated 28.03.2024 and 05.04.2024 informed the R-1 that, the service tax and GST dues of the Corporate Debtor had been paid as per the approved



resolution plan. The relevant extracts of letter dated 28.03.2024 is reproduced herein under:


“Hon’ble NCLT, Mumbai bench Court-III, vide the Resolution Plan dated 29.09.2022 ordered payment of Rs. 7,67,730 in government dues, out of which, Rs.7,65,295/- pertain to Service Tax and GST dues.

As per the order of the Hon’ble NCLT, M/s. Dolphin Offshore Enterprises (India) Ltd has made payment of Rs.7,65,259/- [Rs.7,50,446/- vide CTIN no.2301512043 dated 11.01.2023, Rs.1,960/- vide DRC-03 entry no. DC2701230041206 dated 06.01.2023 and Rs. 12,853/- vide DRC-03 debit entry no. DC2701230043073 dated 06.01.2023].

Since, the service tax and GST dues have been paid as per Hon’ble NCLT, Mumbai Bench Court -III, Resolution Plan dated 29.09.2022, this office letter F.V.GST/bel.Div.I/Dolphin-05/17-18/Pt.I dated 30.01.2020 does not hold ground.”

32. Thus, we note that R-2 has already taken a position that once the resolution plan is approved and payment has been received by it as per the resolution plan then its pre-CIRP dues stand extinguished. We are surprised to observe that even after taking a position, how a Government Department can take ‘U’ turn and communicate to R-1 vide order dated 31.07.2024, Notice dated 30.01.2020 will be in force till further communication. Relevant Extract of the said letter is reproduced below:

“In this regard, it is to inform that we are in the process of taking legal opinion in the matter, till the time the notice dated 30.01.2020 under Section 87 of the finance Act,1994 issued by the Assistant Commissioner (Anti- Evasion), CGST & CEX.,



*Belapur under F.No.V. GST/Bel Dn.I/R-I/Dolphin-05/17-18/Pt-I
will be in force till further communication ”*

33. We are amazed to note the conduct of R-2. *Firstly*, the stand of R-2 is unstable and its position is changing. R-2 after withdrawing its notice dated 30.01.2020 vide letter dated 21.04.2023, sent another letter dated 30.07.2024 that it is taking legal opinion and till then the earlier notice dated 30.01.2020 will be in force. R-2 as per its own letter dated 31.07.2024, it has stated that notice dated 30.01.2024 will be in force **till further communication** which means R-2 has not taken any confirmed stand. One of the core objectives of IBC is the timeline and no decisions can be kept pending for indefinite period.
34. *Secondly*, having already issued letter dated 28.03.2024 communicating to R-1 that its claims are extinguished and payment may be released to Corporate Debtor, R-2 could not have unilaterally changed its stand without even communicating to the Applicant or approaching this Tribunal.
35. *Thirdly*, on similar ground this Tribunal has already rejected its Interlocutory Application which was already accepted, acted upon and no appeal was filed. Therefore, the conduct of R-2 goes against the all canon of law and is entirely against the grain of the IBC for the following reasons:
- a. Section 31 (1) of IBC clearly states 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 that 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.

- b. In ***Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss ARC, (2021) 9 SCC 657***, the Hon'ble Supreme Court has categorically and authoritatively held that once a Resolution Plan is approved by the adjudicating authority then, all claims provided in the Resolution Plan stand frozen and the creditors including Central or State Government or any local authority shall be bound by such plan. The Hon'ble Supreme court in its conclusion in 95 (i) has concluded as follows:

CONCLUSION

95. *In the result, we answer the questions framed by us as under:*

(i) That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of a claim, which is not part of the resolution plan.”

36. In the light of section 31 of the Code and the legislative intent explained by the Hon'ble Supreme Court in Ghanshyam Mishra case (supra), it is abundantly clear that all the claims of GST Department stood frozen on the date of the approval of the resolution plan on 29.09.2022. Upon receipt of



the payment by the GST Department as provided in the Resolution Plan, all claims of the Department whether determined or undetermined, ascertained or unascertained, crystalized or uncrystallised stand extinguished.

37. In the wake of the above discussion, we hold that dues of R-2 from the Corporate Debtor stand extinguished and notice dated 30.01.2020 is no more applicable. Accordingly, **Prayer (c) stands allowed. Prayer (d)** being consequential prayer also **stands allowed.** Prayer (b) has become infructuous as the application is being finally disposed of. As far as prayer (e) is concerned, we direct R-1 to release the amount which is due to the Corporate Debtor.
38. Before parting with this order, we may observe that R-2 has raised an issue that when Corporate Debtor's all pre-CIRP liabilities get extinguished then SRA should also not be entitled to claim or recover any amount pertaining to pre-CIRP period for which third party recovery notice issued by the Department was existing before the initiation of moratorium. However, suffice to say that we are bound by this Tribunal's earlier order dated 11.04.2023, provisions of section 31 of IBC and judicial precedents which lay down the clear principle of law that once a resolution plan is approved by the Adjudicating Authority under Section 31(1) of the Code, all the claims as provided in the resolution plan stand frozen and all claims which are not part of the resolution plan stand extinguished and no person will be entitled to continue or initiate any proceedings in respect of such claims. There is no exception for the claims in respect of which a garnishee notice was served on a third party prior to initiation of CIRP. This issue is for the consideration of the framers of the law or the regulatory authorities to deliberate whether under such situations where garnishee notice for recoveries from third party was subsisting on the date of initiation of CIRP, then is SRA entitled to get amount released in its favour or not.
39. The IBBI may independently examine whether the Resolution Professional had discharged its duties diligently by including such huge amount of recoverable from R-1, in the Information Memorandum for the information



of all PRAs and whether such admitted amounts payable by R-1 were included in the valuation of the assets of the Corporate Debtor and what steps were taken by Resolution Professional during CIRP to recover receivable from R-1.

40. Copy of this order is to be forwarded to IBBI with reference to para 38 and 39 of this order.
41. In result, I.A.4135 of 2024 is allowed in terms of prayer (c) and (d) and stands **disposed of.**

SD/-

**HARIHARAN NEELAKANTA IYER
(MEMBER TECHNICAL)**

/Apurva/

SD/-

**LAKSHMI GURUNG
(MEMBER JUDICIAL)**