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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

Reserved on: 13th October, 2025
Pronounced on: 9th January, 2026

\+ W.P.(C) 10431/2020 & CM APPL. 33016/2020

TATA STEEL LIMITED .....Petitioner

Through: Mr. Ramji Srinivasan, Senior Advocate with Mr. Shashank Gautam, Mr. Arvind Thapliyal, Mr. Siddharth Pandey, Ms. Saravna Vasanta and Ms. Shefali Munde, Advocates.

versus

MINISTRY OF CORPORATE AFFAIRS, THROUGH SECRETARY & ANR. .....Respondents

Through: Ms. Anubha Bhardwaj, CGSC with Ms. Ananya Shamshery and Mr. Vijay Misra, Advocates for R-1. Mr. Ashish Verma, Mr. Saksham Thareja, Mr. Akhil Ranganathan, Mr. Nikhil Thakur and Mr. Rahul Gupta, Advocates for R-2.

CORAM:
HON'BLE MR. JUSTICE AMIT SHARMA

JUDGMENT

AMIT SHARMA, J.

1. The present petition under Articles 226 and 227 of the Constitution of India, 1950, seeks the following prayers: -

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"1. To issue an appropriate writ, order or direction in the nature of Mandamus to the First Respondent, *i.e.* Ministry of Corporate Affairs, being the supervisory ministry in the implementation of IBC, to provide clarification to the questions of law raised in the present Writ Petition *qua* the IBC and confirm/declare that the approved Resolution Plan is binding on all creditors of the Petitioner, including the Second Respondent herein;

2. To issue an appropriate writ, order or direction in the nature of Certiorari setting aside the Order dated October 07.2020 passed by the Arbitral Tribunal;

3. To issue an appropriate writ, order or direction in the nature of Mandamus directing the Arbitral Tribunal to terminate the arbitration proceedings in Arbitration-I/Matter of 2009 and Arbitration II/Matter of 2006 as there being no cause of action surviving in favour of the Second Respondent and alleged claim of the Second Respondent having been extinguished abated and withdrawn;

4. To issue any other suitable writ, order or direction which the Hon'ble Court may deem fit and proper in the circumstances of the case;

5. To award cost of this writ petition to the Petitioner."

2. Relevant facts, as stated by the Petitioner, necessary for adjudication of the present petition are as under: -

i. Tata Steel Limited, being the successor-in-interest of Angul Energy Limited (formerly known as Bhushan Energy Limited) (hereinafter referred to as the "**Petitioner**") has preferred the present petition for the purposes of setting aside of the impugned order dated 07.10.2020 (hereinafter referred to as the "**Impugned Order**"), passed by the Learned Arbitral Tribunal, on an application preferred on behalf of the Petitioner (Respondent/Applicant therein), under Section 32(2)(c) read

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with Section 16 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as the "**Arbitration Act**") seeking termination of the Arbitral proceedings on the ground that the Resolution Plan dated 11.06.2018 extinguishes the claim filed against the Petitioner in the said proceedings;

ii. The Petitioner was incorporated under the provisions of the Companies Act, 1956 (hereinafter referred to as the "**Companies Act**") and is an unlisted public limited company within the meaning of the Companies Act;

iii. On 09.06.2006, the Petitioner entered into the following contracts with ISGEC Heavy Engineering Limited, *i.e.*, Respondent No. 2, who is a public listed company registered under the Companies Act: -

(a) Contract Ref. No. 8/BEL/09-10/039 dated 28.11.2009 for supply of 2x425 TPH CFBC Boilers for a total value of Rs.178 Crores excluding all taxes, duties and levies;

(b) Contract dated 09.06.2006 as amended on 12.03.2007 for supply of 4x250TPH CFBC Boilers for a total value of Rs. 175.10 crores excluding all taxes, duties and levies;

(c) Work Order Ref. No. 8/BEL/09-10/041 dated 21.12.2009 for Erection and Commissioning of the 2x425 TPH CFBC Boilers for a total value of Rs. 30 Crores excluding all taxes, duties and levies.

iv. On account of various disputes pertaining to non-performance of the contractual obligations by the Petitioner, Respondent No. 2 initiated Arbitral proceedings against the Petitioner before the learned Arbitral

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Tribunal, comprising of Hon'ble Mr. Justice (Retd.) R.C. Lahoti, Hon'ble Mr. Justice (Retd.) Vijendra Kumar Jain and Hon'ble Mr. Justice (Retd.) Manmohan Sarin. The said Arbitral proceedings were bifurcated by the learned Arbitral Tribunal into two separate arbitrations, namely Arbitration-I/Matter of 2009 and Arbitration-II/Matter of 2006 and both the proceedings were conducted by the learned Arbitral Tribunal simultaneously as the disputes between the parties were interconnected and inter-dependent;

v. During the pendency of the Arbitral proceedings, Corporate Insolvency Resolution Process (hereinafter referred to as "**CIRP**") under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "**IBC**") was initiated against the Petitioner by the State Bank of India, on 22.11.2017 before the Adjudicating Authority, National Company Law Tribunal (hereinafter referred to as "**Adjudicating Authority**") by way of a Company Petition bearing No. (IB)-530(PB)/2017;

vi. The aforesaid petition was admitted by the Adjudicating Authority *vide* order dated 08.01.2018, whereby a moratorium was imposed and an Interim Resolution Professional (hereinafter referred to as the "**IRP**") was appointed to look after the affairs of the Petitioner in terms of Section 13 of IBC;

vii. Subsequently, *vide* public announcement dated 10.01.2018, the IRP invited claims from all the creditors of the Petitioner;

viii. In view thereof, Respondent No. 2 submitted its claim before the IRP contending to be an Operational Creditor of the Petitioner, *vide* its

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affidavit and Form-B dated 22.01.2018 for an amount of INR 80,29,27,121/- (INR Eighty Crores Twenty Nine Lakhs Twenty Seven Thousand One Hundred and Twenty One Only);

ix. Subsequent thereof, the IRP *vide* e-mail dated 17.04.2018, communicated Respondent No. 2 that the claim of the latter is pending adjudication before the Learned Arbitral Tribunal and the said claim cannot be considered to be a crystalised liability of the Petitioner and is only a "contingent liability". The said communication is reproduced as under:

----- Forwarded message -----
From: IP - Bhushan Energy <IP.Benergy@IN.GT.COM>
To: Rohan Malik <rohan.malik@ymail.com>
Cc: navneetkgupta@gmail.com <navneetkgupta@gmail.com>; BEL - IP Team <Benergy.IPTeam@IN.GT.COM>; Meghna Bansal <Meghna.Bansal@IN.GT.COM>
Sent: Tuesday, 17 April, 2018, 8:01:08 PM IST
Subject: Re: Submission of proof of claim by M/s ISGEC Heavy Engineering Limited (Form B) against Bhushan Energy Limited

Dear Sir,

The claim of ISGEC is pending adjudication in arbitration, Bhushan Energy Ltd has categorically disputed the amount being claimed by ISGEC. The same cannot be considered to be a crystallised liability of Bhushan Energy Ltd.

In light of above, and legal advice sought, it will be advisable for Resolution Professional to not accept ISGEC's Form B and to treat the claim of ISGEC only as a 'contingent liability' for time being.

Regards,
Navneet K Gupta
9711470807

True Copy

x. Subsequently, a *List of Creditors* for the Petitioner was prepared, and in the said list, Respondent No. 2 was mentioned in *List B* titled as *Category: Operational Creditors other than Workmen and Employees*, whereby the claim of Respondent No. 2 was kept as "contingent" for

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the time being;

xi. On 11.06.2018 a Resolution Plan came to be submitted by Tata Steel Limited (hereinafter referred to as "**TSL**") before the Resolution Professional (hereinafter referred to as the "**RP**");

xii. In response to the IRP's e-mail dated 17.04.2018, Respondent No. 2, *vide* its reply dated 06.06.2018, disputed the categorization of its claim as contingent and asserted that the claim was not disputed and was payable on account of non-payment of supplied goods and services. The said communication is reproduced as under: -

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K. DATTA & ASSOCIATES
Advocates

BY SPEED POST/EMAIL

June 6, 2018

To,

Mr. Navneet Kumar Gupta
Interim Resolution Professional
Bhushan Energy Limited
520, 5th Floor, Caddie Commercial Tower,
Aerocity,
New Delhi-110037

Email: IP.Bhenergy@IN.GT.COM; navneetkgupta@gmail.com

Our Client: ISGEC Heavy Engineering Limited.

Subject: Submission of claim in respect of corporate insolvency resolution process against Bhushan Energy Limited.

Dear Sir,

We are in receipt of your email dated 17.04.2018, in respect of our client's claims as filed against Bhushan Energy Ltd.

It has been noticed by us that despite our client being an operational creditor, it has been stated by you that *"In light of above, and legal advice sought, it will be advisable for Resolution Professional to not accept ISGEC's Form B and to treat the claim of ISGEC only as a 'contingent liability' for time being."*

We, on behalf of our client, hereby disagree with your said classification and of treating our client's claim as an alleged 'contingent liability' when our client has submitted due and adequate proof of its claims.

You would appreciate that our client's claim is on account of unpaid dues in respect of the equipments and machineries (boilers) supplied & commissioned by our client to Bhushan Energy Ltd. Whilst it is undisputable that the said equipments and machineries are a part of the fixed assets (plant& machinery) of Bhushan Energy Ltd., our client's unpaid dues have been incorrectly categorized as 'contingent

B-41/8, Lower Ground Floor, Safdarjung Enclave, New Delhi-110029
Tel: +91-11-4[illegible] Fax: +91-11-4[illegible]
E-mail: [illegible]

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K. DATTA & ASSOCIATES
Advocates

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liability'. Our client's dues had been incorrectly denied by Bhushan Energy Ltd., due to their financial constraints and not for other reasons. No dispute can now be cooked up in respect of goods supplied and commission by our client.

Strictly without prejudice to our rights and contentions, inter alia to challenge the said incorrect categorization, we hereby request you to kindly indicate as to how you are proposing to provide for our client's dues in the resolution plan, when one is prepared and submitted by a resolution applicant and the same is considered and approved by you and/or the committee of creditors.

May we request you for an early response. Kindly treat this as most urgent.

Yours sincerely,
For K. DATTA & ASSOCIATES

(Rohan Malik)
Advocate

xiii. Subsequently, the RP, *vide* letter dated 30.07.2018, reiterated that the claim of Respondent No. 2 was disputed and uncrystallised, had been categorized as a "contingent liability", duly disclosed in the List of Creditors, and that its treatment in the Resolution Plan would be determined by the resolution applicant and the Committee of Creditors (hereinafter referred to as "**CoC**"). The said communication is as under: -

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BHUSHAN ENERGY LIMITED

BHUSHAN

Registered Office :
Bhushan Centre, 7th Floor,
Hyatt Regency Complex,
Bhikaji Cama Place, New Delhi-110066
Tel : 91-11-26714290 Fax : 91-11-46518611
CIN : U40106DL2005PLC140748

July 30, 2018

To,

K. Dutta & Associates
Advocates
B-4/66, Lower Ground Floor,
Safdarjung Enclave,
New Delhi – 110029

Attn: Mr. Rohan Malik

SUB: Submission of proof of claim by M/s. ISGEC Heavy Engineering Ltd. vide email dated January 22, 2018 in respect of the corporate insolvency resolution process ("CIR Process") of Bhushan Energy Limited ("BEL")

REF:

1. Letter dated June 6, 2018 issued by the legal counsel of ISGEC to Mr. Navneet Kumar Gupta, Resolution Professional of BEL ("Resolution Professional");

2. Email dated April 17, 2018 issued by the Resolution Professional to the legal counsel of ISGEC in response to email dated January 22, 2018; and

3. Email dated January 22, 2018 issued by the legal counsel of ISGEC to the Resolution Professional.

Sir,

I am in receipt of your letter dated June 6, 2018 issued on behalf of your client, ISGEC Heavy Engineering Ltd. ("ISGEC"), received by me ("Letter") in response to my communication to you dated April 17, 2018.

At the outset, I reiterate the contents of my email dated April 17, 2018 to you. Please note that as stated in my email, ISGEC's claim is a disputed one.

As you are aware, ISGEC's claim is subject matter of arbitration. The said claim cannot be considered as a crystallised liability but can only be treated as a contingent liability in the books of BEL.

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Please note that in November 2016, ISGEC had initiated arbitration, claiming an amount of INR 89.47 Crores against BEL. In the said arbitration, BEL has filed replies disputing the claim of ISGEC in its entirety, and has also raised a counter claim of INR 43.76 Crores against ISGEC. The claim of ISGEC was thus disputed by BEL, even prior to commencement of the CIR Process of BEL.

Vide Hon'ble NCLT's order dated January 8, 2018, CIR Process of BEL commenced and a moratorium was declared in terms of Section 14 of the Insolvency and Bankruptcy Code, 2016. I understand that in view of the order of moratorium, the arbitration proceedings have been kept in abeyance. Therefore, ISGEC's claim being a disputed one cannot be regarded as a crystallised debt and ought to be treated only as a "contingent liability".

In view thereof, I have categorised ISGEC's claim as "contingent liability" and have disclosed the same as such in the list of creditors. The same has been made available to, *inter alia*, committee of creditors of BEL and resolution applicant(s). The list of creditors is also displayed on BEL's website (bhushanenergy.co.in) for your reference.

As regards how contingent liability will be treated by a resolution applicant in a resolution plan (i.e. whether it will be provided for or not in the resolution plan) is entirely up to the said resolution applicant and the decision of the committee of creditors while considering the resolution plan in accordance with law. As a matter of disclosure, please note a resolution plan has been submitted and is under consideration of the committee of creditors.

Sincerely,

For and on behalf of Bhushan Energy Limited

Navneet Kumar Gupta
Resolution Professional
Bhushan Energy Limited

(emphasis supplied)

xiv. The Resolution Plan submitted by TSL was approved by 100% voting by the CoC of the Petitioner, by virtue of the voting held on 15.09.2018 and 16.09.2018;

xv. Subsequent thereto, the RP preferred an application bearing CA No. 929(PB)/2018 under Section 30(6) and 31 of IBC read with Regulation 39 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter referred to as "**Regulations, 2016**") praying for acceptance of the aforesaid Resolution Plan. The said application was allowed by

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the learned Adjudicating Authority *vide* its order dated 30.05.2019 and the Resolution Plan was accepted;

xvi. On 01.06.2019 the new management took charge of the Petitioner after successful completion of the CIRP;

xvii. On 27.02.2020 the name of the Petitioner was changed from "Bhushan Energy Limited" to "Angul Energy Limited" and a fresh certificate of incorporation was issued by the Registrar of Companies, Delhi. The said certificate is reproduced as under: -

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ANNEXURE "P-12"

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सत्यमेव जयते
GOVERNMENT OF INDIA
MINISTRY OF CORPORATE AFFAIRS

Office of the Registrar of Companies
4th Floor, IFCI Tower 61, New Delhi, Delhi, India, 110019

Certificate of Incorporation pursuant to change of name
[Pursuant to rule 29 of the Companies (Incorporation) Rules, 2014]

Corporate Identification Number (CIN): U40105DL2005PLC140748

I hereby certify that the name of the company has been changed from BHUSHAN ENERGY LIMITED to ANGUL ENERGY LIMITED with effect from the date of this certificate and that the company is limited by shares.

Company was originally incorporated with the name ANGUL ENERGY LIMITED.

Given under my hand at New Delhi this Twenty seventh day of February two thousand twenty.

DS DS
MINISTRY OF
CORPORATE
AFFAIRS I

KAMAL HARJANI

Registrar of Companies
RoC - Delhi

Mailing Address as per record available in Registrar of Companies office:
ANGUL ENERGY LIMITED

GROUND FLOOR, MIRA CORPORATE SUITES, PLOT NO 1 & 2, ISHWAR NAGAR, MATHURA ROAD, New Delhi, South Delhi, Delhi, India, 110065

xviii. In view of completion of the Insolvency proceedings of the Petitioner and upon lifting of the moratorium, Respondent No. 2 sent a communication dated 19.06.2019 to the learned Arbitral Tribunal for resuming the Arbitral proceedings;

xix. On 27.07.2019 the learned Arbitral Tribunal informed the parties that since the mandate of the tribunal had expired, parties may seek extension from the Court;

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xx. Subsequently, the Respondent No. 2 preferred an O.M.P.(Misc.) (Comm.) No. 305/2019 before this Court, in which an order dated 08.11.2019 was passed and mandate of the learned Arbitral Tribunal was extended by this Court for a period of 9 months;

xxi. During the course of the Arbitral proceedings, two separate applications were preferred on behalf of the Petitioner under Section 32(2)(c) of the Arbitration Act, in Arbitration-I/Matter of 2009 and Arbitration-II/Matter of 2006 before the learned Arbitral Tribunal *inter alia* praying for termination of the Arbitral proceedings, wherein the impugned order was passed, and accordingly, the present petition was preferred.

SUBMISSIONS ON BEHALF OF THE PETITIONER

3. Learned Senior Counsel appearing on behalf of the Petitioner drew attention of this Court to the impugned order and submitted that the same is contrary to the terms of the approved Resolution Plan and the intent and scheme of IBC. It was further submitted that the law is settled that the liability of the corporate debtor stands frozen upon the approval of the Resolution Plan and all claims which are not a part of the approved Resolution Plan stand extinguished and the same cannot be recovered thereafter.

4. Learned Senior Counsel appearing on behalf of the Petitioner further placed reliance on the decision of the Hon'ble Supreme Court in ***Ghanashyam Mishra and Sons Private Limited through Authorized Signatory v. Edelweiss Asset Reconstruction Company Limited Through the***

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Director and Ors[1], and contended that once a Resolution Plan is approved under Section 31 of the IBC, all claims stand frozen in terms of the Resolution Plan and any claim not forming part thereof, stands extinguished. The relevant portion of the judgment reads as under: -

> "**102.** In the result, we answer the questions framed by us as under:
>
> **102.1.** 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 resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.
>
> **102.2.** 2019 amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which I&B Code has come into effect.
>
> **102.3.** Consequently, all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under Section 31 could be continued."

5. It was further contended by the learned Senior Counsel that the impugned order undermines the binding value of the approved Resolution Plan and the law is well settled that a corporate debtor cannot be made to face undecided claims after the approval of the Resolution Plan. It was further submitted that if the impugned order is sustained, the effect of it will militate

[1] **(2021 SCC Online SC 313)**

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against the entire insolvency resolution process undergone by the Petitioner.

6. Learned Senior Counsel drew the attention of this Court to Section 5(21) of the IBC, and submitted that the said provision defines "operational debt" as a claim in respect of provision of the goods and services, including employment, or a debt in respect of the dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority. It was further submitted that the term "claim", as defined under Section 3(6) in the IBC, includes a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured. The said provisions are reproduced as under: -

> "**3. Definitions**.—In this Code, unless the context otherwise requires,—
>
> …(6) "claim" means—
>
> (a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;
>
> (b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;
>
> *** *** ***
>
> **5. Definitions.—** In this Part, unless the context otherwise requires,—
>
> …(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the 1 [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State

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Government or any local authority;"

7. It was thus contended that a conjoint reading of Sections 5(21) and 3(6) of the IBC clearly establishes that an operational debt includes all claims, whether or not such claims are reduced to judgment, fixed, matured, unmatured, disputed, undisputed secured or unsecured. All such claims shall fall under the definition of "operational debt" and all or any person to whom such disputed claims are owed, shall fall under the category of "operational creditors".

8. Learned Senior Counsel further submitted that the alleged claims of Respondent No. 2, as being sought in the Arbitral Proceedings, were for supply of goods and services, and further, since the alleged claims of Respondent No. 2, which were under dispute in the Arbitral Proceedings, the same fell under the definition of "claim" as defined under Section 3(6) of the IBC, and therefore, the alleged claims of Respondent No. 2 were to be considered as operational debt, which would make Respondent No. 2 an operational creditor to the Petitioner.

9. It was further submitted by the learned Senior Counsel that a conjoint reading of Sections 5(20), 5(21) and 3(6) of the IBC, would place Respondent No. 2 under the category of an operational creditor of the Petitioner, who willingly participated in the CIRP of the Petitioner by duly submitting its claims before the IRP.

10. It was contended that since the learned Arbitral Tribunal had ventured into the interpretation of terms and provisions as defined under the IBC, despite a categorical bar to that effect under Section 63 of the IBC, the

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impugned order is patently illegal and beyond the jurisdiction of the learned Arbitral Tribunal and the same is liable to be set aside. The said provision is reproduced as under: -

> **"63. Civil court not to have jurisdiction**.—No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction under this Code."

11. It was further submitted that by virtue of the non obstante clause contained in Section 238 of the IBC, the provisions of the Code have an overriding effect over all other laws. The said provision is reproduced as under: -

> "**238. Provisions of this Code to override other laws**.—The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

12. Learned Senior Counsel further submitted that the impugned order passed by the learned Arbitral Tribunal failed to appreciate the letter dated 30.07.2018 sent by the RP to Respondent No. 2 in its reply to letter dated 06.06.2018, whereby the RP categorically informed Respondent No. 2 that its claim was not a crystalized liability, but was a contingent claim, and the treatment of the same would depend upon the terms of the Resolution Plan which would finally be approved. It was submitted that the findings of the learned Arbitral Tribunal were limited to the communications dated 17.04.2018 and 06.06.2018, *vide* which the RP had informed Respondent No. 2 that the treatment of its alleged claims was entirely up to the successful resolution applicant and the decision of the CoC, and thus, the learned

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Arbitral Tribunal failed to appreciate that the RP had performed its duties in terms of the mandate as prescribed in the IBC.

13. It was further submitted by the learned Senior Counsel that the learned Arbitral Tribunal wrongly gave finding on the working of the RP, and ventured beyond its jurisdiction when commenting upon the working of the RP of the Petitioner. It was submitted that the RP performed his duties as per law and within the scope of IBC. It was further contended, without prejudice, that any grievance or comments on the working RP were to be made only before the Adjudicating Authority/Appellate Forum, as provided under the IBC, and hence the learned Arbitral Tribunal lacked jurisdiction in this regard, and therefore, as any grievance against the functioning of the RP is within the statutory domain of the IBC, and the finding of the learned Arbitral Tribunal is in contravention of law and the impugned order is liable to be set aside.

14. Learned Senior Counsel further submitted that the terms and provisions of a Resolution Plan submitted by a prospective resolution applicant are based upon the viability of the corporate debtor, and it is purely a commercial document. It was further submitted that the resolution applicant in the Resolution Plan stipulates its intention of taking over the corporate debtor based upon the assets and liabilities thereof, thus taking into consideration the commercial nature of the transaction.

15. It was submitted that the impugned order wrongly recorded that the claim of Respondent No. 2 was not a part of the Information Memorandum, whereas the name of Respondent No. 2 is duly reflected in the List of

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Operational Creditors of the Petitioner. It was further submitted that the approved Resolution Plan categorically bears the name of Respondent No. 2 in its Clause 8.6.2, whereby the claims of Respondent No. 2 had been extinguished, and thus, if the claim of Respondent No. 2 had not been a part of the Information Memorandum, then the name of Respondent No. 2 would have neither featured in the List of Creditors, nor in the approved Resolution Plan.

16. Learned Senior Counsel further placed reliance on the decision of the Hon'ble Supreme Court in ***K. Sashidhar v. Indian Overseas Bank***[2], and submitted that the CoC may accept or reject a Resolution Plan submitted by a resolution applicant and the commercial wisdom, as applied by the CoC in either accepting or rejecting the said plan, is non-justiciable. It was further submitted that in the event of approval of a Resolution Plan by the CoC, the treatment given to the creditors of the corporate debtor, both financial and operational, cannot be put to challenge by any person in any Court of law or authority. The commercial wisdom employed by the CoC is supreme and the said commercial wisdom is duly in play while considering the claims of the creditors of the corporate debtor. The relevant paragraph of the said judgment is reproduced as under: -

> **"52.** As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting

[2] **(2019) 12 SCC 150**

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> financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable."

17. Learned Senior Counsel contended that the impugned order challenges the commercial wisdom of the CoC and the same is contrary to the settled position of law. It was further contended that the CoC was aware of the treatment being given to the alleged claims of Respondent No. 2, however, despite the same, proceeded with the approval of the Resolution Plan applying its commercial wisdom. The learned Arbitral Tribunal, therefore, was precluded from questioning the commercial wisdom of the CoC and the approval of the treatment given to the claims of Respondent No. 2.

18. It was further submitted by the learned Senior Counsel that TSL,

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keeping in view the financial status of the Petitioner, submitted its Resolution Plan subject to certain conditions, including that it would not assume any liability towards claims pertaining to a period prior to the approval of the Resolution Plan, save and except those admitted by the RP. It was submitted that TSL had put a specific clause namely Clause 8.10.12 in the Resolution Plan, and in terms of the said clause, all claims pertaining to the Petitioner, including those arising out of Arbitral proceedings, stand fully discharged and settled. The said clause is reproduced as under: -

> "8.10.12. **Effect on Operational Creditors and Other Creditors**
>
> Upon approval of the Plan by the Adjudicating Authority, the provisions set out below shall be binding on the Operational Creditors and the Other Creditors, under Section 3 l (I) of the IBC:
>
> (i) Except to the extent of the Operational Creditors Settlement Amount proposed to be paid (without an obligation to pay) to the relevant Operational Creditors or the Liquation Value due to the Operational Creditors in accordance with the terms of Sections 8.2 and 8.4, the Company shall have no Liability towards any Operational Creditors and Other Creditors with regard to any claims (as defined under the IBC) relating in any manner to the period prior to the Closing Date (whether under Annexures 8, 9, 10, 11 or otherwise). Any such Liability shall be deemed to be owed and due as of the Insolvency Commencement Date, the Liquidation Value of which is NIL and therefore no amount is payable in relation thereto. **All such Liabilities shall immediately, irrevocably and unconditionally stand fully and finally discharged and settled with there being no further claims whatsoever, and all forms of security created or suffered to exist, or rights to create such a security, to secure any obligations towards the Operational Creditors and Other Creditors (whether by way of guarantee, bank guarantee, letters of credit or otherwise) shall immediately, irrevocably and unconditionally stand released and discharged, and the Operational Creditors and Other Creditors shall waive all**

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rights to invoke or enforce the same. **In accordance with the foregoing, all claims (whether final or contingent, whether disputed or undisputed, and whether or not notified to or claimed against the Company) of all Governmental Authorities (including in relation to Taxes and all other dues and statutory payments to any Governmental Authority), relating to the period prior to the Closing Date, shall stand fully and finally discharged and settled**."

(emphasis supplied)

19. Learned Senior Counsel submitted that the TSL while submitting its Resolution Plan, provided for claims which were recognized/categorized by the RP as "*sub-judice claims*" and TSL *vide* its Resolution Plan stipulated that all claims categorized as "*sub-judice*" shall be considered as full, due and payable as on the insolvency commencement date and not merely as contingent claims. It was further submitted that the Resolution Plan provided that since the liquidation value of the Petitioner, as available to the operational creditors, was assumed to be NIL, no amount was due and payable towards such "*sub-judice claims*", and the said division was taken keeping in view the commercial viability of Petitioner. Attention of this Court was drawn to Clause 8.6 of the Resolution Plan which deals with "Treatment of Claims on Matters that are *Sub Judice"*, and specifically to Clause 8.6.2. The said clause is reproduced as under: -

"**8.6.2. In respect of Sub Judice Claims from Operational Creditors (including without limitation, claims made by ISGEC Heavy Engineering Limited), each such Sub Judice Claim is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the TBC) and therefore the full amount of such Sub Judice Claims shall be deemed to be owed and due as of the Insolvency Commencement Date, the Liquidation Value of which is**

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> **assumed to be NIL, and therefore no amount is payable in relation thereto.** Please also refer to Section 8.2.1 (iii) regarding additional claims from Operational Creditors relating to a period prior to the Insolvency Commencement Date and Section 8. 10.12(iv) regarding no claims being initiated by the Operational Creditors during the period from the Effective Date until the Closing Date."
>
> (emphasis supplied)

20. It was submitted that the Resolution Plan of TSL, as approved by the CoC, was further approved by the Adjudicating Authority *vide* order dated 30.05.2019 and thus the same is a binding document in terms of Section 31(1) of the IBC. It was further submitted that the Adjudicating Authority had also approved the treatment given by TSL to the creditors of the Petitioner. The said provision of the IBC reads as under: -

> "**31. Approval of resolution plan**.—(1) 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.]"

21. Learned Senior Counsel submitted that a successful resolution applicant cannot be saddled with additional liability beyond the liability undertaken by it in the approved Resolution Plan. The Petitioner was acquired

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by TSL, keeping in view of the financial viability of its assets. Once the TSL's Resolution Plan was approved by the Adjudicating Authority, the financial exposure/obligation of TSL has to be governed by the approved Resolution Plan only and thus, as a direct consequence of the CIRP and the approved Resolution Plan, no amount towards any claim of Respondent No. 2 is due and payable by the Petitioner.

22. Learned Senior Counsel submitted that though the appellate/statutory remedies have been provided, however, jurisdiction of a Civil Court and Authorities (including the Arbitral Tribunal) have expressly been barred under the IBC by virtue of Section 63 of the IBC. The IBC being a complete Code, the legislature has consciously enacted the said provision to ensure that the functioning of the adjudicatory forums is not hindered and interfered with by other judicial and *quasi-judicial* bodies.

23. It was further submitted that the findings of the learned Arbitral Tribunal in the impugned order are in contravention to the fundamental principles and the legislative intent of the IBC. In terms of Section 63 of the IBC, the learned Arbitral Tribunal was not empowered to adjudicate upon the functioning of the RP or the interpretation of the term "creditor" and such issues fall exclusively within the jurisdiction of the Adjudicating Authority and the National Company Law Appellate Tribunal (hereinafter referred to as "**NCLAT**"). Therefore, the impugned order suffers from lack of inherent jurisdiction and is liable to be set aside.

24. It was further submitted by the learned Senior Counsel that the impugned order is perverse and there exists a patent lack of jurisdiction of the

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learned Arbitral Tribunal in returning the findings as given in the impugned order. It was further contended by the learned Senior Counsel that the findings of the Arbitral Tribunal are against the provisions of the approved Resolution Plan and the IBC.

25. Learned Senior Counsel placed reliance upon the judgment of the Hon'ble Supreme Court in ***Deep Industries Limited v. Oil and Natural Gas Corporation Limited and Anr.***[3] and the relevant paragraphs of the said judgment are as under: -

> **10.** Mr K.M. Nataraj, the learned Additional Solicitor General appearing on behalf of the respondent, took us through the facts and was at pains to point out that under the relevant clause of the contract, which is Clause 27.1, the notice invoking the arbitration must specify all points of dispute with the details of the amount claimed at the time of invocation of arbitration and not thereafter. He stressed the fact that even a cursory reading of the notice dated 2-11-2017 would show that it was confined to illegal termination and did not raise any plea as to the ban that was imposed for two years. He further went on to distinguish SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] stating that it only applied at a stage where an order of the Arbitral Tribunal was sought to be interfered with directly under Articles 226/227, in which context the seven-Judge Bench made its observations. The present is a case where the Tribunal's orders had travelled to the first appellate court, which appeal was then dismissed, as a result of which the first appellate court's order came directly under the supervisory jurisdiction of the High Court under Article 227. He then referred to Punjab Agro Industries Corpn. Ltd. v. Kewal Singh Dhillon [Punjab Agro Industries Corpn. Ltd. v. Kewal Singh Dhillon, (2008) 10 SCC 128] which is a judgment which distinguished SBP & Co. [SBP & Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] in a case in which an Article 227 petition was held to be maintainable against an order rejecting a Section 11 application for appointment of an

[3]**(2020) 15 SCC 706**

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arbitrator. He then referred to several judgments stating that the power under Article 227, though to be sparingly exercised, can certainly be exercised in cases of patent lack of jurisdiction, and that the present case is one such. He then defended the judgment under appeal stating that the judgment under appeal correctly held that in the circumstances of the present case no stay order could possibly have been granted by the arbitrator under Section 17 on the basis of fundamental principles contained in the Specific Relief Act, in that damages could always be granted, and that therefore, the injunction granted in the facts of the present case should have been denied.

*** *** ***

17. This being the case, there is no doubt whatsoever that if petitions were to be filed under Articles 226/227 of the Constitution against orders passed in appeals under Section 37, the entire arbitral process would be derailed and would not come to fruition for many years. At the same time, we cannot forget that Article 227 is a constitutional provision which remains untouched by the non obstante clause of Section 5 of the Act. In these circumstances, what is important to note is that though petitions can be filed under Article 227 against judgments allowing or dismissing first appeals under Section 37 of the Act, yet the High Court would be extremely circumspect in interfering with the same, taking into account the statutory policy as adumbrated by us hereinabove so that interference is restricted to orders that are passed which are patently lacking in inherent jurisdiction.

*** *** ***

21. It is true that in *Punjab Agro Industries Corpn. Ltd.* [*Punjab Agro Industries Corpn. Ltd.* v. *Kewal Singh Dhillon*, (2008) 10 SCC 128], this Court distinguished *SBP & Co.* [*SBP & Co.* v. *Patel Engg. Ltd.*, (2005) 8 SCC 618] stating that it will not apply to a case of a non-appointment of an arbitrator. This Court held: (*Punjab Agro Industries Corpn. Ltd. case* [*Punjab Agro Industries Corpn. Ltd.* v. *Kewal Singh Dhillon*, (2008) 10 SCC 128], SCC p. 132, para 9)

> "*9.* We have already noticed that though the order under Section 11(4) is a judicial order, having regard to Section

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> 11(7) relating to finality of such orders and the absence of *any* provision for appeal, the order of the Civil Judge was open to challenge in a writ petition under Article 227 of the Constitution. The decision in *SBP & Co.* [*SBP & Co.* v. *Patel Engg. Ltd.*, (2005) 8 SCC 618] does not bar such a writ petition. The observations of this Court in *SBP & Co.* [*SBP & Co.* v. *Patel Engg. Ltd.*, (2005) 8 SCC 618] that against an order under Section 11 of the Act, only an appeal under Article 136 of the Constitution would lie, is with reference to the orders made by the Chief Justice of a High Court or by the designate Judge of *that High Court*. The said observations do not apply to a subordinate court functioning as designate of the Chief Justice."
>
> (emphasis in *original*)
>
> What is important to note is that the observations of this Court in *Punjab Agro Industries Corpn. Ltd.* [*Punjab Agro Industries Corpn. Ltd.* v. *Kewal Singh Dhillon*, (2008) 10 SCC 128] were for the reason that no provision for appeal had been given by statute against the orders passed under Section 11, which is why the High Court's supervisory jurisdiction should first be invoked before coming to this Court under Article 136. Given the facts of the present case, this case is equally distinguishable for the reason that in this case the Article 227 jurisdiction has been exercised by the High Court only after a first appeal was dismissed under Section 37 of the Act."

26. Further reliance was placed upon the judgment of the Hon'ble Supreme Court in ***Punjab State Power Corporation Limited v. Emta Coal Limited and Anr.***[4]. The relevant paragraph of the judgment is reproduced as under: -

> "4. We are of the view that a foray to the writ court from a Section 16 application being dismissed by the arbitrator can only be if the order passed is so perverse that the only possible conclusion is that there is a patent lack in inherent jurisdiction. A patent lack of inherent jurisdiction requires no argument whatsoever — it must be the perversity of the order that must stare one in the face."

[4] **(2020) 17 SCC 93**

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27. Learned Senior Counsel further contended that the instant petition is maintainable and in support of the same, reliance was placed upon the judgment of this Court in ***Surender Kumar Singal and Ors. v. Arun Kumar Bhalotia and Ors.***[5], wherein while relying upon the decisions of the Hon'ble Supreme Court in ***Deep Industries*** (*supra*) and ***Punjab State Power Corporation*** (*supra*), this Court had held that a Writ petition under Articles 226 and 227 of the Constitution of India, 1950 would be maintainable against an order passed by an Arbitral Tribunal. The relevant paragraph of the said judgment is as under: -

> "**25.** A perusal of the above-mentioned decisions, shows that the following principles are well settled, in respect of the scope of interference under Article 226/227 in challenges to orders by an arbitral tribunal including orders passed under Section 16 of the Act.
>
> (i) An arbitral tribunal is a tribunal against which a petition under Article 226/227 would be maintainable;
>
> (ii) The non-obstante clause in section 5 of the Act does not apply in respect of exercise of powers under Article 227 which is a Constitutional provision;
>
> (iii) For interference under Article 226/227, there have to be 'exceptional circumstances';
>
> (iv) Though interference is permissible, unless and until the order is so perverse that it is patently lacking in inherent jurisdiction, the writ court would not interfere;
>
> (v) Interference is permissible only if the order is completely perverse i.e., that the perversity must stare in the face;
>
> (vi) High Courts ought to discourage litigation which necessarily interfere with the arbitral process;

[5]**2021 SCC OnLine Del 3708**

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(vii) Excessive judicial interference in the arbitral process is not encouraged;

(viii) It is prudent not to exercise jurisdiction under Article 226/227;

(ix) The power should be exercised in 'exceptional rarity' or if there is 'bad faith' which is shown;

(x) Efficiency of the arbitral process ought not to be allowed to diminish and hence interdicting the arbitral process should be completely avoided."

28. Learned Senior Counsel further contended that the impugned order undermines the binding value of the approved Resolution Plan. It was submitted that the law is now well settled that a corporate debtor cannot be made to face undecided or residual claims after the approval of a resolution plan, as the same would defeat the very object of the IBC. In support of the said contention, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta***[6], and the relevant paragraphs of the said judgment are reproduced as under: -

> **"41.** At the first meeting of the Committee of Creditors, which shall be held within 7 days of its constitution, the Committee, by majority vote of not less than 66% of the voting share of financial creditors, must immediately resolve to appoint the interim resolution professional as a resolution professional, or to replace the interim resolution professional by another resolution professional — *see* Sections 22(1) and (2) of the Code. Under Section 23(1), the resolution professional shall conduct the entire CIRP and manage the operations of the corporate debtor during the same. Importantly, all meetings of the Committee of Creditors are to be conducted by the resolution professional, who shall give notice of such meetings to the members of the Committee of

[6] **(2020) 8 SCC 531**

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Creditors, the members of the suspended Board of Directors, and operational creditors, provided the amount of their aggregate dues is not less than 10% of the entire debt owed. Like the duties of the interim resolution professional under Section 18 of the Code, it shall be the duty of the resolution professional to preserve and protect assets of the corporate debtor including the continued business operations of the corporate debtor — *see* Section 25(1) of the Code. For this purpose, he is to maintain an updated list of claims; convene and attend all meetings of the Committee of Creditors; prepare the information memorandum in accordance with Section 29 of the Code; invite prospective resolution applicants; and present all resolution plans at the meetings of the Committee of Creditors — *see* Sections 25(2)(*e*) to (*i*) of the Code.

42. Under Section 29(1) of the Code, the resolution professional shall prepare an information memorandum containing all relevant information, as may be specified, so that a resolution plan may then be formulated by a prospective resolution applicant. Under Section 30 of the Code, the resolution applicant must then submit a resolution plan to the resolution professional, prepared on the basis of the information memorandum. After this, the resolution professional must present to the Committee of Creditors, for its approval, such resolution plans which conform to the conditions referred to in Section 30(2) of the Code — *see* Section 30(3) of the Code. If the resolution plan is approved by the requisite majority of the Committee of Creditors, it is then the duty of the resolution professional to submit the resolution plan as approved by the Committee of Creditors to the Adjudicating Authority — *see* Section 30(6) of the Code.

*** *** ***

86. Financial creditors are in the business of lending money. The RBI Report on Trend and Progress of Banking in India, 2017-2018 reflects that the net interest margin of Indian banks for Financial Year 2017-2018 is averaged at 2.5%. Likewise, the global trend for net interest margin was at 3.3% for banks in the USA and 1.6% for banks in the UK in the year 2016, as per the data published on the website of the bank. Thus, it is clear that financial creditors earn profit by earning interest on money lent with low margins, generally being between 1 to 4%. Also, financial creditors are

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capital providers for companies, who in turn are able to purchase assets and provide a working capital to enable such companies to run their business operation, whereas operational creditors are beneficiaries of amounts lent by financial creditors which are then used as working capital, and often get paid for goods and services provided by them to the corporate debtor, out of such working capital. On the other hand, market research carried out by India Brand Equity Foundation, a trust established by the Ministry of Commerce and Industry, as regards the oil and gas sector, has stated that the business risk of operational creditors who operate with higher profit margins and shorter cyclical repayments must needs be higher. Also, operational creditors have an immediate exit option, by stopping supply to the corporate debtor, once corporate debtors start defaulting in payment. Financial creditors may exit on their long-term loans, either upon repayment of the full amount or upon default, by recalling the entire loan facility and/or enforcing the security interest which is a time consuming and lengthy process which usually involves litigation. Financial creditors are also part of a regulated banking system which involves not merely declaring defaulters as non-performing assets but also involves restructuring such loans which often results in foregoing unpaid amounts of interest either wholly or partially.

*** *** ***

88. By reading para 77 (of *Swiss Ribbons* [*Swiss Ribbons (P) Ltd.* v. *Union of India*, (2019) 4 SCC 17]) dehors the earlier paragraphs, the Appellate Tribunal has fallen into grave error. Para 76 clearly refers to the Uncitral Legislative Guide which makes it clear beyond any doubt that equitable treatment is only of *similarly situated creditors*. This being so, the observation in para 77 cannot be read to mean that financial and operational creditors must be paid the same amounts in any resolution plan before it can pass muster. On the contrary, para 77 itself makes it clear that there is a difference in payment of the debts of financial and operational creditors, operational creditors having to receive a minimum payment, being not less than liquidation value, which does not apply to financial creditors. The amended Regulation 38 set out in para 77 again does not lead to the conclusion that financial and operational creditors, or secured and unsecured creditors, must be paid the same amounts, percentage wise, under the resolution plan

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before it can pass muster. Fair and equitable dealing of operational creditors' rights under the said regulation involves the resolution plan stating as to how it has dealt with the interests of operational creditors, which is not the same thing as saying that they must be paid the same amount of their debt proportionately. Also, the fact that the operational creditors are given priority in payment over all financial creditors does not lead to the conclusion that such payment must necessarily be the same recovery percentage as financial creditors. So long as the provisions of the Code and the Regulations have been met, it is the commercial wisdom of the requisite majority of the Committee of Creditors which is to negotiate and accept a resolution plan, which may involve differential payment to different classes of creditors, together with negotiating with a prospective resolution applicant for better or different terms which may also involve differences in distribution of amounts between different classes of creditors.

*** *** ***

107. For the same reason, the impugned NCLAT judgment [*Standard Chartered Bank* v. *Satish Kumar Gupta*, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.

29. Further, reliance was placed upon the judgment of the Hon'ble

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Supreme Court in ***Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.***[7], and the relevant portion of the said judgment is reproduced as under: -

> "***Conclusion***
>
> **102.** In the result, we answer the questions framed by us as under:
>
> **102.1.** 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 resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.
>
> **102.2.** The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.
>
> **102.3.** Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

30. Learned Senior Counsel further submitted that the law as enunciated in ***Ghanashyam Mishra*** (*supra*), has been reiterated by the Hon'ble Supreme Court in ***Ruchi Soya Industries Limited v. Union of India and Ors***.[8] and the relevant portion of the said judgment is reproduced as under: -

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[7] **(2021) 9 SCC 657**
[8] **2022 SCC OnLine SC 455**

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"10. We find that the present appeals are squarely covered by the law laid down by this Court in *Ghanashyam Mishra & Sons (P) Ltd.* [*Ghanashyam Mishra & Sons (P) Ltd.* v. *Edelweiss Asset Reconstruction Co. Ltd.*, (2021) 9 SCC 657 : (2021) 4 SCC (Civ) 638] It will be relevant to refer to para 102 of the said judgment which reads as under : (SCC p. 716)

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

102.1. 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 resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued."

11. Admittedly, the claim in respect of the demand which is the subject-matter of the present proceedings was not lodged by Respondent 2 after public announcements were issued under Sections 13 and 15 IBC. As such, on the date on which the resolution plan was approved by the learned NCLT, all claims stood frozen, and no claim, which is not a part of the resolution plan, would survive.

12. In that view of the matter, the appeals deserve to be allowed

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only on this ground. It is held that the claim of the respondent, which is not part of the resolution plan, does not survive. The amount deposited by the appellant at the time of admission of the appeals along with interest accrued thereon is directed to be refunded to the appellant."

31. Learned Senior Counsel further placed reliance upon the Counter Affidavit dated 15.06.2021, filed on behalf of Respondent No. 1/MCA, and contended that the same supports the case of the Petitioner. In view thereof, reliance was placed upon paragraph No. 3 of the said affidavit, which is reproduced as under: -

"3. That in response to the contents of Para 6, it is submitted that section 31(1) of the Code provides that once the resolution plan is approved by the Adjudicating Authority, the same is binding on all the stakeholders including the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities. The Hon'ble Supreme Court, in the matter of *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors.* [Civil Appeal No. 8766-67/2019 and other petitions], also observed that a successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by the successful resolution applicant. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what is to be paid in order that it may then take over and run the business of the CD. It is submitted that the dispute is between two parties and provisions of the Code are self explanatory and complete Code in itself. Further, the Arbitral Tribunal is not empowered to decide the issues relating to the Code, as under section 60(5)(c) of the Code the Adjudicating Authority/ NCLT is empowered to deal with such issues."

32. Learned Senior Counsel further drew the attention of this Court to the Resolution Plan dated 11.06.2018, and in particular to Clause 8.1.4 thereof,

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which deals with the “Remaining Financial Debt”:

> **8.1.4. Remaining Financial Debt**
>
> (i) The Remaining Financial Debt shall be transferred from the Financial Creditors to the Resolution Applicant by way of novation on the Closing Date, and the aggregate consideration shall be the Debt Consideration. Upon completion of this step, the Resolution Applicant shall hold all rights in respect of the Remaining Financial Debt, which shall be payable by the Company to the Resolution Applicant. Nothing set out in Section 8.1.3 shall apply to the rights of the Resolution Applicant (or limit the same in any manner) in respect of the Remaining Financial. Debt, with regard to the period commencing as of the Closing Date; and
>
> (ii) The Remaining Financial Debt shall be unsecured and subordinated debt, and the rights of the Resolution Applicant with regard to the Remaining Financial Debt shall be subordinated to any new borrowings of the Company and any other instruments issued by the Company (other than equity shares) with effect from the Closing Date, as set out in **Annexure 5** and as shall be provided in the Novation Agreement proposed to be executed in this regard. Further, the Resolution Applicant shall not be entitled to repayment of the principal amounts of the Remaining Financial Debt (excluding conversion of such subordinated debt into equity), or be entitled to payment of interest prior to payment, repayment or redemption of the entire debt due to the Financial Creditors. The Remaining Financial Debt shall be classified as "standard assets" in the books of the Resolution Applicant.
>
> The provisions of this Section 8.1.4 shall be read harmoniously with the provisions of Section 8.11.3(vi) relating to the Guarantees (*as defined therein*) issued by the Guarantors (*as defined therein*).

33. Learned Senior Counsel further placed reliance on the judgment on the

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Hon'ble Supreme Court in ***Kalyani Transco v. Bhushan Power & Steel Ltd***.[9], and the relevant portion of the judgment is reproduced as under: -

> "**172.** We now examine the contentions raised by the appellant-Jaldhi. It is submitted that the appellant was the largest OC of the corporate debtor-BPSL and has been wrongly classified as a "contingent creditor". It is submitted that the appellant holds four international arbitral awards in its favour and the RP has admitted its claims to the tune of Rs. 1,51,37,57,761.65. It is submitted that such a reclassification of the appellant is against settled law is hugely detrimental to it as OCs were eligible to 50 per cent. of their crystallised claims whereas contingent creditors were to be paid only 10 per cent. as per the resolution plan. Per contra, the SRA-JSW submitted that Jaldhi has been rightly classified as a contingent creditor as it has treated itself as a contingent creditor before the NCLT and had later changed its stance. It is further submitted that the appellant withdrew various proceedings filed for enforcement by it before the Calcutta High Court in order to pursue an alternative remedy and therefore, the foreign awards could not be deemed to be binding under Indian law.
>
> **173.** We must firstly examine the stand taken by the appellant-Jaldhi before the NCLT from the approval order passed by the NCLT on September 5, 2019 [See page 636 of 233 Comp Cas.] :
>
> > "The contentions raised by Mr. A. S Chadha, learned senior counsel appointed by the Adjudicating Authority-NCLT to represent the cause of the operational creditors, have been that the resolution plan has illegally classified 'Jaldhi' as contingent creditor entitling to be paid only 10 per cent. of its claim subject to a cap of Rs. 35 crores, if it crystallised within two years from the date of approval of the resolution plan by the CoC. It is evident that Jaldhi is an operational creditor and its claim has been admitted by the resolution professional to the extent of Rs. 151.3 crores. Jaldhi has been maintaining that it has made a claim of Rs. 151.9 crores on the basis of 3 arbitration awards in its favour and against the corporate debtor and that it has initiated execution proceeding by filing

[9] **2025 SCC OnLine SC 2093**

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> 3 execution petitions before the hon'ble High Court of Calcutta. Those proceedings were pending when the CIRP was initiated on July 26, 2017. Later on, different submissions were made and it was claimed that its claim is contingent liability but not an operational debt and that contingent liability can never be resolved under a resolution plan. It was thus argued that the resolution applicant has to assume a risk to contingent liability devolving on the corporate debtor in future. In a separate application filed, Jaldhi again shifted which is stand by arguing that although its claim had been admitted by the RP but the resolution plan categorises its claim has an identified contingent liability.
>
> It was contended that it is the operational creditor and its claim as a contingent liability then it cannot be dealt within the resolution plan."

174. It can thus be seen that the stance adopted by the appellant is varying and inconsistent. On one hand, the appellant-Jaldhi had claimed to be a contingent creditor and raised the contention that its dues could not have been settled under the resolution plan and that SRA-JSW would have to assume the risk in case the contingent liability crystallises in the future. On the other hand, subsequently, the appellant shifted its stand and claimed itself to be an OC which was entitled to equal treatment with other OCs under the resolution plan.

175. Before we examine whether the international arbitral awards would be treated as contingent or crystallised debts, we must first examine the status of foreign awards in light of the provisions of the Arbitration and Conciliation Act, 1996 ["Arbitration Act" for short.] . Section 49 of the Arbitration Act reads thus:

"49. Enforcement of foreign awards.—Where the court is satisfied that the foreign award is enforceable under this Chapter, the award shall be deemed to be a decree of that court."

176. It can thus be seen that the foreign award will be deemed to be a decree of the court only when the court is satisfied that the foreign award is enforceable under Part II, Chapter I of the Arbitration Act. Therefore, a foreign award would not be automatically enforceable in India. For it to be enforceable in India, the court is required to be

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satisfied that such an award is enforceable under Part II, Chapter I of the Arbitration Act.

177. It is relevant to note that though the appellants had initiated proceedings for the execution of international arbitral award in its favour before the Calcutta High Court, the appellants did not prosecute the said proceedings, and the said proceedings were dismissed as withdrawn. Had the appellants pursued the said proceedings before the Calcutta High Court, the SRA-JSW would have had an opportunity of contesting the said proceedings. Not permitting the said proceedings to proceed in accordance with law, in our view, would not permit the appellants to contend that their claims had crystallised and settled as OCs entitling them to claim under the resolution plan.

178. It is further to be noted that the provisions of the IBC only differentiate between the OCs and the FCs. This was the reason that the RP in the present case admitted the claim raised by the appellant-Jaldhi as an OC of the corporate debtor. However, after the admission of a claim, the SRA-JSW had classified the appellant as a contingent creditor. Even though such a classification was made by the SRA-JSW, the same had been duly approved by the CoC who has the power to sanction the resolution plan or enter into negotiations to modify it prior to its approval. Such a decision squarely falls under the protected umbrella of the "commercial wisdom" of the CoC which has been given paramount status by this court in the case of *K. Sashidhar* v. *Indian Overseas Bank* [(2019) 213 Comp Cas 356 (SC); (2019) 12 SCC 150; (2019) 4 SCC (Civ) 222; 2019 SCC OnLine SC 257.] . It will be relevant to take note of the relevant paragraphs of the said judgment which read thus [See page 394 of 213 Comp Cas.] :

> "As aforesaid, upon receipt of a 'rejected' resolution plan the Adjudicating Authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under section 33(1) of the Insolvency and Bankruptcy Code. The Legislature has not endowed the Adjudicating Authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of the CoC much less to enquire into the justness of the rejection of the resolution plan

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by the dissenting financial creditors. From the legislative history and the background in which the Insolvency and Bankruptcy Code, has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under section 22 of the Sick Industrial Companies (Special Provisions) Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of the CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the Insolvency and Bankruptcy Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject-matter expressed by them after due deliberations in the CoC meetings through voting, as per voting shares, is a collective business decision. The Legislature, consciously, has not provided any ground to challenge the 'commercial wisdom' of the individual financial creditors or their collective decision before the Adjudicating Authority. That is made non-justiciable…

Whereas, the discretion of the Adjudicating Authority (NCLT) is circumscribed by section 31 limited to scrutiny of the resolution plan 'as approved' by the requisite per cent. of voting share of financial creditors. Even in that enquiry, the grounds on which the Adjudicating Authority can reject the resolution plan is in reference to matters specified in section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of the insolvency resolution process costs in a specified manner in priority to the repayment of other debts of

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the corporate debtor, (ii) the repayment of the debts of the operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under section 188 of the Insolvency and Bankruptcy Code. The powers and functions of the Board have been delineated in section 196 of the Insolvency and Bankruptcy Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under section 30(4) of the Insolvency and Bankruptcy Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under section 30(4) of the Insolvency and Bankruptcy Code…

Indubitably, the inquiry in such an appeal would be limited to the power exercisable by the resolution professional under section 30(2) of the Insolvency and Bankruptcy Code or, at best, by the Adjudicating Authority (NCLT) under section 31(2) read with section 31(1) of the Insolvency and Bankruptcy Code. No other inquiry would be permissible. Further, the jurisdiction bestowed upon the appellate authority (NCLAT) is also expressly circumscribed. It can examine the challenge only in relation to the grounds specified in section 61(3) of the Insolvency and Bankruptcy Code, which is limited to matters ‘other than’ enquiry into the autonomy or commercial wisdom of the dissenting financial creditors. Thus, the prescribed authorities (NCLT/ NCLAT) have been

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endowed with limited jurisdiction as specified in the Insolvency and Bankruptcy Code and not to act as a court of equity or exercise plenary powers.

In our view, neither the Adjudicating Authority (NCLT) nor the Appellate Authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors. The fact that substantial or majority per cent. of the financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75 per cent. (after amendment of 2018, with effect from June 6, 2018, 66 per cent.) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in Chapter III of the Insolvency and Bankruptcy Code, is avoidable, only if approval of the resolution plan is by a vote of not less than 75 per cent. (as in October, 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the specified per cent. (25 per cent. in October 2017; and now after the amendment with effect from June 6, 2018, 44 per cent.). The inevitable outcome of voting by not less than requisite per cent. of voting share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection…

The argument, though attractive at the first blush, but if accepted, would require us to rewrite the provisions of the Insolvency and Bankruptcy Code. It would also result in doing violence to the legislative intent of having consciously not stipulated that as a ground—to challenge the commercial wisdom of the minority (dissenting) financial creditors. Concededly, the process of resolution plan is necessitated in respect of corporate debtors in whom their financial creditors have lost hope of recovery and who have turned into non-performer or a chronic defaulter. The fact that the corporate debtor concerned was still able to carry on its business activities does not obligate the financial creditors to postpone the recovery of the debt due or to prolong their losses

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> indefinitely. Be that as it may, the scope of enquiry and the grounds on which the decision of 'approval' of the resolution plan by the CoC can be interfered with by the Adjudicating Authority (NCLT), has been set out in section 31(1) read with section 30(2) and by the Appellate Tribunal (NCLAT) under section 32 read with section 61(3) of the Insolvency and Bankruptcy Code. No corresponding provision has been envisaged by the Legislature to empower the resolution professional, the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT), to reverse the 'commercial decision' of the CoC much less of the dissenting financial creditors for not supporting the proposed resolution plan. Whereas, from the legislative history there is contra indication that the commercial or business decisions of the financial creditors are not open to any judicial review by the Adjudicating Authority or the Appellate Authority."
>
> (emphasis supplied)
>
> **179. It can thus be seen that this court has held that the Legislature purposefully did not include a means to challenge the commercial wisdom exercised by the CoC. This makes a challenge to the same non-justiciable. It has been further held that a challenge cannot be raised against the decision making of the CoC unless and until the grounds for challenge as given in the Code are satisfied. Any interference in the paramount objective of the CoC of exercising its commercial wisdom would amount to the court rewriting the law and going against the very objectives of the IBC."**
>
> (emphasis supplied)

34. Learned Senior Counsel had further placed reliance upon the judgment of the Hon'ble Supreme Court in ***Electrosteel Steel Ltd. v. Ispat Carrier (P) Ltd.***[10], and had contended that the facts of the said case are similar to that of the present case.

35. Learned Senior Counsel further submitted that the Hon'ble Supreme

[10] (2025) 7 SCC 773

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Court, in ***Swiss Ribbons (P) Ltd. v. Union of India***[11], had held that insolvency proceedings under the IBC are proceedings in rem, having effect against the world at large. The relevant paragraphs of the said judgment are reproduced as under: -

> "**43.** A financial creditor may trigger the Code either by itself or jointly with other financial creditors or *such* persons as may be notified by the Central Government when a "default" occurs. The Explanation to Section 7(1) also makes it clear that the Code may be triggered by such persons in respect of a default made to any other financial creditor of the corporate debtor, making it clear that once triggered, the resolution process under the Code is a collective proceeding in rem which seeks, in the first instance, to rehabilitate the corporate debtor. Under Section 7(4), the adjudicating authority shall, within the prescribed period, ascertain the existence of a default on the basis of evidence furnished by the financial creditor; and under Section 7(5), the adjudicating authority has to be satisfied that a default has occurred, when it may, by order, admit the application, or dismiss the application if such default has not occurred. On the other hand, under Sections 8 and 9, an operational creditor may, on the occurrence of a default, deliver a demand notice which must then be replied to within the specified period. What is important is that at this stage, if an application is filed before the adjudicating authority for initiating the corporate insolvency resolution process, the corporate debtor can prove that the debt is disputed. When the debt is so disputed, such application would be rejected.
>
> *** *** ***
>
> **82.** It is clear that once the Code gets triggered by admission of a creditor's petition under Sections 7 to 9, the proceeding that is before the adjudicating authority, being a collective proceeding, is a proceeding in rem. Being a proceeding in rem, it is necessary that the body which is to oversee the resolution process must be consulted before any individual corporate debtor is allowed to settle its claim. A question *arises* as to what is to happen before a

[11] **(2019) 4 SCC 17**

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> Committee of Creditors is constituted (as per the timelines that are specified, a Committee of Creditors can be appointed at any time within 30 days from the date of appointment of the interim resolution professional). We make it clear that at any stage where the Committee of Creditors is not yet constituted, a party can approach NCLT directly, which Tribunal may, in exercise of its inherent powers under Rule 11 of NCLT Rules, 2016, allow or disallow an application for withdrawal or settlement. This will be decided after hearing all the parties concerned and considering all relevant factors on the facts of each case."

36. In support of the aforesaid submissions, learned Senior Counsel further placed reliance on the following judgments: -

i. Anuptech Equipment Pvt. Ltd. v. Ganpati Co-Op Housing Society Ltd. and Ors.[12];
ii. Karad Urban Cooperative Bank Ltd. v. Swapnil Bhingardevay and Ors.[13];
iii. Ebix Singapore Pvt. Limited v. Committee of Creditors of Educomp Solutions Limited[14];
iv. Bhushan Power & Steel Ltd. v. Union of India & Ors.[15];
v. Tata Steel Ltd. v. CIT[16];
vi. Paschimanchal Vidyut Vitran Nigam Limited v. Raman Ispat Pvt. Ltd. and Ors.[17];
vii. RPS Infrastructure Limited v. Mukul Kumar and Anr.[18];
viii. Ultra Tech Nathdwara Cement Ltd. v. Union of India and Ors.[19];
ix. Sirpur Paper Mills Limited & Anr. v. Union of India[20];
x. Adhunik Metaliks Ltd. v. State of Odisha & Ors. W.P.(C) No.1553 of 2022;

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[12] 1999(2) Mh.L.J. 161
[13] (2020) 9 SCC 729
[14] (2022) 2 SCC 401
[15] 2022 SCC OnLine Del 2337
[16] 2023 SCC OnLine Del 6987
[17] (2023) 10 SCC 60
[18] 2023 SCC OnLine SC 1147
[19] 2020 SCC Online Raj 1097
[20] 2022 SCC OnLine TS 130

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xi. Sree Metaliks Ltd. v. Additional Director General & Ors.[21];
xii. Commissioner of Central Excise Pune II v. SS Engineers Civil Appeal No. 5700 of 2019;
xiii. Patna Highway Projects Ltd. v. State of Bihar and Ors.[22];
xiv. Pr. Commissioner of Income Tax v. Monnet Ispat and Energy Ltd., Order dated 10.08.2018 in SLP (C) No. 6483/2018;
xv. Innoventive Industries Ltd. v. ICICI Bank and Ors.[23];
xvi. Duncan Industries Limited v. A.J.Agrochem[24];
xvii. Unigreen Global Private Limited v. Punjab National Bank and Ors.[25];
xviii. Solidaire India Ltd. v. Fairgrowth Financial Services Ltd. and Ors.[26];
xix. Jotun India Private Limited v. PSL Limited 2018[27];
xx. State of Haryana Ors. v. Vinod Kumar and Ors.[28];
xxi. Srei Infrastructure Finance Ltd. v. Tuff Drilling Private Limited[29];
xxii. Pratap Technocrats (P) Ltd. and Others v. Monitoring Committee of Reliance Infratel Limited and Another[30];

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 1/MCA

37. Learned CGSC appearing on behalf of Respondent No. 1/MCA submitted that the IBC had been enacted to consolidate and amend the laws pertaining to reorganisation and insolvency resolution of corporate persons, in a time-bound manner, for maximisation of value of assets, promotion of

[21] **2023 SCC OnLine Del 941**
[22] **2024 SCC OnLine Pat 4238**
[23] **(2018) 1 SCC 407**
[24] **(2019) 9 SCC 725**
[25] **2017 SCC Online NCLAT 566**
[26] **(2001) 3 SCC 71**
[27] **2018 SCC OnLine Bom 20570**
[28] **1986 P&H 407**
[29] **2018 (11) SCC 470**
[30] **(2021) 10 SCC 623**

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entrepreneurship and availability of credit, and balancing the interests of all stakeholders. It was submitted that the IBC envisages a creditor-in-control model, wherein the CIRP is undertaken through a Resolution Plan.

38. It was further submitted that under the CIRP, the Resolution Professional is mandated to verify claims as on the insolvency commencement date in terms of Regulation 13 of the CIRP Regulations, and to maintain a list of creditors. The Resolution Professional is also required to prepare the Information Memorandum under Regulation 36(2) of the CIRP Regulations, which contains, *inter alia*, details of the corporate debtor, the list of creditors with the amounts claimed and admitted, and particulars of material litigations.

39. Learned CGSC further submitted that once a Resolution Plan submitted by a prospective resolution applicant is approved by the CoC, and thereafter by the Adjudicating Authority under Section 31(1) of the IBC, the same becomes binding on the corporate debtor and all stakeholders, including the Central Government, State Governments and local Authorities. In this regard, reliance was placed on the decision of the Hon'ble Supreme Court in ***Swiss Ribbons*** (*supra*).

40. It was further submitted that the IBC is a complete Code in itself. Reliance had been placed on the judgment of the Hon'ble Supreme Court in ***Innoventive Industries*** (*supra*) and the relevant portion of the said judgment is reproduced as under: -

> "**55.** It is settled law that a consolidating and amending Act like the present Central enactment forms a code complete in itself and is

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exhaustive of the matters dealt with therein. In *Ravula* Subba *Rao* v. *CIT* [*Ravula Subba Rao* v. *CIT*, 1956 SCR 577 : AIR 1956 SC 604] , this Court held: (SCR p. 585 : AIR p. 610, para 10)

"*10.* … The Act is, as stated in the Preamble, one to consolidate and amend the law relating to income tax. The rule of construction to be applied to such a statute is thus stated by Lord Herschell in *Bank of England* v. *Vagliano Bros.* [*Bank of England* v. *Vagliano Bros.*, 1891 AC 107 (HL)] : (AC pp. 144-45)

'… I think the proper course is in the first instance to examine the language of the statute, and to ask what is its natural meaning, uninfluenced by any considerations derived from the previous state of the law, and not to start with inquiring how the law previously stood, and then, assuming that it was probably intended to leave it unaltered.…'

We must therefore construe the provisions of the Indian Income Tax Act as forming a code complete in itself and exhaustive of the matters dealt with therein, and ascertain what their true scope is."

*** *** ***

58. There can be no doubt, therefore, that the Code is a Parliamentary law that is an exhaustive code on the subject-matter of insolvency in relation to corporate entities, and is made under Entry 9, List III in the Seventh Schedule which reads as under:

"**9.** Bankruptcy and insolvency"

41. Learned CGSC had further relied upon the judgment of the Hon'ble Supreme Court in ***Embassy Property Developments (P) Ltd. v. State of Karnataka***[31], wherein it was observed as under: -

11. It is beyond any pale of doubt that the IBC, 2016 is a complete code in itself. As observed by this Court in *Innoventive Industries Ltd.* v. *Icici Bank* [*Innoventive Industries Ltd.* v. *Icici Bank*, (2018) 1 SCC 407 : (2018) 1 SCC (Civ) 356 : AIR 2017 SC 4084] it is an

[31] (2020) 13 SCC 308

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> exhaustive code on the subject-matter of insolvency in relation to corporate entities and others. It is also true that the IBC, 2016 is a single Unified Umbrella Code, covering the entire gamut of the law relating to insolvency resolution of corporate persons and others in a time-bound manner. The Code provides a three-tier mechanism, namely, (*i*) the NCLT, which is the adjudicating authority, (*ii*) the Nclat, which is the appellate authority, and (*iii*) this Court as the final authority, for dealing with all issues that may arise in relation to the reorganisation and insolvency resolution of corporate persons. Insofar as insolvency resolution of corporate debtors and personal guarantors are concerned, any order passed by the NCLT is appealable to Nclat under Section 61 of the IBC, 2016 and the orders of the Nclat are amenable to the appellate jurisdiction of this Court under Section 62. It is in this context that the action of the State of Karnataka in bypassing the remedy of appeal to Nclat and the act of the High Court in entertaining the writ petition against the order [*Vasudevan* v. *State of Karnataka*, 2019 SCC OnLine NCLT 681] of the NCLT are being questioned.

42. It was further submitted by the Learned CGSC that Sections 60(5) and 63 of the IBC confer exclusive jurisdiction on the National Company Law Tribunal, in respect of any question of law or fact arising out of or in relation to insolvency resolution proceedings and bar the jurisdiction of Civil Courts and other fora. It was contended that issues pertaining to the CIRP, the Resolution Plan and the functioning of the Resolution Professional, fall within the domain of the Adjudicating Authority and cannot be adjudicated by any other fora, including an Arbitral Tribunal.

43. It was further submitted that the IBC provides a complete appellate mechanism under Sections 61 and 62, enabling any aggrieved person to prefer an appeal before the NCLAT and thereafter before the Hon’ble Supreme Court, and therefore, questions arising out of insolvency proceedings are

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required to be addressed only within the statutory framework of the IBC. The said provisions are reproduced as under: -

> "**61. Appeals and Appellate Authority**.—(1) Notwithstanding anything to the contrary contained under the Companies Act 2013 (18 of 2013), any person aggrieved by the order of the Adjudicating Authority under this part may prefer an appeal to the National Company Law Appellate Tribunal.
>
> (2) Every appeal under sub-section (1) shall be filed within thirty days before the National Company Law Appellate Tribunal:
>
> Provided that the National Company Law Appellate Tribunal may allow an appeal to be filed after the expiry of the said period of thirty days if it is satisfied that there was sufficient cause for not filing the appeal but such period shall not exceed fifteen days.
>
> (3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—
>
> (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
>
> (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
>
> (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
>
> (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
>
> (v) the resolution plan does not comply with any other criteria specified by the Board.
>
> (4) An appeal against a liquidation order passed under section 33 may be filed on grounds of material irregularity or fraud committed in relation to such a liquidation order.
>
> **62. Appeal to Supreme Court**.—(1) Any person aggrieved by an order of the National Company Law Appellate Tribunal may file an

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> appeal to the Supreme Court on a question of law arising out of such order under this Code within forty-five days from the date of receipt of such order. (2) The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within forty-five days, allow the appeal to be filed within a further period not exceeding fifteen days."

44. Learned CGSC further placed reliance on the judgment of the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel India Limited*** (*supra*) to submit that a successful resolution applicant cannot be faced with undecided claims after approval of the Resolution Plan, as that would amount to a hydra head popping up and the same would defeat the objective of the IBC. It was submitted that all claims were required to be submitted to and dealt with during the CIRP so that the resolution applicant was made aware of the exact liabilities at the time of taking over the corporate debtor.

45. Learned CGSC placed reliance on the order dated 23.06.2020 in Company Appeal (AT)(Insolvency) No. 319/2020 passed by the learned NCLAT in ***State of Haryana v. Uttam Strips Ltd. and Ors***., while dealing with issue of raising belated claims by the creditors of the corporate debtor after the implementation of the Resolution Plan. It was submitted that a successful resolution applicant cannot be saddled with past liabilities beyond what is provided in the approved Resolution Plan.

46. It was submitted by the learned CGSC that once a claim has been considered during the CIRP and provided for in the Resolution Plan, which has been approved by the Adjudicating Authority, such creditor cannot thereafter seek to recover any amount from the resolution applicant and any grievance against the Resolution Plan is required to be raised before the

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NCLAT in accordance with the statutory remedies under the IBC.

47. It was submitted that in view of the binding nature of the approved Resolution Plan under Section 31 read with Section 238 of the IBC, and the exclusive jurisdiction vested in the Adjudicating Authority, any adjudication by an Arbitral Tribunal on issues arising out of or relating to the CIRP, the Resolution Plan or claims dealt with therein, would be without jurisdiction and hence the impugned order is liable to be set aside.

SUBMISSIONS ON BEHALF OF RESPONDENT NO. 2

48. Learned counsel appearing on behalf of Respondent No. 2 submitted that the remedy under Articles 226 and 227 of the Constitution of India, is not available to the Petitioner in the present case, since an alternate and more efficacious remedy is presently available under the Arbitration Act.

49. It was further submitted by the learned counsel that the law is well settled that if a statute provides an alternate remedy, which is equally efficacious, a Writ should ordinarily not be entertained. In support of the said proposition, reliance was placed on the judgment of the Hon'ble Supreme Court in ***Seth Chand Ratan v. Pandit Durga Prasad***[32]. The relevant portion of the judgment is reproduced as under: -

> "**13.** Even otherwise, the view taken by the Division Bench of the High Court for repelling the objection of the appellant regarding the maintainability of the writ petition that an alternative remedy does not divest the High Court of its powers to entertain petitions under Articles 226 and 227 of the Constitution, has hardly any application on the facts of the present case. It has been settled by a long catena

[32] **(2003) 5 SCC 399**

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> of decisions that when a right or liability is created by a statute, which itself prescribes the remedy or procedure for enforcing the right or liability, resort must be had to that particular statutory remedy before seeking the discretionary remedy under Article 226 of the Constitution. This rule of exhaustion of statutory remedies is no doubt a rule of policy, convenience and discretion and the court may in exceptional cases issue a discretionary writ of certiorari. Where there is complete lack of jurisdiction for the officer or authority or tribunal to take action or there has been a contravention of fundamental rights or there has been a violation of rules of natural justice or where the Tribunal acted under a provision of law, which is ultra vires, then notwithstanding the existence of an alternative remedy, the High Court can exercise its jurisdiction to grant relief. In the present case, the alternative remedy of challenging the judgment of the court was not before some other forum or tribunal. On the contrary, by virtue of sub-section (3) of Section 27 of the Act, the order passed by the court amounted to a decree against which an appeal lay to the High Court. When the party had statutory remedy of assailing the order passed by the District Court by filing an appeal to the High Court itself, he could not bypass the said remedy and take recourse to proceedings under Articles 226 and 227 of the Constitution. Such a course of action may enable a litigant to defeat the provisions of the statute which may provide for certain conditions for filing the appeal, like limitation, payment of court fee or deposit of some amount or fulfilment of some other conditions for entertaining the appeal.

50. It was contended by the learned counsel for Respondent No. 2 that the Arbitration Act provides for a remedy to the Petitioner under Section 34, and a challenge under the said provision can be raised once the Petitioner ultimately suffers from an award. The Court exercising powers under Section 34 of the Act is adequately empowered to do complete justice between the parties, and therefore, interference under Article 226 of the Constitution of India is not warranted by this Court.

51. It was further submitted that the Hon'ble Supreme Court in ***Lalitkumar***

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V. Sanghavi v. Dharamdas V. Sanghavi[33], had held that the question as to whether or not the mandate of the Arbitrator stands terminated under Section 12(2)(c) of the Arbitration Act, can be examined by the Court only under Sections 14(2) of the Arbitration Act. Relevant portion of the judgment reads as under: -

> "**12.** On the facts of the present case, the applicability of clauses (a) and (b) of Section 32(2) is clearly ruled out and we are of the opinion that the order dated 29-10-2007 by which the Tribunal terminated the arbitral proceedings could only fall within the scope of Section 32, sub-section (2), clause (c) i.e. the continuation of the proceedings has become impossible. By virtue of Section 32(3), on the termination of the arbitral proceedings, the mandate of the Arbitral Tribunal also comes to an end. Having regard to the scheme of the Act and more particularly on a cumulative reading of Section 32 and Section 14, the question whether the mandate of the arbitrator stood legally terminated or not can be examined by the court "as provided under Section 14(2)"."

52. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.,***[34]. It was submitted that in view of the remedy enshrined in both Section 34 and Section 14 of the Arbitration Act, the present petition is not warranted and is liable to be dismissed. Relevant portion of the said judgment reads as under: -

> "**18.** In any case, the hierarchy in our legal framework, mandates that a legislative enactment cannot curtail a constitutional right. In Nivedita Sharma v. COAI [Nivedita Sharma v. COAI, (2011) 14 SCC 337 : (2012) 4 SCC (Civ) 947] , this Court referred to several judgments and held : (SCC p. 343, para 11)
>
> *"11. We have considered the respective arguments/submissions. There cannot be any dispute that the power*

[33] (2014) 7 SCC 255
[34](2022) 1 SCC 75

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of the High Courts to issue directions, orders or writs including writs in the nature of habeas corpus, certiorari, mandamus, quo warranto and prohibition under Article 226 of the Constitution is a basic feature of the Constitution and cannot be curtailed by parliamentary legislation — L. Chandra Kumar v. Union of India [L. Chandra Kumar v. Union of India, (1997) 3 SCC 261 : 1997 SCC (L&S) 577] . However, it is one thing to say that in exercise of the power vested in it under Article 226 of the Constitution, the High Court can entertain a writ petition against any order passed by or action taken by the State and/or its agency/instrumentality or any public authority or order passed by a quasi-judicial body/authority, and it is an altogether different thing to say that each and every petition filed under Article 226 of the Constitution must be entertained by the High Court as a matter of course ignoring the fact that the aggrieved person has an effective alternative remedy. Rather, it is settled law that when a statutory forum is created by law for redressal of grievances, a writ petition should not be entertained ignoring the statutory dispensation."

(emphasis supplied)

It is therefore, prudent for a Judge to not exercise discretion to allow judicial interference beyond the procedure established under the enactment. This power needs to be exercised in exceptional rarity, wherein one party is left remediless under the statute or a clear "bad faith" shown by one of the parties. This high standard set by this Court is in terms of the legislative intention to make the arbitration fair and efficient.

*** *** ***

21. Viewed from a different perspective, the arbitral process is strictly conditioned upon time limitation and modelled on the "principle of unbreakability". This Court in P. Radha Bai v. P. Ashok Kumar [P. Radha Bai v. P. Ashok Kumar, (2019) 13 SCC 445 : (2018) 5 SCC (Civ) 773] , observed : (SCC p. 459, paras 36-37)

"36.3. Third, Section 34(3) reflects the principle of unbreakability. Dr Peter Binder in International Commercial Arbitration and Conciliation in Uncitral Model Law Jurisdictions, 2nd Edn., observed:

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> *'An application for setting aside an award can only be made during the three months following the date on which the party making the application has received the award. Only if a party has made a request for correction or interpretation of the award under Article 33 does the time-limit of three months begin after the tribunal has disposed of the request. This exception from the three month time-limit was subject to criticism in the working group due to fears that it could be used as a delaying tactics. However, although "an unbreakable time-limit for applications for setting aside" was sought as being desirable for the sake of "certainty and expediency" the prevailing view was that the words ought to be retained "since they presented the reasonable consequence of Article 33.'*
>
> *According to this "unbreakability" of time-limit and true to the "certainty and expediency" of the arbitral awards, any grounds for setting aside the award that emerge after the three month time-limit has expired cannot be raised.*
>
> 37. Extending Section 17 of the Limitation Act would go contrary to the principle of "unbreakability" enshrined under Section 34(3) of the Arbitration Act."
>
> (emphasis in original)
>
> If the courts are allowed to interfere with the arbitral process beyond the ambit of the enactment, then the efficiency of the process will be diminished."

53. It was further submitted that a Writ Court cannot interfere in an Arbitral proceeding, as a matter of course, and that Writ jurisdiction may be invoked only in the event an Arbitral Tribunal acts in gross excess of its jurisdiction. It was further submitted that the said threshold is not met in the present factual circumstances.

54. Reliance was placed on the order dated 18.09.2020 in SLP (C) No. 8482/2020 passed in ***Punjab State Power Corporation Limited*** (*supra*). It

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was further submitted that the impugned order does not disclose any patent lack of jurisdiction and the application on which the impugned order came to be passed, did not allege that the Arbitral Tribunal lacked jurisdiction. It was further contended that the plea raised before the learned Arbitral Tribunal was merely that the Arbitral proceedings had become unnecessary on account of subsequent events, and therefore, even on the Petitioner's own showing, the case was never one of lack of jurisdiction.

55. It was submitted that the petitioner had submitted to the jurisdiction of the learned Arbitral Tribunal on two occasions. First, during the proceedings under Section 29A of the Arbitration Act, as no plea as to lack of jurisdiction was raised by the Petitioner, despite the Resolution Plan being in force. Second, the application itself, filed under Section 16 and Section 32 of the Arbitration Act, was in substance merely an application under Section 32 of the Arbitration Act.

56. It was further submitted that a detailed order had been passed by the learned Arbitral Tribunal after considering all relevant facts and circumstances, and therefore, no *ex-facie* conclusion can be drawn with regard to any alleged lack of jurisdiction. Without prejudice to the above, it was submitted that even if the impugned order is assumed to be incorrect, the same would, at best, amount to an incorrect exercise of jurisdiction and not a case of inherent lack of jurisdiction.

57. It was further submitted that the "clean slate doctrine" applies in cases where claims are admitted or rejected, and in cases where claims are not filed. The said doctrine would not apply where a claim is preferred, but is kept

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artificially contingent. Therefore, it was submitted that the present case is not covered by the clean slate doctrine as expounded in by the Hon'ble Supreme Court in ***Committee of Creditors of Essar Steel*** (*supra*).

58. It was contended that it is an admitted position that the claim of Respondent No. 2 was never accepted and was classified as a "contingent liability". It was submitted that as a result, Respondent No. 2 was effectively excluded from the CIRP process and, therefore, the approved Resolution Plan cannot be made binding upon Respondent No. 2.

59. It was further submitted by the learned counsel that a Resolution Plan cannot create a legal fiction, contrary to the Information Memorandum. It was contended that since the IRP treated Respondent No. 2 as a contingent creditor, the Resolution Plan could not thereafter treat Respondent No. 2 as an operational creditor and reduce its claim to nil.

60. It was further submitted that under Sections 3(10) and 3(11) of the IBC, a contingent liability does not constitute a "debt" and, therefore, a contingent creditor is no creditor in the eyes of law, and consequently, the rigor of Section 31 of the IBC does not apply in the present case. The said provisions are reproduced as under: -

> "**3. Definitions**.—In this Code, unless the context otherwise requires,—
>
> …(10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;
>
> (11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt

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and operational debt;"

61. It was submitted that under Regulation 37(f) of the Regulations, 2016, a Resolution Plan may provide for a "reduction in the amount payable to the creditors", and therefore, it implies that a Resolution Plan can deal only with crystalized liabilities of creditors. The said provision is reproduced as under: -

> "**Regulation 37: Resolution plan.**
>
> [37. A resolution plan shall provide for the measures, as may be necessary, for insolvency resolution of the corporate debtor for maximization of value of its assets, including but not limited to the following:-
>
> …(f) reduction in the amount payable to the creditors;"

62. Learned counsel for Respondent No. 2 further placed reliance upon Clause (iv) and Clause 6.1.2 of the Resolution Plan to contend that the Resolution Plan itself contemplates settlement of claims of operational creditors based on the amounts admitted and due as on the Closing Date. The said clauses are reproduced as under: -

> "(iv) Operational Creditors Settlement Amount to Operational Creditor (other than employees and workmen) - 50% of the amount admitted and due to them as on the Closing Date, subject to a maximum aggregate amount of< 50 crore, to be paid within a period of 2 (two) months from the Closing Date.
>
> *** *** ***
>
> 6.1.2. The total Outstanding Operational Debt of the Company (excluding claims of workmen and employees) admitted towards its Operational Creditors, as of August 30, 2018, is < 98, 12, 15,611 (Indian Rupees Ninety Eight Crore Twelve Lakh Fifteen Thousand Six Hundred and Eleven only) and details of the same are set out in Annexure 8 of this Plan."

63. Attention of this Court was drawn to the List of Creditors (pursuant to

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claims received and updated as on 13.09.2018), wherein the name of Respondent No. 2 finds mention at Serial No. 3. It was further noted that a corresponding remark had been recorded against the said entry, categorizing the claim of Respondent No. 2 as contingent. The said list is reproduced as under: -

Bhushan Energy Limited

List of Creditors

(Pursuant to claims received and updated as on 13.09.2018)

Category: Operational Creditors other than Workmen and Employees

(Subject to further information being received from 30th August 2018 till the date of approval of the resolution plan by COC)

Official Exchange Rate as on 08.01.2018 (Insolvency Commencement Date): **USD 1: INR 63.3482**

Sl. No.	Names	Nature of Operational Debt	Amount Claimed		Amounts of Claims Admitted# (in INR)	Security Interest	Remark
			(in USD)	(in INR)			
1	Shree Ganesh Enterprices	Security deposit & ESIC deducted on behalf of creditor, but later creditor deposited all ESI liability to department		4,49,607	4,35,419		
2	Macawber Beekay Private Limited	Suppy of Boilers		3,50,02,349	1,44,83,552		
3	ISGEC Heavy Engineering Limited	Suppy of Boilers		80,29,27,121	-		Note 1
4	Royal India Enterprices	Supply of workmen		3,10,517	-		Note 2
5	Walsons Services Pvt Ltd (Securitas India)	Supply of security and guarding services		25,86,300	-		Note 2

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6	Reliable Infratech	Manpower Deployment Services		2,36,096	-		Note 3
7	United Air Express	Manpower Deployment Services		27,95,186	-		Note 3
8	Melco India Pvt. Ltd.			48,44,567	23,44,122		★
9	Hayne Shipping co.ltd	Demurrage charges	$1,38,943	88,01,771	-		Note 4
10	Radhakanta Satpathy - Suprintending Engineer-Cum-Electrical Inspector, Angul	Electricity Duty and Interest		1,02,30,14,105	96,20,32,265		
11	Government of India - Ministry of Finance, Central Board of Indirect Taxes & Customs	Customs duty inculding fine and penalty		7,44,67,684	-		Note 5
12	MECON Limited	Detailed Engineering & Consultancy Services		17,65,659	-		Note 2
13	Daga Power Systems & Engineers Pvt. Ltd.			80,70,515	17,39,233		
14	Shreevim Infra Projects Pvt. Ltd.	Retention money against various projects		9,85,582	1,81,020		
15	Bridge & Roof Co. [INDIA] Ltd.			7,50,77,000	-		Note 2
16	G.S. Cooling towers & Components Private Limited			3,30,400	2,05,809		
17	Munna Construction Co. Pvt. Ltd.			25,12,000	-		Note 2
18	Usha Agencies			86,184	86,184		
19	Juli Constructions			4,96,190	4,96,190		
TOTAL			1,38,943	2,04,47,58,833	98,20,03,794		

Notes

1 The claim has been kept as contingent for the time being. The same has been duly commincated to the claimant.
2 The claim has been rejected and has been communicated to the claimant.
3 Pending for want of information by the claimant.
4 Claim has been withdrawn by the claimant.
5 The claim is kept as contingent as the same is pending under adjudication with the court of law. Also, the same is disclosed as a contingent liability in the books of accounts.
★ The Claimant has agreed to the amount as accepted by the RP.
The claims admitted shall be subject to fulfilment of conditions/stipulations as required per contract or as per the ordinary course of business.

64. Reliance was placed on the judgment of the Hon'ble Supreme Court in ***Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd***.[35], and it was submitted that the position in relation to claims that are pending crystallization, owing to an ongoing litigation, are covered by the said judgment. The relevant portion of the judgment is as under: -

> "**145.** Apart from the aforesaid, the reliefs and concessions as sought for by the resolution applicant in relation to YEIDA in Clauses 4, 14 and 27 of Schedule 3 are also required to be disapproved. We are unable to countenance the proposition that by way of a resolution plan, it could be enjoined upon an agency of the Government like YEIDA to give up or withdraw from a pending litigation. Similarly, extinguishment of existing liability qua YEIDA is not a relief that could be given to the resolution

[35] **(2022) 1 SCC 401**

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> applicant for askance. For the same reason, the resolution applicant cannot seek extension of time period of the concession agreement by way of a clause of "relief" in the resolution plan without the consent of a governmental body like YEIDA."

65. Learned counsel for Respondent No. 2 relied on the order dated 24.03.2023 in Civil Appeal No. 1741/2023 passed by the Hon'ble Supreme Court in ***Adani Power Limited v. Shapoorji Pallonji And Co. Pvt. Ltd. & Ors.***[36] and submitted that even where a claim is categorized as a contingent liability in the resolution process, Arbitral proceedings may continue for adjudication and quantification of such claim. The relevant portion of the said judgment reads as under: -

> "2. In our opinion, there is no ambiguity in the above observations and directions recorded by the NCLAT, as they reflect that the Resolution Plan, as approved, is binding on all and cannot be made subject matter of arbitration or any other proceedings. The claim of respondent no. 1 - Shapoorji Pallonji and Co. Pvt. Ltd. has been categorized by the Resolution Professional as a 'contingent liability'. Respondent no. 1 - -Shapoorji Pallonji and Co. Pvt. Ltd. may continue with the arbitration proceedings for adjudication of its claim and quantification thereof, if they so wish and choose to do so.
>
> 3. However, the claim even if allowed in favour of M/s Shapoorji Pallonji and Co. Pvt. Ltd. will have no bearing on the rights and obligations of the appellant - M/s. Adani Power Limited, which are in terms of the Resolution Plan. It has been held by the judgment dated 23.02.2023, that the appellant cannot be saddled with any liability except what is mentioned in the Resolution Plan.
>
> 4. Recording the aforesaid, the appeal is dismissed on the ground that the appellant has no grievance."

66. It was submitted that Arbitration proceedings in respect of disputed or

[36] **2023 SCC OnLine SC 2377**

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contingent claims may continue, notwithstanding the approval of a Resolution Plan, for the purposes of adjudication and quantification thereof, and in support of the said submission, reliance was placed on the order dated 21.01.2022 passed by the Hon'ble Supreme Court in ***Fourth Dimension Solutions Ltd. v. Ricoh India Ltd. & Ors***[37]., in Civil Appeal No. 5908 of 2021. The relevant portion of the said order reads as under: -

> "2. …During the hearing of the stated appeal, it was brought to the notice of the Court that the appellant had preferred some appeal before the National Company Law Appellate Tribunal (in short "NCLAT") and it was still pending at the relevant time. This Court, in paragraph 160 of the judgment, therefore, directed that the said appeal shall proceed on merits. Pursuant to that liberty, the concerned appeal has now been decided by the NCLAT vide impugned judgment.
>
> 3. In our opinion, it was sufficient for the NCLAT to dispose of the appeal before it by restating the factual position noted while considering the Plan submitted for approval before the Committee of Creditors. In paragraph 48 of the impugned judgment, the NCLAT has noted thus:
>
> > "... The name of the Appellant was mentioned in the list of Operational Creditors. On 29.11.2018 the RP published updated list of Creditors of the Corporate Debtor, wherein the admitted claims of the Appellant was indicated as 'Nil' with an appended note: "2. The claims pertaining to FDSL have been disputed and are proceedings before the Arbitrators/Appellate Authorities. The liability is subjected to outcome of these proceedings".
>
> 4. In light of this factual position, in our opinion, the appeal needs to be disposed of by restating the said fact with liberty to the parties to pursue all contentions available to them in the proceedings pending at the relevant time, if any.
>
> 5. It is stated that some arbitration proceedings were pending between the parties. If so, all contentions available to both sides be

[37]**2022 SCC OnLine SC 2379**

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decided in the said proceedings on its own merits in accordance with law."

67. In order to support the aforesaid submissions, learned counsel further placed reliance upon the following judgments:

i. Fourth Dimension Solutions Ltd. v. Ricoh India Ltd. & Ors.[38];
ii. Indian Oil Corporation Ltd. v. Arcelor Mittal Nippon Steel India Limited[39];
iii. Indian Oil Corporation Limited v. Arcelor Mittal Nippon Steel India Limited[40];
iv. Hindustan Petroleum Corporation Limited v. Om Construction & Ors.[41];
v. PME Power Solutions (India) Ltd. v. Airen Metals Pvt. Ltd.[42];
vi. Siddhast Intellectual Property Innovations Pvt Ltd vs Controller General of Patents, Designs and Trademarks[43];
vii. Easy Trip Planners Ltd. v. One 97 Communications Ltd.[44];
viii. Ambience Projects & Infrastructure Pvt. Ltd. vs Neeraj Bindal[45];
ix. Binani Industries Limited v. Bank of Baroda, Order dated 14.11.2018 in Company Appeal (AT) (Insolvency) No. 82 of 2018.

REJOINER SUBMISSIONS ON BEHALF OF THE PETITIONER

68. At the outset, learned Senior Counsel for the Petitioner submitted that the averments made by Respondent No. 2 in its Counter Affidavit are misconceived, misleading and liable to be rejected.

69. Learned Senior Counsel submitted that the present petition is

[38] **2021 SCC OnLine NCLAT 2142**
[39] **(2024) ibclaw.in 57 SC**
[40] **2023:DHC:7365**
[41] **2023 SCC OnLine Bom 2219**
[42] **(2024) ibclaw.in 1348 HC**
[43] **2022 SCC OnLine Del 2556**
[44] **2022 SCC OnLine Del 2186**
[45] **2021 SCC OnLine Del 4023**

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maintainable, and the impugned order passed by the learned Arbitral Tribunal suffers from patent lack of inherent jurisdiction. It was further contended that the learned Arbitral Tribunal had ventured into a domain expressly barred by Sections 63 and 231 of the IBC, and had rendered findings contrary to the binding effect of an approved Resolution Plan under Section 31(1) of the IBC.

70. It was further submitted by the learned Senior Counsel that the approved Resolution Plan constitutes a final and binding document governing all rights and liabilities of the Petitioner for the period prior to its approval. Any claim, whether admitted, disputed contingent or *sub-judice*, stands extinguished, abated and withdrawn, except to the extent expressly provided for in the Resolution Plan.

71. It was further submitted that the Claim of Respondent No. 2 was duly categorized as a "contingent liability" and the Resolution Applicant expressly dealt with the same in the approved Resolution Plan. It was submitted that the contention of Respondent No. 2 that the claim was excluded from the CIRP was factually incorrect and contrary to the record.

72. Learned Senior Counsel further contended that mere categorization of a claim as contingent does not take it outside the purview of the Resolution Plan, and once the Resolution Plan is approved by the Adjudicating Authority, the treatment accorded to such claim becomes final and binding, and the same cannot be re-agitated before any other fora, including an Arbitral Tribunal.

73. It was submitted that the continuation of the Arbitral proceedings is

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legally impermissible, as the claims as sought therein stand extinguished by the approved Resolution Plan. It was further submitted that if the impugned order is not set aside, then the same shall render the entire IBC regime otiose and mere a paper legislation.

74. Learned Senior Counsel further reiterated that the IBC mandates that a successful resolution applicant takes over the corporate debtor on a "clean slate" and permitting Respondent No. 2 to continue Arbitration, would saddle the Petitioner with additional liabilities.

75. It was further submitted that any grievance regarding the conduct of the RP or the treatment of claims under the Resolution Plan could only have been raised before the statutory fora under the IBC. It was submitted that the learned Arbitral Tribunal lacked jurisdiction to adjudicate the matter touching upon the CIRP, the Resolution Plan or its binding effects.

ANALYSIS AND FINDINGS

76. While passing the impugned order, the learned Arbitral Tribunal after examining the contentions of both the parties, held that the claim of the Respondent No. 2 was kept as "contingent" by the IRP in terms of the Resolution Plan, therefore, the same did not form part of the Information Memorandum in terms of the Section 29 of the IBC. It was further held that since the claim was not crystalized, the Arbitral proceedings would continue. The observations of the learned Arbitral Tribunal are as under: -

> "18. Mr. Datta, Ld. Counsel for the Claimant submitted that the RP having classified the Claimant as a Contingent Creditor. the RP has in effect denied the status of creditor to the Claimant. Mr.

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Bhatnagar, Ld. Sr. Counsel for the Respondent submitted that the determination of the RP is immaterial, and the Claimant is indeed a Creditor, irrespective of what the RP may say. **The submission of Mr. Bhatnagar cannot be accepted. The RP, under Regulation 13,14 and 15 of the IBBI (Corporate Insolvency Resolution Process) Regulations, 2016 is obligated to verify the claims submitted by individuals and affording them the status of Creditor, if he deems fit. Those claims are then as per Regulation 36 made part and parcel of the information memorandum which is in effect all the data pertaining to the Corporate Debtor (the Respondent in the present case). Finally, a Resolution Plan submitted is governed by Section 30(1) of the IBC. Section 30(1) makes it clear that a Resolution Plan is to be prepared on the basis of the information memorandum.**

19. Reading together the provisions as stated above, it is clear that a Resolution Plan cannot be submitted contrary to the Information Memorandum. The Information Memorandum is based on the RPs decision on verification of claims. In the present case, since the RP did not verify the claim of the Claimant and merely treated the Claimant as a Contingent Creditor, the Claimant could not have been a part of the Information Memorandum (as a creditor). Therefore, a Resolution Plan based on the very same information memorandum could not treat the Claimant as anything but a Contingent Creditor, and a Contingent Creditor not being a creditor at all, the plan cannot bind the Claimant.

20. A Creditor is defined in the IBC as "any person to whom a debt is owed". A debt is defined as a liability or obligation in respect of a claim that is due. On a conjoint reading of the two definitions, it is apparent that a creditor is any person to whom the Corporate Debtor owes money. A Contingent Creditor is a creditor to whom money could be due and payable on the occurrence of a certain event. Therefore, till the occurrence of that event a contingent creditor, is under the IBC, not recognized as a creditor.

21. In view of the Claimant having not been classified as an Operational Creditor, Financial Creditor or a Creditor, the Claimant has been denied the opportunity of being a part of or

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consideration in the CIRP on account of the present pending arbitrations between the parties and on the premise that the claims of ISGEC are disputed and are non-crystallized. ln the opinion of the Tribunal. the Resolution Plan and entire process cannot be made binding on the Claimant as the Claimant is not part of the CIRP.

22. Under Regulation 37 (f) of the CIRP Regulations a Resolution Plan may cause *"reduction in the amount if payable to the creditors."* This also implies that a Resolution Plan can only deal with crystallized liabilities of creditors. Alternatively, the RP could have considered the claim of the Claimant and reduced the amount of claim. **But the RP has simply not considered the claim of the Claimant.**

23. It is basic to the civil law and jurisprudence that wherever there is a right, there is a remedy. A wrong done has to be vindicated by resort to appropriate legal proceedings. A legitimate right claimed and asserted by a person cannot be refused to be adjudicated upon and cannot just be buried except by a valid and express provisions of law.

*** *** ***

25. We have exan1ined the scheme of IBC and have taken into consideration all the relevant provisions of IBC in addition to those to which our attention was specifically invited. **There is no provision in the IBC which can support the proposition that in spite of a creditor having applied to the RP and the RP having refused to consider the claim of the creditor yet it would stand wiped out in spite of the fact that the creditor had invoked the jurisdiction of appropriate civil forum (arbitral Tribunal), in the present matter and his claim would not be permitted to be crystallized as per law and would simply stand nullified.**

*** *** ***

29. Mr. Datta, Ld. Counsel for the Claimant submitted that the Resolution Plan only binds creditors and stakeholders. In the present matter, it is an admitted fact that the claim of the Claimant was disputed by Respondent and never admitted. Therefore, there

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can be no question of the Resolution Plan being binding upon the Claimant.

30. On behalf of the Respondent, Mr. A nil Bhatnagar, Ld. Sr. Counsel placed reliance on the judgment of the Supreme Court in ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, 2019 SCC Online SC 1478***. Their Lordships have rejected the contention that claims may exist apart from those decided on merits by the Resolution Professional and can be decided by an appropriate forum as such contention militates against the rationale of Section 31 of the IBC. However, their Lordships have further held - *'all claims must be submitted to and decided by the Resolution Professional'*. The case before the Supreme Court was of the members of the Promoter Group, who were guarantors and were not parties to the Resolution Plan. The contention was that the Resolution Plan cannot bind them to take away rights of subrogation which they may have if they were ordered to pay amounts guaranteed by them in the pending legal proceedings. Mr. K. Dutta Ld. Counsel for the Claimant submitted that the observations made in the case of Essar Steel (Supra) pertains to the claims by creditors which are admitted, collated and verified by the RP. Those observations would not cover a case like the present one where the RP of the Respondent failed to admit the claim of the Claimant though the Claimant was ready and willing to substantiate its claim.

31. In the case before us, the Claimant did approach the RP but the RP did not adjudicate the claim and treated it as contingent obviously in view of the fact that the present arbitral proceedings were pending.

32. For all the forgoing reasons, we are of the opinion that the Application filed by the Respondent is devoid of merit. It is liable to be rejected and is rejected, accordingly. This Order shall govern the two arbitral disputes pending before this arbitral Tribunal between the parties, hereat. One copy each of this Order shall be placed on record of both the matters."

(emphasis supplied)

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77. Before this Court proceeds further, it would be apposite to refer to the judgment of the Hon'ble Supreme Court in ***Electrosteel Steel Limited*** (*supra*), since the factual matrix therein is similar to the present case. The relevant facts of the said judgment are as under: -

i. The Hon'ble Supreme Court dealt with a dispute arising out of claims preferred by the Respondent therein, before the West Bengal Micro, Small and Medium Facilitation Council under the provisions of Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as the "**MSME Act**").

ii. The Respondent therein had supplied telescopic and truck mounted cranes, crawler cranes, etc to the Appellant therein, on a hire basis pursuant to purchase orders dated 02.06.2011 and 06.06.2011.

iii. The Respondent therein alleged non-payment of the amounts due under the invoices raised and subsequently, the Respondent preferred two claim petitions bearing Case No. 330/2014 and Case No. 331/2024 respectively.

iv. As per the requirement of the MSME Act, conciliation proceedings were initiated, but were failed. Subsequent thereto, arbitration proceedings between the parties commenced on 07.06.2017.

v. During the pendency of the said Arbitral proceedings, financial creditors of the Appellant initiated proceedings under Section 7 of the IBC before the learned National Company Law Tribunal, Kolkata Bench, and the same was registered as C.P. (IB) No. 361/KB/2017. *Vide* order dated 21.07.2017, the learned National Company Law Tribunal imposed a moratorium under Section 14 of the IBC and

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appointed an Interim Resolution Professional. Pursuant thereto, a public announcement dated 24.07.2017 was issued by the Interim Resolution Professional, calling upon all creditors to submit their claims. In view of the moratorium, the Arbitral proceedings before the Facilitation Council were kept in abeyance. Subsequent thereto, the Respondent submitted its claim before the Resolution Professional, which was partly admitted.

vi. On 29.03.2018, a Resolution Plan was submitted by Vedanta Limited, and the same was placed before the Committee of Creditors, and ultimately got approved by the learned National Company Law Tribunal, *vide* order dated 17.04.2018, under Section 31 of the IBC. In terms of the said approved Resolution Plan, the claims of operational creditors were settled at nil value and the claim of the Respondent, however, was not provided for in the resolution plan.

vii. The said order dated 17.04.2018, was challenged before the learned National Company Law Tribunal, New Delhi (hereinafter referred to as the NCLAT) in Company Appeal (AT) (Insolvency) No. 175/2018, by some of the operational creditors and the same was dismissed by the learned NCLAT *vide* order dated 10.08.2018.

viii. Subsequently, other creditors also approached the learned NCLAT in Company Appeal (AT) (Insolvency) No. 265/2018 and in analogous appeals, on grounds that in the Resolution Plan, the Resolution Applicant had not taken proper care of the operational creditors. The said appeals were also dismissed by the learned NCLAT *vide* order dated 20.08.2018. The said matter was then carried forward to the

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Hon'ble Supreme Court in Civil Appeal No. 1133/2019; however, the said appeal was dismissed by the Hon'ble Supreme Court *vide* order dated 27.11.2019.

ix. Upon lifting of the moratorium, the Facilitation Council resumed the Arbitral proceedings and the Appellant, did not participate in the said proceedings. An Arbitral award dated 06.07.2018 came to be passed by the Facilitation Council, directing the Appellant to pay a sum of INR 1,59,09,214.00/-, along with interest to the Respondent, in terms of Section 16 of the MSME Act. The said Award was not challenged by the appellant.

x. Subsequent thereto, the Respondent instituted execution proceedings, which was initially registered as Execution Case No. 77/2018 and thereafter, as Commercial Execution Case No. 21/2022 before the Executing Court. During the pendency of the said execution proceedings, the Appellant preferred a petition dated 14.05.2019, contending that the Arbitral Award was a nullity, and hence, not executable as the claim of the Respondent was already settled at nil as per the Resolution Plan, and therefore, no sum was payable to the Respondent.

xi. The said petition was dismissed by the Executing Court, *vide* order dated 03.03.2023 and directed the Appellant to comply with the Award dated 06.07.2018, within a period of 15 days. The said order was challenged before the Hon'ble High Court, under Article 227 of the Constitution of India, 1950. The Hon'ble High Court had framed the following questions for consideration:

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a. The arbitral award having not been challenged under Section 34 of the Act of 1996, whether the objection to execution of the arbitral award referrable to Section 47 of the Civil Procedure Code, 1908 (CPC) was maintainable by alleging that the arbitral award itself was a nullity and hence non-executable?

b. Whether the arbitral award in the present case could be assailed as a nullity and hence non-executable within the permissible grounds of raising such a plea?

c. Irrespective of maintainability of the objection to the arbitral award under Section 47 of the CPC, whether on facts, the Facilitation Council lost its jurisdiction to proceed and pronounce the arbitral award in view of the insolvency resolution plan of the petitioner which was duly approved under Section 31 of the IBC?

xii. Insofar as the first question was concerned, the Hon'ble High Court was of the opinion that the plea of nullity *qua* an Arbitral Award can be raised in an execution proceeding under Section 47 of the Code of Civil Procedure. However, the scope of interference would be very narrow. As regards to the second question, the Hon'ble High Court rejected the contention of the Appellant that that since the award suffered from patent or inherent lack of jurisdiction and therefore was a nullity, it can be questioned at the stage of execution without challenging the award under Section 34 of the Arbitration Act.

xiii. The Hon'ble High Court answered the third question by holding that the Facilitation Council did not lose its jurisdiction to proceed with and pronounce the Arbitral Award, notwithstanding the approval of the resolution plan by the National Company Law Tribunal under Section 31 of the IBC. The Hon'ble High Court reasoned that the Arbitral

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proceedings had been initiated prior to the commencement of the insolvency resolution process, and were kept in abeyance during the period of moratorium, and were resumed after the lifting of the moratorium. It was further observed that the approved resolution plan merely determined the claim of the Respondent at nil value and did not, by itself, render the arbitral proceedings without jurisdiction. Accordingly, the Hon'ble High Court had dismissed the petition filed by the Appellant and hence, the appeal was preferred before the Hon'ble Supreme Court.

77.1. The relevant submissions on behalf of the parties, made before the Hon'ble Supreme Court, for the purposes of the present petition are as under:-

> "22. Learned senior counsel for the appellant submits that the High Court had erroneously held that the resolution plan did not determine the claim of the respondent at nil and, therefore, the Facilitation Council had the jurisdiction to decide on the claim of the respondent.
>
> 22.1. He submits that the High Court had misread and misinterpreted the resolution plan which would be evident from a perusal of the relevant paragraphs of the resolution plan. Respondent had submitted its claim as an operational creditor to the resolution professional. Such claim was the same claim which formed the subject matter of the proceedings before the Facilitation Council. Resolution applicant had submitted a resolution plan in respect of the appellant (corporate debtor) in accordance with the provisions of Section 30 of the IBC to enable the appellant to continue as a going concern. A reading of the relevant paragraphs of the resolution plan i.e. paragraphs 3.2(v), 3.4(ii) and 3.8(i) would indicate that the claims of the operational creditors including the debt of the respondent were settled at nil and, therefore, they were not entitled to any payment.
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22.3. Learned senior counsel submits that on 17.04.2018 when the NCLT had approved the resolution plan, claims of the operational creditors were settled at nil. This became binding on the respondent and all other authorities as per Section 31(1) of the IBC. In this connection, learned senior counsel has referred to and relied upon the decision of this Court in *Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Ltd.*[1] In the said decision, this Court had made it abundantly clear that the creditor has no option but to join the process under the IBC. Once the plan is approved, it would bind everyone under the sun. He contended that the respondent had submitted its claim before the resolution professional but the same was not included in the resolution plan as was approved by the committee of creditors and then by the adjudicating authority i.e. NCLT which became binding on the respondent. **Even if the respondent had not submitted its claim before the resolution professional, the approved resolution plan would still have been binding on the respondent**.

*** *** ***

23.4. Learned senior counsel for the respondent distinguished the case of *Ghanshyam Mishra (supra)* by contending that the said judgment was rendered in a distinguishable factual situation where the creditor had failed to lodge its claim upon public announcement by the resolution professional. Therefore, this Court held that such a creditor cannot file its claim thereafter and such claim gets extinguished. This judgment does not deal with claims filed before the interim resolution professional or resolution professional and not included in the resolution plan. High Court had noticed this fact and has rightly observed that since the respondent does not fall in the category of operational creditors whose claims were rendered nil, there was no occasion for the respondent to challenge the resolution plan.

*** *** ***

23.6 He has referred to various provisions of the IBC as well as to the decision of this Court in *Ghanshyam Mishra (supra)* and submits that imposition of moratorium and consequential approval of resolution plan does not terminate or put an end to pending proceedings but those were merely stayed. Legislature has not provided that upon approval of a resolution plan, all pending

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proceedings would get extinguished. Therefore, post expiry of the moratorium period, pending proceedings such as arbitral proceedings would stand revived and taken to their logical conclusion.

23.7 **Learned senior counsel submits that in the present case, respondent had lodged its claim before the interim resolution professional and had also informed about the pendency of proceedings before the Facilitation Council. Interim resolution professional had published an information memorandum on 20.10.2017 mentioning therein a list of claimants which did not include operational creditors whose claims were sub-judiced before different judicial fora. Validity of such claims would be decided after the judicial proceedings were complete. He submits that after lifting of moratorium, notices were duly issued to the appellant by the Facilitation Council but the appellant decided not to appear and contest the proceedings. After the award was passed, appellant did not challenge the same under Section 34 of the 1996 Act. Having not challenged the award in the forum designated by law, he could not have challenged the same by filing objections to the arbitral award in a proceeding under Section 47 of the CPC. Learned counsel asserts that Section 34 of the 1996 Act is the only acknowledged remedy available to challenge an award.** Appellant had the opportunity to assail the award under Section 34 of the 1996 Act but he did not do so. Therefore, filing of application to declare the award a nullity in execution proceedings instituted by the respondent for execution of the award is a clear abuse of the process of law and was rightly rejected by the Executing Court which decision has been upheld by the High Court. Learned counsel further submits that since the claim of the respondent was pending before the Facilitation Council and in view of the information memorandum issued by the interim resolution professional, there was no need for the respondent to have challenged the resolution plan. Therefore, the High Court was fully justified in rejecting the petition filed by the appellant under Article 227 of the Constitution of India. The appeal is devoid of any merit and should, therefore, be dismissed."

77.2. The Hon'ble Supreme Court after noticing the relevant provisions of

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the IBC, judicial precedents and upon applying the same to the factual matrix of the said case, observed and held as under: -

> "35. Respondent had supplied telescopic and type mounted cranes, 75 ton crawler cranes, hydra and trailors on hiring basis to the appellant pursuant to two purchase orders dated 02.06.2011 and 06.06.2011. Case No. 330 of 2014 pertains to 138 numbers of bills under eight work orders in which the disputed amount was Rs. 1,36,69,981.33; on the other hand Case No. 331 of 2014 pertains to 158 numbers of bills under nine work orders where the disputed amount was Rs. 22,39,233.00. Thus, the total disputed amount was Rs. 1,59,09,214.33. Buyer (appellant) did not make any payment so the entire amount was claimed as outstanding and due. Initially conciliation proceedings were initiated by the Facilitation Council but the buyer unit was not present though it had filed written submissions stating that on the request of the supplier it had appointed an arbitrator whereafter arbitration proceedings had commenced. As an independent arbitration agreement existed between the parties, Facilitation Council should not proceed under Section 18(3) of the MSME Act. Already arbitration process was going on as per the arbitration agreement. Facilitation Council in its proceedings dated 31.07.2017 noted that it appeared from newspaper reports and order copy of the NCLT that moratorium was declared under Section 14 of IBC in the matter *of State Bank of India Vs. Electrosteel Steels Ltd.* It was decided that the matter should be kept in abeyance till the moratorium period was over.
>
> 36. We shall now deal with the resolution plan and revert back to the proceedings of the Facilitation Council thereafter. The resolution plan was submitted by Vedanta Ltd. as resolution applicant and is dated 29.03.2018. Clause 3 contained the mandatory contents of the resolution plan. Clause 3.2(v) declared that while the liquidation value of the corporate debtor was Rs. 2,899.98 crores, the admitted debts of the financial creditors aggregated to approximately Rs.13,395.25 crores. The liquidation value was not sufficient to cover the debts of the financial creditors in full. Therefore, the liquidation value of the operational creditors or the other creditors or stakeholders of the corporate debtor including dues of the employees (other than workmen), government dues, taxes etc. and other creditors and stakeholders was nil. As

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such, they would not be entitled to any payment. The dissenting financial creditors would be entitled to receive 21.65 percent of the value of their admitted debt which would be paid in priority to any payment to the assenting financial creditors.

37. Clause 3.2(xii)(A) is relevant. It says that notwithstanding what is contained in the mandatory contents of the resolution plan, upon approval of the resolution plan by the NCLT under Section 31 of the IBC, on and from the effective date all pending proceedings relating to the winding up of the company i.e. the corporate debtor shall stand irrevocably and unconditionally abated in perpetuity and claims in connection with all violation or breach of any agreement by the corporate debtor shall be settled at nil value at par with operational creditors.

38. Clause 3.4 provides for a proposal for operational creditors (excluding employees and workmen). Sub-clause (ii) says that since the liquidation value is not sufficient to cover the debts of the financial creditors in full, therefore, the liquidation value of the operational creditors or the other creditors etc. was taken as nil. Thus nil payment was proposed under the resolution plan towards claims of operational creditors whether filed or not, whether admitted or not and whether or not set out in the provisional balance sheet or the list of creditors etc. Thus, no source was identified for such payment under the resolution plan.

39. Heading of Clause 3.8 is treatment of amounts claimed under ongoing litigations. Clause 3.8(i) states that all claims arising out of enquiries, investigations, notices, causes of action, suits, litigations, arbitrations, claims of the top 30 operational creditors against the corporate debtor in relation to any period prior to the effective date etc. shall be settled at nil.

40. The resolution plan as submitted by Vedanta Ltd. was examined by NCLT and by order dated 17.04.2018 approved the same. It was mentioned in the said order that the resolution plan had the approval of the committee of creditors with a voting share of 100 percent. It was clarified that the moratorium order passed under Section 14 IBC would cease to have effect as the approved resolution plan had come into force with immediate effect. Adjudicating authority i.e. NCLT declared that the approved resolution plan would be binding on the corporate debtor, its

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employees members, creditors, coordinators and stakeholders involved in the resolution plan.

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50. **In so far the second and third issues are concerned, it is by now well settled that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, all claims which are not part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. In fact, this Court in *Essar Steel India Ltd.* (supra) had categorically declared that a successful resolution applicant cannot be faced with undecided claims after the resolution plan is accepted. Otherwise, this would amount to a hydra head popping up which would throw into uncertainty the amount payable by the resolution applicant**. In so far the resolution plan is concerned, the resolution professional, the committee of creditors and the adjudicating authority noted about the claim lodged by the respondent in the arbitration proceeding. However, the respondent was not included in the top 30 operational creditors whose claims were settled at nil. This can only mean that the three authorities conducting the corporate insolvency resolution process did not deem it appropriate to include the respondent in the top 30 operational creditors. If the claims of the top 30 operational creditors were settled at nil, it goes without saying that the claim of the respondent could not be placed higher than the said top 30 operational creditors. Moreover, the resolution plan itself provides that all claims covered by any suit, cause of action, arbitration etc. shall be settled at nil. Therefore, it is crystal clear that in so far claim of the respondent is concerned, the same would be treated as nil at par with the claims of the top 30 operational creditors.

50.1 Lifting of the moratorium does not mean that the claim of the respondent would stand revived notwithstanding approval of the resolution plan by the adjudicating authority. Moratorium is intended to ensure that no further demands are raised or adjudicated upon during the corporate insolvency resolution process so that the process can be proceeded with and concluded without further complications. View taken by the

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High Court cannot be accepted in the light of the clear cut provisions of the IBC as well as the law laid down by this Court. **In view of the resolution plan, as approved, the claim of the respondent stood extinguished. Therefore, the Facilitation Council did not have the jurisdiction to arbitrate on the said claim. Since the award was passed without jurisdiction, the same could be assailed in a proceeding under Section 47 CPC. View taken by the High Court that because the appellant did not challenge the award under Section 34 of the 1996 Act, therefore, it was precluded from objecting to execution of the award at the stage of Section 47 of CPC is wholly unsustainable.**

51. Consequently, the view taken by the High Court that notwithstanding approval of the resolution plan by the NCLT, the Facilitation Council did not lose jurisdiction to proceed and pronounce the arbitral award, is erroneous and contrary to the law laid down by this Court.

52. In that view of the matter, we have no hesitation to hold that upon approval of the resolution plan by the NCLT, the claim of the respondent being outside the purview of the resolution plan stood extinguished. Therefore, the award dated 06.07.2018 is incapable of being executed. Consequently, the order dated 03.03.2023 passed by the Presiding Officer, Commercial Court/District Judge-1, Bokaro in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018) is hereby set aside. Execution proceedings in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018) pending in the Court of Presiding Officer, Commercial Court/District Judge-1, Bokaro, are hereby quashed. Resultantly, impugned order of the High Court dated 17.07.2023 is also set aside."

(emphasis supplied)

78. In the present case, the RP, *vide* letter dated 30.07.2018 addressed to Respondent No. 2, categorically stated that the treatment of the claims of Respondent No. 2 would depend upon the terms of the Resolution Plan, as may be approved. The Resolution Plan dealt with contingent liabilities in

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terms of Clause 8.7, which reads as under: -

"**8. 7. Treatment of Contingent Liabilities**

In addition, Tata Steel understands that the Company has recognized certain contingent liabilities towards certain persons in the FY 17 Annual Financials aggregating to approximately ₹ 64.36 crores (Indian Rupees Sixty Four point Three Six Crore only). Particulars of such contingent liabilities are set out in Part A of Annexure 10 hereto, and set out in Part B of Annexure 10 hereto are particulars of other potential contingent liabilities of the Company. The matters set out in Annexure 10, together with all other contingent liabilities of the Company (whether known or unknown) until the Closing Date, are collectively the "Contingent Liabilities". Such Contingent Liabilities shall be treated as follows:

8.7.1. In respect of Contingent Liabilities which are in the nature of financial debt or are towards Financial Creditors (for instance any outstanding guarantees issued by the Financial Creditors, counter guarantee by the Company in connection with the letter(s) of credit), no further payments from the Resolution Applicant shall be due in respect of any Contingent Liabilities which are capable of being crystallised prior to the Closing Date. Please refer to Section 8. I l.3(ii) regarding effect of the Plan on and from the Closing Date with respect to guarantees provided by the Company.

8.7.2. **In respect of Contingent Liabilities which are in the nature of operational debt or are towards Operational Creditors, then to the extent that the same are capable of being crystallized as of the Closing Date, each such Contingent Liability is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the IBC) and therefore the full amount of such Contingent Liability shall be deemed to be owed and due as of the lnsolvency Commencement Date, the Liquidation Value of which is assumed to be NIL, and therefore no amount is payable in relation thereto.**

8.7.3. In respect of Contingent Liabilities which are not in the nature of financial debt or operational debt, or are towards Other

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> Creditors, then to the extent that the same have/are capable of being crystallized as of the Closing Date, no amount shall be payable in relation thereto as set out in Section 8.4.1 above."
>
> (emphasis supplied)

79. In the considered opinion of this Court, the claim of the Petitioner was duly considered and dealt with in the Resolution Plan. It is also observed that the Resolution Plan categorically deals with *sub judice* matters in the following manner: -

> "8.6.2. **In respect of Sub Judice Claims from Operational Creditors (including without limitation, claims made by ISGEC Heavy Engineering Limited), each such Sub Judice Claim is a "claim" and "debt", each as defined under the IBC, and would consequently qualify as "operational debt" (as defined under the TBC) and therefore the full amount of such Sub Judice Claims shall be deemed to be owed and due as of the Insolvency Commencement Date, the Liquidation Value of which is assumed to be NIL, and therefore no amount is payable in relation thereto.** Please also refer to Section 8.2.1 (iii) regarding additional claims from Operational Creditors relating to a period prior to the Insolvency Commencement Date and Section 8. 10.12(iv) regarding no claims being initiated by the Operational Creditors during the period from the Effective Date until the Closing Date."
>
> (emphasis supplied)

80. Thus, even if the claim of the Respondent No. 2 was considered to be contingent in terms of the communications dated 17.04.2018 and 30.07.2018 by the RP, the fact that their said claims were duly considered and rejected in the Resolution Plan, which was ultimately approved by the Adjudicating Authority, is a matter of record.

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81. The order relied upon by learned counsel for Respondent No. 2 in ***Adani Power Limited*** (*supra*), cannot be of any assistance, in as much as the Hon'ble Supreme Court, while passing the said order, clearly observed as under: -

> "3. However, the claim even if allowed in favour of M/s Shapoorji Pallonji and Co. Pvt. Ltd. will have no bearing on the rights and obligations of the appellant - M/s. Adani Power Limited, which are in terms of the Resolution Plan. It has been held by the judgment dated 23.02.2023, that the appellant cannot be saddled with any liability except what is mentioned in the Resolution Plan."

82. Thus, it is noted that the Hon'ble Supreme Court reiterated the principle of law, that once a Resolution Plan has been approved, no further claims can be raised or pursued with respect to the corporate debtor.

83. Furthermore, the Hon'ble Supreme Court in ***Essar Steel India Limited*** (*supra*) reiterated that a successful resolution applicant cannot be made to face undecided claims after the Resolution Plan is approved. It was further held therein that lifting of moratorium would not mean that the claim would stand revived notwithstanding the approval of such a plan by the Adjudicating Authority. As already noted, the Respondent therein, despite having filed a claim as an operational creditor, had its claim treated as nil in the Resolution Plan, at par with the claims of other operation creditors. In the said judgment it was further noted that since the liquidation value was insufficient to cover the debts of financial creditors in full, the liquidation value of the operational creditors was taken as nil. In the present case, it is pointed out by the learned Senior Counsel for the Petitioner that as per order dated 30.05.2019 passed by the learned Adjudicating Authority in CA No. 929(PB)/2018, the total debt

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upon the Petitioner was to the tune of INR 2878 Crores and the liquidation value of the Petitioner was INR 721 Crores.

84. The contention advanced on behalf of the Respondent No. 2, which was approved by the learned Arbitral Tribunal, was that since RP failed to classify it as an operational creditor/financial creditor or a creditor, it was effectively removed from the CIRP, which was confirmed by the RP in his communications dated 17.04.2018 and 30.07.2018. It was contended that the claim of Respondent No. 2 was classified as a "contingent liability", and therefore, the Resolution Plan could not have dealt with a future liability. In these circumstances, it was contended that the Petitioner's Resolution Plan, insofar as it sought treatment of claim of Respondent No. 2 as an operational debt due in *praesenti* and thereafter proceeded to reduce the same to nil, was not permissible in law. It was further contended that a "contingent creditor" is no creditor in the eyes of law, and, on such a classification, the Respondent No. 2 was removed from the CIRP, and therefore, the Resolution Plan would not be binding on it.

85. At this stage, it would be apposite to refer to the judgment of the Hon'ble Supreme Court in ***Kalyani Trasport*** (*supra).* In the said case, the Resolution Professional had admitted the claim raised by the Appellant therein, as an Operational Creditor of the Corporate Debtor. However, after admission of the claim, the Resolution Professional had classified the Appellant as a contingent creditor and the said classification was duly approved by the CoC, who had the power to sanction the Resolution Plan or to enter into negotiations to modify it by its approval. It was held that such a

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decision would squarely fall under the protected umbrella of "commercial wisdom" of the CoC, and after considering the judgment of the Hon'ble Supreme Court in ***K. Shasidhar*** (*supra*), it was held as under: -

> "**179. It can thus be seen that this court has held that the Legislature purposefully did not include a means to challenge the commercial wisdom exercised by the CoC. This makes a challenge to the same non-justiciable. It has been further held that a challenge cannot be raised against the decision making of the CoC unless and until the grounds for challenge as given in the Code are satisfied. Any interference in the paramount objective of the CoC of exercising its commercial wisdom would amount to the court rewriting the law and going against the very objectives of the IBC."**
>
> (emphasis supplied)

86. In the present case, as already noted hereinabove, the Resolution Plan in Clause no. 8.6.2, has duly considered the *sub-judice* claim of Respondent No. 2, and has duly noted that the *sub-judice* claim is a "claim" and "debt", as defined in the IBC, and would consequently qualify as "operational debt." This, as per record, was duly approved by the CoC, and subsequent approval was granted by the Adjudicating Authority. It is also pertinent to note that TSL had submitted its Resolution Plan to the RP on 11.06.2018, and on 01.09.2018 an amended and restated Resolution Plan was submitted based upon negotiations and consultation with CoC and RP. It is only thereafter on 30.07.2018, a letter was sent by RP as noted hereinbefore, wherein it was stated that the claim of Respondent No. 2 cannot be treated as a crystallised liability and can only be treated as a "contingent liability". In the said letter, it

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was clearly stated and informed to Respondent No. 2 that the treatment of contingent liability in the Resolution Plan will be entirely up to the said resolution applicant and subject to the decision of CoC while considering the Resolution Plan in accordance with law. Thus, in these circumstances there was a full disclosure, and Respondent No. 2 was put to notice of the same. The Petitioner had contended that subsequent to the approval of the Resolution Plan by the Adjudicating Authority, Respondent No. 2 had preferred an appeal against the same before the learned NCLAT, under the provisions of the IBC, however, in the Counter Affidavit filed by Respondent No. 2 the same is denied and it is averred that no appeal is pending before the learned NCLAT. Thus, the Resolution Plan had attained finality and would be binding in terms of Section 31(1) of the IBC.

87. Insofar as the objection with regard to the maintainability of the present petition is concerned, useful reference can be made to the decisions of the Hon'ble Supreme Court in ***Deep Industries*** (*supra*), ***Punjab State Power Corporation*** (*supra*) and decision of this Court in ***Surender Kumar Singal*** (*supra*), wherein it has been held that the Court can exercise jurisdiction under Articles 226 and 227 of the Constitution of India, 1950, against an order passed by an Arbitral Tribunal, if such order is completely perverse, or is patently lacking in inherent jurisdiction. In the present case, in view of the Resolution Plan being approved by the Adjudicating Authority, the claim of Respondent No. 2 stood extinguished, and therefore, in terms of the judgment of the Hon'ble Supreme Court in ***Electrosteel*** (*supra*), the learned Arbitral Tribunal did not have the jurisdiction to proceed further with the adjudication of the said claim.

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88. In view of the aforesaid discussion, the impugned order dated 07.10.2020 is hereby set aside. The arbitral proceedings before the learned Arbitral Tribunal stands terminated.

89. The present petition is allowed in the aforesaid terms.

90. Pending application(s), if any, also stand disposed of.

91. Judgment be uploaded on the website of this Court, *forthwith*.

AMIT SHARMA
(JUDGE)

JANUARY 09, 2026/*sn/kr/db*

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