

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Ins.) No. 242 of 2019**

**IN THE MATTER OF:**

**Standard Chartered Bank** ....Appellant

**Vs.**

**Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors.** ....Respondents

**Present:**

**For Appellant:** Mr. Kapil Sibal, Sr. Advocate with Mr. Sandeep Singh, Mr. Gaurav Mathur, Ms. Anushree Kapadia, Mr. Adit Pujari and Mr. Raghav Tankha and Mr. Abhishek Shah, Advocates.

Mr. Ankur Mittal, Mr. Ankur Saboo and Mr. Avi Yadav, Advocates for Intervener.

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Gopal Subramaniam, Senior Advocate with Ms. Anannya Ghosh, Advocate for R-2, 3, 4 & 5.

Mr. Parag Tripathi, Sr. Advocate with Mr. Dhruv Malik, Mr. Ashish Mukhi, Mr. L. Joshi, Mr. Kamendra P. Singh and Ms. Madhurima Sarangi, Advocates for R-8.

Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.

Mr. Ankur Mittal and Mr. Avi Yadav, Advocates for Intervener.

**With**

**Company Appeal (AT) (Ins.) No. 243 of 2019**

**IN THE MATTER OF:**

**Standard Chartered Bank** ....Appellant

**Vs.**

**Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors.** ....Respondents

**Present:**

**For Appellant:** Mr. Kapil Sibal, Sr. Advocate with Mr. Sandeep Singh, Mr. Gaurav Mathur, Ms. Anushree Kapadia, Mr. Adit Pujari and Mr. Raghav Tankha and Mr. Abhishek Shah, Advocates.

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Gopal Subramaniam, Senior Advocate with Ms. Anannya Ghosh, Advocate for R-2, 3, 4 & 5.

Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.

Mr. Ankur Mittal and Mr. Avi Yadav, Advocates for Intervener.

With  
Company Appeal (AT) (Ins.) No. 257 of 2019

**IN THE MATTER OF:**

**Prashant Ruia** **....Appellant**

**Vs.**

**State Bank of India & Ors.** **....Respondents**

**Present:**

**For Appellant:** Dr. U. K. Chaudhary, Sr. Advocate with Mr. Nakul Mohta, Mr. Johnson Subba and Mr. Dhruv Gupta, Advocates.

Mr. Haren Rawal, Senior Advocate with Mr. Rajeev Kumar, Advocate.

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Arun Kathpalia, Sr. Advocate with Ms. Misha, Mr. Manu Nair, Mr. Sapan Gupta, Ms. Mrida Lakhmani, Mr. Siddhant Kant and Ms. Jasveen Kaur, Advocates for CoC.

Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh

**Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With**  
**Company Appeal (AT) (Ins.) No. 265 of 2019**

**IN THE MATTER OF:**

**Committee of Creditors of Essar Steel India through SBI** ....Appellant

**Vs.**

**Satish Kumar Gupta & Ors.** ....Respondents

**Present:**

**For Appellant:** Mr. Gopal Subramaniam and Mr. Arun Kathpalia, Sr. Advocates with Ms. Misha, Mr. Manu Nair, Mr. Sapan Gupta, Ms. Mrida Lakhmani, Mr. Siddhant Kant and Ms. Jasveen Kaur, Advocates.

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With**  
**Company Appeal (AT) (Ins.) No. 266 of 2019**

**IN THE MATTER OF:**

**State Bank of India & Ors.** ....Appellants

**Vs.**

**Standard Chartered Bank & Ors.** ....Respondents

**Present:**

**For Appellants:** Mr. Gopal Subramaniam, Senior Advocate with Ms. Anannya Ghosh, Advocate for R-2, 3, 4 & 5.

**Mr. Shantanu Singh, Advocate for A-3 & A-4.**

**For Respondents: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.**

**Ms. Anannya Ghosh, Advocate for R-2, 3, 4 & 5.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With  
Company Appeal (AT) (Ins.) No. 279 of 2019**

**IN THE MATTER OF:**

**Vinayak Road Carriers** **....Appellant**  
**Vs.**  
**State Bank of India & Ors.** **....Respondents**

**Present:**

**For Appellant: Mr. Sanjiv Sen, Sr. Advocate with Mr. Shwetank Singh and Mr. Anand Varma, Advocates**

**For Respondents: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With  
Company Appeal (AT) (Ins.) No. 290 of 2019**

**IN THE MATTER OF:**

**Essar Bulk Terminal Ltd.** **....Appellant**  
**Vs.**  
**State Bank of India & Ors.** **....Respondents**

**Present:**

**For Appellant:** Mr. K. Datta and Ms. Prachi Johri, Advocates.

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.

With

**Company Appeal (AT) (Ins.) No. 291 of 2019**

**IN THE MATTER OF:**

**Arkay Logistics Ltd. ....Appellant**

**Vs.**

**State Bank of India & Ors. ....Respondents**

**Present:**

**For Appellant:** Mr. Sumesh Dhawan and Ms. Vatsala Kak, Advocates.

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.

With

**Company Appeal (AT) (Ins.) No. 292 of 2019**

**IN THE MATTER OF:**

**Essar Bulk Terminal Ltd. ....Appellant**

**Vs.**

**State Bank of India & Ors. ....Respondents**

**Present:**

**For Appellant:** Mr. K. Datta and Ms. Prachi Johri, Advocates.

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.

**With**  
**Company Appeal (AT) (Ins.) No. 293 of 2019**

**IN THE MATTER OF:**

**Arkay Logistics Ltd. ....Appellant**

**Vs.**

**State Bank of India & Ors. ....Respondents**

**Present:**

**For Appellant:** Mr. Sumesh Dhawan and Ms. Vatsala Kak, Advocates.

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.

**With**  
**Company Appeal (AT) (Ins.) No. 300 of 2019**

**IN THE MATTER OF:**

**Arfin India Ltd. ....Appellant**

**Vs.**

**State Bank of India & Ors.**

**....Respondents**

**Present:**

**For Appellant:** Mr. Sanjiv Sen, Sr. Advocate with Mr. Shwetank Singh, Mr. Anand Varma, Mr. Shayen Ray and Mr. Soumo Palit, Advocates

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.

**With**

**Company Appeal (AT) (Ins.) Nos. 302-303 of 2019**

**IN THE MATTER OF:**

**Ideal Movers Pvt. Ltd.**

**....Appellant**

**Vs.**

**State Bank of India & Ors.**

**....Respondents**

**Present:**

**For Appellant:** Mr. Sanjiv Sen, Sr. Advocate with Mr. Shwetank Singh, Mr. Anand Varma, Mr. Shayen Ray and Mr. Soumo Palit, Advocates.

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Manu Nair, Mr. Sapan Gupta, Ms. Misha, Ms. Mrida Lakhmani, Mr. Siddhant Kant and Ms. Jasveen Kaur, Advocates for CoC

Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr.

**Devanshu Sajalan and Ms. Manjira Dasgupta,  
Advocates for Arcelormittal India Pvt. Ltd.**

**With  
Company Appeal (AT) (Ins.) Nos. 304-305 of 2019**

**IN THE MATTER OF:**

**Shubham Cargo Movers** **....Appellant**

**Vs.**

**State Bank of India & Ors.** **....Respondents**

**Present:**

**For Appellant:** **Mr. Sanjiv Sen, Sr. Advocate with Mr. Shwetank Singh, Mr. Anand Varma, Mr. Shayen Ray and Mr. Soumo Palit, Advocates.**

**For Respondents:** **Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.**

**Mr. Arun Kathpalia, Sr. Advocate with Mr. Manu Nair, Mr. Sapan Gupta, Ms. Misha, Ms. Mrida Lakhmani, Mr. Siddhant Kant and Ms. Jasveen Kaur, Advocates for CoC**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With  
Company Appeal (AT) (Ins.) Nos. 332-333 of 2019**

**IN THE MATTER OF:**

**Sarkar Industries Pvt. Ltd.** **....Appellant**

**Vs.**

**State Bank of India & Ors.** **....Respondents**

**Present:**

**For Appellant:** **Mr. Sanjiv Sen, Sr. Advocate with Mr. Shwetank Singh, Mr. Anand Varma, Mr. Shayen Ray and Mr. Soumo Palit, Advocates.**

**For Respondents:** **Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary,**



**Mr. Tarun Agarwal and Ms. Sylona Mohapatra,  
Advocates for RP.**

**Mr. Arun Kathpalia, Sr. Advocate with Mr. Manu Nair, Mr. Sapan Gupta, Ms. Misha, Ms. Mrida Lakhmani, Mr. Siddhant Kant and Ms. Jasveen Kaur, Advocates for CoC**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With  
Company Appeal (AT) (Ins.) Nos. 337 of 2019**

**IN THE MATTER OF:**

**Mahendra Aluminium Company Ltd.**

**....Appellant**

**Vs.**

**State Bank of India & Ors.**

**....Respondents**

**Present:**

**For Appellant: Mr. Sanjiv Sen, Sr. Advocate with Mr. Shwetank Singh, Mr. Anand Varma, Mr. Shayen Ray and Mr. Soumo Palit, Advocates.**

**For Respondents: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.**

**Mr. Arun Kathpalia, Sr. Advocate with Mr. Manu Nair, Mr. Sapan Gupta, Ms. Misha, Ms. Mrida Lakhmani, Mr. Siddhant Kant and Ms. Jasveen Kaur, Advocates for CoC**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With**  
**Company Appeal (AT) (Ins.) Nos. 338 of 2019**

**IN THE MATTER OF:**

**Global Transnational Trading FZE** **....Appellant**

**Vs.**

**Satish Kumar Gupta (RP)** **....Respondents**  
**of Essar Steel India Ltd. & Ors.**

**Present:**

**For Appellant:** **Mr. Dhaval Mehrotra and Mr. Sudhanshu Sikka, Advocates.**

**For Respondents:** **Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With**  
**Company Appeal (AT) (Ins.) Nos. 345 of 2019**

**IN THE MATTER OF:**

**Gujarat Energy Transmission Corporation Ltd.** **....Appellant**

**Vs.**

**State Bank of India & Ors.** **....Respondents**

**Present:**

**For Appellant:** **Mr. M. G. Ramachandran, Sr. Advocate with Ms. Ranjitha Ramachandran, Mr. Shubham Arya, Ms. Poorva Saigal and Ms. Tanya Sareen, Advocates**

**For Respondents:** **Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr.**

**Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With**  
**Company Appeal (AT) (Ins.) Nos. 349 of 2019**

**IN THE MATTER OF:**

**Dakshin Gujarat Vij Co. Ltd. ....Appellant**

**Vs.**

**Satish Kumar Gupta ....Respondents**  
**Resolution Professional, Essar Steels Ltd. & Ors.**

**Present:**

**For Appellant: Mr. Pradeep Misra and Mr. Manoj Kr. Sharma, Advocates**

**For Respondents: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With**  
**Company Appeal (AT) (Ins) No. 361 of 2019**

**IN THE MATTER OF:**

**State Tax Office (3) ....Appellant**

**Vs.**

**Essar Steel India Ltd. & Anr. ....Respondents**

**Present:**

**For Appellant: Mr. Vedant Bhardwaj and Mrs. Hemantika Wahi, Advocates.**

**For Respondents: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary,**

**Mr. Tarun Agarwal and Ms. Sylona Mohapatra,  
Advocates for RP.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj  
Kishan Kaul, Sr. Advocates with Ms. Ruby Singh  
Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr.  
Vishal Gehrana, Mr. Abhishek Swaroop, Mr.  
Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh  
Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr.  
Avishkar Singhvi, Mr. Amit Bhandari, Mr.  
Devanshu Sajalan and Ms. Manjira Dasgupta,  
Advocates for Arcelormittal India Pvt. Ltd.**

**With  
Company Appeal (AT) (Ins) No. 374 of 2019**

**IN THE MATTER OF:**

**Indian Oil Corporation Ltd. ....Appellant**

**Vs.**

**Satish Kumar Gupta & Ors. ....Respondents**

**Present:**

**For Appellant: Mr. Rajat N. and Mr. Mukul Gupta, Advocates**

**For Respondents: Mr. Ramji Srinivasan, Sr. Advocate with Mr.  
Raunak Dhillon, Ms. Annanya Dhar Choudhary,  
Mr. Tarun Agarwal and Ms. Sylona Mohapatra,  
Advocates for RP.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj  
Kishan Kaul, Sr. Advocates with Ms. Ruby Singh  
Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr.  
Vishal Gehrana, Mr. Abhishek Swaroop, Mr.  
Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh  
Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr.  
Avishkar Singhvi, Mr. Amit Bhandari, Mr.  
Devanshu Sajalan and Ms. Manjira Dasgupta,  
Advocates for Arcelormittal India Pvt. Ltd.**

**With  
Company Appeal (AT) (Ins) No. 375 of 2019**

**IN THE MATTER OF:**

**Karur Vysya Bank Ltd. ....Appellant**

**Vs.**

**Satish Kumar Gupta & Anr. ....Respondents**

**Present:**

**For Appellant: Mr. Nataksh Kr. Pal, Advocate.**

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Manu Nair, Mr. Sapan Gupta, Ms. Misha, Ms. Mrida Lakhmani, Mr. Siddhant Kant and Ms. Jasveen Kaur, Advocates for CoC

Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.

With  
Company Appeal (AT) (Ins) No. 376 of 2019

**IN THE MATTER OF:**

**Bharat Petroleum Corporation Ltd. ....Appellant**

**Vs.**

**Satish Kumar Gupta & Ors. ....Respondents**

**Present:**

**For Appellant: Mr. Rajat N. and Mr. Mukul Gupta, Advocates**

**For Respondents:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.

With  
Company Appeal (AT) (Ins) No. 428 of 2019

**IN THE MATTER OF:**

**Hill View Hire Purchase Pvt. Ltd. ....Appellant**

**Vs.**

**Satish Kumar Gupta,  
RP for Essar Steel India Ltd. (ESIL)**

**....Respondent**

**Present:**

**For Appellant: Mr. Anand Varma, Mr. Shwetank Singh and  
Mr. Dhairya Madan, Advocates**

**For Respondent: Mr. Ramji Srinivasan, Sr. Advocate with Mr.  
Raunak Dhillon, Ms. Annanya Dhar Choudhary,  
Mr. Tarun Agarwal and Ms. Sylona Mohapatra,  
Advocates for RP.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj  
Kishan Kaul, Sr. Advocates with Ms. Ruby Singh  
Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr.  
Vishal Gehrana, Mr. Abhishek Swaroop, Mr.  
Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh  
Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr.  
Avishkar Singhvi, Mr. Amit Bhandari, Mr.  
Devanshu Sajalan and Ms. Manjira Dasgupta,  
Advocates for Arcelormittal India Pvt. Ltd.**

**With**

**Company Appeal (AT) (Ins) No. 429 of 2019**

**IN THE MATTER OF:**

**D.R. Patnaik**

**....Appellant**

**Vs.**

**Satish Kumar Gupta RP for ESIL**

**....Respondent**

**Present:**

**For Appellant: Mr. Anand Varma, Mr. Shwetank Singh and  
Mr. Dhairya Madan, Advocates.**

**For Respondent: Mr. Ramji Srinivasan, Sr. Advocate with Mr.  
Raunak Dhillon, Ms. Annanya Dhar Choudhary,  
Mr. Tarun Agarwal and Ms. Sylona Mohapatra,  
Advocates for RP.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj  
Kishan Kaul, Sr. Advocates with Ms. Ruby Singh  
Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr.  
Vishal Gehrana, Mr. Abhishek Swaroop, Mr.  
Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh  
Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr.  
Avishkar Singhvi, Mr. Amit Bhandari, Mr.  
Devanshu Sajalan and Ms. Manjira Dasgupta,  
Advocates for Arcelormittal India Pvt. Ltd.**

With

**Company Appeal (AT) (Ins) No. 449 of 2019**

**IN THE MATTER OF:**

**MSTC Ltd. ....Appellant**

**Vs.**

**Essar Steel India Ltd. & Ors. ....Respondent**

**Present:**

**For Appellant: Mr. Abhijeet Sinha, Ms. Pallavi Pratap and Mr. Saikat Sarkar, Advocate.**

**For Respondent: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

With

**Company Appeal (AT) (Ins) No. 454 of 2019**

**IN THE MATTER OF:**

**Oil and Natural Gas Corporation Ltd. ....Appellant**

**Vs.**

**Satish Kumar Gupta & Ors. ....Respondent**

**Present:**

**For Appellant: Mr. Gaurav Juneja, Mr. Aditya Ganju and Ms. Pritika Malhotra, Advocates.**

**For Respondent: Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.**

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr.**

**Devanshu Sajalan and Ms. Manjira Dasgupta,  
Advocates for Arcelormittal India Pvt. Ltd.**

**With  
Company Appeal (AT) (Ins) No. 517 of 2019**

**IN THE MATTER OF:**

**Gail (India) Limited** .....Appellant

**Vs.**

**Satish Kumar Gupta,** .....Respondent  
**RP of Essar Steel India Ltd.**

**Present:**

**For Appellant:** Mr. Vikas Mehta and Mr. Adith Nair, Advocates.

**For Respondent:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With  
Company Appeal (AT) (Ins) No. 518 of 2019**

**IN THE MATTER OF:**

**Gail (India) Limited** .....Appellant

**Vs.**

**Satish Kumar Gupta,** .....Respondent  
**RP of Essar Steel India Ltd.**

**Present:**

**For Appellant:** Mr. Vikas Mehta and Mr. Adith Nair, Advocates.

**For Respondent:** Mr. Ramji Srinivasan, Sr. Advocate with Mr. Raunak Dhillon, Ms. Annanya Dhar Choudhary, Mr. Tarun Agarwal and Ms. Sylona Mohapatra, Advocates for RP.

**Mr. Harish Salve, Mr. Rajiv Nayar and Mr. Neeraj Kishan Kaul, Sr. Advocates with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Sameen Vyas, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr.**



**Anupm Prakash, Mr. Akhil Anand, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Avishkar Singhvi, Mr. Amit Bhandari, Mr. Devanshu Sajalan and Ms. Manjira Dasgupta, Advocates for Arcelormittal India Pvt. Ltd.**

**With**  
**Company Appeal (AT) (Ins) No. 580 of 2019**

**IN THE MATTER OF:**

**Principal Secretary & Anr. ....Appellants**

**Vs.**

**Essar Steel India Ltd. & Anr. ....Respondents**

**Present:**

**For Appellant: Mr. Prakash Jani, Senior Advocate with Mrs. Maithli Mehta, Mr. Vedant Bhardwaj and Mrs. Puja Singh, Advocates.**

**For Respondent: Mr. Arun Kathpalia, Senior Advocate with Mr. Siddhant Kant, Advocates for COC.**

**Mr. Raunak Dhillon and Ms. Ananya Dhar Choudhary, Advocates for R-2 (RP).**

**With**  
**Company Appeal (AT) (Ins) No. 181 of 2019**

**IN THE MATTER OF:**

**L&T Infrastructure Finance Company Ltd. ....Appellant**

**Vs.**

**The Resolution Professional of Essar Steel India Ltd. ....Respondent**

**Present:**

**For Appellant: Mr. Arvind Kumar Gupta and Ms. Henna George, Advocates.**

**For Respondent: Mr. Ramji Srinivasan, Senior Advocate with Ms. Sylona Mohapatra and Mr. Siddharth Verma, Advocates.**

**With**  
**Company Appeal (AT) (Ins) No. 551 of 2019**

**IN THE MATTER OF:**

**M/s. NTPC Ltd. ....Appellant**

**Vs.**

**Shri Satish Kumar Gupta & Ors. ....Respondents**

**Present:**

**For Appellant: Mr. Ashim Vachher, Mr. Vaibhav and Mr. V. Dobbal, Advocates.**

**For Respondents: Mr. Raunak Dhillon and Ms. Ananya Dhar Choudhury, Advocates for RP.**

**Mr. Vishal Gehrana, Mr. Anupam Prakash, Mr. Utkarsh and Mr. Naman Singh Bagga, Advocates.**

## J U D G M E N T

### SUDHANSU JYOTI MUKHOPADHAYA, J.

In the ‘Corporate Insolvency Resolution Process’ initiated against ‘Essar Steel India Limited’- (‘Corporate Debtor’), the ‘Committee of Creditors’ approved the ‘Resolution Plan’ submitted by ‘ArcelorMittal India Pvt. Ltd.’- (‘Successful Resolution Applicant’) which was approved by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad, with certain modifications by impugned order dated 8<sup>th</sup> March, 2019.

2. A number of applications were preferred by the ‘Operational Creditors’ and the ‘Financial Creditors’ which were disposed of by individual impugned orders or the impugned order dated 8<sup>th</sup> March, 2019.

3. A group of appeals were heard together. Some of the appeals were heard separately but common impugned order being under challenge and as common question of law is involved, they are disposed of by this common judgment.

4. Mr. Prashant Ruia (Promoter), Appellant in Company Appeal (AT) (Insolvency) No. 257 of 2019, has challenged the order dated 8<sup>th</sup> March, 2019 on the ground that ‘ArcelorMittal India Pvt. Ltd.’- (‘Successful Resolution Applicant’) is ineligible in terms of Section 29A of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “I&B Code”).

5. In rest of the appeals, the different orders have been challenged in part, so far it relates to distribution of assets to different 'Financial Creditors' and the 'Operational Creditors' on the ground of discrimination or the modification of 'Resolution Plan' as suggested by the Adjudicating Authority.

6. For the reasons aforesaid, before deciding the issues whether distribution of amount amongst the 'Financial Creditors', 'Operational Creditors' and other stakeholders as shown in the impugned order dated 8<sup>th</sup> March, 2019 is discriminatory or not or whether the modification of plan as suggested by the Adjudicating Authority is proper or not, it is desirable to decide the issue as to 'whether 'ArcelorMittal India Pvt. Ltd.' is eligible to file 'Resolution Plan' or not as raised by Mr. Prashant Ruia, the promoter of 'Essar Steel India Limited' and one of its shareholders.

**Company Appeal (AT) (Insol.) No. 257 of 2019– (Prashant Ruia v. State Bank of India & Ors.)**

7. The grievance of the Appellant- Mr. Prashant Ruia is that though the Board of Directors were to take part in each meeting of the 'Committee of Creditors' and were to participate but the members of the Board of Directors were often either asked to leave the meeting room and/ or were invited to take part in some of the meeting, and were excluded from participating during discussions and/or deliberations of the 'Resolution Plan' on the ground that such meeting were 'confidential'.

**Grievance against 'Resolution Plan'**

8. Dr. U.K. Chaudhary, learned Senior Counsel for Mr. Prashant Ruia submitted that the Appellant's right of subrogation under Section 140 of the Contract Act, 1872 and right to be indemnified under Section 145 of

the Contract Act are statutory rights which have been extinguished by the 'Resolution Applicant' in violation of Section 30(2)(e) of the 'I&B Code'.

9. According to him, the rights under Section 140 and Section 145 of the 'Indian Contract Act, 1872' are future and contingent rights of the Appellant which arise upon making any payment under the guarantee agreement. The 'Resolution Plan' can deal only with claims against the 'Corporate Debtor' as on the Insolvency Commencement date i.e. 2<sup>nd</sup> August, 2017. Therefore, 'ArcelorMittal India Pvt. Ltd.' in the 'Resolution Plan' should not have dealt with in any manner with the Appellant's right of subrogation and indemnification, much less extinguishing such rights.

10. Learned Senior Counsel for the Appellant further submitted that the 'Resolution Plan' submitted by 'ArcelorMittal India Pvt. Ltd.', as approved, is violative of Section 29A (e) of the 'I&B Code'.

11. According to him, 'ArcelorMittal India Pvt. Ltd.' fraudulently by way of falsehood, suppression and misrepresentation of the facts had not brought to the notice of the Hon'ble Supreme Court that it is ineligible under Section 29A (e). It has misled the Hon'ble Supreme Court, this Appellate Tribunal, the 'Committee of Creditors' and the 'Resolution Professional' of the 'Corporate Debtor' by stating that Mr. Lakshmi Mittal had completely exited from the Indian Businesses of the Mittal Family, more specifically, (i) 'Gontermann Peipers India Limited' ['GPIL']; (ii) 'GPI Textiles Limited' and (iii) 'Balasore Alloys Limited'.

12. According to him, Mr. Lakshmi Mittal, Mr. Sanjay Sharma and Mr. Rajan Tandon have made false statements on oath that Mr. Lakshmi Mittal has disassociated himself from all businesses of his brothers, Mr. Pramod Mittal and Mr. Vinod Mittal. A copy of the Affidavit dated 15<sup>th</sup> May, 2018 executed by Mr. Rajan Tandon at the behest of Mr. Lakshmi Mittal, filed before the 'Committee of Creditors' and another Affidavit dated 17<sup>th</sup>

October, 2018 of Mr. Sanjay Sharma, a Director of 'ArcelorMittal India Pvt. Ltd.', executed at the behest of Mr. Lakshmi Mittal has also been enclosed, which were stated to have been placed before the 'Committee of Creditors' of 'Essar Steel India Limited', before acceptance of the 'Resolution Plan'.

13. Mr. Harin Rawal, learned Senior Counsel appears on behalf of Intervenor- 'Essar Steel Asia Holdings Limited'- one of the shareholder of 'Essar Steel India Limited'.

14. According to him, 'ArcelorMittal India Pvt. Ltd.' is ineligible in terms of Section 29A (c) read with Section 29A (j) of the 'I&B Code'. It is informed that Mr. L.N. Mittal held 10 shares in 'Navoday Consultants Ltd.'. As per the statutory filings, Mr. L.N. Mittal is classified as a person holding shares as a Promoter and as part of the Promoter Group. Under the provisions of 'I&B Code', there is no distinction between a Promoter and/or Promoter Group.

15. Further, according to him, 'Navoday Consultants Limited' is a Promoter of 'GPI Textiles' and 'Gontermann Piepers'. Under the provisions of the 'I&B Code', a person stands ineligible irrespective of the quantum of association with a particular entity.

16. It was further submitted that neither the provisions of the 'I&B Code', nor the judgment dated 4<sup>th</sup> October, 2018 of the Hon'ble Supreme Court prescribe a quantum of shareholding by a person to entail ineligibility under Section 29A. The conduct of Mr. L.N. Mittal to sell the 10 shares in 'Navoday Consultants Ltd.' after the judgment of Hon'ble Supreme Court dated 4<sup>th</sup> October, 2018 and the 'Committee of Creditors' letter dated 16<sup>th</sup> October, 2018, itself highlights and evidences the significance of holding of the 10 shares. Therefore, ineligibility of 'ArcelorMittal India Pvt. Ltd.' cannot be brushed aside.

17. Learned Senior Counsel for the Intervenor- 'Essar Steel Asia Holdings Limited' also submitted that the directions of the Hon'ble Supreme Court under Article 142 of the Constitution of India cannot be a ground to justify a breach of conditions. The Hon'ble Supreme Court after holding 'ArcelorMittal India Pvt. Ltd.' ineligible because of its association with 'Uttam Galva' and 'KSS Petron' directed 'ArcelorMittal India Pvt. Ltd.' to pay of 'NPA' dues of all related/ connected entities within a period of two weeks. The said directions are not limited to 'Uttam Galva' and 'KSS Petron' only. Therefore, it would be incorrect to assert that pursuant to directions under Article 142, this Appellate Tribunal cannot evaluate the eligibility of 'ArcelorMittal India Pvt. Ltd.', more particularly, in view of the directions of the Hon'ble Supreme Court to pay the dues within the period of two weeks. The directions of the Hon'ble Supreme Court, in fact, require compliance of the provision of Section 29A.

18. Learned counsel for the Intervenor submits that 'ArcelorMittal India Pvt. Ltd.'s reply dated 18<sup>th</sup> October, 2018 is based on an Affidavit dated 17<sup>th</sup> October, 2018 which is false and an attempt to mislead the 'Committee of Creditors' and this Appellate Tribunal.

19. Relying on the decision of the Hon'ble Supreme Court in ***"Arcelormittal India Private Limited v. Satish Kumar Gupta and Ors.— (2018) SCC OnLine SC 1733"***, it is submitted that the Hon'ble Supreme Court has also held that the reasonable proximate facts prior to the submission of both the 'Resolution Plans' by AMIPL would show that there is no doubt whatsoever that AMNLBV's shares in Uttam Galva were sold only in order to get out of the ineligibility mentioned by Section 29A (e), and consequently the proviso thereto.

20. Therefore, according to him, the 'Resolution Plan' is in violation of the decision of the Hon'ble Supreme Court in 'ArcelorMittal India Pvt. Ltd.'.

21. Mr. Harish Salve, learned Senior Counsel on behalf of 'ArcelorMittal India Pvt. Ltd.'- ('Successful Resolution Applicant') submitted that the issue relating to 'Navoday Consultants Limited' as raised in the application is one of the multiple *mala fide* attempts to derail the 'Corporate Insolvency Resolution Process' of the 'Corporate Debtor'. He referred the following attempts as made on behalf of the Promoters:

**a. First attempt:** Immediately after the 'Reserve Bank of India' (RBI) referred ESIL for CIRP, ESIL filed a writ petition, being W.P No. 12424/2017 before the Hon'ble High Court of Gujrat, *inter alia*, seeking quashing of the Press Release dated 13.06.2017 of RBI and directions against the consortium of lenders to implement the alleged debt restructuring plan submitted by ESIL.

**b. Second attempt:** As a part of the design to re-acquire ESIL, the promoters of ESIL submitted a Resolution Plan on 12.02.2018 in the name of Numetal Limited, which was later found ineligible by the Hon'ble Supreme Court under Section 29A of the IBC on account of the looming presence of Mr. Rewant Ruia. The Hon'ble Supreme Court further gave an opportunity to the parties to pay off the NPAs of its related parties and become eligible under Section 29A of the IBC, which the Ruia failed to do.

**c. Third attempt:** On 17.04.2018 ESAHL, the present Applicant, submitted a purported debt restructuring plan to the Resolution Professional and the Committee of Creditors. The same was however rejected by the Resolution Professional on 08.05.2018, *inter alia*, on the ground that ESAHL was ineligible to submit any resolution plan for ESIL in view Section 29A of the IBC.

**d. Fourth attempt:** On 10.07.2018, ESAHL, the present Applicant, again wrote to the Committee of Creditors for consideration of its purported debt restructuring plan. However, the same was also rejected by the Committee of Creditors on 17.07.2018. Pertinently, neither the decision dated 08.05.2018 nor the decision dated 17.07.20 18 is assailed by ESAHL before the Adjudicating Authority.

**e. Fifth attempt:** In a bid to circumvent the judgment of the Hon'ble Supreme Court and to stall the CIRP of ESIL, ESAHL, on 25.10.2018 (the very same day when AMIPL's Resolution Plan was approved) approached the Committee of Creditors with allegedly another 'Settlement Plan' offering to repay the entire dues of ESIL. Since, the Committee of Creditors, acting under the mandate of the Supreme Court Judgment, had already approved the Resolution Plan filed by AMIPL (after AMIPL had cleared all related party to become eligible), it refused to consider the alleged 'Settlement Plan' of the present Applicant. The decision of the Committee of Creditor was challenged before the Adjudicating Authority *inter alia*, praying for directions to the Committee of Creditors to accept the purported 'Settlement Plan' and to terminate the CIRP. The Adjudicating Authority dismissed the said application on 29.01.2019 by its detailed order.

ESIL shareholders filed an appeal against the said Order on 11.02.2019 before this Appellate Tribunal, however, the said appeal was mischievously and consciously kept pending in the registry of this Appellate Tribunal by not curing the defects for almost two months. The appeal filed against such order before Appellate Tribunal has been withdrawn by ESAHL on 14.03.2019.



- f. Sixth attempt:** On 15.10.2018, Numetal wrote a letter to the Resolution Professional of GPI Textiles, *inter alia*, calling upon him to challenge the eligibility of AMIPL. At the instigation of Numetal, the Resolution Professional of GPI Textiles filed an application on 31.10.2018 before the Adjudicating Authority, Ahmedabad seeking declaration of AMIPL as an ineligible resolution applicant.
- Pertinently, each of the pleas/grounds (pertaining to GPI Textiles) being raised by the present Applicant, were raised by the Resolution Professional of GPI Textiles also. However, the said application was withdrawn on 07.03.2019.
- g. Seventh attempt:** Prashant Ruia other suspended Board of Directors filed an application before the Adjudicating Authority bearing IA No. 64 of 2019 seeking rejection of the resolution plan of AMIPL for non-compliance of the judgment passed by Hon'ble *Supreme Court of India in Vijay Kumar Jain v. Standard Chartered Bank & Others, Civil Appeal No. 8430 of 2018*. The said Application was also rejected by the Adjudicating Authority vide its common Judgment dated 08.03.2019. The Company Appeal No. 257 of 2019 filed against such order is pending before this Hon'ble Appellate Authority.
- h. Eighth attempt:** By way of the captioned application, ESAHL has now sought to contend, *inter alia*, that AMIPL is ineligible under Section 29A of the Code on account of *Gontermann Peipers (India) Ltd. and GPI Textiles Ltd.* The applicant has chosen not to agitate these issues which are being raised at this belated stage at any of the fora earlier. Clearly, the applicant chose to sit on the fence and to file one application after another with an attempt to somehow stall the resolution process.
- i.** According to him, this Application is nothing but another

*malafide* attempt to sabotage the entire resolution process. The Applicant herein did not take any ground raised in the present application, in its application filed before the Adjudicating Authority. Having failed to get any relief from the Adjudicating Authority and after withdrawing the appeals filed before this Appellate Authority, the Applicant has now come with unclean hands to sabotage the entire resolution process. As stated above, the applicant has made numerous attempts to stall this process somehow or the other, which has also resulted in the wastage of precious judicial time.

22. It is further submitted that the Applicant has no *locus standi* as the Settlement Plan submitted by the Applicant stands disallowed by the Adjudicating Authority and the appeal against the order stands withdrawn, the Applicant can't have any grievance and / or *locus standi* to re-agitate this issue. Evidently, the Applicant is misleading this Appellate Tribunal by stating that this Appellate Tribunal granted a leave to raise all contentions in the pending appeals. However, to the contrary, no such leave was granted to the Applicant herein. Therefore, this application is clearly not maintainable.

23. Mr. Harish Salve, learned Senior Counsel highlighted the following facts and made following submissions:

**“Response on merits:**

*a. The allegation that Mr. L.N. Mittal is a promoter of Navoday Consultants Ltd. (NCL) is frivolous*

- It is a matter of record that there has been a complete disassociation between the businesses of Mr. L.N. Mittal and the businesses of his brothers for more than 20 years. The contents of the

affidavits of Mr. Rajan Tandon and Mr. Sanjay Sharma are reiterated in their entirety.

- The ESAHL now seeks to rely on 10 shares held by Mr. L.N. Mittal in NCL.
- The Application conveniently omits to mention that as per the shareholding pattern filed as part of the application itself, Mr. L.N. Mittal is alleged to have held 10 shares out of a total issued and outstanding share capital of 17,18,888 shares (i.e., 0.00058% of the total paid up capital). It is submitted and reiterated that Mr. L.N. Mittal does not hold any shares in the said companies and, in any case, a mere holding of 0.00058% of total paid up capital of NCL, cannot invite any ineligibility under Section 29A IBC.
- The entire surmise of the Application is ill-conceived. Without prejudice to what has been stated above, it is pertinent to note that NCL holds only 0.91% of shareholding in Gontermann Peipers (and 11.61% in GPI Textiles). The Applicant has tried to allege since NCL is named as a promoter of GPI Textiles & Gontermann Peipers, Mr. L.N. Mittal can be called as promoter of GPI Textiles and Gontermann Peipers. This argument is not only fallacious but is an attempt to mislead this Appellate Tribunal. Even if the averments made in the present application are taken at its face value, Mr. L.N. Mittal cannot be called a promoter of GPI Textiles and Gontermann

Peipers merely because according to the Applicant he is a promoter of NCL. It is reiterated that neither Mr. L.N. Mittal holds any shares in GPI Textiles or Gontermann Peipers nor is a promoter of these companies.

**b.** *The allegation that there is purported 'business connection' between Mr. L.N. Mittal and his brothers is untrue:*

- The fact that Mr. L.N. Mittal has recently provided funds to clear the dues of Mr. Pramod Mittal does not in any way contradict or otherwise run counter to the disassociation of businesses. That such funds have been paid on account of familial ties to assist the brothers in avoiding criminal prosecution does not mean that they are doing business together.
- The Appellant is repeatedly attempting to draw business linkages between Mr. L.N. Mittal and his brothers when none have existed for more than 20 years. An alleged shareholding of 0.00058% of Navodaya or Mr. L.N. Mittal assisting in paying his brothers' dues in order that they avoid criminal prosecution will not establish any business connections between them or make them connecting persons in respect of AMIPL's bid for ESIL.

**c.** *Mr. L. N. Mittal was at the best a part of the "promoter group" of NCL (and, not a promoter)*

- Even if the averment stated in the application are taken

on their face value, Mr. L.N. Mittal is not a promoter of NCL but is a part of the promoter group at best since the definition of "promoter group" includes, inter alia, an "immediate relative of a promoter (i.e., any spouse of that person, or any parent, brother, sister or child of the person or of the spouse)". Clearly, the disqualification under Section 29A(c) of the IBC does not extend to members of the "promoter group".

24. On hearing the parties and going through the records, we find that no ground is made out to entertain the appeal preferred by Appellant- Mr. Prashant Ruia or by the Intervenor- 'Essar Steel Asia Holdings Limited'- shareholder of the 'Corporate Debtor'.

25. The Hon'ble Supreme Court in **"Arcelormittal India Private Limited"** (Supra) noticed that the Promoter (Mr. Prashant Ruia) is in concert with 'Numetal Limited'. The Hon'ble Supreme Court in its judgment has clearly rejected the objections made by 'Numetal Limited' with respect to 'NPAs' of 'Gonterman Piepers', being an issue raised at a belated stage. Also, the issue with regard to 'GPI Textiles' formed part of the submissions before the Hon'ble Supreme Court. This Application has now been made by the Applicant herein to re-agitate the very same issue which stands decided by the Hon'ble Supreme Court. Any attempt to reopen those issues would effectively amount to review or reconsideration of the order of the Hon'ble Supreme Court. The relevant extract of the judgment of the Hon'ble Supreme Court wherein aforesaid facts were noticed is reproduced below for ease of reference:

*"18..... Shri Rohatgi further argued that Shri Pramod Mittal, brother of Shri L. N. Mittal, is a connected person, which would trigger Section 29A(j). Shri Pramod Mittal is a promoter and director of one 'GontermannPiepers (India)*

Limited’, which has also been declared an NPA, rendering Shri L. N. Mittal ineligible under Section 29A (j). Equally, Shri L. N. Mittal, Shri Pramod Mittal and other members of the Mittal family are promoters of one ‘Ispat Profiles India Limited’. This company was ordered to be wound up by the BIFR, appeals from which have been dismissed by the AAIFR. Consequently, Shri L. N. Mittal, as a related party of Shri Pramod Mittal, would render AMPL ineligible under sub-clause (c) read with sub-clause (j) of Section 29A of the Code.

112. Shri Rohatgi also argued before us that Shri Pramod Mittal, brother of Shri Laxmi Mittal, also held shares in two other companies which were declared to be NPAs more than one year prior to the date of commencement of the corporate insolvency resolution process of ESIL. We have been informed by Shri Salve that Shri Pramod Mittal parted company with Shri L. N. Mittal as far back as 1994 and cannot therefore be regarded as a person acting in concert with Shri L.N. Mittal. Since this aspect of the case has not been argued before the authorities below, though raised in an L.A. by Numetal before the Appellate Authority, we will not countenance such an argument for the first time before this Court.” (Emphasis supplied)

26. An issue which has been settled by the Hon’ble Supreme Court i.e., eligibility of ‘ArcelorMittal India Pvt. Ltd.’ as a ‘Resolution Applicant’ for ‘Essar Steel India Limited’, cannot be re-agitated again and again. Any such attempt is clearly barred by the principles of *res judicata*.

Therefore, the Application preferred by the Appellant- Mr. Prashant Ruia and Intervenor- 'Essar Steel Asia Holdings Limited' deserves to be rejected.

27. The issue of eligibility of 'ArcelorMittal India Pvt. Ltd.' has been adjudicated upon after considering all the arguments by the Hon'ble Supreme Court and could not be re-opened before the Appellate Authority at a stage where the 'Resolution Plan' approval is being considered by this Appellate Authority on grounds other than Section 29A ineligibility.

28. The present appeal is also barred by delay and laches as the facts stated above, were within the knowledge of Promoters and Shareholders of 'Essar Steel Asia Holdings Limited', since the application filed the 'Resolution Professional' of 'GPI Textiles' was admittedly filed on the basis of the letter dated 15<sup>th</sup> October, 2018 issued by 'Numetal Limited'. Further, the present Applicant was a party to the proceedings before the Adjudicating Authority when the application was filed by the 'Resolution Professional' of 'GPI Textiles' and subsequently withdrawn. Hence, the said application suffers from an *ex-facie* inordinate delay of 6-7 months from the judgment of the Hon'ble Supreme Court. Therefore, the present application which is clearly barred by delays and laches has been filed to sabotage the 'Resolution Process'.

29. Apart from the aforesaid facts, we find that the 'Resolution Plan' was considered by the Adjudicating Authority in view of the decision and directions of the Hon'ble Supreme Court under Article 142 of the Constitution of India in **"Arcelormittal India Private Limited"** (Supra). Hence, at this stage, we are not inclined to re-open the question of eligibility or ineligibility of 'ArcelorMittal India Pvt. Ltd.', which stands closed in view of the decision and directions of the Hon'ble Supreme Court.

30. So far as the Appellant- Mr. Prashant Ruia's right of subrogation under Section 140 of the Contract Act and right to be indemnified under Section 145 of the said Act is concerned, the question of exercising such right does not arise in the present case.

31. The Appellant- Mr. Prashant Ruia has executed a 'Deed of Guarantee' between the lenders and the 'Corporate Debtor'. Such guarantee is with regard to clearance of debt. Once the debt payable by the 'Corporate Debtor' stands cleared in view of the approval of the plan by making payment in favour of the lenders ('Financial Creditors'), the effect of 'Deed of Guarantee' comes to an end as the debt stands paid. The guarantee having become ineffective in view of payment of debt by way of resolution to the original lenders ('Financial Creditors'), the question of right of subrogation of the Appellant's right under Section 140 of the Contract Act and the right to be indemnified under Section 145 of the Contract Act does not arise.

32. We find no merit in this appeal preferred by Appellant- Mr. Prashant Ruia or submissions made on behalf of Intervenor- 'Essar Steel Asia Holdings Limited'. It is accordingly dismissed. No costs.

### **OTHER APPEALS**

33. The question arises for consideration in most of the appeals are:

- (i) Whether the distribution as shown in the 'Resolution Plan is discriminatory or not?
- (ii) Whether the 'Financial Creditors' can be classified on the ground of a 'Secured Financial Creditor' having charge on project assets of the 'Corporate Debtor' and 'Secured Financial Creditor' having no charge on the project asset of the 'Corporate Debtor' or on the ground



that the 'Financial Creditor' is an 'Unsecured Financial Creditor'?

- (iii) Whether the 'Operational Creditors' can be validly classified on the ground of (a) employees of the 'Corporate Debtor' or (b) those who have 'supplied goods' and 'rendered services' to the 'Corporate Debtor' and (c) the debt payable under the existing law (statutory dues) to the Central Government or the State Government or the Local Authorities?
- (iv) Whether the power of distribution of amount to the lenders, i.e. 'Financial Creditors', 'Operational Creditors' and other stakeholders is to be made by the 'Resolution Applicant' or the 'Committee of Creditors'?

34. Before deciding the issues, it is necessary to notice the relevant facts of the rest of appeals as detailed hereunder.

The grievance of the following 'Operational Creditors' are as follows:

- (i) In the 'Resolution Plan', 0% (zero percent) of their debt has been proposed to be paid, whereas the 'Financial Creditors' have been proposed to be paid 92.5% of their dues. and;
- (ii) Claim of some of the 'Operational Creditors' have been notionally assessed at Re. 1/- (average) by the 'Resolution Professional' without any basis. Subsequently, in spite of direction of the Adjudicating Authority, the 'Resolution Professional' has not reflected their claims.

**Company Appeal (AT) (Insol.) No. 449 of 2019 (MSTC Limited) ('Operational Creditor')**

35. The grievance of the Appellant- 'MSTC Limited' is that it supplied materials worth Rs. 29 Crores which is lying with the Company under

bailment/pledge, but not been reflected and added in the 'Corporate Insolvency Resolution Process Costs'.

**Company Appeal (AT) (Insol.) No. 338 of 2019 (Global Transnational Trading FZE)**  
**(Operational Creditor)**

36. According to Appellant- 'Global Transnational Trading FZE', it supplied goods to the 'Corporate Debtor' amounting to Rs. 18,19,73,638/- and the 'Resolution Professional' accepted claim to the extent of Rs. 17,09,83,857/- but amount receivable by it has been notionally admitted at Re. 1/- only by the 'Resolution Professional'.

**Company Appeal (AT) (Insol.) No. 361 of 2019 (State Tax Officer (3))**  
**(Operational Creditor)**

37. According to the Appellant, the 'State Tax Department' filed claim of Rs. 544 Crores approx., but its claim has been notionally admitted at Re.1/- only by the 'Resolution Professional'.

**Company Appeal (AT) (Insol.) No. 374 of 2019 (Indian Oil Corporation Ltd.)**  
**(Operational Creditor)**

38. According to the Appellant- 'Indian Oil Corporation Ltd.', it had submitted a claim of Rs. 3762,58,74,503/- to the 'Resolution Professional', who has admitted notional amount of Re. 1/- Only.

**Company Appeal (AT) (Insol.) No. 376 of 2019 (Bharat Petroleum Corporation Limited)**  
**(Operational Creditor)**

39. According to the Appellant- 'Bharat Petroleum Corporation Limited', it had submitted a claim of Rs. 503,83,46,437/- to the 'Resolution Professional' who had only admitted notional amount of Re. 1/- Only.

**Company Appeal (AT) (Insol.) No. 349 of 2019 (Dakshin Gujarat Vij. Co. Ltd.)**

40. The grievance of the Appellant- 'Dakshin Gujarat Vij. Co. Ltd.' is that the 'Resolution Professional' has not included the claim of the Appellant, though it raised bill of Rs. 5822.85 Crores towards the electricity charges.

41. In Interlocutory Applications filed by 'Dakshin Gujarat Vij. Co. Ltd.'; 'State Tax Officer'; 'Gujarat Energy Transmission Corporation Ltd.'; 'Bharat Petroleum Corporation Limited'; 'Indian Oil Corporation Ltd.'; 'MSTC Limited'; 'Gail (India) Limited' and 'Global Transnational Trading FZE' before the Adjudicating Authority, the Adjudicating Authority passed following directions:

*“That these I.As. can partially succeed only to the extent of such direction may be issued to the Resolution Professional to register their respective claims and to update the claims in the list of creditors, because we have already held in our separate order passed in I.As Nos. 54 & 55 of 2018. However, the apportionment of these claims cannot be made as a matter of right, but only their interest, if any, can be taken care of while dealing with I.A. No. 431 of 2018 in succeeding paragraphs for consideration and approval of the Resolution Plan.”*

42. The grievance of 'Dakshin Gujarat Vij. Co. Ltd.'; 'State Tax Officer'; 'Bharat Petroleum Corporation Limited'; 'Indian Oil Corporation Ltd.'; 'MSTC Limited'; 'Gail (India) Limited'; 'Global Transnational Trading FZE'; 'Oil and Natural Gas Corporation Ltd.' and 'Indian Oil Corporation Ltd.'

etc., is that inspite of direction of the Adjudicating Authority, the 'Resolution Professional' has not allowed their total claim.

43. The aforesaid part of order and direction given by the Adjudicating Authority having not been challenged by any person. Pursuant to our observation, the 'Resolution Professional' has provided the claim of the aforesaid 'Operational Creditors' and detailed below:-

I.A. No.	Name of Creditor	Amount of claim (Rs.) as per I.A. as per pages 34-41 of NCLT Order
28/2018	Dakshin Gujarat Vij Co. Ltd.	313,23,33,224
446/2018	Dakshin Gujarat Vij Co. Ltd.	5882,28,00,000
467/2018	Dakshin Gujarat Vij Co. Ltd.	606,49,00,000
468/2018	State Tax Officer	544,00,00,000
443/2018	Gujarat Energy Transmission Corporation Ltd.	896,52,00,000
325/2018	Bharat Petroleum Corporation Limited	443,05,33,379
53/2018	Bharat Petroleum Corporation Limited	503,83,46,437
469/2018	Indian Oil Corporation Ltd.	3762,58,74,503
52/2019	MSTC Limited	813,30,00,000
438/2018	GAIL India Limited	2,47,26,000
470/2018	Global Transnational Trading FZE	NA

The order passed by the Adjudicating Authority in respect of claim of aforesaid 'Operational Creditors', we hold that the total amount aforesaid is to be added towards claim of the 'Operational Creditors'.

**Company Appeal (AT) (Insol.) Nos. 304-305 of 2019 (Subham Cargo Movers)**

44. According to the counsel for the Appellant, the 'Resolution Professional' admitted the claim of the Appellant to the extent of Rs. 9,44,85,287/- (97.62%), but 'NIL' amount (0%) has been proposed to be paid in the 'Resolution Plan'.

**Company Appeal (AT) (Insol.) Nos. 332-333 of 2019 (Sakar Industries Pvt. Ltd.)**

45. The grievance of the Appellant is that the 'Resolution Professional' had admitted the claim of the Appellant to the extent of Rs. 24,85,25,394/- (88.9%), but 'NIL' amount (0%) has been proposed to be paid in the 'Resolution Plan'.

**Company Appeal (AT) (Insol.) Nos. 302-303 of 2019 (Ideal Movers Private Limited)**

46. The grievance of the Appellant is that though the 'Resolution Professional' admitted the claim of it to the extent of Rs. 178,50,51,792/- (more than 95%), but 'NIL' amount (0%) has been proposed to be paid to the Appellant in the 'Resolution Plan'.

**Company Appeal (AT) (Insol.) Nos. 291 & 293 of 2019 (Arkay Logistics Limited)**

47. According to this Appellant, the admitted outstanding claim of it is Rs. 226 Crores approx., but 'NIL' amount (0%) has been proposed to be paid in the 'Resolution Plan'. Further grievance is that the 'Operational Creditors' whose claim are less than Rs. 1 Crore, they have been paid 100% of their dues, but 'NIL' amount has been proposed to be paid to the Appellant.

**Company Appeal (AT) (Insol.) No. 300 of 2019 (Arfin India Limited)**

48. According to this Appellant, the 'Resolution Professional' admitted the claim to the extent of Rs. 25,50,53,397/- (91.2%), but the 'Resolution Plan' proposed 'NIL' amount (0%) in favour of the Appellant.

**Company Appeal (AT) (Insol.) No. 337 of 2019 (Mahendra Aluminium Company Limited)**

49. According to the Appellant, the 'Resolution Professional' admitted the claim of it to the extent of Rs. 10,46,73,224/- (85.2%), but in the 'Resolution Plan' only 'NIL' amount (0%) has been shown to be paid in its favour.

**Company Appeal (AT) (Insol.) No. 279 of 2019 (Vinayak Road Carriers)**

50. According to the Appellant, the 'Resolution Professional' admitted the claim of the Appellant to the extent of Rs. 15,49,94,471/- (more than

98.91%). However, 'NIL' amount (0%) has been proposed to be paid in favour of this Appellant.

**Company Appeal (AT) (Insol.) No. 345 of 2019 (Gujarat Energy Transmission Corporation Limited)**

51. The grievance of the Appellant ('Gujarat Energy Transmission Corporation Ltd.') is that its claim has been adjudicated at Rs. 896.52 Crores, but 'NIL' amount (0%) is proposed to be paid in the 'Resolution Plan'.

**Company Appeal (AT) (Insol.) No. 290 & 292 of 2019 (Essar Bulk Terminal Limited)**

52. The grievance of the Appellant is that though its claim of Rs. 703 Crores approx. is admitted, but 'NIL' amount (0%) is proposed to be paid against its admitted claim.

**Company Appeal (AT) (Insol.) No. 242 of 2019 (I.A No. 1266 of 2019) (Palco Recycle Industries Ltd.- (Operational Creditor)**

53. The Appellant has supplied aluminium wire rod and aluminium wire as raw material under various purchases orders. It filed claim of Rs. 2,40,66,551/- of which Rs. 2,36,58,977/- (98.3%) admitted by the 'Resolution Professional'. However, 'NIL' amount (0%) has been allocated.

**Company Appeal (AT) (Insol.) No. 454 of 2019 (Oil and Natural Gas Corporation Limited)**

54. In case of 'Oil and Natural Gas Corporation Limited' though the 'Resolution Professional' allowed the principal amount but no interest was allowed. In similar case of 'Indian Oil Corporation Limited', the Adjudicating Authority allowed the interest and ordered to accept the total claim.

55. In I.A. No. 14 of 2019 filed by 'ONGC', the Adjudicating Authority observed:

*“The applicant has sought prayer to intervene in the present proceedings, which pertains to approval of resolution plan, in I.A. No. 431 of 2018. Since we have already recorded that claim of the Indian Oil Corporation Ltd. (in its IA. No. 469 of 2018) can be admitted by the Resolution Professional in creditors list. Therefore, the purpose of this I.A. is achieved and, thus, it has now become infructuous, according stands disposed of.”*

56. Learned counsel for ‘Oil and Natural Gas Corporation Limited’ submitted that the Adjudicating Authority while passed order referred to the Interlocutory Applications filed by ‘Indian Oil Corporation Limited’ but observed that the Interlocutory Application filed by Appellant has become infructuous. However, we are of the view that the total claim amount of ‘Indian Oil Corporation Limited’, having been accepted by the Adjudicating Authority, the ‘Oil and Natural Gas Corporation Limited’ is also entitled to its total claim of Rs. 7,46,81,468/- thereby, interest payable to the Appellant to be included towards dues of the ‘Operational Creditors’.

**Company Appeal (AT) (Insol.) No. 580 of 2019— (Principal Secretary & Anr.)**

57. This appeal has been preferred by Principal Secretary, Government of Gujarat, Energy & Petrochemicals Department alongwith the Collector of Electricity Duty, challenging the impugned order dated 8<sup>th</sup> March, 2019, which was filed after some delay on the ground that the impugned order was not communicated to the Department and, therefore, we have entertained the appeal being within time from the date of knowledge.

58. According to the Appellants, the dues of the 'Corporate Debtor' arising out of self-assessment under the 'Gujarat Electricity Duty Act, 1958' as well as sale of Electricity being governed under the provisions of the Gujarat Tax on sale of the 'Electricity Act, 1985' (repealed), a sum of Rs. 861.19 Crores is all crystallized dues inclusive of interest which has accrued due to delay in paying the duty and tax component.

59. The 'Corporate Debtor' ('Essar Steel India Ltd') had not paid the amount on the ground that it was entitled for exemption. Initially, the matter was moved before the Hon'ble High Court of Gujarat. In Letters Patent Appeal No. 518 of 2010 pursuant to interim order passed in Special Civil Application No. 10946 of 2009, the 'Corporate Debtor' was directed by the Hon'ble Gujarat High Court to deposit the amount of Rs. 612.79 Crores. Accordingly, instalments were granted to the 'Corporate Debtor' for complying with the said interim directions, out of the total claim of Rs. 1321.48 Crores. Thus, as on date the Appellants herein are entitled to Rs. 708.69 Crores towards Electricity Duty as well as Rs. 152.50 Crores towards Tax on Sale of Electricity totalling Rs. 861.19 Crores.

60. According to the Appellants, as per the required and statutory procedure the Appellants filed claim with proof on 14<sup>th</sup> August, 2017 pursuant to Public Notice dated 5<sup>th</sup> August, 2017 issued by the 'Resolution Professional'. However, the claim has not been reflected by the 'Resolution Professional'.

61. Further, the case of the Appellants is that the 'Corporate Debtor' moved before the Hon'ble Supreme Court by Civil Appeal No. 4842 of 2017 which was not entertained. Thereafter, the 'Corporate Debtor' filed Review Petition (C) No. 2234 of 2017 in Civil Appeal No. 4842 of 2017 which was also dismissed by the Hon'ble Supreme Court on 5<sup>th</sup>



October, 2017. Thereafter, the Curative Petition No. 53 of 2018 was filed by the 'Corporate Debtor' through 'Resolution Professional' which was also dismissed by the Hon'ble Supreme Court on 13<sup>th</sup> February, 2019.

62. The grievance of the Appellants is that amount of Rs. 1321.48 Crores which includes the electricity duty and tax on sale of electricity including interest thereon though crystallized but amount has not been collated by the 'Resolution Professional' and the plan has been approved by the impugned order dated 8<sup>th</sup> March, 2019 being in complete contravention of the provisions of Section 8A of the 'Gujarat Electricity Duty Act, 1958' and order passed by the Hon'ble Courts, as also *de hors* the provisions of Section 30(2) (e) of the 'I&B Code'.

63. From the impugned order, we find that the 'Resolution Professional' or the Adjudicating Authority has not considered the claim of the Appellants on merit. This apart, we find that the matter reached finality during the pendency of the approval of the plan when Curative Petition filed by the 'Corporate Debtor' through the 'Resolution Professional' was dismissed by the Hon'ble Supreme Court on 13<sup>th</sup> February, 2019. Admittedly, the Review Petition and the Curative Petition was filed by the 'Corporate Debtor' when it was being run by the 'Resolution Professional', therefore, he had the knowledge of the same.

64. For the reason aforesaid, we are of the view that the 'Resolution Professional' and the Adjudicating Authority should have accepted the total claim of the Appellant of Rs. 861.19 Crores i.e. Rs. 708.69 Crores towards 'Electricity Duty' and Rs. 152.50 Crores towards 'Tax on sale of Electricity'.

65. The Adjudicating Authority has noticed that the 'Resolution Professional' has no jurisdiction to decide and/ or reject the claim, it is only required to collate the claim. The 'Resolution Professional' on behalf of the 'Corporate Debtor' having moved before the Hon'ble Supreme Court even during the pendency of the resolution process and having lost, it was the duty of the 'Resolution Professional' to bring the aforesaid facts to the notice of the Adjudicating Authority for accepting the claim.

66. In that view of finding aforesaid, the prayer made in Company Appeal (AT) (Insol.) No. 580 of 2019 for inclusion of its claim of Rs. 861.19 Crores is allowed.

**Company Appeal (AT) (Insol.) No. 551 of 2019— (M/s. NTPC Ltd.)**

67. The case of the Appellant- 'National Thermal Power Corporation Ltd.' ('NTPC Ltd.') is that it has preferred I.A. No. 62 of 2019 under Section 60(5) of the 'I&B Code' being aggrieved by partial rejection of its claim by the 'Resolution Professional'. It is contended that as per e-mail dated 22<sup>nd</sup> October, 2018, the 'Resolution Professional' has partly admitted the claim of NTPC only to the extent of Rs. 1,19,44,783/- and not allowed the rest of its claim of Rs. 9,25,55,481/- towards interest. Therefore, the Appellant challenged such decision.

68. The Adjudicating Authority by impugned order dated 8<sup>th</sup> March, 2019 partly allowed the I.A. No. 62 of 2019 and held that their interest as being 'Operational Creditor' can be adequately taken care at the time of dealing with main I.A. No. 431 of 2018, for judicious distribution/ apportionment of the amount receivable through the resolution plan among 'Financial/ Operational Creditors' and other stakeholders, in terms of Section 53 of the 'I&B Code'.

69. In view of the fact that the claim of the Appellant is similarly placed like 'Oil and Natural Gas Corporation Ltd.' and 'Gail India Limited' (in one of the appeal), we hold that the Appellant- 'NTPC Limited' is also entitled to get the same relief as accepted by the Adjudicating Authority. Therefore, their total claim of Rs. 10,45,00,264/-, which includes interest is allowed.

**Company Appeal (AT) (Insol.) No. 181 of 2019- (L&T Infrastructure Finance Company Ltd.)**

70. 'L&T Infrastructure Finance Company Limited' preferred the appeal challenging the order of rejection of its claim.

71. The Appellant- 'L&T Infrastructure Finance Company Limited' claimed to be a 'Financial Creditor' of the 'Corporate Debtor' on the strength of post-dated cheques issued by the 'Corporate Debtor' towards payment of some amount due under facility agreement entered into between the Appellant- 'L&T Infrastructure Finance Company Limited' and one 'Essar Power Gujarat Limited' (borrower). The Appellant- 'L&T Infrastructure Finance Company Limited' assailed the decision of the 'Resolution Professional' communicated to it through e-mail dated 8<sup>th</sup> October, 2018, whereby the Appellant's claim was rejected.

72. The case of the Appellant- 'L&T Infrastructure Finance Company Limited' is that it sanctioned a Term Loan of Rs. 75 Crores to one 'Essar Power Gujarat Limited' (EPGL) vide its sanction letter dated 26<sup>th</sup> April, 2016. As per one of the terms and conditions contained in the Facility Agreement read with Addendum to such Agreement, the borrower (EPGL) was required to arrange post-dated cheques from the present 'Corporate Debtor' to the satisfaction of the Appellant towards the Debt Servicing Obligation.

73. It was submitted that the 'Corporate Debtor' vide its letter dated 13<sup>th</sup> May, 2016, has issued 45 crossed post-dated cheques in favour of the Appellant- 'L&T Infrastructure Finance Company Limited' for a total sum of Rs. 61,71,68,861/- and thereby, the Appellant has assumed its liability in the nature of a 'guarantor' to secure the loan/ financial facility, given by Appellant to the principal borrower- 'EPGL'.

74. The 'Resolution Professional' took specific plea that the 'Corporate Debtor' is not a party to any of the loan agreement entered into between the Appellant- 'L&T Infrastructure Finance Company Limited' and the borrower (EPGL), nor at any point of time the 'Corporate Debtor' was a signatory to the 'Facility Agreement' or the Addendum or any 'Promoter Obligation Agreement'. Further, the 'Corporate Debtor' did not stand as a guarantor to the above stated loan because such guarantee requires a tripartite agreement entered into among the lender, the principal borrower and the guarantor. It is also alleged that the Appellant- 'L&T Infrastructure Finance Company Limited' filed its proof of claim before the 'Resolution Professional' (in Form-C) on 19<sup>th</sup> September, 2018, i.e. much after the expiry of statutory period of 270 days.

75. Taking into consideration the aforesaid facts, we hold that the Adjudicating Authority rightly held that 'L&T Infrastructure Finance Company Limited' cannot be classified as a 'Financial Creditor', there being no 'financial debt' payable by the 'Corporate Debtor' ('Essar Steel India Limited'). The record show that the cheques were issued by the 'Corporate Debtor' due to its payment obligation towards 'Bhander Power Limited' and not issued with a view to secure any payment obligation of principal borrower- ('EPGL').

76. In view of the aforesaid position, we are not inclined to allow the prayer made in Company Appeal (AT) (Insol.) No. 181 of 2019 preferred by 'L&T Infrastructure Finance Company Limited'. The appeal is dismissed.

**Company Appeal (AT) (Insol.) No. 517 of 2019— (Gail (India) Ltd.)**

77. According to the Appellant, pursuant to 'Gas Sale Agreement' ('GSA') dated 28<sup>th</sup> March, 2014 executed with the Appellant's Mumbai Zonal Office ('MZO'). The 'Corporate Debtor' for its Pune plant has executed the 'GSA' with 'MZO' for the sale of natural gas for a period of 14 years, expiring in the year 2028. The Appellant purchases/ imports natural gas from 'RasGas' (a company incorporated under the law of 'Qatar') which is being received in India at 'M/s. Petronet LNG Ltd.' ('PLL') Terminal, Dahej. As per the agreement, the 'Corporate Debtor' would be entitled for receiving less amount of gas at the future date upon payment of the price of the gas under its contractual obligations. With regard to payment, there being violation of certain provisions of agreement, the Appellant's claimed Rs. 1204.15 Crores.

78. In the meantime, the 'Corporate Debtor' entered into a 'One Time Settlement' on 22<sup>nd</sup> January, 2016 and because of failure of payment, an arbitration proceeding was initiated. However, after order of 'Moratorium' as no litigation could be initiated or continue during 'Corporate Insolvency Resolution Process', the arbitration proceeding and the proceeding pending before the Hon'ble High Court initiated by the Appellant to recover its dues against the 'Corporate Debtor' were ordered to be *sine die*.

79. It is stated that after the 'Resolution Plan' was approved on 8<sup>th</sup> March, 2019, the period of 'Moratorium' having completed, the Appellant herein submitted its claim of Rs. 1204.15 Crores to the

‘Resolution Professional’ on 25<sup>th</sup> March, 2019 for appropriate distribution in terms with the order of the Adjudicating Authority.

80. From the facts as noticed above, we find that the matter is pending adjudication before the Arbitral Tribunal and the Hon’ble High Court. Therefore, the Appellant had not filed its claim before the ‘Resolution Professional’ during the ‘Corporate Insolvency Resolution Process’. It has filed such claim after completion of the same on 25<sup>th</sup> March, 2019 i.e. much after the impugned order passed by the Adjudicating Authority on 8<sup>th</sup> March, 2019.

81. In the aforesaid background, no relief can be granted by this Appellate Tribunal. However, it is open to the Appellant- ‘Gail (India) Ltd.’ to pursue the matter before the Arbitral Tribunal or the Hon’ble High Court in terms of sub-section (6) of Section 60 of the ‘I&B Code’ which may decide the same uninfluenced by impugned order passed by the Adjudicating Authority or this Appellate Tribunal.

**Company Appeal (AT) (Insol.) No. 518 of 2019 (Gail (India) Limited)**

82. This appeal preferred by Appellant- ‘Gail (India) Ltd.’ is in respect of claim amount arising out of ‘Gail Sale Agreement’ (‘GSA’) dated 27<sup>th</sup> May, 2009, executed between the Appellant’s Ahmedabad Zonal Office and the ‘Corporate Debtor’. In this case, the Appellant filed claim within time on 6<sup>th</sup> December, 2017 for Take or Pay obligation qua contract year 2016 amounting to Rs. 117.26 Crores plus Rs. 8.28 Crores. Another claim was made on 26<sup>th</sup> October, 2018 for Take or Pay obligation qua contract year 2017 amounting to Rs. 111.94 Crores plus Rs. 9.78 Crores apart from future claims as and when there will be a rise as per the agreement.

83. The Appellant’s total claim was Rs. 247.26 Crores but only the claim dated 6<sup>th</sup> December, 2017 of ‘Gail (India) Ltd.’ amounting to Rs. 124.882

Crores was admitted by the 'Resolution Professional' against which 'NIL' amount has been proposed to be paid.

84. It appears that the claim amount of contract year 2017 made on 26<sup>th</sup> October, 2018 relates to 'Corporate Insolvency Resolution Process'. In the aforesaid background, it has not been taken care of by the 'Resolution Professional' while collating the claim. Therefore, we are concerned with the admitted claim of Rs.124.882 Crores as admitted by the 'Resolution Professional'. The order as may be passed in other appeal with regard to distribution of amount proposed by the 'Resolution Applicant' will be applicable to this Appellant with regard to admitted claim of Rs. 124.882 Crores.

85. With respect to claim as was made on 26<sup>th</sup> October, 2018 as it was filed during the 'Corporate Insolvency Resolution Process', we are not deliberating on the issue and leave it open to the Appellant to move before appropriate forum. If the said amount is payable for supply made during the 'Corporate Insolvency Resolution Process', the Appellant may move before the 'Corporate Debtor, otherwise it may move before an appropriate forum in terms of Section 60(6) of the 'I&B Code'.

**Company Appeal (AT) (Insol.) No. 428 & 429 of 2019 (Hill View Hire Purchase Pvt. Ltd./ D.R. Patnaik)**

86. In both the appeals, similar prayer has been made. One has been filed on behalf of 'Hill View Hire Purchase Pvt. Ltd.' through D.R. Patnaik, Director and authorised signatory, claiming to be a 'Financial Creditor'. Another appeal has been filed by D.R. Patnaik, the Director of the said company in his personal capacity for holding him to be a 'Financial Creditor'.

87. According to both the Appellants, it entered into an agreement with the 'Corporate Debtor' on 14<sup>th</sup> August, 2014 and granted financial

assistance comprising Subordinated Rupee Loan of Rs. 50,00,00,000/- to the 'Corporate Debtor'. The financial assistance was granted for financing procurement of Iron Ore Fines by the 'Corporate Debtor' from the miners/traders at Odisha and also to export pellets manufactured from the said Iron Ore Fines. Pursuant to the agreement, the Appellant disbursed to the 'Corporate Debtor' an amount of Rs. 45,00,00,000/-.

88. The 'Corporate Debtor' was making timely payments against the interest amount until 25<sup>th</sup> January, 2017. Thereafter, no amount has been deposited towards the interest amount by the 'Corporate Debtor'. According to the Appellant, the 'Corporate Debtor' has acknowledged the debt as on 31<sup>st</sup> March, 2017 to the tune of Rs. 42,11,46,852/-.

89. After 'Corporate Insolvency Resolution Process', the Appellants have submitted its claims in Form C on 16<sup>th</sup> August, 2017 in respect of financial debts. On 29<sup>th</sup> August, 2017, the 'Resolution Professional' released a list of creditors of the 'Corporate Debtor' but the claim of the Appellants was not admitted due to lack of information and/ or supporting documents. Earlier, the Appellants received a communication dated 22<sup>nd</sup> August, 2017 from the 'Resolution Professional' seeking various details and documents including, ledger account, bank statements, annual report and TDS certificates, to which the Appellants responded to the same vide email dated 6<sup>th</sup> September, 2017.

90. The Appellants received a communication from the 'Resolution Professional' seeking various details and documents including confirmation whether the agreement is properly stamped as per Stamp Act and TDS certificates from 14<sup>th</sup> August, 2014 till 2<sup>nd</sup> August, 2017. The 'Resolution Professional' has not admitted their claim vide letter dated 23<sup>rd</sup> January, 2018 as agreement dated 14<sup>th</sup> August, 2014 seems insufficiently stamped.



91. It is stated that thereafter since 5<sup>th</sup> February, 2018, the Appellants provided the Form 26 AS certificate to the 'Resolution Professional'. The Form 26 AS provided for the TDS deposits made by the 'Corporate Debtor' which indicate the acknowledgement of the debt, finally the claim was not accepted in absence of original copy of agreement.

92. In December, 2015-16, the Appellants moved before the Adjudicating Authority vide I.A. No. 482 of 2018 seeking directions to the Respondent to admit the claim. After notice, the said matter was tagged along with other applications of the 'Operational Creditors'. It appears that the Appellants thereafter moved before the Adjudicating Authority, which was listed and the matter was dismissed for non-prosecution. The Adjudicating Authority subsequently restored the I.A. to hear the Appellants on merit.

93. On hearing counsel for the Appellants and perusal of the record, we find that the Appellants have failed to produce the relevant evidence in support of their claim, therefore, it was not accepted by the 'Resolution Professional'. We are also not in a position to verify the genuineness of one or other documents, in absence of any such record or enclosure. The Appellants have enclosed copy of e-mails and corrected copy of relevant pages of list of creditors dated 19<sup>th</sup> January, 2018 but it cannot be relied upon to hold that one or the other Appellant is a 'Financial Creditor'. In fact, none of the Appellants was accepted as a 'Financial Creditor' and therefore were not made member(s) of the 'Committee of Creditors'. They should have moved earlier before this Appellate Tribunal for appropriate relief.

94. Further, as in both the appeals same amount has been claimed on the basis of same set of pleading by two different Appellants, we have a doubt relating claim made by one or other Appellant. However, without

expressing any opinion, we dismiss both the appeals in absence of any evidence in support of their claims.

**Company Appeal (AT) (Insol.) No. 375 of 2019 (M/s. Karur Vysya Bank Ltd.)**

95. According to the Appellant, the 'Resolution Professional' admitted a sum of Rs. 3,43,96,866/- payable to the Appellant, but no amount has been shown to be paid. However, from the record, it appears that the Appellant did not approach the 'Resolution Professional' by filing its claim. Its claim is against 'KSS Petron Pvt. Ltd.'. The claim of the Appellant having not lodged before the 'Resolution Professional', no relief can be granted. The appeal is dismissed.

**Company Appeal (AT) (Insol.) Nos. 242 & 243 of 2019- (Standard Chartered Bank)**

96. The case of the Appellant- 'Standard Chartered Bank' is as follows:-

The 'State Bank of Mysore' on 5<sup>th</sup> August, 2010 informed the 'Reserve Bank of India' of the intention of 'Essar Steel India Limited'- ('Corporate Debtor') to acquire 'M/s. Trinity Coal Corporation', USA (Trinity) through 'M/s. Essar Steel Offshore Limited', a wholly owned subsidiary of the 'Corporate Debtor'. It was also informed by the 'Corporate Debtor' to the 'Reserve Bank of India' on 5<sup>th</sup> August, 2010.

97. Having received the clearance, on the request of the 'Corporate Debtor' on 20<sup>th</sup> August, 2010, the Appellant- 'Standard Chartered Bank' advanced a loan of US\$ 500,000,000 to 'M/s. Essar Steel Offshore Limited', a wholly owned subsidiary of the 'Corporate Debtor'.

98. On 18<sup>th</sup> November, 2013, the 'Corporate Debtor' informed the 'Steering Committee of lenders' including the 'State Bank of India' in respect of refinancing of the facility granted by the 'Standard Chartered Bank' and issuance of Corporate Guarantee.

99. The facility came to be refinanced to the tune of US\$ 413,000,000 by way of an Agreement. Such refinancing became necessary owing to financial difficulties of the 'Corporate Debtor' and 'M/s. Essar Steel Offshore Limited'.

100. An Agreement was reached on 7<sup>th</sup> February, 2014 (along with the Agreement executed on 3<sup>rd</sup> January, 2014 (hereinafter referred to as "Facility Agreement") amending the Agreement dated 3<sup>rd</sup> January, 2014. On 26<sup>th</sup> March, 2014, a 'Share Pledge Agreement' was executed by the 'Corporate Debtor' for securing the financial assistance extended by the 'Standard Chartered Bank' vide 'Facility Agreement', pledging 71,830,001 ordinary shares of 'M/s. Essar Steel Offshore Limited'.

101. On account of failure of 'M/s. Essar Steel Offshore Limited' in repaying the debt, the 'Standard Chartered Bank' invoked the guarantee given by the 'Corporate Debtor' on 7<sup>th</sup> December, 2015 followed by notice issued under Section 434 of the Companies Act, 1956 to the 'Corporate Debtor' on 18<sup>th</sup> April, 2016.

102. Having received no positive reply, the Appellant- 'Standard Chartered Bank' filed application under Section 7 of the 'I&B Code' against the 'Corporate Debtor' which was admitted on 2<sup>nd</sup> August, 2017. During the 'Corporate Insolvency Resolution Process', the Appellant- 'Standard Chartered Bank' submitted its claim before the 'Resolution Professional' to the tune of Rs. 3487.09 Crores. Out of this, Rs. 2646.05 Crores represents the secured principal outstanding of the Appellant. The claim was collated by the 'Resolution Professional', in respect of which the Appellant has no grievance.

103. The Appellant has challenged the impugned order dated 8<sup>th</sup> March, 2019 approving the 'Resolution Plan', so far it relates to distribution of

amount in favour of the Appellant. It was discriminated having not equated with other 'Financial Creditors'. All the 'Financial Creditors' have been allowed 91.99% of their claim amount, whereas the claim of the Appellant has been categorised in two categories namely— (i) as 'Secured Financial Creditors' (having charge on project assets of the Corporate Debtor) – in respect of claim amount of Rs. 3,487.10 Crores and (ii) as 'Unsecured Financial Creditors' in respect of claim amount of Rs. 70.34 Crores.

104. Though with regard to claim amount of Rs. 3,487.10 Crores, the Appellant- 'Standard Chartered Bank' has been shown as 'Secured Financial Creditors' but it has not been allowed 91.99% of the claim amount as allowed in favour of other 'Financial Creditors'. The Appellant has been provided with 1.74% of the claim amount on the ground that "*it has no charge on project assets of the 'Corporate Debtor'*".

105. So far as the claim relating to Rs. 70.34 Crores, the Appellant- 'Standard Chartered Bank' has been allowed 4.08% of the claim amount as 'Unsecured Financial Creditor'.

**Company Appeal (AT) (Insol.) No. 266 of 2019 (State Bank of India)**

106. Like 'Standard Chartered Bank', similar grievance has been made by the 'State Bank of India. According to counsel for the 'State Bank of India', there is no justification for placing its claims on some different criteria than the 'Project Asset Secured Lenders'.

**Company Appeal (AT) (Insol.) No. 265 of 2019 ('Committee of Creditors')**

107. The 'Committee of Creditors' of 'Essar Steel India Limited' has challenged part of the impugned order dated 8<sup>th</sup> March, 2019. Their limited grievance is that while approving the 'Resolution Plan', the

Adjudicating Authority has proceeded to make some suggestions and observations and rendered advice which is not only without jurisdiction but also *ultra vires* to the 'I&B Code' and in contradiction of its own findings. As the 'Standard Chartered Bank' has raised all the issues, we have discussed the matter at appropriate stage.

### **Validity of 'Resolution Plan'**

108. For proper understanding of the case, it is desirable to notice the chart of distribution as was proposed by 'Resolution Applicant' at the instance of the 'Committee of Creditors' and approved in its meeting held on 25<sup>th</sup> October, 2018, which as follows:

**"DISTRIBUTION AS PER THE SUCCESSFUL RESOLUTION PLAN OF ACRELORMITAL INDIA PRIVATE LIMITED AS APPROVED BY THE COMMITTEE OF CREDITORS ("COC") OF ESSAR STEEL INDIA LIMITED ('CORPORATE DEBTOR') ON 25<sup>th</sup> OCTOBER, 2018 AND AS PLACED BEFORE THE NATIONAL COMPANY LAW TRIBUNAL FOR APPROVAL IN TERMS OF THE CODE**

S.No	Category of Stakeholder	Name of the stakeholder	Amount admitted by Resolution Professional (In Rs. Crores)	Proposed payment under the Successful Resolution Plan as approved by the COC on 25 October, 2018 (In Rs. Crores)	Percentage of admitted claim allowed under the Successful Resolution Plan as approved by the COC on 25 October, 2018 (In %)
<b>A.</b>	<b>Workmen &amp; Employees</b>				
	Workmen & Employees	-	*18.07	18.07	100%
<b>B.</b>	<b>Secured Financial Creditors</b>				
<b>B1.</b>	Secured Financial Creditors (having charge on project assets of the Corporate Debtor)	State Bank of India	13,220.91	12,161.73	91.99%
		IDBI Bank	2,481.61	2,282.79	91.99%
		Canara Bank	3,798.06	3,493.78	91.99%
		EARC Trust SC 114	602.39	554.13	91.99%
		EARC Trust SC 187	92.25	84.86	91.99%
		EARC Trust SC 217	1,697.77	1,561.75	91.99%
		EARC Trust SC 233	993.46	913.87	91.99%
		EARC Trust SC 292	1,966.31	1,808.78	91.99%
		EARC Trust SC 322	554.92	510.47	91.99%
		EARC Trust SC 327	137.25	126.25	91.99%
		EARC Trust SC 337	1,273.78	1,171.74	91.99%
		EARC Trust SC 323	978.63	900.22	91.99%
		EARC Trust SC 326	10.00	9.20	91.99%
		Bank of Baroda	5.00	4.60	91.99%
		Punjab National Bank	2,936.25	2,701.01	91.99%
		Deutsche Bank	2,829.88	2,603.17	91.99%
		ICICI Bank	2,294.11	2,110.31	91.99%
		Union Bank of India	2,122.60	1,952.55	91.99%
		Bank of India	1,985.08	1,826.04	91.99%
		Corporation Bank	1,566.62	1,441.11	91.99%
		Syndicate Bank	967.91	890.37	91.99%
		SC Lowy	900.12	828.01	91.99%
		UCO Bank	582.26	535.62	91.99%
		Exim Bank	556.26	511.70	91.99%

		Central Bank of India	510.04	469.18	91.99%
		Allahabad Bank	320.49	294.81	91.99%
		SREI Infrastructure Finance	175.28	161.24	91.99%
	<b>Total(B1)</b>		<b>45,559.24</b>	<b>41,909.29</b>	<b>91.99%</b>
<b>B2.</b>	Secured Financial Creditors (having no charge on project assets of the Corporate Debtor)	Standard Chartered Bank	3,487.10	60.71	1.74%
	<b>Total (B2)</b>		<b>3,487.10</b>	<b>60.71</b>	<b>1.74%</b>
	<b>Total (B1+B2)</b>		<b>*49,046.34</b>	<b>41,970.00</b>	<b>As set out above at B1 and B2</b>
<b>C.</b>	<b>Unsecured Financial Creditors</b>				
<b>C1</b>	Unsecured Financial Creditors (With admitted claims less than Rs.10,00,000)	Melwani Gopal Tharumal and/or Melwani Vinod	0.08	0.08	100%
		Arvind Parakh HUF	0.08	0.08	100%
		Mr. Arvinlal N Shah & Mrs. Indumati A. Shah	0.08	0.08	100%
		Mr. Jiwat K. Dansanghani and Mrs. Neetu J Dansanghani	0.03	0.03	100%
		Nathu Ram Verma	0.02	0.02	100%
		<b>Total (C1)</b>	-	<b>-0.30</b>	<b>-0.30</b>
<b>C2</b>	Unsecured Financial Creditors (with admitted claims equal to or above Rs. 10,00,000)	State Bank of India	5.57	0.23	4.08%
		Bank of Baroda	7.70	0.31	4.08%
		Standard Chartered Bank	70.34	2.87	4.08%
		The Bank of New York Mellon, London Branch	202.50	8.26	4.08%
		Inox Air Products Private Limited	78.48	3.20	4.08%
		Axis Bank	61.91	2.53	4.08%
		<b>Total (C2)</b>	-	<b>426.51</b>	<b>17.40</b>
	<b>TOTAL (C1 + C2)</b>		<b>*426.81</b>	<b>~17.70</b>	<b>As set out above at C1 And C2</b>
<b>D.</b>	<b>Operational Creditors (other than Workmen and Employees)</b>				
D1.	Operational Creditors with admitted claim amount less than Rs. 1 crore  (i.e. ~1,600 operational creditors out of a total of 1,855 operational creditors in No.)	-	~196	~196	100%
D2	Operational Creditors with admitted claim amount equal to or more than Rs. 1 Crores	-	~4,877.99	NIL	NIL
	<b>Total (D1 + D2)</b>		<b>**5073.99</b>	<b>~196</b>	<b>As set out above at D1 and D2</b>

\* Claims as admitted by the Resolution Professional as reflected in the list of creditors updated as of 24 October, 2018. The Successful Resolution Plan was approved by the COC on 25 October, 2018 basis the voting share and claim amounts set out in this list.

\*\* As on 25 October, 2018, the date on which the Successful Resolution Plan was approved by the COC, the operational debt as admitted by the Resolution Professional was Rs.5,058.66 Crores. The amount reflected here represents the operational claims as admitted by the Resolution Professional and as reflected in the list of creditors updated as of 5 March, 2019. As per the observations issued by the Resolution Professional pursuant to the NCLT Order dated 8 March, 2019, the Resolution Professional has 'registered' further operational claims of approximately Rs.13,767.76 crores and has further admitted notional amount of Rs. 1 for certain operational claims aggregating the approximately Rs. 2,722.50 crores subject to final outcome of the disputes pending with respect to such operational claims."

109. From the aforesaid distribution of amount as shown and approved on 25<sup>th</sup> October, 2018, we find that the 'Financial Creditors' have been categorised in four categories:

- (i) 'Secured Financial Creditors' (having charge on project assets of the 'Corporate Debtor');
- (ii) 'Secured Financial Creditors' (having no charge on project assets of the 'Corporate Debtor');
- (iii) 'Unsecured Financial Creditors' (with admitted claims less than Rs.10,00,000); and
- (iv) 'Unsecured Financial Creditors' (with admitted claims equal to or above Rs. 10,00,000).

110. In so far as the 'Operational Creditors' are concerned, they have been categorised as (i) 'Operational Creditors' (workmen and employees); (ii) the 'Operational Creditors' (other than workmen and employees), but admitted claim amount is less than Rs. 1 Crore and (iii) the 'Operational Creditors' (whose admitted claim is equal to or more than Rs. 1 Crore).

111. The 'Operational Creditors' (who are workmen and employees) and the 'Operational Creditors' whose admitted dues is less than Rs. 1 Crore and have been paid 100% of their dues, but the rest of the 'Operational Creditors' whose claim admitted at notional amount of Re.1/- (one rupee) or Rs. 1 Crore or more, they have been provided with 'NIL' amount i.e. 0% (zero percent).

112. Mr. Kapil Sibal, learned Senior Counsel for the Appellant- 'Standard Chartered Bank' questioned the role of the 'Committee of Creditors' and the powers of the Adjudicating Authority while considering the 'Resolution Plan'.

113. According to learned Senior Counsel for the 'Standard Chartered Bank', the 'Committee of Creditors' does not enjoy any authority to delegate itself the role of the 'Resolution Applicant' including the manner of distribution and thereby taking judicial/ adjudicatory decisions, like distribution of proceeds and the same are exclusively within the domain of the Adjudicating Authority, if found discriminatory.

114. It is brought to our notice that the 'Committee of Creditors' instead of going through the 'Resolution Plan' for approval by vote, delegated the power to a 'Sub-Committee/ 'Core Committee'.

115. The Appellants have also alleged bias against the 'Core Committee'/ 'Sub-Committee' and the 'Committee of Creditors' and alleged discrimination.

116. Mr. Kapil Sibal, learned Senior Counsel for the 'Standard Chartered Bank' submitted that 'ArcelorMittal India Pvt. Ltd.'- ('Successful Resolution Applicant') all the time informed the 'Committee of Creditors', this Appellate Tribunal and the Hon'ble Supreme Court that it is ready to offer upfront amount of Rs. 42,000 Crores. It is alleged that it is because of secret negotiations by the 'Core Committee'/ 'Sub- Committee' the upfront amount cleared by 'ArcelorMittal India Pvt. Ltd.' was reduced from Rs. 42,000 Crores to Rs. 39,500 Crores and rest of Rs. 2,500 Crores was shown as 'guaranteed working capital adjustment'.

117. Learned counsel for the 'Standard Chartered Bank' produced a copy of the Note given by 'ArcelorMittal India Pvt. Ltd.' before the Hon'ble Supreme Court of India vide Civil Appeal Nos. 9402-9405 of 2018 while the case was pending consideration before the Hon'ble Supreme Court, relevant of which reads as follows:



IN THE SUPREME COURT OF INDIA  
CIVIL APPEAL JURISDICTION  
CIVIL APPEAL NOS. 9402-9405 OF 2018

IN THE MATTER OF:  
ARCELORMITTAL INDIA PRIVATE LTD.

... APPELLANT

VERSUS

SATISH KUMAR GUPTA & ORS.

... RESPONDENT

NOTE ON BEHALF OF THE APPELLANT ON THE "ESCROW"

- 1) The Appellant has deposited a sum of Rs. 5000 crores [at the exchange rate then prevalent] in an account in the State Bank of India London Branch. A draft escrow agent agreement was also circulated but the Bank has not signed it thus far.
- 2) The Appellant proposes that if the resolution plan filed by it is confirmed (on the basis of the last financial package offered by letter dated 10<sup>th</sup> September 2018), as per its commitment made to the CoC, the Appellant would pay upfront the entire amount overdue to the secured financial creditors, and also clear up the sum overdue to the financial creditors of Uttam Galva and KSS Petron.
- 3) In its financial package, the Appellant stated thus:
  - (a) *"We present the following proposal to the Committee of Creditors (the "AM Proposal") without prejudice to our rights:*
  - (b) *ArcelorMittal hereby offers to pay upfront INR 42,000 crores (Rupees forty-two thousand crores) towards the resolution of the debt of secured financial lenders of ESIL. This amount reflects 100% of the principal outstanding dues of the secured creditors of ESIL.*
  - (c) *In addition, ArcelorMittal also commits to settle in full the entire amount overdue to the financial creditors of Uttam Galva and KSS Petron that has been classified as non-performing in accordance with the guidelines issued by the Reserve Bank of India (NPA)", simultaneously with the upfront payment towards resolution of the secured financial lenders of ESIL."*
- 4) In order to ensure that there is no delay whatsoever, this Hon'ble Court may be pleased to issue appropriate directions to the concerned Regulatory Authorities to grant necessary permissions to facilitate the transaction, in the interest of an early resolution under the IBC.
- 5) The AM Proposal as set out above is supported by a Letter of Commitment from Credit Agricole Corporate and Investment Bank<sup>1</sup> and the amount deposited with State Bank of India, London Branch as informed to the Committee of Creditors on May 15, 2018.
- 6) The Appellant is advised that the simplest and expeditious modality of paying off overdue amounts of UG and KSS would be by "transferring" the debt. In other words, the banks would assign the entire amount overdue to the Company/NBFC/ARC. This Hon'ble Court may direct the RBI to grant necessary permission for such transfers.

<sup>1</sup> For the bid amount of Rs. 42,000 cr.

  
TRUE COPY

(ADVOCATE)

118. Learned Senior Counsel for the 'Standard Chartered Bank' also relied on an e-mail of Mr. Amit Kumar Kedia dated 26<sup>th</sup> September, 2018, whereby it was informed that Mr. Gopal Subramaniam, Senior Advocate appearing on behalf of the 'Committee of Creditors' read out letter of 'ArcelorMittal India Pvt. Ltd.' and the offer submitted in the Court (the Hon'ble Supreme Court) and requested the Court that in view of the offer made by 'ArcelorMittal India Pvt. Ltd.', the same should be taken as undertaking before the Court to be a base value, in accordance with law. It was submitted that the 'Committee of Creditors' would be willing to accept the offer of simultaneous payment of amount of overdues along with the upfront amount as long as the said undertaking is given by 'ArcelorMittal India Pvt. Ltd.'

119. Learned counsel appearing on behalf of 'Standard Chartered Bank' also referred to a letter dated 10<sup>th</sup> September, 2018 written by Mr. Sanjay Sharma of 'ArcelorMittal India Pvt. Ltd.', whereby Mr. Satish Kumar Gupta, the 'Resolution Professional' has been informed that 'ArcelorMittal India Pvt. Ltd.' without prejudice to their rights proposed an offer to pay upfront amount of Rs. 42,000/- Crores towards the resolution of the debt of secured financial lenders of 'Essar Steel India Limited'. The letter reflects 100% of the principal outstanding dues of the secured creditors of 'Essar Steel India Limited', which reads as follows:-



10<sup>th</sup> September 2018

To  
Mr. Satish Kumar Gupta, Resolution Professional  
With copy to: The Committee of Creditors,  
Essar Steel India Limited

Dear Sirs,

**Re: Insolvency Resolution of Essar Steel India Limited**

This is in connection with the insolvency resolution process of Essar Steel India Limited (“ESIL”) under the provisions of the Insolvency and Bankruptcy Code, 2016, as amended from time to time (“IBC”).

We present the following proposal to the Committee of Creditors (the “AM Proposal”) without prejudice to our rights:

- (a) ArcelorMittal hereby offers to pay upfront INR 42,000 crores (Rupees forty-two thousand crores) towards the resolution of the debt of secured financial lenders of ESIL. This amount reflects 100% of the principal outstanding dues of the secured creditors of ESIL.
- (b) In addition, ArcelorMittal also commits to settle in full the entire amount overdue to the financial creditors of Uttam Galva and KSS Petron that has been classified as non-performing in accordance with the guidelines issued by the Reserve Bank of India (“NPA”).

With regard to (b) above, we hereby request the CoC to confirm the overdue amounts for each of Uttam Galva and KSS Petron and the modality for the payment.

The AM Proposal as set out above is supported by a Letter of Commitment from Credit Agricole Corporate and Investment Bank (enclosed) and the amount deposited with State Bank of India, London Branch as informed to the Committee of Creditors on May 15, 2018.

We trust that the AM Proposal continues to demonstrate ArcelorMittal’s serious intent in respect of its bid for ESIL and to enable the resolution of the debt of ESIL in an expeditious manner. We are of the firm view that our proposal presents an unprecedented opportunity for the financial creditors of ESIL to maximize the recovery of their overdue debt in conformity with IBC principles. The underlying object of the IBC is maximization of value. Where the asset value is less than the value of the institutional debt, the value of the debt being redeemed by a proposal in financial terms should be the determining factor.

The NPA problem has afflicted the banking sector generally, and not individual debtors. Thus, the overall payment towards NPAs need to be evaluated, when considering the financials of a proposal.

We are not the debtors in relation to the debt of Uttam Galva and KSS Petron and have not obtained any financial or non-financial advantage, and no nominee or representative of AM has ever been on the board of directors of either company. Both these investments have only had negative value for us. Despite this, we have agreed to clear the debt of Uttam Galva and KSS Petron as a one-time investment in India, and we would thus submit that the total value of our proposal, in terms of NPA resolution, is Rs. 49,000 Crores, which is the aggregate of the sums proposed to be paid to banks and other institutional lenders of the three companies.

# ArcelorMittal

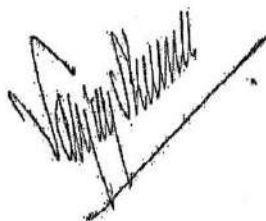
We believe that ArcelorMittal with its undisputed global leadership, operational prowess and expertise as well as its historic track record in turning around highly distressed steel assets globally offers the best long-term solution for ESIL and its stakeholders. We stand ready to effect the above at the earliest direction of the Committee of Creditors.

Please note that the AM Proposal must in no way be construed as an admission of the purported ineligibility of any company in the ArcelorMittal group to submit a resolution plan under the IBC or otherwise, nor is it in derogation of our right to avail of appellate remedies against this Order. We continue to believe that we are, and have always been, eligible to submit bids for ESIL, and we reserve all rights in respect to any finding to the contrary (including by the Hon'ble NCLAT).

We hope for a favourable consideration of our proposal leading to a quick settlement of your outstanding dues with the highest possible recovery.

Thanking you,

Regards



Sanjay Sharma

(On Behalf of ArcelorMittal India Private Limited, the Resolution Applicant)

120. A breakup of admitted claims put by 'Resolution Professional' on 'Virtual Data Room' has been produced by learned Counsel for the 'Standard Chartered Bank' to suggest as to why 'ArcelorMittal India Pvt. Ltd.' offered to pay upfront payment of Rs. 42,000/- Crores being 100% payment to the 'Financial Creditors', which is as follows:

**Based on break up of Admitted claims put by RP on  
Virtual Data Room**

<b>Lender Name</b>	<b>Principal O/s (INR Crore)</b>
Allahabad Bank	267.55
Axis Bank/SC Lowy	702.69
Bank of Baroda	1,518.68
Bank of India	1,585.76
Canara Bank	3,497.01
Central Bank of India	465.04
Corporation Bank	1,228.38
Edelweiss ARC	4,751.18
EXIM Bank	490.36
HDFC Ltd	907.65
HDFC Bank	120.13
ICICI Bank	2,155.42
IDBI Bank	4,320.73
Jammu & Kashmir	474.74
Lakshmi Vilas Bank	124.99
Punjab National Bank	2,312.94
State Bank of India	11,222.65
SREI Infrastructure	118.25
Syndicate Bank	785.42
Union Bank of India	1,722.60
UCO Bank	549.66
Standard Chartered Bank	2,646.05
<b>Total</b>	<b>41,957.88</b>

**Note:** As some of the loans have been assigned to ARCs/Distress funds over a period of time the name of the lenders may have changed but the broad composition of Principal O/s of Admitted claims of Secured lenders remain at about INR 42,000 crore.

121. The records suggest that in the 9<sup>th</sup> Meeting of the 'Committee of Creditors' held on 21<sup>st</sup> March, 2018, the representative of the 'State Bank of India' recommended formation of a 'Core Committee' so as to facilitate representation before the Adjudicating Authority in view of the challenge to the ineligibility of 'Numetal Limited' and 'ArcelorMittal India Pvt. Ltd.' under Section 29A of the 'I&B Code'. The 'Standard Chartered Bank' did not vote in respect of constitution of the 'Core Committee'/ 'Sub-Committee'. The function of the 'Core Committee' was for operational convenience, limited to facilitating representation before the Adjudicating Authority.

122. In the 16<sup>th</sup> Meeting of the 'Committee of Creditors' held on 31<sup>st</sup> May, 2018, the 'Standard Chartered Bank' requested to be a part of the 'Sub Committee. In the said meeting, it was stated that there was no immediate requirement *"considering that the limited purpose for which the sub committee' was formed, i.e. filing of application before the NCLAT, has already been completed...."*. Further, that *"if any issue comes up for consideration of the sub-committee, based on the decision of NCLAT, then at that stage, a request may be made by SCB to be a part of the sub-committee and the same can be voted on by the members of the CoC."*

123. In the 20<sup>th</sup> Meeting of the 'Committee of Creditors' held on 19<sup>th</sup> October, 2018, the representative of the 'State Bank of India' proposed that the 'Sub Committee' would negotiate with the H1 Resolution Applicant viz. 'ArcelorMittal India Pvt. Ltd.'. It was informed that such negotiations were required to be carried out as per clause 4.11.2 (e) of the Request of Proposal by the 'Committee of Creditors' to better the terms of the 'Resolution Plan'. Though, negotiation with a 'Resolution Applicant' on a 'Resolution Plan' is a substantive function of the 'Committee of Creditors' without affecting the rights of each/ all 'Financial Creditors' and other stakeholders.

124. Learned Senior Counsel for the 'Standard Chartered Bank' submitted that the 'Standard Chartered Bank' was deliberately excluded from the 'Sub Committee' and from participation in the purported "*negotiations*" as it would have derailed the true purpose for such secret negotiations, which was to deny the rights of the 'Standard Chartered Bank'.

125. From the record, it appears that 'Sub Committee' negotiated, accepted the offer of 'ArcelorMittal India Pvt. Ltd.' for upfront payment of Rs. 42,000 Crores. However, during such negotiations of the 'Sub Committee', for the reasons best known to 'Sub Committee', 'ArcelorMittal India Pvt. Ltd.' was asked to revise its plan in a manner, which shows 'ArcelorMittal India Pvt. Ltd.' has offered upfront payment of Rs. 39,500 Crores for payment to the 'Financial Creditors', and Rs. 2,500 Crores towards working capital amount i.e. total Rs. 42,000 Crores.

126. The grievance of the Appellant is that as a result of secret negotiations by the 'Sub Committee', the upfront amount offered by 'ArcelorMittal India Pvt. Ltd.' was reduced from Rs. 42,000 Crores to Rs. 39,500 Crores.

127. According to learned counsel for the 'Standard Chartered Bank', the reduction in the upfront amount and the agreement to delegate the manner of distribution was evidently designed to (a) prejudice the right of 'Standard Chartered Bank' to be paid its 100% principal outstanding and (b) in doing so to secretly settle with the major lenders of 'Odisha Slurry Pipeline Infrastructure Limited' (such major, lenders are the creditors constituting the 'Core Committee' of 'Essar Steel India Ltd.'s 'Corporate Insolvency Resolution Process') whose outstanding debt in 'Odisha Slurry Pipeline Infrastructure Limited' constitutes 65% (approx..) of the total debt of 'Odisha Slurry Pipeline Infrastructure Limited'.

128. According to him, this was achieved as under:

- Reduced 'Standard Chartered Bank's entitlement by approx. Rs. 2585/- crores (Rs. 2646 crores – Rs. 60 Crores) corresponding to the reduction of Rs. 2,500/- crores in the upfront amount (Rs. 42,000 – Rs. 39,500);
- The amount reduced from 'Standard Chartered Bank's Share of 100% principal amount is utilized for payment to other 'Secured Financial Creditors' and in the process the said other 'Secured Financial Creditors' would not only receive 100% of the principal outstanding but would also recover 40% of the interest and has left 'Standard Chartered Bank' to take 1.7% of its outstanding amount.
- The gain of Rs. 2,500 Crores to 'ArcelorMittal India Pvt. Ltd.' (pursuant to such secret negotiations) is to utilize the said amount to settle the dues of the 'Odisha Slurry Pipeline Infrastructure Limited' lenders. It is pertinent to mention that the creditors constituting the 'Core Committee' are the major creditors to whom outstanding is due from 'Odisha Slurry Pipeline Infrastructure Limited'.

129. The question arises for consideration in this appeal is whether the ‘Committee of Creditors’ can delegate its power to a ‘Sub Committee’ or ‘Core Committee’ for negotiation with the ‘Resolution Applicant’ for revision of plan?

The other question arises for consideration is whether the ‘Sub Committee’ or the ‘Committee of Creditors’ are empowered to distribute the amount amongst the ‘Financial Creditors’ and the ‘Operational Creditors’ and other Creditors.

130. A ‘Sub-Committee or ‘Core Committee’ is unknown and against the provisions of the ‘I&B Code’. There is no provision under ‘I&B Code’ which permits constitution of a ‘Core Committee’ or ‘Sub-Committee’ nor the ‘I&B Code’ or Regulations empowers the ‘Committee of Creditors’ to delegate the duties of the ‘Committee of Creditors’ to such ‘Core Committee’/ ‘Sub-Committee’.

131. Section 30 relates to “Submission of resolution plan”, as follows:

**“30. Submission of resolution plan.—** (1) *A resolution applicant may submit a resolution plan [along with an affidavit stating that he is eligible under section 29A] to the resolution professional prepared on the basis of the information memorandum.*

*(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan –*

*(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the*



*[payment] of other debts of the corporate debtor;*

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

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

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

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

*(f) confirms to such other requirements as may be specified by the*

*Board.*

*[Explanation. — For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013(18 of 2013) or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.]*

*(3) The resolution professional shall present to the committee of creditors for its approval such*

*resolution plans which confirm the conditions referred to in sub-section (2).*

*[(4) The committee of creditors may approve a resolution plan by a vote of not less than 5 [sixty-six] per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board:*

*Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ord. 7 of 2017), where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:*

*Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:*

*Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency*

*resolution process shall be completed within the period specified in that subsection]:*

*[Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.]*

*(5) The resolution applicant may attend the meeting of the committee of creditors in which the resolution plan of the applicant is considered: Provided that the resolution applicant shall not have a right to vote at the meeting of the committee of creditors unless such resolution applicant is also a financial creditor.*

*(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority.”*

132. From sub-clause (b) of sub-section (2) of Section 30, it is clear that the ‘Resolution Professional’ is required to notice whether the ‘Resolution Plan’ provides for the payment of the debts of the ‘Operational Creditors’ in such manner as may be specified by the Board. The said provision makes it clear that the ‘Resolution Applicant’ in its ‘Resolution Plan’ must provide the amount it proposes to pay one or other Creditors, including the ‘Operational Creditors’ and the ‘Financial Creditors’.

133. Sub-section (3) of Section 30 suggests that the ‘Resolution Professional’ is required to present before the ‘Committee of Creditors’, the ‘Resolution Plan’ which confirms the conditions referred to in sub-section

(2) that means if the ‘Resolution Plan’ do not show the distribution amongst the ‘Financial Creditors’ and the ‘Operational Creditors’, it cannot be placed before the ‘Committee of Creditors’.

134. Sub-section (4) of Section 30 provides that the ‘Resolution Plan’ is required to be approved by a vote of not less than 66% of voting share of the ‘Financial Creditors’, *after considering its feasibility and viability and such other requirements as may be specified by the Board*. Thereby, all members of the ‘Committee of Creditors’ who are present are required to go through the ‘Resolution Plan’ to find out whether it is in accordance with sub-section (2) of Section 30; and whether it’s feasible and viable and meets all the requirements as specified by the Board as also whether the ‘Resolution Applicant’ is ineligible in terms of Section 29A of the ‘I&B Code’ or not.

135. Regulation 38 of the ‘Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016’ reads as follows:

**“38. Mandatory contents of the resolution**

**plan.**— (1) *A resolution plan shall identify specific sources of funds that will be used to pay the –*

*(a) insolvency resolution process costs and provide that the insolvency resolution process costs will be paid in priority to any other creditor;*

*(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a*

*resolution plan by the Adjudicating Authority; and*

*(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan.*

***[(1A) A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.]***

*(2) A resolution plan shall provide:*

*(a) the term of the plan and its implementation schedule;*

*(b) the management and control of the business of the corporate debtor during its term; and*

*(c) adequate means for supervising its implementation.*

*(3) A resolution plan shall demonstrate that—*

*(a) it addresses the cause of default;*

*(b) it is feasible and viable;*

*(c) it has provisions for its effective implementation;*

*(d) it has provisions for approvals required and the timeline for the same; and*

*(e) the resolution applicant has the capability to implement the resolution plan.]”*

136. From Regulation 38, particularly clause (1A), it is clear that 'Resolution Plan' must include a statement as to how it has dealt with the interests of all stakeholders, including 'Financial Creditors' and the 'Operational Creditors', of the 'Corporate Debtor'. Therefore, we hold that the distribution of amount to the 'Operational Creditors', 'Financial Creditors' and other stakeholders are to be made by the 'Resolution Applicant' and required to be reflected in the 'Resolution Plan'.

137. The RFP issued by the 'Resolution Professional' on 24<sup>th</sup> December, 2017 contains further clauses in respect of the above, relevant of which are as follows:-

*“(i) “4. RESOLUTION PLAN PROCESS*

*4.1..... It is hereby clarified that if any resolution plan (or the terms thereof which is received by the Resolution Professional is not pursuant to this Request for Proposal document and/or such plan is not in accordance with the terms and conditions set out in this Request for Proposal document, then such resolution plan shall not be considered eligible for evaluation by the Committee of Creditors.”*

*(ii) “4.6 Contents of the Resolution Plan*

*4.6.1 The Resolution Applicant shall mandatorily include the following in its Resolution Plan, as set out in Section 30(2) of the IB Code read with Regulation 38 of the CIRP Regulations:*

*xxx*

*xxx*

*xxx*

*(d) statement as to how it would deal with the interest of all stakeholders, including **but not limited to break-up of amounts to be paid to secured Financial Creditors, unsecured Financial Creditors and Operational Creditors, of the Company;***

138. From the aforesaid provisions, it is clear that the ‘Committee of Creditors’ have not been empowered to decide the manner in which the distribution is to be made between one or other creditors.

139. Therefore, we hold that the ‘Committee of Creditors’ has no role to play in the matter of distribution of amount amongst the Creditors including the ‘Financial Creditors’ or the ‘Operational Creditors’. The ‘Committee of Creditors’ is only required to notice the viability, feasibility of the ‘Resolution Plan’, apart from other requirements as specified by the Board and ineligibility of the ‘Resolution Applicant’ in terms of Section 29A.

140. The ‘Financial Creditors’ being Claimants at par with other Claimants like other ‘Financial Creditors’ and the ‘Operational Creditors’ having conflict of interest cannot distribute the amount amongst themselves that too keeping the maximum amount in favour of one or other ‘Financial Creditors’ and minimum or ‘NIL’ amount in favour of some other ‘Financial Creditors’ or the ‘Operational Creditors’. The members of the ‘Committee of Creditors’ being interested party are also not supposed to decide the manner in which the distribution is to take place. In view of the aforesaid position of law, we hold that the ‘Committee of Creditors’ do not enjoy any authority to delegate to itself the role of the ‘Resolution Applicant’ including the manner of distribution of amount amongst the

stakeholders, which is exclusively within the domain of the 'Resolution Applicant' and thereafter before the Adjudicating Authority, if found discriminatory.

141. Such being the position, the 'Committee of Creditors' cannot delegate its power to a 'Sub Committee' or 'Core Committee' for negotiating with the 'Resolution Applicant(s)'.

142. The negotiation by 'Sub Committee' has resulted in infirmity and because of 'Sub-Committee', the 'ArcelorMittal India Pvt. Ltd.' submitted revised/ modified 'Resolution Plan' on 22<sup>nd</sup> October, 2018. In Part VIII which deals with the treatment of various stakeholders (distribution of amount to the stakeholders), the 'ArcelorMittal India Pvt. Ltd.' proposes to pay to the 'Financial Creditors' Rs. 39,500 Crores and delegated the power to the 'Committee of Creditors' as recorded in Part VIII which states that:

*"The Resolution Applicant has empowered the Committee of Creditors to decide the manner in which the financial package being offered by the Resolution Applicant to the Financial Creditors will be distributed to the Secured Financial Creditors. All such allocations to the Financial Creditors will be binding on all stakeholders."*

143. The final 'Resolution Plan' delegating the power of 'ArcelorMittal India Pvt. Ltd.' to 'Committee of Creditors' being against the provision of sub-section (2) of Section 30 and Regulation 38 (1A), the 'Committee of Creditors' should have requested the 'ArcelorMittal India Pvt. Ltd.' ('Resolution Applicant') to distribute the amount amongst the 'Financial Creditors' and the 'Operational Creditors' and other stakeholders.



144. The suggestion of ‘Resolution Applicant’ to distribute the financial package offered by it only to the ‘Secured Financial Creditors’, denying the right of ‘Operational Creditors’ and other stakeholders, is also against the provisions of Section 30 (2) and Regulation 38 (1A), and thereby cannot be upheld. In fact, the ‘Resolution Plan’ originally cleared by the ‘Resolution Professional’ presumed to be in consonance of Section 30(2) of the ‘I&B Code’. However, after negotiation with sub-committee, the plan was so modified which violates the provisions of Section 30(2) of the ‘I&B Code’ and Regulation 38 (1A) as observed above.

145. However, for the reasons aforesaid, we are not inclined to reject the ‘Resolution Plan’, as it appears that ‘ArcelorMittal India Pvt. Ltd.’ delegated the power because of suggestion of ‘Sub Committee’ as apparent, which is not permissible under the law.

146. For ensuring equitable treatment of similarly situated creditors, the Hon’ble Supreme Court in **“Swiss Ribbons Pvt. Ltd. & Anr.”** (Supra) noticed the ‘UNCITRAL Guidelines’ and observed:

*“70. Quite apart from this, the United Nations Commission on International Trade Law, in its Legislative Guide on Insolvency Law [“UNCITRAL Guidelines”] recognizes the importance of ensuring equitable treatment to similarly placed creditors.....”*

The Hon’ble Supreme Court in the said case further observed:

*“71. The NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the committee of creditors, always gone into whether operational creditors are given*

*roughly the same treatment as financial creditors, and if they are not, such plans are either rejected or modified so that the operational creditors' rights are safeguarded. It may be seen that a resolution plan cannot pass muster under Section 30(2)(b) read with Section 31 unless a minimum payment is made to operational creditors, being not less than liquidation value. Further, on 05.10.2018, Regulation 38 has been amended. Prior to the amendment, Regulation 38 read as follows:*

**“38. Mandatory contents of the resolution plan.—** (1) *A resolution plan shall identify specific sources of funds that will be used to pay the—*

*(a) insolvency resolution process costs and provide that the [insolvency resolution process costs, to the extent unpaid, will be paid] in priority to any other creditor;*

*(b) liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and*

*(c) liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries*

*are made by the financial creditors who voted in favour of the resolution plan.”*

*Post amendment, Regulation 38 reads as follows:*

**“38. Mandatory contents of the resolution plan.—** (1) *The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.*

(1-A) *A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.”*

147. As per the aforesaid decision of the Hon’ble Supreme Court, the regulation strengthens the rights of the ‘Operational Creditors’ by statutorily incorporating the principle of fair and equitable dealing of ‘Operational Creditors’ rights, together with priority in payment over ‘Financial Creditors’.

148. The Hon’ble Supreme Court noticed that the NCLAT, while looking into viability and feasibility of the ‘Resolution Plan’ that are approved by the ‘Committee of Creditors’, always gone into ***whether ‘Operational Creditors’ are given roughly the same treatment as ‘Financial Creditors’, and if they are not, such plans are either rejected or modified so that the ‘Operational Creditors’ rights are safeguarded.***

149. In the present case, we have noticed a huge discrimination made by the ‘Committee of Creditors’ in distribution of proposed amount to the ‘Operational Creditors’ qua ‘Financial Creditors’. Majority of the ‘Financial

Creditors' have been allowed 99.19% of their claim amount, whereas 'NIL' i.e. 0% in favour of the 'Operational Creditors'. Such distribution is not only discriminatory but also arbitrary. They have also discriminated amongst themselves on the ground that one 'Financial Creditor' is 'Secured Creditor' ('Standard Chartered Bank') having no charge on project assets of the 'Corporate Debtor' and other has no charge on the project of the 'Corporate Debtor', though it is accepted that the 'Standard Chartered Bank' is also a 'Secured Financial Creditor'.

150. Mr. Gopal Subramaniam, learned Senior Counsel appearing on behalf of the 'Committee of Creditors' submitted that the 'Resolution Plan' submitted by 'ArcelorMittal India Pvt. Ltd.' is not violative of Section 30 (2). It is submitted that the 'Committee of Creditors' has power to deal with all commercial aspect of a 'Resolution Plan'. He placed reliance on the decision of this Appellate Tribunal in ***"Darshak Enterprise Private Limited v. Chhaparia Industries Pvt. Ltd.— Company Appeal (AT) (Insol.) No. 327 of 2017"***, whereby this Appellate Tribunal held that in a particular case, what should be the percentage of claim amount payable to one or other 'Financial Creditor' or the 'Operational Creditor' or 'Secured Creditor' or 'Unsecured Creditor' can be looked into by the 'Committee of Creditors' based on facts and circumstances of each case.

151. However, the aforesaid decision is not applicable in the present case. In the present case, we have held that the 'Resolution Applicant' is required to decide the manner in which the distribution to be made amongst all the stakeholders including the 'Financial Creditors', 'Operational Creditors' and other Creditors. It is only when such distribution is found to be discriminatory, in such case, to remove such discrimination and to find out what should be the percentage of the claim amount payable to one or other 'Financial Creditors' or 'Operational Creditors', the 'Committee of Creditors' may negotiate and may ask the

‘Resolution Applicant’ to prepare revised chart re-distributing the amount in favour of Creditors’ in a manner which is non-discriminatory by providing same treatment to all the stakeholders.

152. Mr. Gopal Subramaniam, learned Senior Counsel relied on ‘Banking Law Reforms Committee’ reports published in November, 2015, but none of the reports empowers the ‘Committee of Creditors’ to decide the distribution amongst the stakeholders (lenders).

153. The *inter se* distribution amongst the ‘Financial Creditors’ cannot be held to be purely commercial in nature. The same cannot, by any stretch of imagination, come within the purview of the ‘Committee of Creditors’ who is supposed to look into viability and feasibility under the ‘I&B Code’ and other prescription as made by the Insolvency and Bankruptcy Board of India. The commercial aspect is one and manner of distribution of the upfront amount is different than that of the commercial aspect. For the said reasons, the ‘I&B Code’ and Regulations framed thereunder empowers the ‘Resolution Applicant’ to decide the manner in which the distribution is to be made and not to the ‘Committee of Creditors’.

#### **Role of ‘Committee of Creditors’**

154. In “***Swiss Ribbons Pvt. Ltd. & Anr.***” (Supra), the Hon’ble Supreme Court observed that since the ‘Financial Creditors’ are in the business of money lending, banks and financial institutions are best equipped to assess viability and feasibility of the business of the ‘Corporate Debtor’. Even at the time of granting loans, these banks and financial institutions undertake a detailed market study which includes a techno-economic valuation report, evaluation of business, financial projection, etc. Since this detailed study has already been undertaken before sanctioning a loan, and since financial creditors have trained employees to assess viability and

feasibility, they are in a good position to evaluate the contents of a resolution plan.

155. The 'Committee of Creditors' needs to rescue all viable 'Corporate Debtor' and close unviable ones, in the interest of the economy. In its long title, the 'I&B Code' specifies its objectives. It is reorganisation and insolvency resolution (reorganisation) of certain persons. The purpose of such reorganisation is maximisation of value of assets of the person concerned to promote entrepreneurship and availability of credit and balance the interests of all its stakeholders.

156. The 'I&B Code' provides for 'Corporate Insolvency Resolution Process' for reorganisation of 'Corporate Debtors'. It separates commercial aspects from judicial aspects and empowers and facilitates the 'Committee of Creditors' to take commercial decisions in a 'Corporate Insolvency Resolution Process'. The commercial decisions of the 'Committee of Creditors' are not ordinarily open to any analysis, evaluation or judicial review by the Adjudicating Authority or the Appellate Authority and hence not justiciable.

157. The 'I&B Code' envisages a 'Resolution Plan' for reorganisation of a defaulting 'Corporate Debtor'. The selection and approval of the best 'Resolution Plan' requires two abilities, namely, the ability to restructure the liabilities and the ability to take commercial decisions. In contrast with the 'Operational Creditors' who may pursue immediate realisation of their dues, the 'Financial Creditors' generally have the resilience to wait for realisation of their dues post reorganisation. They have also the ability to determine if a 'Resolution Plan' will achieve the objectives of the 'I&B Code'. In view of their abilities, the 'Committee of Creditors' comprises 'Financial Creditors'. The 'Committee of Creditors', therefore, has a duty to take commercial decisions which further the objectives of

the 'I&B Code' and do not allow the interests of 'Financial Creditors' overshadow the interests of the 'Corporate Debtor' or the other Creditors, such as 'Operational Creditors'.

158. A 'Corporate Insolvency Resolution Process' entails a large variety of decisions by an 'Operational Creditor', 'Financial Creditor', the IP, the 'Committee of Creditors' and 'Resolution Applicants'. This piece, however, enumerates four key commercial decisions, which a 'Committee of Creditors' is required to take in a 'Corporate Insolvency Resolution Process', to reorganise the 'Corporate Debtor' as a going concern to maximise the value of its assets.

(a) A 'Corporate Debtor' in a market economy fails to deliver for two broad reasons. First, it carries on a business which is no more viable for exogenous reasons such as innovation. Most such 'Corporate Debtors' have economic distress and are unviable. However, a few of them may have resources to change the business line and become viable. Second, the 'Corporate Debtor' is not doing well for endogenous reasons such as its inability to compete at market place, while other Corporates in the same business are doing well. Many of such Corporates have financial distress but are viable. However, a few of them may have significantly depleted their resources and become unviable. The 'Committee of Creditors' must correctly identify if the 'Corporate Debtor' under 'Corporate Insolvency Resolution Process' is viable or not and must rescue a failing, viable 'Corporate Debtor' and close a failing, unviable one.

(b) If the 'Corporate Debtor' is viable, the 'Committee of Creditors' must visualise the 'Resolution Plan' required for reorganisation of the 'Corporate Debtor'. 'Resolution Plan' may entail a change of management, technology, or product portfolio; acquisition or

disposal of assets, businesses or undertakings; restructuring of ownership, balance sheet or organisation; etc. Much in the same way a promoter invites subscription for shares in an IPO, the 'Committee of Creditors' must create visibility of the underlying value of the 'Corporate Debtor' and invite and encourage appropriate 'Resolution Plans' for reorganisation of the 'Corporate Debtor'. It must express its mind as to what kind of 'Resolution Applicant' can reorganise the 'Corporate Debtor' keeping in view its complexity and scale of business; what can possibly address the failure by the 'Corporate Debtor'; what are parameters to assess the viability and feasibility of the 'Resolution Plans'; etc. to enable prospective 'Resolution Applicants' design and submit competing 'Resolution Plans' for reorganisation of the 'Corporate Debtor'.

(c) The 'Committee of Creditors' must ensure that the 'Corporate Debtor' continues as a going concern and its value does not deteriorate during 'Corporate Insolvency Resolution Process'. For this purpose, it must appoint a competent IP who can run the business of the 'Corporate Debtor' as a going concern at its optimum potential, provide complete, correct and timely information about the 'Corporate Debtor' to resolution applicants for design of resolution plans, and safeguard the assets of the 'Corporate Debtor'. It must facilitate interim finance, and co-operate in detection of avoidance transactions, wherever required. It must expedite various tasks for closure of the 'Corporate Insolvency Resolution Process' at the earliest.

(d) The Code envisages the 'Committee of Creditors' to consider only those 'Resolution Plans' which (i) have been received from credible and capable 'Resolution Applicants', (ii) comply with the applicable laws, (iii) are feasible and viable, (iv) have potential to address the



default, and (v) have provision for effective implementation of the plan. These considerations ensure that the 'Resolution Plan' achieves reorganisation of the 'Corporate Debtor' as a going concern, on a sustained basis. Of the plans which meet these requirements, the 'Committee of Creditors' must approve that 'Resolution Plan' which maximises the value of the assets of the 'Corporate Debtor' and balance all the stakeholders, irrespective of realisation for creditors under the plan.

159. The 'Committee of Creditors' also takes a few other decisions along with approval of 'Resolution Plan'. It may approve restructuring of realisations for 'Financial Creditors' to enhance maximisation of value under the 'Resolution Plan'. It may also approve sharing the realisations under the plan between 'Financial Creditors' and 'Operational Creditors' or between classes of 'Financial Creditors' or 'Operational Creditors', or exemptions from taxes and duties sought for implementation of the plan, etc. These are strictly not the commercial decisions and, therefore, not beyond scrutiny. In any case, the 'I&B Code' does not mandate consideration of these aspects while approving a resolution plan, as these may not have a bearing on viability and feasibility of the plan. Therefore, the 'Committee of Creditors' must not discard a 'Resolution Plan' that maximises the value of the assets of the 'Corporate Debtor' just because it yields realisations in future for 'Financial Creditors' or yields relatively lower realisation for them.

160. It is important to note that the commercial decisions are not amenable to a precise mathematical formula. It is not that a 'Corporate Debtor' is viable, or a 'Resolution Plan' is viable and feasible, where the realisations for 'Financial Creditors' under the plan exceeds liquidation value of the 'Corporate Debtor'. In fact, it requires considerable commercial dexterity and acumen. The 'Committee of Creditors' must enhance its

capacity to distinguish a viable ‘Corporate Debtor’ from an unviable one and ensure rescue of all viable ‘Corporate Debtors’ and closure of only unviable ones, in the interest of the economy. Only then the economy can reap the full benefits of having an ‘I&B Code’ and justify its well-founded objects and reasons.

### **Permissibility of classification**

161. Section 3(10) defines ‘Creditor’ means:

**“3. Definitions.—(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”**

162. Thus, it is apparent that the creditor includes a ‘Financial Creditor’, an ‘Operational Creditor’, a ‘Secured Creditor’, an ‘Unsecured Creditor’ and a decree-holder.

163. Section 5(7) defines ‘Financial Creditor’ means any person to whom a financial debt is owed, whereas ‘Financial Debt’ has been defined under Section 5(8) means *a debt alongwith interest, if any, which is disbursed against the consideration for the time value of money*, which are as follows:

**“5. Definitions.— (7) “financial creditor” means any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to;**  
**(8) “financial debt” means a debt alongwith interest, if any, which is disbursed against the**

consideration for the time value of money and includes–

(a) money borrowed against the payment of interest;

(b) any amount raised by acceptance under any acceptance credit facility or its dematerialised equivalent;

(c) any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;

(d) the amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;

(e) receivables sold or discounted other than any receivables sold on non-recourse basis;

(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;

[Explanation. -For the purposes of this sub-clause, -

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

*(ii) the expressions, “allottee” and “real estate project” shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016 (16 of 2016);]*

*(g) any derivative transaction entered into in connection with protection against or benefit from fluctuation in any rate or price and for calculating the value of any derivative transaction, only the market value of such transaction shall be taken into account;*

*(h) any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*

*(i) the amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clause (a) to (h) of this clause”*

164. If both Section 5(7) and Section 5(8) are read together, it is evident that there is no distinction made between one or other ‘Financial Creditor’. All persons to whom a financial debt is owed by the ‘Corporate Debtor’, which debt is disbursed against the consideration for time value of money, whether they come within one or other clause of Section 5(8), all of such person form one class i.e. ‘Financial Creditor’ they cannot be sub-classified as ‘Secured’ or ‘Unsecured Financial Creditor’ for the purpose of preparation of the ‘Resolution Plan’ by the ‘Resolution Applicant’.

**Distribution of debts to the ‘Financial Creditors’, ‘Operational Creditors’ and Others**

165. The distribution of debts to the ‘Financial Creditors’ and the ‘Operational Creditors’ during the ‘Corporate Insolvency Resolution Process’ cannot be equated with distribution of debts to all stakeholders after the liquidation for the following reasons:

166. The ‘Resolution Applicant’ proposes the *distribution of debt to the ‘Financial Creditors’, ‘Operational Creditors’ and other stakeholders out of the amount proposed to be paid by the ‘Resolution Applicant’*.

167. On the other hand, after liquidation, ***debt is distributed out of the assets of the ‘Corporate Debtor’*** in terms of Section 53 of the ‘I&B Code’ in order of priority, which reads as follows:

**“53. Distribution of assets.—** (1) *Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period as may be specified, namely: -*

*(a) the insolvency resolution process costs and the liquidation costs paid in full;*

*(b) the following debts which shall rank equally between and among the following:*

*(i) workmen’s dues for the period of twenty-four months preceding the liquidation commencement date; and*

*(ii) debts owed to a secured creditor in the event such secured creditor has*

*relinquished security in the manner set out in section 52;*

*(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;*

*(d) financial debts owed to unsecured creditors;*

*(e) the following dues shall rank equally between and among the following: -*

*(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;*

*(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;*

*(f) any remaining debts and dues;*

*(g) preference shareholders, if any; and*

*(h) equity shareholders or partners, as the case may be.*

*(2) Any contractual arrangements between recipients under sub-section (1) with equal ranking, if disrupting the order of priority under that sub-section shall be disregarded by the liquidator.*

*(3) The fees payable to the liquidator shall be deducted proportionately from the proceeds payable to each class of recipients under sub-section (1), and the proceeds to the relevant recipient shall be distributed after such deduction.*

*Explanation. – For the purpose of this section-*

- (i) it is hereby clarified that at each stage of the distribution of proceeds in respect of a class of recipients that rank equally, each of the debts will either be paid in full, or will be paid in equal proportion within the same class of recipients, if the proceeds are insufficient to meet the debts in full; and*
- (ii) the terms “workmen’s dues” shall have the same meaning as assigned to it in section 326 of the Companies Act, 2013 (18 of 2013).”*

168. A ‘Resolution Plan’ shows upfront payment in favour of the Creditors including the ‘Financial Creditors’, ‘Operational Creditors’ and the other Creditors. ***It is not a distribution of assets from the proceeds of sale of liquidation of the ‘Corporate Debtor’ and, therefore, the ‘Resolution Applicant’ cannot take advantage of Section 53 for the purpose of determination of the manner in which distribution of the proposed upfront amount is to be made in favour of one or other stakeholders namely— the ‘Financial Creditor’, ‘Operational Creditor’ and other creditors.***

169. Sub-clause (b) of sub-section (2) of Section 30 of the 'I&B Code' mandates that the 'Resolution Plan' must provides for the payment of the debts of 'Operational Creditors' in such manner as may be prescribed by the Board which shall not be less than the amount to be paid to the 'Operational Creditors' in the event of a liquidation of the 'Corporate Debtor' under Section 53. That means, the 'Operational Creditors' should not be paid less than the amount they could have received in the event of a liquidation out of the asset of the 'Corporate Debtor'. It does not mean that they should not be provided the amount more than the amount they could have received in the event of a liquidation which otherwise amount to discrimination.

170. In view of the aforesaid position of law, we hold that Section 53 cannot be made applicable for distribution of amount amongst the stakeholders, as proposed by the 'Resolution Applicant' in its 'Resolution Plan'.

171. In the case of "***Binani Industries Limited vs. Bank of Baroda & Anr.— Company Appeal (AT) (Insolvency) No. 82 of 2018 etc.***" this Appellate Tribunal taking into consideration the viability and feasibility of the 'Resolution Plan' held:-

*"48. If the 'Operational Creditors' are ignored and provided with 'liquidation value' on the basis of misplaced notion and misreading of Section 30(2)(b) of the 'I&B Code', then in such case no creditor will supply the goods or render services on credit to any 'Corporate Debtor'. All those who will supply goods and provide services, will ask for advance payment for such supply of goods or to render services which will be against the basic principle of the 'I&B*



*Code’ and will also affect the Indian economy. Therefore, it is necessary to balance the ‘Financial Creditors’ and the ‘Operational Creditors’ while emphasizing on maximization of the assets of the ‘Corporate Debtor’. Any ‘Resolution Plan’ if shown to be discriminatory against one or other ‘Financial Creditor’ or the ‘Operational Creditor’, such plan can be held to be against the provisions of the ‘I&B Code’.”*

172. Therefore, we hold that the ‘Financial Creditors’ cannot be discriminated on the ground of ‘Secured’ or ‘Unsecured Financial Creditors’ for the purpose of distribution of proposed amount amongst stakeholders in the ‘Resolution Plan’ by the ‘Resolution Applicant’.

173. In the present case, we have seen that the ‘Standard Chartered Bank’ has been accepted as a ‘Secured Financial Creditor’. However, it has been discriminated by the ‘Committee of Creditors’ on the ground of it having no charge on project assets of the ‘Corporate Debtor’. Such ground is also not based on the fact, the ‘Standard Chartered Bank’ having already been held as a ‘Secured Financial Creditor’ having already invoked its guarantee.

174. On the contrary, ‘Operational Creditor’ is defined in sub-section (20) of Section 5 which is to be read with ‘Operational Debt’ as defined in sub-section (21) of Section 5, and read as follows:

**“5. Definitions.—** (20) *“operational creditor” means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred;*

*(21) “operational debt” means a claim in respect of the provision of goods or services including employment or a debt in respect of the [payment] of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”*

175. From the definition of ‘Operational Debt’, we find the following classification has been made by the Parliament:

- (i) Those who have ‘supplied goods’ and ‘rendered services’ and thereby entitled for payment.
- (ii) The employees who have ‘rendered services’ for which they are entitled for payment.
- (iii) The Central Government, the State Government or the Local Authority who has not rendered any services but derive the advantage of operation of the ‘Corporate Debtor’ pursuant to existing law (statutory dues).

176. From the aforesaid definition, the ‘Operational Creditors’ can be classified in three different classes for determining the manner in which the amount is to be distributed to them. However, they are to be given the same treatment, if similarly situated.

177. For the aforesaid reasons, if the employees are given 100% of their dues or those who have ‘supplied goods’ and ‘rendered services’ having claim less than Rs.1 Crore are provided with 100% dues of their claim amount as provided in the present case, the other ‘Operational Creditors’ whose claim are more than Rs. 1 Crore or the ‘Central Government’ or the ‘State Government’ or the ‘Local Authority’, who raise their claim on the basis of the statutory dues, they cannot ask for same treatment as allowed in favour of the aforesaid class of ‘Operational Creditors’.

178. For the said reasons, we hold that 100% payment as suggested in the 'Resolution Plan' in favour of the workmen and employees, 'Unsecured Financial Creditor' whose claim is less than Rs. 1 Crore and the 'Operational Creditors' whose admitted claim is less than Rs. 1 Crore are not discriminatory and the other 'Operational Creditors' or 'Financial Creditors' cannot ask for 100% of their claim on the ground that they should also be provided with same treatment.

179. On our request, the 'Committee of Creditors' prepared a fresh distribution chart, which is as follows:

**"REVISED DISTRIBUTION AS PER THE SUCCESSFUL RESOLUTION PLAN OF ACRELORMITTAL INDIA PRIVATE LIMITED AS APPROVED BY THE COMMITTEE OF CREDITORS ("COC") OF ESSAR STEEL INDIA LIMITED ("CORPORATE DEBTOR") ON 25<sup>TH</sup> OCTOBER, 2018 AND AS FURTHER AMENDED BY THE COC POST ORDER DATED 20<sup>TH</sup> MARCH 2019 OF THIS HON'BLE TRIBUNAL IN ITS 22<sup>ND</sup> MEETING HELD ON 27<sup>TH</sup> MARCH 2019**

S.No	Category of Stakeholder	Name of the stakeholder	Amount admitted by Resolution Professional (In Rs. Crores)	Proposed payment under the Successful Resolution Plan as approved by the COC on 25 October, 2018 and as further amended by the COC pursuant to its 22 <sup>nd</sup> meeting held on 27 <sup>th</sup> March, 2019 (In Rs. Crores)	Percentage of admitted claim allowed under the Successful Resolution Plan as approved by the COC on 25 October, 2018 and as further amended by the COC pursuant to its 22 <sup>nd</sup> meeting held on 27 <sup>th</sup> March, 2019 (In %)
<b>A.</b>	<b>Workmen &amp; Employees</b>				
	Workmen & Employees	-	*18.07	18.07	100.00%
<b>B.</b>	<b>Secured Financial Creditors</b>				
<b>B1.</b>	Secured Financial Creditors (having charge on project assets of the Corporate Debtor)	State Bank of India	13,220.91	11,871.96	89.80%
		IDBI Bank	2,481.61	2,228.40	89.80%
		Canara Bank	3,798.06	3,410.53	89.80%
		EARC Trust SC 114	602.39	540.93	89.80%
		EARC Trust SC 187	92.25	82.84	89.80%
		EARC Trust SC 217	1,697.77	1,524.54	89.80%
		EARC Trust SC 233	993.46	892.10	89.80%
		EARC Trust SC 292	1,966.31	1,765.68	89.80%
		EARC Trust SC 322	554.92	498.30	89.80%
		EARC Trust SC	137.25	123.25	89.80%

		327			
		EARC Trust SC 337	1,273.78	1,143.82	89.80%
		EARC Trust SC 323	978.63	878.77	89.80%
		EARC Trust SC 326	10.00	8.98	89.80%
		Bank of Baroda	5.00	4.49	89.80%
		Punjab National Bank	2,936.25	2,636.66	89.80%
		Deutsche Bank	2,829.88	2,541.14	89.80%
		ICICI Bank	2,294.11	2,060.03	89.80%
		Union Bank of India	2,122.60	1,906.03	89.80%
		Bank of India Corporation Bank	1,985.08	1,782.54	89.80%
		Syndicate Bank	1,566.62	1,406.77	89.80%
		SC Lowy	967.91	869.16	89.80%
		UCO Bank	900.12	808.28	89.80%
		Exim Bank	582.26	522.85	89.80%
		Central Bank of India	556.26	499.51	89.80%
		Allahabad Bank	510.04	458.00	89.80%
		SREI Infrastructure Finance	320.49	287.79	89.80%
		<b>Total(B1)</b>	<b>45,559.24</b>	<b>40,910.74</b>	<b>89.80%</b>
<b>B2.</b>	Secured Financial Creditors (having no charge on project assets of the Corporate Debtor)	Standard Chartered Bank	3,487.10	59.26	1.70%
	<b>Total (B2)</b>		<b>3,487.10</b>	<b>59.56</b>	<b>1.70%</b>
	<b>Total (B1+B2)</b>		<b>*49,046.34</b>	<b>**40,970.00</b>	<b>As set out above at B1 and B2</b>
<b>C.</b>	<b>Unsecured Financial Creditors</b>				
<b>C1</b>	Unsecured Financial Creditors (With admitted claims less than Rs.10,00,000)	Melwani Gopal Tharumal and/or Melwani Vinod	0.08	0.08	100%
		Arvind Parakh HUF	0.08	0.08	100%
		Mr. Arvinlal N Shah & Mrs. Indumati A. Shah	0.08	0.08	100%
		Mr. Jiwat K. Dansanghani and Mrs. Neetu J Dansanghani	0.03	0.03	100%
		Nathu Ram Verma	0.02	0.02	100%
	<b>Total (C1)</b>	-	<b>~0.30</b>	<b>~0.30</b>	<b>100%</b>
<b>C2</b>	Unsecured Financial Creditors (with admitted claims equal to or above Rs. 10,00,000)	State Bank of India	5.57	0.23	4.08%
		Bank of Baroda	7.70	0.31	4.08%
		Standard Chartered Bank	70.34	2.87	4.08%
		The Bank of New York Mellon, London Branch	202.50	8.26	4.08%
		Inox Air Products Private Limited	78.48	3.20	4.08%
		Axis Bank	61.91	2.53	4.08%
	<b>Total (C2)</b>	-	<b>426.51</b>	<b>17.40</b>	<b>4.08%</b>
	<b>TOTAL (C1 + C2)</b>		<b>*426.81</b>	<b>~17.70</b>	<b>As set out above at C1 And C2</b>
<b>D.</b>	<b>Operational Creditors (other than Workmen and Employees)</b>				
D1.	Operational	-	~196	~196	100%

	Creditors with admitted claim amount less than Rs. 1 crore  (i.e. ~1,600 operational creditors out of a total of 1,855 operational creditors in No.)				
D2	Operational Creditors with admitted claim amount equal to or more than Rs. 1 Crores	-	~4,877.99	1,000	20.50%
	<b>Total (D1 + D2)</b>		<b>**5,073.99</b>	<b>1,196.00</b>	<b>As set out above at D1 and D2</b>

\* Claims as admitted by the Resolution Professional as reflected in the list of creditors updated as of 24 October, 2018. The Successful Resolution Plan was approved by the COC on 25 October, 2018 basis the voting share and claim amounts set out in this list.

\*\* The COC in deference to the non-binding "recommendations" of the Hon'ble National Company Law Tribunal, Ahmedabad Bench (as set out in its order dated 8 March 2019) ("**NCLT Order**") and the order dated 20 March 2019 of this Hon'ble Tribunal, has pursuant to its 22<sup>nd</sup> meeting vide a resolution passed on 30 March 2019, ex-gratia apportioned payment of a capped amount of Rs. 1,000 Crores, from the upfront payment amount of approximately Rs. 41,970 crores earmarked for secured financial creditors under the Successful Resolution Plan of ArcelorMittal India Private Limited, for payment to the operational creditors of the Corporate Debtor who have not been proposed any payment against their admitted claims under the Successful Resolution Plan. In the event the quantum of admitted claims of operational creditors increases beyond the aggregate amount of Rs. 5073.99 crores (as admitted by the Resolution Professional vide the list of creditors as updated on 5 March 2019), the ex-gratia payment approved by 70.73% of the COC in its 22<sup>nd</sup> meeting for payment to operational creditors as set out above shall, at all times, remain capped at Rs. 1,000 crores only.

\*\*\* As on 25 October, 2018, the date on which the Successful Resolution Plan was approved by the COC, the operational debt as admitted by the Resolution Professional was Rs.5,058.66 Crores. The amount reflected here represents the operational claims as admitted by the Resolution Professional and as reflected in the list of creditors updated as of 5 March, 2019. As per the observations issued by the Resolution Professional pursuant to the NCLT Order dated 8 March, 2019, the Resolution Professional has 'registered' further operational claims of approximately Rs.13,767.76 crores and has further admitted notional amount of Re. 1 for certain operational claims aggregating the approximately Rs. 2,722.50 crores subject to final outcome of the disputes pending with respect to such operational claims."

180. The aforesaid revised chart placed by the 'Committee of Creditors' is also discriminatory, as we find that majority of the 'Financial Creditors' have been provided with 89.80% of their claim amount whereas 'Secured Financial Creditor' (Standard Chartered Bank) has been provided 1.07% of its claim. With regard to majority of the 'Operational Creditors', their claims have been increased at 20.50% of their claim amount and thereby, they have not been provided with similar treatment as required under the Law. In this background, we are also not inclined to accept suggestion as made on behalf of the 'Committee of Creditors'.

181. As the 'Successful Resolution Applicant' ('ArcelorMittal India Pvt. Ltd.') was supposed to provide the manner in which the distribution is to

be made amongst all the stakeholders including the 'Financial Creditors' and the 'Operational Creditors'; we requested Mr. Harish Salve, learned Senior Counsel for 'ArcelorMittal India Pvt. Ltd.' to address this Appellate Tribunal as to how to distribute the amount, if the 'ArcelorMittal India Pvt. Ltd.' is allowed to distribute.

182. Mr. Harish Salve, learned Senior Counsel for 'ArcelorMittal India Pvt. Ltd.' while agreed that total amount of Rs. 42,000 Crores to be distributed amongst the stakeholders, suggested the following 'Scheme for Distribution':

“1. The operational creditors ("**OC**") are to be paid on the basis of the percentage of their debt depending upon the amount available for distribution to OC's.

2. Up to 08.03.2019 i.e. the Plan Approval Date, the Resolution Professional ("**RP**") had "admitted" claims of INR 5074 Cr. However pursuant to the order dated 08.03.2019 passed by the Adjudicating Authority ("**Plan Approval Order**"), the total of all the claims "**registered**" by the RP is in the vicinity of INR 19000 Cr. In addition to the same, there are a large number of disputed claims.

3. Under the Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations, 2016 ("**CIRP Regulations**"), the claims had to be lodged within a prescribed time. If a purported creditor has not lodged his claim within the prescribed time, the right to make a claim stands forfeited.

4. The percentage figure is the quotient arrived at by dividing the total amount available for distribution by the total amount of the claims. **Thus in order to arrive to a figure of the percentage of the *pro-rata* distribution to**

**each OC, it is necessary to fix two elements in the equation- the numerator and the denominator.**

5. The first element in the equation is in the total amount available for distribution to the OCs. For the present, this amount may be assumed to be "X". This will be the numerator.

6. The next element necessary is the denominator, which is the aggregate amount of debt to be payable to the OCs. This may be assumed to be "Y".

7. The amount payable to each OC is ascertained by first arriving at the Quotient, and that is applied as a percentage to each claim. The Quotient is arrived at by dividing the total amount available for distribution "X" by the total amount payable to the OCs "Y".

8. If for example the amount available for distribution is 500, and the total claims are 2000, the quotient would be  $\frac{1}{4}$  - which in percentage terms would be 25%.

9. The element "X" would be known only after this Hon'ble Tribunal decides, how much of the total amount offered for resolution is to be kept aside for the OCs.

10. The figure of "Y" would vary and continue for some time to vary, with the amount finally adjudicated. In the first instance, "Y" will be taken at the full figure i.e. INR 27,101 Cr. And the first tranche of distribution would be made as a ratio arrived at by dividing of all admitted claims. However, the percentage of the distribution being arrived at is the figure "Z", which is equal to the value of "X" being divided by "Y".

11. It needs to be clearly stated that the distribution of the amount can only be made as a percentage of admitted

claims. The balance of “X” will be kept in a designated/escrow account. OCs, having disputed claims can avail remedy under Section 60(6) of the Insolvency & Bankruptcy Code, 2016 (“**IBC**”). Over a period of time as the figure of “Y” becomes final and stands reduced (by final rejection of disputed claims), additional distributions can be made of the incremental figure of “Z” arrived at by dividing “X” by “Y” - being the revised figure.

12. The final distribution will be made when finality is reached on all disputed claims and the final figure of “Y” is available with the resolution applicant.

183. Learned counsel for ‘ArcelorMittal India Pvt. Ltd.’ submitted that

a. The process of distribution will take some time. It is proposed that the actual process may be carried out by a reputed Chartered Accountants' firm, as may be selected/appointed by this Hon'ble Appellate Tribunal, whose fees and cost will be borne by the Resolution Applicant. The Resolution Applicant will take all necessary steps to assist the said Chartered Accountants' firm, and the Adjudicating Authority for adjudicating the claims, including by way of legal fees of representation of the estate before the NCLT and the higher authorities.

b. This Appellate Authority may make an order allowing all such OCs (who are dissatisfied by the amount of claim admitted and/or rejected by the RP) to lodge their respective claims within a defined period of time (after final approval of the resolution plan) with the Adjudicating Authority.



c. It is a matter of law that related parties are entitled to payment of whatever may be the sum due and payable as much as an unrelated party. However, the claims of related parties cannot be taken at face value. The RP would have to “*evaluate*” the goods and/or services provided by the related parties to arrive at the fair amount to be paid to such related parties. This would be a part of the process of verification of claims. This would finally be decided upon by the NCLT.

d. In the present case the Chartered Accountant may be asked to verify the bona fides of a claim of a related party to ensure that extravagant claims based on transactions not at arms-length are not honoured to the detriment to the body of OCs.

e. The Chartered Accountants’ firm, as selected by this Hon’ble Appellate Tribunal for administering this process, may also be directed to assist the Adjudicating Authority in “*evaluating*” the claims of the related parties so as to limit them to the fair value of the goods and/or services provided.”

184. For deciding the distribution of the assets in a manner as suggested by Mr. Harish Salve, learned Senior Counsel, first it is to be noticed as to what is the amount due to the stakeholders; i.e. ‘Financial Creditors’, ‘Operational Creditors’ and others.

185. The ‘Resolution Professional’ on collating the claim initially calculated the admitted claim payable to the ‘Financial Creditors’ and the ‘Operational Creditors’ which were reflected in the ‘Information Memorandum’ and was brought to the notice of the ‘Resolution Applicant’.

186. The 'Financial Creditors' and the 'Operational Creditors' made the following claims:

- (i) Financial Creditors – Rs. 55,440 Crores
- (ii) Operational Creditors – Rs. 27,101 Crores.

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**Total : Rs. 82,541 Crores**  
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187. The 'Resolution Professional' admitted the claim amount as follows:

- (i) Financial Creditors – Rs. 49,473 Crores
- (ii) Operational Creditors – Rs. 5,074 Crores.

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**Total : Rs. 54,547 Crores**  
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188. A number of 'Operational Creditors' filed objections against determination of their claims, as noticed in the preceding paragraphs.

189. The grievance has been made by 'MSTC Limited' and other Appellants that in spite of the order passed by the Adjudicating Authority, the 'Resolution Professional' has not recorded their claims. In this background, we asked the 'Resolution Professional' to file the chart showing the amount claimed in terms of the order passed by the Adjudicating Authority. Same is reflected hereunder and which we have accepted:

I.A. No.	Name of Creditor	Amount of claim (Rs) as per I.A. as per pages 34-41 of NCLT Order
28/2018	Dakshin Gujarat Vij. Co. Ltd.	313,23,33,224
446/2018	Dakshin Gujarat Vij. Co. Ltd.	5882,28,00,000
467/2018	Dakshin Gujarat Vij. Co. Ltd.	606,49,00,000
468/2018	State Tax Officer	544,00,00,000
443/2018	Gujarat Energy Transmission Corporation Ltd.	896,52,00,000
325/2018	Bharat Petroleum Corporation Limited	443,05,33,379
53/2018	Bharat Petroleum Corporation Limited	503,83,46,437

469/2018	Indian Oil Corporation Ltd.	3762,58,74,503
52/2019	MSTC Limited	813,30,00,000
438/2018	GAIL India Limited	2,47,26,000
470/2018	Global Transnational Trading FZE	NA

190. 'M/s. Essar Power Limited' and 'M/s. Bhandar Power Limited' claimed to be 'Operational Creditors' whose claims were rejected by e-mail dated 25<sup>th</sup> October, 2017, they challenged the same in the Interlocutory Application. They pleaded that their claims were rejected arbitrarily by the 'Resolution Professional' and prayed for setting aside such decision of rejection of the claims to the tune of Rs. 893,21,52,807/- and Rs. 1618,02,74,465/-. The Adjudicating Authority by impugned order dated 8<sup>th</sup> March, 2019 while observed that the duty of the 'Resolution Professional' is to collate the information by verifying the claims and update with power of adjudicating the claim. However, taking into consideration that the terms of claim comprise of two parts, namely— (i) **right to payment** (ii) **right to remedy for breach of contract**; if such breach gives a rise to payment.

191. In this background, it was ordered to include their claims in the list of creditors with other similar disputed claims which will be subject to final outcome of dispute pending.

The aforesaid decision of the Adjudicating Authority has not been assailed by 'M/s. Essar Power Limited' or 'M/s. Bhandar Power Limited' by filing any appeal against the impugned judgment dated 8<sup>th</sup> March, 2019.

192. The 'Resolution Professional' in its chart stated that the claim of 'M/s. Essar Power Limited' is Rs. 912,69,90,753/- and the claim of 'M/s. Bhandar Power Limited' is Rs. 1809,79,89,500/- as disputed and subject to final outcome of the dispute pending.

193. The 'Committee of Creditors' in their chart has informed that the 'Resolution Professional' has registered further operational claims of approx. Rs. 13,767.76 Crores and has further admitted notional amount of Re. 1/- for certain operational claims aggregating the approx. Rs. 2,722.50 Crores subject to final outcome of the disputes pending with respect to such operational claims.

194. In the aforesaid circumstance, we are not deliberating on the disputed claim of 'M/s. Essar Power Limited' and 'M/s. Bhandar Power Limited'.

195. In the 'Information Memorandum', the 'Resolution Professional' has shown the admitted claims, as follows:

S.No.	Category of Stakeholder	Amount claim (In Rs. Crores)	Amount admitted by the 'Resolution Professional' (In Rs. Crores)
1	Corporate Debtor	Rs.82,541 Cr.	
2	Financial Creditor	Rs. 55,440 Cr.	Rs.49,473 Cr.
3	Operational Creditor	Rs. 27,101 Cr.	Rs. 5,074 Cr.

196. The additional claim of the 'Operational Creditors' has been admitted by the Adjudicating Authority and upheld by us, which are as follows:

S.No.	Name of Creditor	Amount of claim (in Rs.) as per I.A. as per pages 34-41 of NCLT Order
1	Dakshin Gujarat Vij Co. Ltd.	3,13,23,33,224
2	Dakshin Gujarat Vij Co. Ltd.	58,82,28,00,000
3	Dakshin Gujarat Vij Co. Ltd.	6,06,49,00,000
4	State Tax Officer	5,44,00,00,000
5	Gujarat Energy Transmission Corporation Ltd.	8,96,52,00,000
6	Bharat Petroleum Corporation Limited	4,43,05,33,379
7	Bharat Petroleum Corporation Limited	5,03,83,46,437
8	Indian Oil Corporation Ltd.	37,62,58,74,503
9	MSTC Limited	

		8,13,30,00,000
10	GAIL India Limited	2,47,26,000
11	Global Transnational Trading FZE	NA
	<b>TOTAL</b>	<b>1,37,67,77,13,543</b>

**Following claims have also been accepted by this Appellate Tribunal –**

12	ONGC (Total Claim) minus (-) Claim already admitted & reflected in Operational Claim of Rs. 5,074 cr	7,46,81,468     (-) 47,59,512	
	Additional claim amount of ONGC as admitted by Adjudicating Authority & accepted by this Appellate Tribunal		<b>6,99,21,956</b>
13	NTPC (Total Claim) minus (-) Claim already admitted & reflected in Operational Claim of Rs. 5,074 cr	10,45,00,264     (-)1,19,44,783	
	Additional claim amount of NTPC as admitted by Adjudicating Authority & accepted by this Appellate Tribunal		<b>9,25,55,481</b>
14	Gujarat Electricity Duty & Tax on sale of electricity		8,61,19,00,000

Therefore, the total claim of 'Operational Creditors' comes to-

S. No.	Amount of Claim (in Rs.)	Remarks
a.	50,74,00,00,000	admitted by 'Resolution Professional'
b.	1,37,67,77,13,543	Additional amount, as accepted by the adjudicating authority in the case of 'Dakshin Gujarat Vij Co. Ltd. & Ors'.
c.	8,61,19,00,000	Gujarat Electricity Duty & Tax on sale of electricity
d.	6,99,21,956	further amount payable to 'ONGC Ltd.'
e.	9,25,55,481	Further amount payable to 'NTPC Ltd.'
<b>Grand Total</b>	<b>1,97,19,20,90,980</b>	<b>Operational Debt</b>
	<i>(Nineteen Thousand Seven Hundred Nineteen Crore Twenty Lakh Ninety Thousand Nine Hundred and Eighty Only)</i>	

**'Total debt payable to 'Financial Creditors' & 'Operational Creditors'**

Therefore, the total debt amount payable to stakeholders: -

1. Financial Creditors	-----	Rs. 4,94,73,00,00,000/-
2. Operational Creditors	-----	Rs. 1,97,19,20,90,980/-
		-----
Total	-----	Rs. 6,91,92,20,90,980/-
		-----

*(Rupees Sixty-Nine Thousand One Hundred Ninety-Two Crore Twenty Lakh Ninety Thousand Nine Hundred and Eighty Only)*

Against Rs. 6,91,92,20,90,980/-, Arcelor Mittal Ltd. offered Rs. 4,20,00,00,00,000/-. Therefore %age wise, the amount will be -

$$\frac{4,20,00,00,00,000}{6,91,92,20,90,980} * 100 = \mathbf{60.7\% \text{ (approx.)}}$$

Therefore -

Financial Creditors will get 60.7%  
of their claim of Rs.4,94,73,00,00,000/- (i.e) =Rs. 3,00,30,44,50,000/-

&

Operational Creditors will get 60.7%  
of their claim of Rs.1,97,19,20,90,980/- (i.e) = Rs. 1,19,69,55,49,224/-

**Grand Total** = **Rs. 4,19,99,99,99,224/-**  
**\*(Rs. 4,20,00,00,00,000 approx.)**

**'Distribution amongst Financial Creditors & Operational Creditors'**

S. No.	Category of Stakeholders	%age	Amount (in Rs.)
A.	<i>Operational Creditors</i>	60.7%	
1.	Operational Creditors-I <sup>#</sup>	59.614%	1,17,55,48,49,224
2.	Operational Creditors-II <sup>##</sup>	100.00%	2,14,07,00,000
3.	<b>Total-I</b>		<b>1,19,69,55,49,224</b>
B.	<i>Financial Creditors</i>	60.7%	
4.	Financial Creditors-I	60.7%	3,00,30,14,50,000
5.	Financial Creditors-II	100.00%	30,00,000
6.	<b>Total-II</b>		<b>3,00,30,44,50,000</b>
	<b>Grand Total ( 3 + 6 )</b>		<b>4,19,99,99,99,224</b>

(Rs. 4,20,00,00,00,000 approx.)

#Operational Creditors-I whose claim is Rs.1 crore or more than Rs.1 crore.

##Operational Creditors-II whose claim is less than Rs.1 crore allowed 100%.

**'Method of Calculation for distribution of amount to Financial Creditors'**

**Financial Creditors:**

1. 60.7% of Rs. 4,94,73,00,00,000/- = Rs. 3,00,30,44,50,000/-

2. Rs. 3,00,30,44,50,000/- (total amount payable to Financial Creditors- I & II)

- Rs. 30,00,000/- (amount payable to Financial Creditors-II – 100%)<sup>#</sup>

-----  
Rs. 3,00,30,14,50,000/- (amount payable to Financial Creditors-I)<sup>##</sup>  
-----

3.  $\frac{3,00,30,14,50,000}{4,94,73,00,00,000} * 100 = 60.7\%$  (payable to Financial Creditors-I)

#Financial Creditors-I whose claim is Rs.1 crore or more than Rs.1 crore.

##Financial Creditors-II whose claim is less than Rs.1 crore allowed 100%.

**'Method of Calculation for distribution of amount to Operational Creditors'**

**Operational Creditors:**

1. 60.7% of Rs. 1,97,19,20,90,980/- = Rs. 1,19,69,55,99,224/- (total claim amount payable to Operational Creditors- I&II)  
 - Rs. 50,000/-\*  
 -----  
 Rs. 1,19,69,55,49,224/-  
 -----
2. Rs. 1,19,69,55,49,224/- (60.7% of the claim amount of Operational Creditors- I & II)  
 - [ Rs. 1,96,00,00,000/- ]  
 [ + Rs. 18,07,00,000/- ] (i.e. Rs.214.07 crore payable to Operational Creditors-II- 100%)  
 -----  
 Rs. 1,17,55,48,49,224/- (Rest amount payable to Operational Creditors-I)  
 -----
3. Rs. 2,14,07,00,000/- ---- 100% payable to Operational Creditors-II  
 Total Rs. 1,19,69,65,99,224/- ---- 60.7% of Rs.1,97,19,20,90,980/-
4.  $\frac{1,17,55,48,49,224}{1,97,19,20,90,980} * 100 \longrightarrow = 59.614\%$  (payable to Operational Creditor-I)

[\*Out of Rs.1,19,69,55,99,224/- of Operational Creditors, Rs. 50,000/- deducted and adjusted towards payment to Financial Creditors to adjust the difference.]

197. On the basis of first calculation, the distribution chart is shown below:

S. No.	Category of Stakeholder	Name of the Stakeholder	Amount admitted by Resolution Professional (In Rs. Crores)	Amount payable as per 60.7%	Total Amount allowed for payment*	
<b>A.</b>	<b>Financial Creditors</b>					
		State Bank of India	13,220.91	8,025.0924	8,025.094	60.7%
		IDBI Bank	2,481.61	1,506.3372	1,506.344	60.7%
		Canara Bank	3,798.06	2,305.4224	2,305.424	60.7%
		EARC Trust SC 114	602.39	365.6507	365.654	60.7%
		EARC Trust SC 187	92.25	55.9957	56.004	60.7%



		EARC Trust SC 217	1,697.77	1,030.5464	1,030.554	60.7%
		EARC Trust SC 233	993.46	603.0302	603.034	60.7%
		EARC Trust SC 292	1,966.31	1,193.5502	1,193.554	60.7%
		EARC Trust SC 322	554.92	336.8365	336.844	60.7%
		EARC Trust SC 327	137.25	83.3108	83.314	60.7%
		EARC Trust SC 337	1,273.78	773.1845	773.184	60.7%
		EARC Trust SC 323	978.63	594.0284	594.034	60.7%
		EARC Trust SC 326	10.00	6.07	6.074	60.7%
		Bank of Baroda	5.00	3.035	3.044	60.7%
		Punjab National Bank	2,936.25	1,782.3038	1,782.308	60.7%
		Deutsche Bank	2,829.88	1,717.7372	1,717.744	60.7%
		ICICI Bank	2,294.11	1,392.5248	1,392.529	60.7%
		Union Bank of India	2,122.60	1,288.4182	1,288.424	60.7%
		Bank of India	1,985.08	1,204.9436	1,204.944	60.7%
		Corporation Bank	1,566.62	950.9384	950.944	60.7%
		Syndicate Bank	967.91	587.5214	587.524	60.7%
		SC Lowy	900.12	546.3728	546.374	60.7%
		UCO Bank	582.26	353.4318	353.434	60.7%
		EXIM Bank	556.26	337.6498	337.654	60.7%
		Central Bank of India	510.04	309.5943	309.594	60.7%
		Allahabad Bank	320.49	194.5374	194.544	60.7%
		SREI Infrastructure Finance	175.28	106.3950	106.394	60.7%
		Standard Chartered Bank	3,487.10	2,116.6697	2,116.674	60.7%
		State Bank of India	5.57	3.3810	3.384	60.7%
		Bank of Baroda	7.70	4.6739	4.674	60.7%
		Standard Chartered Bank	70.34	42.6964	42.704	60.7%
		The Bank of New York Mellon, London Branch	202.50	122.9175	122.924	60.7%
		Inox Air Products Private Limited	78.48	47.6374	47.644	60.7%
		Axis Bank	61.91	37.5794	37.584	60.7%
<b>B.</b>	<b>Financial Creditors</b>					
<b>B1.</b>	Financial Creditors (with admitted claims less than Rs.10 lacs)	Melwani Gopal Tharumal and/or Melwani Vinod	0.08	0.08	0.08	100.00%
		Arvind Parakh HUF	0.08	0.08	0.08	100.00%

		Mr. Arvinlal N Shah & Mrs. Indumati A Shah	0.08	0.08	0.08	100.00%
		Mr. Jiwat K Dansanghani and Mrs. Neetu J Dansanghani	0.03	0.03	0.03	100.00%
		Nathu Ram Verma	0.02	0.02	0.02	100.00%
<b>C.</b>	<b>Operational Creditors (other than Workmen and Employees)</b>					
	Operational Creditors with admitted claim amount less than Rs.1 crore  (i.e. 1,600 plus operational creditors as allowed by us out of a total of 1,855 operational creditors in nos.)	-	196	196	196	100.00%
	Operational Creditors with admitted claim amount equal to or more than Rs.1 crore	-	19,505.1390980	11,755.4899224	*11,755.485	60.268%
<b>D.</b>	<b>Workmen &amp; Employees</b>					
	Workmen & Employees	-	18.07	18.07	18.07	100.00%
	<b>TOTAL</b>		<b>69,192.34</b>	<b>41,999.86</b>	<b>42,000.000</b>	

\*difference of amount adjusted

198. The details of all the 'Financial Creditors' being available, the final distribution shown by us which is to be distributed amongst them. The details of the 'Operational Creditors', which are larger in number have not been shown and, therefore, except the workmen and employees and those whose admitted claim is less than Rs. 1 Crore, the distribution has not been shown by us. For the said reason, we allow the 'Committee of Creditors' to take help of a reputed Chartered Accountant Firm or a legal firm for calculating the exact amount to be distributed amongst each 'Operational Creditors' as per admitted claim, as admitted by the 'Resolution Professional' or the Adjudicating Authority or by this Appellate Tribunal as per percentage of distribution shown by us.

199. As suggested by Mr. Harish Salve, learned Senior Counsel for the 'Resolution Applicant', the cost as may be incurred for appointment of Chartered Accountant Firm or a legal firm is to be paid by the 'Resolution Applicant'.

200. In view of the aforesaid observations, instead of rejecting the 'Resolution Plan' submitted by 'ArcelorMittal India Pvt. Ltd.', we modify the plan to safeguard the rights of the 'Operational Creditors' and other 'Financial Creditors'. The impugned order dated 8<sup>th</sup> March, 2019 stands modified to the extent above. However, the other conditions laid down by the Adjudicating Authority and as mentioned in the 'Resolution Plan' is not interfered with.

**Profit generated during the 'Corporate Insolvency Resolution Process'**

201. During the course of hearing, Mr. Gopal Subramaniam, learned Senior Counsel appearing on behalf of the 'Committee of Creditors' casually argued that the 'Operational Creditors' have earned a huge amount during the 'Corporate Insolvency Resolution Process'. It was informed that during the 'Corporate Insolvency Resolution Process', the 'Corporate Debtor' did business of about Rs. 55,000/- Crores (data not available and, therefore, not verified). Therefore, according to him, the 'Operational Creditors' have not been allowed any amount.

202. In view of such submissions, we directed the 'Resolution Professional' to file affidavit giving details of profit if generated during the 'Corporate Insolvency Resolution Process' for determination as to who is entitled to such profit.

203. The 'Resolution Professional' in his affidavit has stated as follows:

*"(3) As directed, the earnings before interest, tax, depreciation and amortization ("**EBITDA**") of the*

Corporate Debtor from operations during the period of CIRP and subsequent period (as provided by acting CFO of the Corporate Debtor and Alvarez & Marsal India Private Limited, Advisor (“**A&M / Advisor**”) is as follows:

(Rs. in crores)

Particulars	Aug 17- Mar 18 (Audited)	Apr 18- Feb 19 (Provisional) **	Total for CIRP	Mar 2019 (Provisio nal)**	Total
<b>EBIDTA from Operations</b>	1,759	2,241	4,000	229	4229*

\*Figures from April 1, 2019 till date are not available. However, EBIDTA for April 2019 month (Post CIRP period) is estimated at about Rs. 300 Crores.

\*\*These are provisional amounts and are subject to annual statutory audit.”

(4) The above figure (of Rs. 4229 crores) includes an amount of INR 734 Crores incurred towards Finance Costs (Financial Lease, LC/BG Charges to Banks and Finance charges payable to suppliers etc. as per contractual terms) for maintaining the Corporate Debtor as a going concern. Therefore the amount of EBIDTA of the Corporate Debtor is Rs. 3495 Crores (Rs. 4229 crores less Rs. 734 crores).

(5) In addition to the foregoing, it is respectfully submitted that in terms of Clause 4.6.3 (i) and the Parameter referred to in Serial No.1 of the Annexure 3 of the Request for Proposal dated December 24, 2017 as amended by the First Addendum to the Request for Proposal dated February 8, 2018, as approved by the CoC, the amount of closing working capital adjustment as on February 28, 2019, as estimated by A&M / Advisor based on the information provided by the Corporate Debtor is Rs. 3,987 crores. This is subject to audit by an independent chartered

*accountant firm in accordance with the RFP provisions as mentioned above. Amount of closing working capital adjustment March 1, 2019 onwards is not yet available.”*

204. From the aforesaid affidavit, it appears that approx. Rs. 3,495 Crores profit has been earned, subject to verification by Auditors.

205. We asked the counsel for the ‘Committee of Creditors’, ‘Operational Creditors’ and ‘ArcelorMittal India Pvt. Ltd.’ as to who is entitled to derive benefit of the profit generated during the ‘Corporate Insolvency Resolution Process’, which are not the subject matter of the ‘Resolution Plan’.

In reply to the same, it was submitted on behalf of the ‘Committee of Creditors’ that the ‘Financial Creditors’ have earned the interest, the amount should be allocated for them for distribution amongst them.

206. Learned counsel appearing on behalf of the ‘Operational Creditors’ submitted that the ‘Financial Creditors’ have not disbursed any amount during the ‘Corporate Insolvency Resolution Process’. On the other hand, the ‘Operational Creditors’ i.e. those who supplied goods and rendered services included employees they have performed the job and kept the ‘Corporate Debtor’ as a going concern for maximisation of assets of the ‘Corporate Debtor’ and, therefore, the total profit should be distributed amongst the ‘Operational Creditors’ who are generally provided lesser amount than the ‘Financial Creditors’.

207. Mr. Harish Salve, learned Senior Counsel appearing on behalf of the ‘ArcelorMittal India Pvt. Ltd.’ submitted that the ‘ArcelorMittal India Pvt. Ltd.’ having provided Rs. 2,500 Crores towards the working capital, the said amount of Rs. 2,500 Crores should be adjusted out of the profit generated and the rest amount after the audit may be distributed amongst

the Creditors (both the 'Financial Creditors' and the 'Operational Creditors').

208. It was further submitted that the balance amount be kept in a designated Escrow Account if the 'Operational Creditors' having disputed the claim, avail remedy under Section 60(6) of the 'I&B Code'.

209. The suggestions made by Mr. Harish Salve was opposed by both counsel for the 'Financial Creditors' and the 'Operational Creditors' as according to them, the said amount cannot be treated to be amount invested by 'ArcelorMittal India Pvt. Ltd.'.

210. Having heard rival contentions, we are of the view that the amount of profit if generated during the 'Corporate Insolvency Resolution Process', cannot be given to the 'Successful Resolution Applicant' as the 'Successful Resolution Applicant' has not invested any money during the Corporate Insolvency Resolution Process'. If one or other 'Financial Creditors' would have invested money during the 'Corporate Insolvency Resolution Process' to keep the 'Corporate Debtor' as a going concern, it can claim that it should get the interest out of the profit amount.

211. In the aforesaid background, we are of the view where the 'Successful Resolution Applicant' does not pay the total dues to the Creditors such as the 'Financial Creditors' or the 'Operational Creditors' but pays lesser amount than the claim, then in such case, the profit should be distributed amongst all the Creditors including the 'Financial Creditors' and the 'Operational Creditors'. We, accordingly direct that after the distribution of the amount of Rs. 42,000 Crores in a manner as shown in the preceding paragraphs, if any amount is found to have been generated as profit during the 'Corporate Insolvency Resolution Process' after due verification by the Auditors, it should be distributed amongst all the 'Financial Creditors' and the 'Operational Creditors' on *pro-rata* basis

of their claims subject to the fact that it should not exceed the admitted claim.

**Disputed claim and remedy**

212. During the submissions, Mr. Harish Salve, learned Senior Counsel appearing on behalf of 'ArcelorMittal India Pvt. Ltd.' submitted that once a 'Resolution Plan' is approved then under Section 31 of the 'I&B Code', it is binding on the 'Corporate Debtor' and its employees, members, creditors, guarantors and other stakeholders involved in the 'Resolution Plan'. According to him, this is the most important change brought by the 'I&B Code', over its progenitor- the 'Sick Industrial Companies Act'.

213. It was submitted that the availability of an additional period by way of limitation under sub-section (6) of Section 60 does not expand the exposure of the 'Resolution Applicant' to 'Operational Creditors', whose claims are in dispute. The extended period of limitation becomes necessary by virtue of the width of the 'Moratorium' under Section 14, whereby all actions in all pending suits, including non-monetary suits and in relation to contracts and properties, are put in freeze.

214. It was further submitted that once the 'Resolution Process' is complete, all non-financial claims and disputes would be resolved in pending proceedings or fresh proceedings. It is for the latter that the legislature has accommodated the period of the 'Moratorium'. Therefore, according to him, after approval of the plan under Section 31, the claim of all the Creditors is extinguishing against the 'Corporate Debtor'.

215. In the preceding paragraph, we have noticed the suggestion made by Mr. Harish Salve, learned Senior Counsel that the 'Operational Creditors' having disputed claims can avail remedy under Section 60(6) of the 'I&B Code'. Thereby, over a period of time as the figure of aggregate

amount of debt payable to the ‘Operational Creditors’ (as shown to be ‘Y’) becomes final and stands reduced (by final rejection of disputed claims), additional distributions can be made of the incremental figure of ‘Z’, which is the percentage of distribution being arrived at the time.

216. Therefore, the submission that after approval of the plan under Section 31, the claim of the creditors extinguished against the ‘Corporate Debtor’ is contrary to the suggestion made by Mr. Harish Salve, learned Senior Counsel that “the ‘Operational Creditors’ having disputed claim can avail remedy under Section 60(6) of the I&B Code” as noticed above. Section 60(6) reads as follows:

*“60. (1) The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be the National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is located.*

*xxx*

*xxx*

*xxx*

*(6) Notwithstanding anything contained in the Limitation Act, 1963 or in any other law for the time being in force, in computing the period of limitation specified for any suit or application by or against a corporate debtor for which an order of moratorium has been made under this Part, the period during which such moratorium is in place shall be excluded.*



*From the aforesaid provision, it is clear notwithstanding the order passed under Section 31 of the I&B Code (any existing law), it is open to a person to file a suit or an application against the ‘corporate debtor’ after completion of the period of moratorium.”*

217. The said provisions fell for consideration before this Appellate Tribunal in **‘M/s. Dynepro Private Limited’ vs. Mr. V. Nagarajan – Company Appeal (AT) (Insolvency) No. 229 of 2018 etc.’** This Appellate Tribunal by its judgment dated 30th January, 2019 held that ‘Resolution Professional has no jurisdiction to decide the claim of one or other creditor, including ‘Financial Creditor’, ‘Operational Creditor’, ‘Secured Creditor’ or ‘unsecured Creditor’. Referring to sub-section (6) of Section 60 of the ‘I&B Code’, this Appellate Tribunal further observed that after completion of the period of moratorium, a suit or application can be filed against the ‘Corporate Debtor’.

218. In **“M/s. Prasad Gempex v. Staer Agro Marine Exports Pvt. Ltd. & Ors.– Company Appeal (AT) (Ins.) No. 291 of 2018 etc.”**, this Appellate Tribunal by its order dated 1<sup>st</sup> February, 2019 held that notwithstanding the order passed under Section 31 of the ‘I&B Code’ (which comes within the purview of any existing law), it is open to a person to file a suit or an application against the ‘Corporate Debtor’ after completion of the period of ‘Moratorium’ in accordance with Section 60(6) of the ‘I&B Code’.

219. In **“M/s. Roma Enterprises v. Mr. Martin S.K. Golla, Resolution Professional– Company Appeal (AT) (Ins.) No. 232 of 2018”**, this Appellate Tribunal by its order dated 6<sup>th</sup> May, 2019 held that where the claim of an ‘Operational Creditor’ involves a disputed question of fact as it

cannot be decided by the 'Resolution Professional' or the Adjudicating Authority, such 'Operational Creditor' can raise such issue and claim at an appropriate stage i.e. after 'Moratorium' is over, which reads as follows:

*“4. In **“Swiss Ribbons Pvt. Ltd. & Anr. vs. Union of India & Ors.— 2019 SCC OnLine SC 73”**, the Hon’ble Supreme Court has already held that the ‘Resolution Professional’ has no jurisdiction to decide the claim of one or other party. This Appellate Tribunal has also held earlier that the ‘Resolution Professional’ can only collate the claim. Apart from the fact that earlier the same issue was raised and we did not entertain the appeal in view of the fact that nobody appeared on behalf of the Appellant and observed that the Appellant can raise such issue and claim at an appropriate stage i.e. after ‘Moratorium’ is over, we are not inclined to give any finding for the same prayer in this appeal.*

*The appeal is dismissed. No costs.”*

220. In **“M/s. Prasad Gempex v. Star Agro Marine Exports Pvt. Ltd & Anr.— Company Appeal (AT) (Ins.) No. 469 of 2019”**, this Appellate Tribunal held that the parties having given opportunity to move against the 'Corporate Debtor' under sub-section (6) of Section 60 of the 'I&B Code', the Adjudicating Authority cannot prohibit the aggrieved person from filing claim before the Court of Competent Jurisdiction or an application before the appropriate forum, which reads as follows:

*“3. After hearing the learned counsel for the Appellant, learned counsel for the ‘Successful Resolution Applicant’ who is now ‘Corporate Debtor’ and the learned counsel for the ‘Resolution Professional’, we are of the view that the Adjudicating Authority has no jurisdiction to pass any order with regard to any matter pending before the Court of criminal jurisdiction. Further, the parties having given opportunity to move against the ‘Corporate Debtor’ under subsection (6) of Section 60 of the ‘I&B Code’, the Adjudicating Authority cannot prohibit the aggrieved person to file a claim before the Court of competent jurisdiction or an application before the appropriate Forum.”*

221. In this background, the cases in which the Adjudicating Authority or this Appellate Tribunal could not decide the claim on merit, we have allowed such Appellants to raise the issue before an appropriate forum in terms of Section 60(6) of the ‘I&B Code’. The ‘Financial Creditors’ and the ‘Operational Creditors’ whose claims have been decided by the Adjudicating Authority or this Appellate Tribunal, such decision being final and is binding on all such ‘Financial Creditors’ and the ‘Operational Creditors’ in terms of Section 31 of the ‘I&B Code’. Their total claims stand satisfied and, therefore, they cannot avail any remedy under Section 60(6) of the ‘I&B Code’. The ‘Financial Creditors’ in whose favour guarantee were executed as their total claim stands satisfied to the extent of the guarantee, they cannot reagitate such claim from the Principal Borrower.

222. It is made clear that this decision relates to ‘Corporate Insolvency Resolution Process’ initiated against ‘Essar Steel India Limited’. It does not

relate to 'Odisha Slurry Pipeline Infrastructure Limited'. Mr. Harish Salve, learned Senior Counsel for the 'Resolution Applicant' made it clear that the 'Resolution Plan' do not relate to any outstanding debt in 'Odisha Slurry Pipeline Infrastructure Limited'.

223. Company Appeal (AT) (Insolvency) Nos. 242, 243, 266, 279, 290, 291, 292, 293, 300, 302-303, 304-305, 332-333, 337, 338, 345, 349, 361, 374, 376, 449, 454, 580 & 551 of 2019 are allowed with observations and directions as made above; Company Appeal (AT) (Insolvency) Nos. 517 & 518 of 2019 stand disposed of with liberty as given to them and Company Appeal (AT) (Insolvency) Nos. 257, 265, 375, 428, 429 & 181 of 2019 are dismissed. No costs.

[Justice S.J. Mukhopadhaya]  
Chairperson

[Justice Bansi Lal Bhat]  
Member (Judicial)

NEW DELHI  
4<sup>th</sup> July, 2019

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