

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No. 988 of 2021

(Arising out of Order dated 29.10.2021 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi in CA No.897(PB)/2018 in CP (IB)-201/2017)

IN THE MATTER OF:

1. Neeraj Singal,
S/o Shri Brij Bhushan Singal,
S-352, GF, Greater Kailash-II,
New Delhi – 110048.
 2. Brij Bhushan Singal,
S/o Shri Kishori Lal,
S-352, GF, Greater Kailash-II,
New Delhi – 110048.
- Appellants

Vs

1. Tata Steel Limited
Bombay House,
24, Homi Mody Street,
Port, Mumbai – 400001.
 2. Tata Steel BSL Ltd.,
Ground Floor,
Mira Corporate Suites,
Plot No.1 & 2, Ishwar Nagar,
Mathura Road,
New Delhi – 110065.
- ... Respondents

Present:

For Appellants:	Mr. Kapil Sibal, Sr. Advocate with Mr. Niranjan Reddy, Sr. Advocate, Mr. Sahil and Ms. Aarushi Tikku, Advocate.
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For Respondents:	Mr. Ramji Srinivasan, Sr. Advocate with Ms. Anindita Roy, Ms. Simran Bhat, Mr. Rajshree Chaudhary and Ms. Vatsala Rai, Advocates for R-1.
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J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed by two Appellants – Neeraj Singal and Brij Bhushan Singal, erstwhile Promoters of Bhushan Steel Limited, challenging the order dated 29.10.2021 of the National Company Law Tribunal, Principal Bench, New Delhi, by which order, the Adjudicating Authority has directed the Appellants, who were Respondents in the Application to strictly comply with the Resolution Plan forthwith. The Adjudicating Authority held that erstwhile Promoter Group has to sell away their shares to the Applicant @ INR 2/- per share. Aggrieved by the above order passed by the Adjudicating Authority, this Appeal has been filed.

2. We need to notice certain facts and events to decide the issues raised in this Appeal.

- (i) M/s Bhushan Steel Limited owed a debt of Rs.59 thousand crores to its creditors. On an Application filed by State Bank of India, Corporate Insolvency Resolution Process (CIRP) begun in the year 2017.
- (ii) M/s. Tata Steel Limited (Respondent No.1) submitted a Resolution Plan proposing an upfront payment of Rs.35 thousand crores. The Resolution Plan submitted by M/s. Tata Steel Limited was approved by the Adjudicating Authority on 15.05.2018. M/s. Tata Steel Limited implemented the Plan on 18.05.2018 by making payment to the creditors and appointing necessary managerial officials.

- (iii) On 18.05.2018, Bamnival Steel Ltd., a subsidiary of M/s. Tata Steel Limited wrote to the Promoters including the Appellants to transfer all of their unpaid equity shares of the Company held by them to Bamnival Steel Ltd. for consideration @ INR 2/- per share. Details of dematerialized account were also set out in the letter. The Appellants did not reply to letter nor sold their shares as requested.
- (iv) On 26.05.2018, a letter was written by Bhushan Steel Limited to National Stock Exchange (NSE) and Bombay Stock Exchange informing that pursuant to the approval of the Resolution Plan by the Adjudicating Authority on 15.05.2018, the same is being implemented and requesting National Stock Exchange of India Limited as well as to Bombay Stock Exchange Limited for Reclassification under Regulation 31A, sub-clause (5) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as 'Regulation 2015'). Regulation 2015 came to be amended by Amendment Regulation dated 2018 (dated 31st May, 2018) with effect from 1st June, 2018. On 25th June, 2018, National Stock Exchange and Bombay Stock Exchange communicated their approval for Reclassification of Promoter under Regulation 2015 and the Appellants were reclassified.
- (v) The suspended Director of the Bhushan Steel Limited challenged the order dated 15.05.2018 by filing an Appeal

before this Appellate tribunal, which Appeal being Company Appeal (AT) (Insolvency) No.221 of 2018, Neeraj Singal vs. Bhushan Steel Ltd. & Ors. was dismissed by judgment dated 10th August, 2018 of this Tribunal. Challenging the judgment of this Appellate Tribunal dated 10th August, 2018 a Civil Appeal was filed by Neeraj Singal & Ors. before the Hon'ble Supreme Court. The Civil Appeal was dismissed as withdrawn by order dated 22nd February, 2021 of the Hon'ble Supreme Court granting leave to withdraw the appeal reserving the right to pursue appropriate remedies with regard to other grievance if any.

- (vi) M/s Tata Steel Limited filed an IA No.897(PB)/2018 on 12.09.2018 seeking direction to Respondent Nos.1 and 2 (Appellant herein) to transfer 256,53,813 equity shares of the Bhushan Steel Ltd. held by them in favour of Bamnipal Steels Ltd. in compliance of Resolution Plan approved on 15.05.2018. After hearing the parties, the Adjudicating Authority passed order dated 29.10.2021 allowing the Application while holding that Respondents to the Application (Appellants herein) have to sell their shares to the Applicant @ INR 2/- per share. Aggrieved by the said order of the Adjudicating Authority, this Appeal has been filed by erstwhile Promoters of the Bhushan Steel Ltd.

3. We have heard Shri Kapil Sibal, learned senior Counsel, Shri S. Niranjan Reddy, learned senior Counsel on behalf of the Appellants and Shri Ramji Srinivasan, learned senior Counsel appearing on behalf of Respondent No.1 - M/s Tata Steel Ltd.

4. Shri Kapil Sibal, learned senior Counsel submits that Adjudicating Authority by issuing the impugned direction has virtually modified the Resolution Plan approved on 15.05.2018. It is submitted that as per Resolution Plan, Annexure-5 Para-3, the Tata Steel Ltd. was obliged to subscribe to 89,70,44,238 equity shares of the Company at face value of INR 2/- per share, whereas Tata Steel Ltd. has subscribed only 794,428,986 equity shares of the Company at a face value of INR 2/- and has written to the Appellants to sell their equity shares held by Existing Promoter Group i.e. 256,53,813 @ INR 2/- per share, which was not permissible. It is submitted that eventuality of purchasing of equity shares of Existing Promoter Group was to arise only when SEBI does not allow the erstwhile Existing Promoter Group shareholding to be counted towards public shareholding. In the present case on 26.05.2018, a letter has already been written to National Stock Exchange and Bombay Stock Exchange for reclassification under Regulation 31A of Regulation 2015, which reclassification could ultimately be allowed on 25.06.2018. There was no occasion to sell the equity shares by erstwhile Promoters Group. It is submitted that closing date for the purposes of Resolution Plan is not 18.05.2018 as claimed by Tata Steel Ltd., rather it will be 25.06.2018, when National Stock Exchange and Bombay Stock Exchange permitted

reclassification of equity shares of erstwhile Promoter Group. On 25.06.2018 when approval was granted by SEBI for reclassification there was no restraint in treating the erstwhile Promoter Group share into public shareholding. The Appellants can very well continue with its public shareholding, which cannot be compelled to be sold to Tata Steel as has been directed in the impugned order.

5. Shri Sibal further submits that in the Application filed by Tata Steel under Section 60, sub-section (5), there was no disclosure of the letter dated 26.05.2018 written to National Stock Exchange and Bombay Stock Exchange praying for reclassification. Clause 3 of Annexure 5 of Resolution Plan specifically provides for permission required from SEBI, thus, without obtaining permission from SEBI regarding reclassification, there was no occasion to adopt for Option 2 as given in Clause 3 of Annexure 5. On Closing date, Tata Steel was obliged to subscribe 89,70,44,238 shares, which have not been done by the Tata Steel. Tata Steel has failed to inform the Tribunal that the contingency step in Clause 3 of Annexure 5 of Approved Resolution Plan suggests compulsory acquisition of Appellant/ existing promoter shares only if the main mechanism cannot be availed of due to Stock Exchange refusing to recognize the Appellants as Public shareholders. The Appellants are fully entitled to keep their shareholding, which have now been classified as public shareholding and cannot be compelled to sell the shares to Resolution Applicant. The Appellants being public shareholders are entitled to retain the subject shareholding. The Respondent is attempting to create a wrongful impression that the present

Appeal has been filed with an intent to avail higher sale price of the subject shareholding.

6. Shri Sibal submits that the submission of the Respondent that for the Successful Resolution Applicant to reach 75% shareholding, it had to compulsory purchase the subject shareholding by 2% approximately is an argument in contravention of the Resolution Plan. It is the Respondent, who has not complied with the Resolution Plan, since it was required to subscribe 89,70,44,238 fresh equity shares, whereas it has subscribed only 794,428,986 equity shares. On 18.05.2018, the Appellants were no longer Promoters.

7. Mr. Niranjana Reddy, learned senior Counsel also supporting the submissions of Shri Sibal contended that closing date will be the date when all steps are completed. Reclassification of shareholding of the Appellants having not been completed till 25.06.2018, the closing date cannot be earlier than to 25.06.2018. The closing date is dependent on SEBI's approval. The Adjudicating Authority in paragraph 82 of the order dated 15.05.2018 has observed that the Resolution Applicant to obtain necessary approval has to approach the competent Authorities, which also impel the Resolution Applicant to approach the SEBI for obtaining reclassification.

8. Shri Ramji Srinivasan, learned Advocate appearing for the Tata Steel refuting the submissions of learned Counsel for the Appellants submits that purchase of erstwhile Promoters equity shareholding in Bhushan Steel Limited is an integral part of the Resolution Plan approved on 15.05.2018. The mode and manner of acquiring shares of erstwhile Promoter is provided

in the approved Resolution Plan in para-3 of Annexure 5. The Resolution Applicant implemented the entire Resolution Plan on 18.05.2018 by taking all necessary steps required to be taken under the Plan. The closing day was 18.05.2018, on which day Resolution Applicant completed all steps. Entire outstanding financial debt was discharged on 18.05.2018. Tata Steel made financial payment of INR 35,232.57 crores to the Financial Creditors and towards the equity of the Corporate Debtor. On closing day, the Applicant (Respondent herein) subscribed 72.65% equity shares of the Corporate Debtor as per the Resolution Plan. Tata Steel/ Bamnipal Steel Limited had to hold 75% equity shares of the Corporate Debtor on the closing day. Hence, in addition to subscription of 72.65% equity shares, the remaining 2.35% equity shares held by the erstwhile Promoters including the Appellants, which were to be sold by the Appellants at INR 2/- per share. On 18.05.2018, Bamnipal Steel Limited had issued a letter to Appellants calling upon Promoters to sell equity shares by them, which letter was neither replied nor shares were sold. It is submitted that the Appellant after dismissal of their Appeal by this Tribunal against order dated 15.05.2018 had filed Civil Appeal before the Hon'ble Supreme Court, where they have taken a ground that the shareholding of the Appellant cannot be compulsory acquired at a sum of INR 2/- per share. Transfer of shares cannot be forcefully acquired. It is submitted by Shri Srinivasan that the Civil Appeals filed by the Appellants were dismissed by the Hon'ble Supreme Court as withdrawn, only with liberty to pursue remedy with regard to other grievances. The grievances were raised in the Hon'ble

Supreme Court, but the Hon'ble Supreme Court does not permit them to agitate again and the Respondents objection for selling their share has been taken even after dismissal of the Civil Appeal by the Hon'ble Supreme Court.

9. Shri Srinivasan submits that before the Adjudicating Authority, the Appellant contended that their shares cannot be sold @ INR 2/- per share and the shares should be permitted to be re-sold at the current price of shares, which was INR 27/- at the relevant time. The letters dated 26.05.2018 written to National Stock Exchange and Bombay Stock Exchange were in line with the Regulation 31A, sub-regulation (5) of Regulation 2015, which is a separate and independent provision from Regulation 31A(7), sub-clause (b) of Regulation 2015. The letters dated 26.05.2018 should not be treated to have been written towards seeking any exception from Regulation 31A(7)(b). It was the Resolution Applicant, who was to implement the Resolution Plan and on 18.05.2018 it having taken all steps including sending a letter to Appellants to sell their equity shares @ INR 2/- per share, nothing more was required to be done and the Appellants were obliged to sell the equity shares at the rate of INR 2/-.

10. Shri Srinivasan further submits that all acts taken by Respondents were in accordance with the Resolution Plan and above Option 2 in the Clause 3 of Annexure 5 was elected by the Respondent since Option 1 on the relevant date that is 18.05.2018 was not permissible, there being a specific prohibition from treating the reclassified Promoter shareholding towards minimum public shareholding i.e. 25%. Option 1 in the Clause 3

thus was not permissible and was statutorily prohibited, hence opting for contingency plan as provided in the Resolution Plan was perfectly in accordance with Plan and no exception can be taken by the Appellants. The Appellants, who are erstwhile Promoter and who are responsible for insolvency of the Corporate Debtor cannot be allowed to continue their shareholding in the Bhushan Steel, now undertaken by the Tata Steel in defiance of Resolution Plan. The attempt of the Appellants to claim continuous of their shareholding is not only in violation of the terms of the Resolution Plan, but is a serious impediment in proper implementation of the Approved Resolution Plan and the Appellant from last so many years continuingly flouting the terms of the Resolution Plan. When the acquisition of shareholding of erstwhile Promoter was duly provided in the Resolution Plan, no objection can be taken by the Appellants to the steps taken by the Respondent as per Resolution Plan for acquiring the shareholding of the erstwhile Promoter. This Appeal filed by the Appellants is violent efforts on behalf of the erstwhile Promoter to continue in the Bhushan Steel, who is now taken by Respondent.

11. We have considered the submissions of learned Counsel for the parties and perused the records.

12. We may notice the relevant portion of the Resolution Plan in para 3 of Annexure 5, which deals with the allotment of equity shares to the Resolution Plan. Para 3 is to the following effect:

“3. Allotment of Equity Shares to the Resolution Applicant:

On the Closing Date, the Company shall issue, by way of preferential allotment, and the Resolution Applicant shall subscribe to 89,70,44,238 (Eighty Nine Crore Seventy Lakh Forty Four Thousand Two Hundred and thirty Eight) equity shares of the Company at face value of 2 (Indian Rupees two only) per share, and the aggregate consideration shall be the **“Applicant subscription Consideration”**.

As a result of such issuance, the shareholding pattern of the Company shall be as indicated in the table below:

Shareholding Post Primary Share Issuance		
The Resolution Applicant	8970,44,238	75.00%
Existing Promoter Group	256,53,813	2.14%
Security Trustee on behalf of the pledge holding Financial Creditors (Public Shareholders)	743,02,524	6.21%
Eligible Financial Creditors	725,00,000	6.06%
Other Public Shareholders	1265,58,409	10.58%
Total	11960,58,984	100.00%

The above structure is assuming that the erstwhile Existing Promoter Group shareholding is not counted towards promoter shareholding for the purposes of SEBI (Listing Obligations and Disclosure Requirement) Regulation, 2015.

If SEBI does not allow the erstwhile Existing Promoter Group shareholding to be counted towards public shareholding, then the following structure will be adopted instead of the structure indicated above in this step 3:

On the Closing Date, the Company shall issue, by way of preferential allotment, and the Resolution Applicant shall subscribe to 79,44,28,986 (Seventy Nine Crore Forty Four Lakh Twenty Eight Thousand Nine Hundred and Eighty Six) equity shares of the Company at face value of 2 (Indian Rupees two only) per share. Further, the Resolution Applicant shall on the Closing Date, purchase, and the Existing Promoter Group shall be bound to sell, all the shares held by the Existing Promoter Group (i.e. 256,53,813 equity shares) for a consideration of 2 (Indian Rupees two only) per share, such that the Resolution Application holds 75% of the fully paid up equity share capital of the Company (on a fully diluted basis).

Upon the Plan being approved by the Adjudicating Authority, the terms of this Plan including Annexure 5 are deemed to be accepted by the Existing Promoter Group in their capacity as shareholders of the Company.

As a result of such issuance, the shareholding pattern of the Company shall be as indicated in the table below:

Shareholding Post Primary Share Issuance		
<i>The Resolution Applicant</i>	<i>794,428,986</i>	<i>72.65%</i>
<i>Existing Promoter Group</i>	<i>256,53,813</i>	<i>2.35%</i>
<i>Security Trustee on behalf of the pledge holding Financial Creditors (Public Shareholders)</i>	<i>146,802,524</i>	<i>13.43%</i>
<i>Other Public Shareholders</i>	<i>1265,58,409</i>	<i>11.57%</i>
Total	1,093,443,732	100.00%

Shareholding Post Transfer of Shares by Existing Promoter Group
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<i>The Resolution Applicant</i>	<i>820,082,799</i>	<i>75.00%</i>
<i>Eligible Financial Creditors and the security trustee on behalf of the pledge holding Financial Creditors</i>	<i>146,802,524</i>	<i>13.43%</i>
<i>Other Public Shareholders</i>	<i>1265,58,409</i>	<i>11.57%</i>
Total	1,093,443,732	100.00%

The issuance of shares by way of a preferential allotment, pursuant to the terms of this Plan, shall not acquire this consent of the creditors of the Company or approval of the shareholders the Company, as the Plan, upon being approved by the Adjudicating Authority is binding on the Company and its stakeholders (including its creditors and shareholders). Further, in accordance with the provisions of Regulation 70(1) of the ICDR Regulations, the provisions of Chapter VII of the ICDR Regulations (other than the provisions relating to lock-in of shares) shall not apply to such issuance of equity shares by the Company. Further, in terms of Regulation 10(1)(da) of the SEBI (substantial Acquisition of Shares and Takeovers) Regulation, 2011, the Resolution Applicant will be exempt from the obligation of making an open offer pursuant to such acquisition.”

13. Para 3 of the Resolution Plan, as noted above, provides two structures (methods) for allotment of equity shares to the Resolution Applicant. As per first structure (method) Resolution Applicant has to subscribe 75% of equity shares that is 89,70,44,238. The Existing Promoter Group equity share is 2.14% that is 256,53,813 was to be in rest

25% shareholding. The first structure was to take place in event erstwhile Existing Promoter Group shareholding is not counted towards promoter shareholding for the purposes of Regulation 2015. We may at this juncture notice the relevant provisions of Regulation 2015 as well as the provisions of Securities Contracts (Regulation) Rules, 1957. The Securities Contracts (Regulation) Rules, 1957, Rule 19A provided that *“Every listed company other than public sector company shall maintain public shareholding of at least twenty five percent”*. The Bhushan Steel being listed company, it was obliged to maintain public shareholding of at least 25%. Now we come to Regulation 2015. Regulation 31A, sub-regulation (7), which is relevant for the present case is as follows:

“31A(7) Without prejudice to sub-regulations (5) and (6), re-classification of promoter as public shareholders shall be subject to the following conditions:

- (a) Such promoter shall not, directly or indirectly, exercise control, over the affairs of the entity.*
- (b) Increase in the level of public shareholding pursuant to re-classification of promoter shall not be counted towards achieving compliance with minimum public shareholding requirement under rule 19A of the Securities Contracts (Regulation) Rules, 1957, and the provisions of these regulations.*
- (c) The event of re-classification shall be disclosed to the stock exchanges as a material event in accordance with the provisions of these regulations.*
- (d) Board may relax any condition for re-classification in specific cases, if it is satisfied about non-*

exercise of control by the outgoing promoter or its persons acting in concert.”

14. The above Regulation clearly prohibit public shareholding of Promoter pursuant to reclassification to be counted towards achieving compliance with minimum public shareholding requirement under Rule 19A as noted above. Thus, shareholding of 2.14%, which was held by erstwhile Promoter Group, even if they were treated as public shareholding cannot be counted towards 25% shareholding, which is statutory requirement to be maintained. Thus, Structure one on 15.05.2018, on the date when Plan was approved ok on 18.05.2018, did not permit subscribing of 75% shareholding by the Tata Steels. It was due to above reasons that the Structure two, which was contained in the Resolution Plan was adopted. Under the Structure-2, Tata Steel was required to subscribe 794,428,986 equity shares at the face value of INR 2/-, which Tata Steel did and further the Resolution Plan contemplated **“Further, the Resolution Applicant on the Closing Date, purchase, and the Existing Promoter Group shall be bound to sell, all the shares held by Existing Promoter Group i.e. 256,53,813 equity shares for consideration of Rs.2 (Indian Rupees two only) per share”**. On 18.05.2018 itself, Bamnival Steel Ltd. (subsidiary of Tata Steel) proceeded to act under Structure two and wrote to erstwhile Promoter Group to sell their shares @ INR 2/-. The letter dated 18.05.2018 written by Bamnival Steel Ltd. to Appellants and other shareholders is part of paper-book of the plea and is

at page 198. It is useful to extract the aforesaid letter dated 18.05.2018, which is to the following effect:

“Subject: Resolution plan submitted by Tata Steel Limited (“Resolution Plan”) in relation to Bhushan Steel Limited (“Company”) under the Insolvency and Bankruptcy Code, 2016 (“IBC”) as approved by the National Company Law Tribunal (“NCLT”) on May 15, 2018.

- 1. We reference the captioned subject matter.*
- 2. As per the approved Resolution Plan, Tata Steel Limited is acquiring the Company through its wholly owned subsidiary, Bamnival Steel Limited (“Bamnival”).*
- 3. Pursuant to the approved Resolution Plan, we request you to transfer all unpledged equity shares of the Company held by you to Bamnival for a consideration of INR 2 (Rupees two only) per share (which is the same price as the price at which Bamnival is subscribing to the equity shares) at the earliest. The details of our dematerialized account are set out in Annexure A below.*
- 4. We look forward to receiving your support and co-operation on implementing the terms of the Resolution Plan which has been approved by the NCLT.*
- 5. Any communication pursuant to this letter should be addressed to the following:*
Bamnival Steel Limited
Address: Tarapur Complex, Plot No.F8, MIDC,

Tarapur Industrial Area, Palghar
Thane, Maharashtra – 401506.
Attention: Mr. R Ranganath
Tel. No.: 033 22883332
Email: r.ranganath@tatasteel.com

With a copy to:

*Attn: Managing Director
Bhushan Steel Limited
Ground Floor, Hyatt Regency Complex,
Bhikaji Cama Place, New Delhi-110066.*

6. *This letter is without prejudice and we reserve all our rights and remedies in law and under the IBC in particular.*

Thanking you,

Yours Sincerely

*Name: Sd/-
Authorised signatory
Bamnival Steel Limited”*

15. The Tata Steel thus on 18.05.2018 itself opted Structure two and wrote to the Appellants to sell their shares @ INR 2/- per share, as per Resolution Plan, which letter was neither replied nor the Appellants sold their equity shares. The submission of Shri Kapil Sibal, learned Senior Counsel is that Bhushan Steel Ltd. on 18.05.2018 having instead writing to National Stock Exchange that it shall ensure the process of re-classification, actually wrote letters dated 26.05.2018 to both National Stock Exchange and Bombay Stock Exchange to reclassify the Promoters

shareholding, there was no occasion to ask the Appellants to sell their shares @ INR 2/-. Tata Steel was to await the completion of reclassification process as per Regulation 2015, which reclassification process was completed on 25.06.2018 when approval of classification of existing Promoters as public shareholding was granted by National Stock Exchange and Bombay Stock Exchange. It is submitted that on the date of approval granted that is 25.06.2018, will be considered the closing date and it is on 25.06.2018 that applicability of structures provided in para 3 of Resolution Plan has to be examined. It is submitted that on 26.05.2018, the prohibition contained in Regulation 31A, sub-clause (7)(b) was not applicable since the Regulation 2015 was amended by Regulation 2018 with effect from 1st June, 2018, by which sub-regulation (9) was added making it clear that sub-regulation (7) shall not apply, if re-classification of existing Promoter or Promoter Group of the Company as per the Resolution Plan approved under Section 31. Sub-regulation (9) of Regulation 31A, which was added by Notification dated 31st May, 2018 is to the following effect:

“31A(9) The provisions of sub-regulations (5), (6) and clause (b) of sub regulation (7) of this regulation shall not apply, if re-classification of existing promoter or promoter group of the listed entity is as per the resolution plan approved under Section 31 of the Insolvency Code, subject to the following conditions:

- (i) The existing promoter and promoter group seeking re-classification shall not remain in control of the listed entity; and*

- (ii) *Such re-classification along with the underlying rationale shall be disclosed to the stock exchanges within one day of the resolution plan being approved.”*

16. The amended Regulation dated 31st May, 2018 made in 2015 Regulation were only prospective in nature and shall be applicable with effect from 1st June 2018 when Notification was gazetted, which notification was not applicable on 15.05.2018 or 18.05.2018. The prohibition contained in Regulation 31A, sub-regulation 7(b) was very much in existence on the day when Resolution Plan was approved. In this context, learned Counsel for the Appellant has referred to Clause 10 of the Resolution Plan, by which ‘Reliefs and concessions’ were asked for Resolution Applicant. In clause 10 of the Resolution Plan, which deals with ‘relief and concessions’ in para 10.1.26, it is provided:

“10. Reliefs and concessions

...

10.1.26 SEBI shall:

a) provide dispensation from Regulation 31A(7)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 in respect of shareholding of the Existing promoter Group post re-classification of the Existing Promoter Group to public shareholding category to be counted towards satisfaction of the minimum public shareholding requirement;”

17. It is relevant to notice that Adjudicating Authority while approving the Resolution Plan on 15.05.2018 with regard to reliefs and concessions

in paragraph 82 of the judgment denied to grant relief and concession as prayed for and only observation was made that monitoring agency along with Resolution Applicant may make a claim before the Authorities, which shall be considered in accordance with law. In paragraph 82, following has been stated:

“82. In respect of the relief and concession as set forth in Annexure-8 it is not possible for us to issue any directions except to say that the monitoring agency along with the resolution applicant may make a claim before the authorities which shall be considered in accordance with law. Moreover, these reliefs and concessions are also not condition precedent for the acceptance of resolution plan and would not be any impediment for us to accept the Resolution Plan.”

18. Thus, in event the relief and concessions regarding dispensation from Regulation 31A(7)(b) was allowed by the Adjudicating Authority, the Structure one as contained in the Resolution Plan would have been implemented. But Adjudicating Authority having not allowed the dispensation, the prohibition contained in Regulation 31A(7)(b) of Regulation 2015, continued on 15.05.2018 as well as on 18th May, 2018, which prohibited the Resolution Applicant on 18.05.2018 to adopt the Structure one mentioned in Para-3 of the Resolution Plan. We do not find any error in the action of Respondents in proceeding to opt to acquire the equity shares of the Promoter Group by asking them to sell the equity shares @ INR 2/- after subscribing 72.65% of equity shares, so that after

purchase of the equity shares of Existing Promoter Group, the Respondent may have 75% of shareholding leaving 25% to the public shareholding.

19. Much emphasis has been laid by Shri Kapil Sibal, learned Senior Counsel to the letters dated 26.05.2018 written by Bhushan Steel to National Stock Exchange and Bombay Stock Exchange. The subject of the application dated 26.05.2018 was “Application for Reclassification under Regulation 31A (5) of the SEBI (Listing Obligations and Disclosure Requirements) Regulation, 2015”. The reclassification process initiated by the said application mentions that it was not initiated to achieve minimum public shareholding. In paragraph 5 of the said application, following was specifically stated:

“5) *The reclassification process has not been initiated to achieve minimum public shareholding.*”

20. The Respondent could have very well acquired the equity shares of the existing Promoter Group as per the Resolution Plan without awaiting for reclassification by National Stock Exchange and Bombay Stock Exchange, since the Resolution Plan itself provided for two structures for acquiring the equity shares of the existing Promoter Group. When on 18.05.2018 after Board Resolution was passed divesting rights of the existing Promoter Group, the Plan was fully implemented on 18.05.2018 for subscribing the equity shares as per Para-3, Tata Steel was not to wait till reclassification of application was to be decided.

21. Much arguments have been addressed by the parties on the expression “if SEBI does not allow” in respect of para-3 of the Resolution Plan. It is contended by the Appellant that word SEBI used in para-3 is the word as per definition Clause in Resolution Plan itself. When Respondent acted on Regulation 2015, which contains prohibition of shareholding of existing Promoter Group to be counted for achieving minimum 25% of public shareholding, action of Respondent not to proceed under Structure one can neither be said to be contrary to Resolution Plan or any statutory provisions, rather the said action is inconsonance of the statutory provisions as existed at the relevant date that is 15.05.2018 and 18.05.2018. As noted above, the reliefs and concessions asked for dispensation of rigour under Section 31A(7)(b) was denied by the Adjudicating Authority, there was no occasion to wait for any decision of SEBI, when Regulation also clearly makes prohibition in the above regard. On 18.05.2018, when Structure two was adopted by Respondent, it cannot be imagined that in future the rigour of 31A(7)(b) shall be relaxed when acquisition is in pursuance of Resolution Plan. The letters issued by National Stock Exchange and Bombay Stock Exchange on 25.06.2018 were clearly in accord with amended Regulation, that is Regulation 31A sub-clause (9). The wholesome reading of para-3 of Annexure 5 indicate that existing Promoter Group could have retained their equity shares only if they fall within the group of public shareholding of 25%, which was impermissible as Structure two was adopted by subscribing to 72.65% shares and to acquire 2.35% equity shares of existing Promoter Group to

make their shareholding by 75%, which was specifically provided for in para-3 of Resolution Plan itself, which we have quoted above at paragraph 12 of this judgment. Thus, the request sent to Appellants on 18.05.2018 to sell their shares @ INR 2/- was as per the Resolution Plan, which cannot be said to be in any way contrary to the Resolution Plan.

22. We may notice one more aspect of the matter. Before the Adjudicating Authority, when Application was filed by Respondent seeking a direction to the Appellants to transfer their shares, the Appellants resisted the Application and one of the ground taken was that they could not be asked to sell their shares @ INR 2/- per share, when the market price of the share is much more. It was further submitted by the Appellants that they should be given the same price of the shares, which is to be given to Pledge and Un-pledge shares, which submission was noticed in paragraph 34 and 35 of the judgment of the Adjudicating Authority, which is to the following effect:

“34. That the plea taken by the Respondent No.2 and 3 that the equal treatment shall be given to the price with respect to Pledge and Un-pledge shares, in terms of Clause 6 of the Resolution Plan, in our considered view it does not merit consideration since the clause 6 solely deals with the pledged shares.

35. If unpledged shares are allowed to be transferred at the market price, then the same will result in modification in the terms of the resolution plan. Since, the resolution plan has a specific clause dealing with a specified rate INR 2.00 with respect to unpledged shares. Any other interpretation of the same shall result in

*modification in the terms of the Resolution Plan which is not permissible in light of the law laid down by the Hon'ble Supreme Court in the matter of **Ebix Singapore Private Limited vs. Committee of Creditors of Educomp Solutions Limited & Anr. Civil Appeal No.3224 of 2020 dated 13.09.2021.** The extract of the relevant portion is reproduced below:*

“203..... In this context, we hold that the existing insolvency framework in India provides no scope for effecting further modifications or withdrawals of CoC-approved Resolution Plans, at the behest of the successful Resolution Applicant once the plan has been submitted to the Adjudicating Authority.”

23. We may further notice that Resolution Plan dated 15.05.2018 was challenged before this Appellate Tribunal by filing an Appeal by the Appellants, which Appeal was dismissed and thereafter matter was taken up before the Hon'ble Supreme Court by the Appellants by filing Civil Appeal. The learned Senior Counsel for the Respondent made reference to one of the ground which was taken by the Appellant in the Special Leave Petition, which is to the following effect:

“GROUNDS

E. Because the equity shares held by the Appellant could not have been forcefully acquired by Bamnipal Steel Ltd. through the Resolution Plan for a dismal sum of Rs.2/- per share when such shares are listed on the Stock Exchange for much higher sums and in any case the Appellant does not wish to sell the said shares to any person. This shareholding being of the Appellant of personal

nature having no lien or pledge in favor of any Financial Creditor, could not have been appropriated by any person either through Section 31 of the IBC or even otherwise, without there being a consent by the Appellant. In any case, transfer of such shares can only be in accordance with and law and not through a forced transaction where there is not even an element of consent from one party to the other.”

24. The Hon’ble Supreme Court on 22nd February, 2021 dismissed the Appeal filed by the Appellant. The Hon’ble Supreme Court has passed the following order in Civil Appeal No.____ of 2018:

*“Civil Appeal No..... of 2018
(Arising out of Dy. No.39637/2018)*

<i>Neeraj Singal</i>	<i>Appellant(s)</i>
<i>Versus</i>	
<i>Bhushan Steel Ltd. & Ors.</i>	<i>Respondent(s)</i>

O R D E R

We have heard learned counsel for the parties at great length.

Leave is sought to withdraw the appeals reserving the right to pursue appropriate remedies with regard to other grievances, if any.

Civil Appeals stand dismissed as withdrawn.

*.....J.
[NAVIN SINHA]*

*.....J.
[KRISHNA MURARI]”*

25. The Hon'ble Supreme Court by the aforesaid order dated 22nd February, 2021 did not grant any leave to pursue any other remedy with regard to grievances, which was raised in the Civil Appeal that is arising out of the Resolution Plan dated 15.05.2018. Liberty was granted to pursue remedy with regard to other grievances, if any. What is being agitated by the Appellants before the Adjudicating Authority while opposing the Application filed under Section 60 sub-Section (5) of the Code is that they cannot be compelled to sell their shares @ INR 2/- per equity share and they are entitled to keep their shares with them without selling it. When the Resolution Plan clearly contemplated that in event Structure two was followed by Respondent to oblige the Appellant to sell their equity shares @ INR 2/- and specific number of shares that is 256,53,813 as mentioned in the Plan itself, the Appellants cannot refuse to follow the aforesaid portion of the Resolution Plan. As per Section 31, sub-section (1) of the Code, after approval of the Resolution Plan, same is binding on Corporate Debtor, its employees, members, creditors. Section 31, sub-section (1) is to the following effect:

“31. Approval of resolution plan. - (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, [including the Central Government, any State Government or any

local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,] guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.”

26. The Adjudicating Authority has also in paragraph 28 to 31 of the judgment has given reasons for approving the above act by Respondent to the following effect:

“28. However, no matter whether the Option 1 or the Option 2 is exercised by the Successful Resolution Applicant, the position with respect to the share price would remain same INR 2/-. If the SEBI guidelines does not allow the erstwhile promoter group as part and parcel of the new promoter group, there is no right vested with the erstwhile promoters to hold on to the shares and to remain in the company as shareholders by the virtue of the resolution plan. Even in case of the Option 2, if the existing promoter group as per the resolution plan hold 75% shareholding, the erstwhile promoter group cannot be considered as promoter group nor as a public shareholding for the reasons the shares are not allotted to them in any public issue, nor they have purchased the same in the open market.

29. As any stretch of imagination in any of the Option, there remains no vested right of the erstwhile promoter

group to hold on to the company in any capacity, let alone as shareholders.

30. In this scenario the attempts on the part of erstwhile promoter group to remain in the company as shareholders either by interpreting the option 1 or option 2 cannot merit their case, in any manner for the reason they first of all ought not to have been given any place in the company at the time of the approval of the resolution plan.

31. Assuming for a moment some accommodation was offered by the successful resolution applicant by graciously allowing the erstwhile promoter group to have 2.35% stake in the company and it does not mean that they can hold on to 2.35% forever nor can they claim market price for selling of shares.”

27. We fully endorse of the above observations made by the Adjudicating Authority while allowing the Application filed by Respondent seeking direction to the Appellants to sell their Promoter group shares @ INR 2/- per equity shares.

28. We thus are of the view that the Resolution Plan as per Section 30(2) (e) of the Code has to be in accordance with law for the time being in force. Section 30(2) sub-clause (e) mandates – “*does not contravene any of the provisions of the law for the time being in force*”. The implementation of the Resolution Plan has to be thus in accordance with the existing law and the Respondent could not have implemented the Plan following Structure one in para-3, which could have been in contravention of Regulation 31A(7)(b) of 2015 Regulation. Thus, the implementation of Resolution Plan by

following Structure two as provided in para 3 of Annexure 5 was fully permissible and no exception can be taken by the Appellants when they are asked to sell their equity shares as per Plan itself. We do not find any error in the judgment of the Adjudicating Authority allowing the Application filed by Respondent while holding that erstwhile Promoters have to sell their shares to the Applicant (Tata Steel) @ INR 2/- per share.

29. In view of the foregoing, we do not find any merit in this Appeal, the Appeal is dismissed. No order as to costs.

**[Justice Ashok Bhushan]
Chairperson**

**[Dr. Ashok Kumar Mishra]
Member (Technical)**

**[Dr. Alok Srivastava]
Member (Technical)**

NEW DELHI

7th March, 2022

Ash/NN