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**NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH**

PRESENT: HON'BLE SHRI RATAKONDA MURALI- MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING HELD ON 26.07.2019 AT 10.30 AM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA No.693/2018 & IA No.541/2018 in CP(IB) No.117/7/HDB/2018
NAME OF THE COMPANY	Lanco Teesta Hydro Power Ltd
NAME OF THE PETITIONER(S)	ICICI Bank Ltd
NAME OF THE RESPONDENT(S)	Lanco Teesta Hydro Power Ltd
UNDER SECTION	7 of IBC

Counsel for Petitioner(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
N. ASHWANI KUMAR	ADV FOR IRP	9052219194	NAK
Muzfa Satabkhan	RP	993067625 muzfa@thinkcapnl.	Muzfa

Counsel for Respondent(s):

Name of the Counsel(s)	Designation	E-mail & Telephone No.	Signature
Mr. Divij Kumar	Adv	9654982990 divijk@luthra.com	Divij Kumar
	for RA-NHPC		

S.V. Sai Phanihan for
P. Vikram in IA 541/18

Adv

9700942504

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ORDER

Orders passed in IA 693/2019. Resolution Plan is approved vide separate orders.

IA 541/2018 is listed on 09.08.2019


Member (J)

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IN THE NATIONAL COMPANY LAW TRIBUNAL

HYDERABAD BENCH, HYDERABAD

IA No. 693 of 2018

IN

CP(IB).No.117/7/HDB/2018

U/s 30 (6) and 31 of IBC, 2016

R/w Regulation 39(4) of IBBI (CIRP) Regulations, 2016

IN THE MATTER OF M/S. LANCO TEESTA HYDRO POWER LIMITED

Huzefa Fakhri Sitabkhan

Resolution Professional of Lanco Teesta Hydro Power Limited,

ADDRESS:

1012, Dalamal Towers, Free Pass Journal Road,

211, Nariman Point, Mumbai- 400021.

....Applicant

ICICI Bank Limited,

REGISTERED OFFICE:

ICICI Bank Tower, Near Chakli Circle,

Old Padra Vadodara, Vadodara, Gujarat- 390007.

..... Financial Creditor/ Petitioner

Lanco Teesta Hydro Power Limited,

REGISTERED OFFICE:

Plot No. 4, Software Units Layout,

HITEC City, Madhapur, Hyderabad- 500081.

.....Corporate Debtor

Date of order: 26.07.2019

Coram:

Hon'ble Shri Ratakonda Murali, Member (Judicial)

Parties / Counsels present:

Resolution Professional: Presented In Person.

Counsels for Resolution Professional: N. Ashwani Kumar, A. Raghuram.

Counsels for Committee of Creditors: Tushar Nagar, Rajesh Herur.

Counsels for Resolution Applicant : Divij Kumar, Anurag Singh.

Per: Shri Ratakonda Murali, Member (Judicial)-Author

Heard on:01.07.2019,10.07.2019,23.07.2019.

ORDER


THE BRIEF AVERMENTS MADE IN THE APPLICATION ARE AS FOLLOWS:


1. This Tribunal vide order dated 16.03.2018 admitted the Petition filed by ICICI Bank Limited under Section 7 of Insolvency & Bankruptcy Code, 2016 and Corporate Insolvency Resolution Process started against Lanco Teesta Hydro Power Limited/ Corporate Debtor.
2. The Applicant herein was appointed as Interim Resolution Professional who was subsequently confirmed as Resolution Professional in the 1st meeting of CoC conducted on 24.04.2018.
3. This Tribunal vide order dated 05.09.2018 extended the period of CIRP by 90 days under the provisions of Section 12 (2) of IBC, 2016 and the last date of conclusion of CIRP was on 11.12.2018.
4. The Applicant issued advertisement inviting expression of interest for submission of Resolution Plan from the prospective Resolution Applicants on 18.05.2018 and subsequently addendum to the same got published on 02.06.2018. Pursuant to above, the Applicant received 11 EOIs, out of which 10 met the eligibility criteria laid down

by CoC and the last date for submitting Resolution Plan was 02.11.2018.

5. The Resolution Plans submitted by NHPC Limited and SJVN Limited were discussed in the 12thCoC meeting. The Applicant avers the CoC appointed Feedback Infra Private Limited to evaluate the resolution plans and further taking into consideration the modification letters dated 09.11.2018 submitted by above two Resolution Applicants.
6. It is averred in the 14thCoC meeting held on 19.11.2018, few modifications were asked to be made by the Resolution Applicants and the same were re-submitted on 27.11.2018 and discussed in the 15thCoC meeting held on 30.11.2018. Thereafter in the 16thCoC meeting held on 05.12.2018, the Resolution Plan with modifications was approved with 100% voting share in favour of the Resolution Plan submitted by NHPC Limited
7. Hence the Applicant moved this Application under Section 30 (6) of the Code, seeking directions of this Tribunal to approve the Resolution Plan with modifications submitted by NHPC Limited. The Resolution Professional / Applicant herein is stated to have issued the letter of intent dated 05.12.2018 and the Resolution Applicant accepted the said LOI and submitted PBG for Rs.10,00,00,000/- which is marked as Annexure A-9.

BRIEF BACKGROUND OF RESOLUTION PROCESS:

1. The last date for submission of resolution plans was November 02, 2018 by 6:00 PM. Two entities, namely, NHPC Limited and SJVN Limited submitted their resolution plans. During the Twelfth CoC meeting the Resolution Professional apprised the CoC of the mandatory contents of the Resolution Plans submitted by NHPC Limited and SJVN Limited.
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2. Thereafter, the CoC appointed Feedback Infra Private Limited (Feedback Infra) to evaluate the resolution plans as per the approved evaluation matrix and consider the viability and feasibility of the Resolution Plans submitted by both the Resolution Applicants. Thereafter, the CoC in the Thirteenth CoC Meeting ratified the Evaluation carried out by Feedback Infra and declared NHPC Limited as H1 Resolution Applicant.
 3. The CoC then discussed the Resolution Plan with the Authorised Representative of the H1 Resolution Applicant and agreed with the opinion of Feedback Infra set out in the report dated November 19, 2018 that the said resolution plan will only be viable and feasible at a levelised tariff of Rs.4.07 per unit, as mentioned by the Resolution Applicant in the approved Resolution Plan. Hence, the CoC was of the view that the earlier termination of the PPA with MSEDCL (where the tariff is at Rs. 2.32 per unit) was essential for the viability and feasibility of the resolution plan submitted by NHPC Limited.
 4. In the Sixteenth meeting of the CoC held on December 05, 2018, the Resolution Plan submitted by the Resolution Applicant was approved with 100% votes in favour of approval of the Resolution Plan.
 5. Subsequently, the Applicant issued the Letter of Intent ("**LOI**") dated December 05, 2018 to the Resolution Applicant as directed by the CoC. Thereafter, the Resolution Applicant accepted the said LOI and submitted the Performance Bank Guarantee of Rs. 10,00,00,000/- (Rupees Ten Crore only). The said Performance Bank Guarantee has been renewed by the Resolution Applicant and is now valid till December 04, 2019.
 6. Resolution Applicant offered Rs. 907 Crores as Consideration to be paid within 90 days from the date approving the Resolution Plan by this tribunal and
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Resolution Professional submitted this Application on 17.12.2018 for approval of Resolution Plan before this tribunal.

7. Subsequent to the filing of the application for approval of the Resolution Plan before the Tribunal, an incident of theft/damage had taken place at the power house of the Corporate Debtor The Resolution Applicant requested for a joint inspection to ascertain the quantum of loss and also filed an Intervening Application before this Tribunal. The CoC appointed M/s. Tractebel Engineering Pvt. Ltd. to quantify the losses caused due to theft. They submitted their report dated April 10, 2019 and quantified the loss at Rs. 9,50,00,000/- (Indian Rupees Nine Crore Fifty Lakhs Only), which is filed along with the Additional Affidavit filed by the Resolution Professional dated June 06, 2019
8. The Resolution Applicant, i.e., NHPC Limited addressed a letter dated May 27, 2019 inter alia, stating that they propose to reduce the consideration amount under the approved Resolution Plan by Rs. 9,50,00,000/- (Indian Rupees Nine Crore Fifty Lakhs Only) in lieu of theft and damages suffered by the Corporate Debtor at the Project Site. It was further stated that the revised amount consideration would therefore, be Rs. 897,50,00,000/- (India Rupees Eight Hundred and Ninety Seven Crores and Fifty Lakhs Only) under the modified Resolution Plan. Vide the said letter, the Resolution Applicant requested the CoC to approve the modified Resolution Plan to reflect the above modification in the consideration.
9. The Resolution Applicant in its Letter also stated that subject to the CoC agreeing on the modification / revision, they will endeavor to make payment of the entire revised consideration upon expiry of 60 days but not later than 75 days from the date of approval of the modified Resolution Plan by this Tribunal and any recovery against the FIR

lodged with regard to the theft and damages at the Project Site, would be to the account of the CoC.

10. The Resolution Professional convened the Seventeenth CoC Meeting of the Committee of Creditors of the Corporate Debtor on May 29, 2019 to consider the modified Resolution Plan proposed by the Resolution Applicant. The CoC by 97.43% votes approved the modified Resolution Plan.

SAILENT FEATURES OF RESOLUTION PLAN

<u>SR. NO.</u>	<u>PARTICULARS</u>	<u>PROVISION IN THE RESOLUTION PLAN</u>	<u>REFERENCE</u>
1.	Background of Resolution Applicant	NHPC Limited, a Govt. of India Enterprise, was incorporated in the year 1975 with an authorised share capital of Rs. 200 crores and with an objective to plan, promote and organise an integrated and efficient development of hydroelectric power in all aspects. NHPC expanded its objects to include development of power in all its aspects through conventional and non-conventional sources in India and abroad. At present, NHPC is a Mini Ratna Category-I Enterprise of the Govt. of India with an authorised share capital of Rs. 15000 crores. NHPC is ranked as a premier organization in the country for development of hydropower. In the last preceding 5 years NHPC has completed 8 eight projects with the capacity of 1521 MW which included one Wind Power Project at Jaisalmer of 50 MW.	Regarding financial progress of NHPC in last 3 financial years the copy of Balance sheet is enclosed with the Resolution Plan in the Format-III as Annexure-C.
2.	UNDERTAKING BY RESOLUTION APPLICANT	Resolution Applicant stated by way of Undertaking that he is not disqualified from submitting a Resolution Plan in respect Lanco Teesta Hydro Power Limited pursuant to provisions of Insolvency and Bankruptcy code, 2016	Page No: 3439, Format 3A
3.	SOURCE OF FUNDING	Resolution Applicant/NHPC will take up the project by considering Debt : Equity ratio of 70:30. Resolution Applicant propose to fund the acquisition out of internal accruals, equity, and debt.	A Commitment letter from "Power Finance Corporation Limited" amounting to Rs. 4500 Crores for the Debt is enclosed at Page no.3483.

			A Comfort letter from "Rural Electrification Corporation Limited" amounting to Rs. 4500 Crores for funding the Debt Portion is enclosed at Page No: 3484.
4.	CAPITAL STRUCTURE OF THE RESOLUTION APPLICANT	Authorized Share Capital : 1500,00,00,000/- Issued, Subscribed and Paid up share capital : 1025,93,20,519/- Government of India Holding : 73.67%	
5.	DETAILS OF FAIR VALUE AND LIQUIDATION VALUE	The Resolution Professional appointed two registered valuers namely M/s. Adroit Technical Services Private Limited and G A Advisory Private Limited as per Regulation 27 of CIRP Regulations, 2016. The Average Fair value is Rs. 166.38 Crores and Liquidation Value is Rs. 132.08 Crores.	
6.	TOTAL CONSIDERATION OFFERED BY THE RESOLUTION APPLICANT UNDER THE MODIFIED PLAN	Rs.897,50,00,000/- (India Rupees Eight Hundred and Ninety-Seven Crores and Fifty Lakhs Only).	Page No. 89 of the Additional Affidavit
7.	PAYMENT TOWARDS FINANCIAL CREDITORS UNDER THE RESOLUTION PLAN	8,77,74,27,462/-	Page No. 89 of the Additional Affidavit
8.	PAYMENT TOWARDS OPERATIONAL CREDITORS UNDER THE RESOLUTION PLAN. (Other than Workmen and Employees)	11,12,44,239/-	Page No. 89 of the Additional Affidavit
9.	PAYMENT TOWARDS	18,45,819/-	Page No. 89 of the Additional Affidavit

	WORKMEN AND EMPLOYEES		
10.	PAYMENT TOWARDS CIRP COST	8,44,82,481	Page No. 89 of the Additional Affidavit

FINDINGS

1) I have heard the Counsel for Resolution Applicant and the Resolution Professional. This Application is filed under Section 30 (6) of Insolvency & Bankruptcy Code, 2016 (herein after referred to as "CODE") for approval of the Resolution Plan. The Resolution Plan is shown as FORMAT 5A at page nos. 3538-3593 of the Application. Resolution Applicant offered Rs. 907 Crores towards Consideration.

2) The Resolution Plan of NHPC Limited was approved by CoC with a 100% voting in favour of it. The Minutes of the 16thCoC meeting held on 04.12.2018 is shown as Annexure-A7 at page nos. 56-59.

The list of financial creditors of the Corporate Debtor, Lanco Teesta Hydro Power Limited being members of the CoC and distribution of voting share among them is as under:

Sl. No.	Name of Creditor	Voting Share (%)	Voting for Resolution Plan (Voted for / Dissented / Abstained)
1	ICICI Bank Limited	13.11	Voted for
2	Punjab National Bank	14.66	Voted for
3	India Infrastructure Finance Company Limited	23.64	Voted for
4	Central Bank of India	5.90	Voted for
5	UCO Bank	5.05	Voted for
6	Canara Bank	3.12	Voted for
7	Housing and Urban Development Corporation Limited	17.53	Voted for
8	Rural Electrification Corporation Limited	14.42	Voted for
9	Vijaya Bank	2.57	Voted for

- 3) This Application for Approval of Resolution Plan filed by the Resolution Professional on 17.12.2018. When the matter is pending for Approval of Resolution Plan theft was occurred at the powerhouse of the Corporate Debtor located at Tarkola Project site. A FIR has been lodged with the nearest police station by the site in-charge of the Corporate Debtor. The CoC appointed one M/s. Tractebel Engineering Private Limited as Inspecting Agency. The Inspecting Agency quantified the losses caused due to theft at Rs. 9,50,00,000/-. The Resolution Applicant moved an application before this tribunal for reduction of bid amount in lieu of the theft and damages suffered by the Corporate Debtor at the Project Site. This tribunal by order dated 13.05.2019 in IA No. 201 of 2019 directed the Resolution Professional to place it before the CoC for approval of revised bid amount. CoC in its 17th Meeting dated 29.05.2019 approved the revised consideration by 97.34% voted in favor of the revised consideration. The revised amount consideration is Rs. 897,50,00,000/- under the modified Resolution Plan. The entire consideration will be paid in one go by the Resolution Applicant upon expiry of 60 days but not later than 75 days from the date of approval of Resolution Plan by this tribunal. Thus, the total consideration payable by the Resolution Applicant under modified plan is Rs.897,50,00,000/- (India Rupees Eight Hundred and Ninety-Seven Crores and Fifty Lakhs Only).
- 4) The Resolution Professional appointed two registered valuers namely Adroit Technical Services Private Limited and GA Advisory Private Limited as per Regulation 27 of CIRP regulations. The details valuations are as follows:



Summary of Valuation Reports			
Rs. In Crores			
Sr. No.	Valuers Name	As on 16.03.2018	
		Fair Value	Liquidation Value
1.	Adroit Technical Services Private Limited	170.17	134.09
2	G A Advisory Private Limited	162.60	130.08
Average Fair and Liquidation Value (I and II)		166.38	132.08

5) The Resolution Professional filed Additional Affidavit dated.07.06.2019. The Distribution of bid amount to the stakeholders of the Corporate Debtor is shown as Annexure -11 at Page No: 89 of the Additional Affidavit. The Distribution of bid amount category wise is shown below:

DISTRIBUTION OF RESOLUTION PLAN PROCEEDS				
Sr. No.	Category of Creditor	Amount Claimed (In INR)	Amounts of Claims Admitted (In INR)	Amount Offered on Pro-Rata Sharing (In INR)
1.	Financial Creditors	28,27,41,17,325	25,03,17,20,263	8,77,74,27,462
2.	Operational Creditors(Other than Workmen and Employees)	5,30,01,95,345	31,72,49,521	11,12,44,239
3.	Operational Creditors (Only Workmen and Employees)	66,70,440	52,63,959	18,45,819
4.	Other Creditors (As per regulation 9A)	5,28,90,98,521	-	-
5.	CIRP Cost (Estimated)	-	-	8,44,82,481
Total		38,87,00,81,632	25,35,42,33,743	8,97,50,00,000
DISTRIBUTION OF RESOLUTION PROCEEDS AMONGST CLAIMS ADMITTED NET OF CIRP COSTS				
Sr. No.	Category of Creditor	Amounts of Claims Admitted (In INR)	Amounts of Claims Admitted (In %)	Amount Offered on Pro-Rata Sharing (In INR)
1.	Financial	25,03,17,20,263	98.73%	8,77,74,27,462

Creditors				
2.	Operational Creditors(Other than Workmen and Employees)	31,72,49,521	1.25%	11,12,44,239
3.	Operational Creditors (Only Workmen and Employees)	52,63,959	0.02%	18,45,819
4.	Other Creditors (As per regulation 9A)	-	-	-
Total		25,35,42,33,743	100.00%	8,89,05,17,519

THE PAYMENTS ENVISAGED TO THE FINANCIAL CREDITORS IS AS FOLLOWS:

Sr. No.	Name of Financial Creditors	Amount Claimed (In INR)	Claim Admitted (In INR)	Amount Disbursed (In INR)	Amount Offered on Disbursement Sharing (In INR)
1.	India Infrastructure Finance Company Limited	5,90,16,65,702	5,90,02,21,982	3,76,39,85,370	1,39,68,51,016
2.	Vijaya Bank	1,04,26,39,694	64,26,39,694	79,99,99,357	29,68,87,422
3.	ICICI Bank Limited	3,72,85,54,057	3,27,24,94,239	4,00,00,00,000	1,48,44,38,305
4.	Central Bank of India	2,71,95,45,500	1,47,33,70,087	1,78,81,55,016	66,36,01,450
5.	UCO Bank	2,26,61,32,547	1,26,13,93,114	1,48,35,00,000	55,05,41,056
6.	Canara Bank	85,52,10,289	77,78,76,376	49,18,09,731	18,25,15,301
7.	Housing and Urban Development Corporation Limited	4,37,52,47,215	4,37,52,47,215	3,66,10,58,990	1,35,86,54,050
8.	Punjab National Bank	3,71,65,10,226	3,66,01,52,385	4,25,00,00,000	1,57,72,15,699
9.	Rural Electrification Corporation Limited	3,59,95,96,683	3,59,95,96,683	3,34,84,00,167	1,24,26,23,367
10.	Lanco Power Limited	6,90,15,412	6,87,28,487	Pro-Rata Share	2,40,99,794
Total Amount		28,27,41,17,325	25,03,17,20,263	23,58,69,08,631	8,77,74,27,462

THE PAYMENTS ENVISAGED TO THE OEPRTATIONAL CREDITORS (EXCEPT EMPLOYEES AND WORKMEN) IS AS FOLLOWS:

Sr. No.	Operational Creditors (other than Workmen and Employee)	Amount Claimed (In INR)	Claim Admitted (In INR)	Amount Offered on Pro- Rata Sharing (In INR)
1.	M/s Brahmayya& Co., Chartered Accountants	18,60,108	16,25,995	5,70,159
2.	SNC Lavalin Engineering India Private Limited	4,32,400	4,07,400	1,42,856
3.	Surya Enterprises	22,42,200	22,42,200	7,86,232
4.	M/s V K Verma& Co, Chartered Accountants	3,47,910	3,47,910	1,21,995
5.	Lanco Thermal Power Limited	3,21,272	3,19,703	1,12,105
6.	Lanco Hydro Power Limited	4,43,476	4,41,908	1,54,956
7.	Lanco Power Limited	10,09,273	10,09,273	3,53,904
8.	DMR Hydro-engineering & Infrastructures Private Limited	5,24,750	4,72,250	1,65,595
9.	Tractebel Engineering Private Limited (Formerly Lahmeyer International (India) Private Limited)	8,16,272	7,54,398	2,64,531
10.	Deloitte Haskins & Sells LLP	1,35,195	1,35,195	47,407
11.	HemantSahai Associates	21,92,887	21,92,887	7,68,941
12.	Energy and Power Department, Government of Sikkim	5,28,90,98,522	30,65,29,322	10,74,85,177
13.	Globe Forex& Travels Limited	6,41,539	6,41,539	2,24,957
14.	Lanco Amarkantak Power Limited	1,29,541	1,29,541	45,424
Total Amount		5,30,01,95,345	31,72,49,521	11,12,44,239

THE PAYMENTS ENVISAGED TO THE OPERATIONAL CREDITORS (EMPLOYEES AND WORKMEN) IS AS FOLLOWS:

Sr. No.	Operational Creditors (Workmen and Employee)	Amount Claimed (In INR)	Claim Admitted (In INR)	Amount Offered on Pro- Rata Sharing (In INR)
1.	Mr. Bhanu Sharma	44,667	44,667	15,663
2.	Mr. ChitturiVenkataPulleswaraRao	4,04,894	4,04,894	1,41,977
3.	Mr. DokkaVenkataSathyaMurali	3,68,210	3,68,210	1,29,114
4.	Mr. SarvanandPandey	6,06,418	5,72,999	2,00,923
5.	Mr. GyanBhadra Kumar	28,00,000	27,48,481	9,63,761
6.	Mr. Sharad Kumar Singh	1,49,389	1,30,489	45,756
7.	Mr. Amit Banerjee	1,50,353	1,35,194	47,406
8.	Mr. AikanshGautam	12,254	12,254	4,297
9.	Mr. AvinashSundriyal	54,141	54,141	18,985
10.	Mr. C.J.Thomas	7,25,427	-	-
11.	Mr. NirajPradhan	5,62,057	-	-
12.	Mr. YugandharaBabuLella	5,78,430	5,78,430	2,02,828
13.	Ms. AnuradhaTomar (Wife of S.S. Tomar)	71,400	71,400	25,037
14.	Mr. Srajan Singh Tomar (Son of S.S. Tomar)	71,400	71,400	25,037
15.	Mr. Aaditya Singh Tomar (Son of S.S. Tomar)	71,400	71,400	25,037
Total Amount		66,70,440	52,63,959	18,45,819


6) The Resolution Professional has given certificate by way Memo in FORM-H as per Regulation 39 of CIRP Regulations,2016. In this certificate, the Resolution Professional certified that the Resolution Plan was approved by the CoC and it provides for:-

- (a) The payment of the Insolvency Resolution Process costs in priority to the repayment of other debts of the Corporate Debtor.
- (b) Payment of the debts of Operational Creditors in priority to any financial creditor, which shall not be less than the amount to be paid to the Operational Creditors, in the event of liquidation of Corporate Debtor under Section 53 of the Code.
- (c) The Resolution Professional also certified the Resolution Plan provides for the management of affairs of the Corporate Debtor.
- (d) The Resolution Plan provides implementation and its supervision.
- (e) The Resolution Plan prima facie does not contravene any of the provisions of the law for the time being in force and the

is not in contravention of any of the provisions of the law for the time being in force.

- (f) The Resolution Plan contains an affidavit stating that Resolution Applicant is eligible under Section 29A of the Code.
 - (g) The Resolution Plan includes a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the Corporate Debtor.
 - (h) The Resolution Plan provides for (i) its term and implementation schedules (b) the management and control of the business of the Corporate Debtor during its term; and (c) Adequate means for supervising its implementation.
 - (i) The Resolution Plan contains details of the Resolution Applicant and other connected persons to enable the Committee of Creditors to assess the credibility of such Applicant and other connected persons to take a prudent decision while considering the resolution plan for its approval.
- 7) The Resolution Professional filed copy of the Renewed Performance Bank Guarantee dated 03.06.2019 by way of Memo dated 23.07.2019. The Performance Bank Guarantee is of Rs. 10,00,00,000/- (Rupees Ten Crore only). The said Performance Bank Guarantee has been renewed by the Resolution Applicant and is now valid till December 04, 2019. I have seen the performance bank guarantee. The Resolution Professional also filed undertaking given by Resolution Applicant dated 10.01.2019 stating that it is not disqualified under the Code for submission of Resolution Plan which is shown at page No. 3439-3443.
- 8) The contention of the Learned Counsel for Resolution Applicant that this Tribunal to approve the Resolution Plan granting certain reliefs as stated in Resolution Plan. The Learned Counsel would contend the CoC with 100% of voting share approved the Resolution Plan submitted by the Resolution Applicant M/s.NHPC Limited. The Counsel would contend that Resolution Applicant has endeavored to maximize the value of the assets of Corporate Debtor. The Resolution Plan takes care of the interest of the stakeholders concerned which includes Financial Creditors, Operational Creditors as well as workmen and employees of Corporate Debtor and a provision is made for payment of CIRP costs. The bid amount is above the Liquidation value and Fair

requirements laid down under Section 30 R/w 31 of IBC, 2016 as well as CIRP Regulations 2016. The counsel would contend Resolution Applicant sought certain exemptions and / or waivers in the Resolution Plan which essentially required for effective implementation of the Resolution Plan. The counsel contended, the waivers and / or exemptions prayed are not only essential for effective implementation of the Resolution Plan but also to protect the interest of the stakeholders including workmen and employees. The exemptions and waivers sought for are intended for effective implementation of the Resolution Plan and without which the Resolution Plan cannot be implemented / executed.

- 9) The Resolution Professional filed this Application under Section 30, 31 of the IBC for approval of the Resolution Plan submitted by M/s. NHPC Limited. The Resolution Plan shall confirm to the requirements stated in 30 (2) of the Code. The Resolution Applicant is competent to file the Resolution Plan. The Resolution Professional has given certificate that Resolution Plan confirms to the requirements of Section 30 (2) of the IBC. The Resolution Plan is approved by the CoC with 100% voting share. Resolution Applicant made a request to the CoC for revision of bid amount on account of theft taken place at the premises of Corporate Debtor. CoC in its 17th Meeting dated 29.05.2019 approved the revised consideration by 97.34% voted in favor of the revised consideration. The revised amount consideration is Rs. 897,50,00,000/- under the modified Resolution Plan. The Resolution Professional filed copy of the Renewed Performance Bank Guarantee dated 03.06.2019 by way of Memo dated 23.07.2019. The Performance Bank Guarantee is of Rs. 10,00,00,000/- (Rupees Ten Crore only). The said Performance Bank Guarantee has been renewed by the Resolution Applicant and is now valid till December 04, 2019. The total claims of Financial Creditors admitted by the Resolution Professional is Rs.25,03,17,20,263/-. The total claims due to the Operational creditors other than workmen and employees admitted by the Resolution Professional is Rs. 31,72,49,521/-. The Resolution Professional has given undertaking to provide Rs. 897,50,00,000/- towards consideration. Rs. 8,77,74,27,462/- is provided for Financial Creditors and Rs. 11,12,44,239/- crores is provided to the Operational Creditors. The entire consideration will be paid in one go by the Resolution Applicant upon expiry of 60 days but not later than 75 days from the date of approval of Resolution Plan by this tribunal.
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- 10) The Resolution Applicant prayed certain waivers under the Resolution Plan which are as follows:
- a) Extinguishment of Past Dues to government or governmental authorities (Point 7.6 on Page 3559-3562 of the Main Resolution Plan Application Volume XVIII).
 - b) Extinguishment of liabilities against any part of creditors upon approval of Resolution Plan (Point 7.7 on Page 3562-3565 of the Main Resolution Plan Application Volume XVIII).
 - c) Exemption from payment of Tax and Stamp Duty Page 3573-3574 of the Main Resolution Plan Application Volume XVIII)
 - d) Immunity shall be granted to the Corporate Debtor from any actions and penalties under any laws for non-compliance of laws in relation the Corporate Debtor. Page 3574-3575of the Main Resolution Plan Application Volume XVIII)
 - e) The Resolution Applicant shall have a right to review and terminate any contract that was entered into piror to the Completion date. Point 16 (h) – Contract Page 3575-3576 of the Main Resolution Plan Application Volume XVIII).
- 11) The Resolution Applicant prayed exemption to pay stamp duty which may arise in implementation of the Plan. It is open to the Resolution Applicant to approach the appropriate authority seeking exemption and that appropriate authority to consider the waiver in favor of Resolution Applicant as per law.
- 12) The Resolution Applicant prayed for exemption from Tax Liabilites. The Resolution Applicant has nothing to do with the tax liability crystallized prior to commencement of CIRP. Regarding other tax waivers due to the Govt. authorities it is for the Resolution Applicant to approach the concerned authorities seeking waiver and the authorities concerned may consider the request. The Resolution Applicant is exempted from liability to pay tax arrears due by the Corporate Debtor prior to

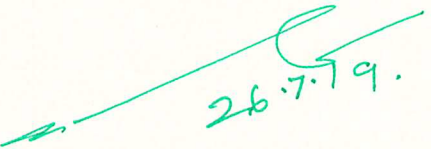
- 13) The Resolution Applicant is relieved of from the liabilities against any part of creditors upon approval of Resolution Plan. It is for the Resolution Applicant to review and terminates any contract that was entered into prior to the Insolvency Commencement date.
- 14) The Resolution Applicant seeking immunity from any actions and penalties under any laws. This relief cannot be granted as it is against law. If any fraud is involved in the affairs of Corporate Debtor prior to commencement of CIRP, if any investigation is required, the same cannot be prohibited as the same is against law. However Resolution Applicant/Corporate Debtor is not concerned with reference to any investigation started prior to the commencement of CIRP.
- 15) The Resolution Applicant has to obtain necessary approval if any required within one year as per Section 31 (4) of the Code.

ORDER

- 1) Thus, Resolution Plan submitted by Resolution Applicant M/s. NHPC Limited, which is approved by members of CoC having 100% voting share and Subsequent revision of bid amount by the Resolution Applicant is approved by members of CoC by 97.34% stands **approved** subject to reliefs stated above as per Section 31 (1) of the Code. In other words I am satisfied with the Resolution Plan as approved by Committee of Creditors under Section 30 (4) of the Code and it meets the requirement as referred to in Section 30 (2) of IBC, 2016 and therefore the Resolution Plan stands **approved** and the same is binding on Corporate Debtor, its employees, Members, Creditors, Guarantors and stakeholders involved in the Resolution Plan.
- 2) The moratorium order passed under Section 14 shall cease to have effect from today.
- 3) The Resolution Professional shall forward all records

Resolution Process and the Resolution Plan to the IBBI to be recorded on its database.

- 4) The Resolution Applicant shall obtain necessary approval required under any law for the time being in force within a period of one year from the date of approval of the Resolution Plan or within such period as provided for in such law.


26.7.19.

RATAKONDA MURALI
MEMBER (JUDICIAL)

VISWARAJ

(Law Research Associate)