SL. No.9

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH

COURT HALL NO: II

Hearing Through: VC and Physical (Hybrid) Mode

SPECIAL BENCH

CORAM: SHRI. RAJEEV BHARDWAJ – HON'BLE MEMBER (J)
CORAM: SHRI. YOGENDRA KUMAR SINGH- HON'BLE MEMBER (T)

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF NATIONAL COMPANY LAW TRIBUNAL, HYDERABAD BENCH, HELD ON 16.10.2025 at 12:00 PM

TRANSFER PETITION NO.	
COMPANY PETITION/APPLICATION NO.	IA (IBC)/1043/2025 and IA (IBC)/1044/2025 in CP (IB) No.492/7/HDB/2019
NAME OF THE COMPANY	KSK Mahanadhi Power Company Ltd
NAME OF THE PETITIONER(S)	Power Finance Corporation
NAME OF THE RESPONDENT(S)	KSK Mahanadhi Power Company Ltd
UNDER SECTION	7 of IBC

ORDER

IA (IBC)/1043/2025

Orders pronounced, recorded vide separate sheets. In the result, IA(IBC)/1043/2025 is allowed.

IA (IBC)/1044/2025

Orders pronounced, recorded vide separate sheets. In the result, IA(IBC)/1044/2025 is allowed.

Sd/-
MEMBER (T)

Sd/-
MEMBER (J)

Vamsi

NATIONAL COMPANY LAW TRIBUNAL
HYDERABAD BENCH, COURT-II

IA (IBC)1043 of 2025 & IA (IBC) 1044 of 2025

IN

C.P (IB) No.492/7/HDB/2019

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

BETWEEN:

M/s. KSK Mahanadi Power Company Limited,
R/o. 8001, Survey No. 109, Q-City Nanakramguda,
Gachibowli, K.V. Rangareddy,
Seri Lingampally, Hyderabad,
Telangana - 500032

...Applicant

And

1. **Paradeep Customs Division,**
Office of the Assistant Commissioner,
Paradeep Customs Division,
Government of India.

...Respondent No.1/R1

2. **Paradip Port Authority,**
Paradip Port 754142,
Odisha (India).

...Respondent No.2/R2

Date of Order: 16.10.2025

Coram:

Shri Rajeev Bhardwaj, Hon'ble Member (Judicial)

Shri Yogendra Kumar Singh, Hon'ble Member (Technical)

Counsels Present

For the Applicant : Mr. Gopal Jain, Mr. Allwin Godwin, Mr. Anoop Rawat, Mr. Vishrut Kansal, Mr. Aditya Marwah, Ms. Niranjana Pandian, Ms. Snigdha Saraff & Mr. Prarthana Ramesh, Advocates.

For Respondent No. 1 : Ms. B. Sapna Reddy & Ms. Rakshitha, Advocates.

For Respondent No. 2 : Mr. Rithesh Kallepu & Mr. Venkateshwar Rao, Ld. Advocates.

[PER: RAJEEV BHARDWAJ]

ORDER

1. Both IA (IBC) 1043 of 2025 and 1044 of 2025 in CP (IB) No. 492/7/HDB/2019 filed by M/s.KSK Mahanadi Power Company Limited (**KSKMPCL/Applicant**) against Paradeep Customs Division (**Respondent No. 1/R1**) and Paradip Port Authority (**Respondent No. 2/R2**) are taken up together for decision as these are interlinked and interconnected.

2. In IA (IBC)1044 of 2025, the Applicant has sought the following reliefs:

   a. To pass an order directing the Respondents to forthwith and unconditionally release the materials belonging to the Applicant lying in custody of the Respondents;

   b. To pass a direction against the Respondents to co-operate with the Applicant for enabling effective implementation of the Approved Resolution Plan dated 29 November 2024 of JSW Energy Limited, which is binding upon the Respondents.

3. In IA (IBC)1043 of 2025, the prayer of the Applicant is as below:

   a. To pass an ex-parte ad-interim order preventing the Respondents from dissipating the materials belonging to the Applicant and further direct the Respondents to cooperate with the Applicant in all manners, with respect to the materials belonging to the Applicant, pending disposal of I.A. No. of 2025 in CP (IB) 492/07/HDB/2019.

4. **<u>Application</u>**

   (i) The Applicant is a Company incorporated under the provisions of the Companies Act, 2013. In the year 2019, one of its Financial Creditors (**FC**) filed CP (IB) No. 492/7/HDB/2019 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (**IBC/Code**) before this Authority.

   (ii) The said Petition was admitted vide Order dated 03.10.2019, thereby initiating the Corporate Insolvency Resolution Process (**CIRP**) against the Applicant. Subsequently, Mr. Sumit Binani was appointed as the Resolution Professional (**RP**) vide Order dated 16.06.2020.

   (iii) Thereafter, M/s.JSW Energy Limited (**JSW**) submitted a Resolution Plan dated 29.11.2024, which was approved by the Committee of Creditors (**CoC**) of KSKMPCL with 100% voting share. The RP accordingly filed IA (IBC) (Plan)/02/2025 seeking approval of the said Resolution Plan. Vide order dated 13.02.2025, this Authority approved the Resolution Plan. The Plan was implemented by JSW on 06.03.2025, upon which the control and management of KSKMPCL were transferred to JSW.

(iv) Earlier on 15.06.2017, KSKMPCL received certain materials under shipment number KMPCL-043S and have been lying in the Paradip Port. Based on the commercial invoice dated 15.06.2017, the shipment is valued at USD 2,70,59,631.

(v) Upon commencement of the CIRP, both Respondents had submitted their claims before the RP, which were duly collated as operational claims in the list of creditors.

(vi) During the CIRP, R2 addressed a Letter dated 12.09.2022 to the RP seeking evacuation of the cargo lying at the Port. The RP, in response, apprised R2 of the ongoing CIRP and requested permission to take possession of the cargo without insistence on recovery of pending dues, as such, recovery would contravene the letter and spirit of the Code and the CIRP Regulations.

(vii) After approval of the Resolution Plan and its implementation on the closing date, requisite payments were made to the Respondents in accordance with the Plan. The Applicant further submits that it has not yet received the Bank Guarantees and Letters of Credit held by the Office of the Deputy Commissioner, Paradeep Customs Division.

(viii) The Applicant, vide letter dated 19.03.2025, intimated R1 about the implementation of the approved Resolution Plan and the payments made thereunder, which was acknowledged by R1 on 25.04.2025.

(ix) Thereafter, vide letter dated 18.04.2025, the Applicant requested R2 to release its materials, enclosing proof of implementation of the approved Resolution Plan and payments made against all admitted claims. In response, R2 advised the Applicant to obtain a No-Objection Certificate (**NOC**) from R1. Accordingly, the Applicant requested R1 to issue such NOC for release of the cargo.

(x) R1 replied that the clearance of Cargo was to be dealt with by R2 in accordance with Section 48 of the Customs Act, 1962, read with CBIC Circular No. 49/2018-Customs dated 03.12.2018, and that no NOC was required from R1.

(xi) The Applicant, vide letter dated 14.05.2025, reiterated that the claims of both Respondents stood settled in terms of the approved Resolution Plan and that the provisions of the Customs Act relating to removal of unclaimed Cargo were inapplicable in the present case. The Applicant sought the cooperation of R1 in facilitating urgent release of the Cargo.

(xii) On 28.05.2025, R1 again wrote to the Applicant reiterating that NOC from R1 was not warranted and that R2 should proceed with clearance of the cargo.

(xiii) Subsequently, the Applicant received a letter dated 14.05.2025 on 23.05.2025 from R1, wherein it claimed to have identified a typographical error in the accounting of the assessable value in a Bill of Entry dated 27.10.2012, allegedly resulting in a short assessment of customs duty amounting to Rs. 9,70,65,310/-.

(xiv) The Applicant, vide letter dated 09.06.2025, responded that the said claim pertains to a period prior to the commencement of the CIRP, and by virtue of the approval of the Resolution Plan, such claim stood fully extinguished and settled.

(xv) The Applicant also received communication dated 06.06.2025 from the Traffic Department, Paradip Port Authority, seeking payment of alleged outstanding dues already admitted and settled in the CIRP, as a precondition for release of cargo. The Applicant, vide reply dated 13.06.2025, clarified that all such dues stood permanently discharged upon approval of the Resolution Plan.

(xvi) The Applicant relies on Clause 2.3.7 of the approved Resolution Plan, which mandates that the Cargo shall be taken into possession by the Applicant, and Clause 3.3.12(b), which provides for permanent discharge, settlement and extinguishment of all claims of the Respondents on and from the closing date. Further, under Section 31(1) of the IBC, the approved Resolution Plan is binding in rem, including on statutory authorities such as the Respondents.

(xvii) The Applicant places reliance on judgments of the Hon'ble Supreme Court in ***Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*** (Civil Appeal No. 8129 of 2019), ***Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*** (Civil Appeal Nos. 8766–67 of 2019), and ***Monnet Ispat & Energy Ltd. v. State of Odisha*** (W.P. (C) No. 1177 of 2020), to assert the doctrine of "clean slate" and the extinguishment of all pre-CIRP liabilities upon approval of the Resolution Plan.

(xviii) Further, reliance is placed on ***ABG Shipyard Ltd. (Liquidator) v. Central Board of Indirect Taxes & Customs***, (2023) 1 SCC 472, wherein it was held that under Section 238 of the IBC, the provisions of the Code and an approved Resolution Plan override all other laws in case of inconsistency.

(xix) The Applicant, therefore, submits that all liabilities of the Respondents stand permanently discharged, settled, and extinguished pursuant to the approval and implementation of the Resolution Plan, and prays for directions accordingly.

5. **Counter of Respondent No. 1 (Paradeep Customs Division)**

(i) R1 submits that vide emails dated 22.04.2025, 23.04.2025, 25.06.2025 and 04.07.2025, it requested the Applicant to share a copy of the approved Resolution Plan dated 29.11.2024 to verify the treatment of customs duty claims therein. However, the Applicant, citing confidentiality, did not furnish the Resolution Plan. Hence, R1 states it is unaware of the facts and directions contained therein.

(ii) R1 further contends that against its admitted claim of Rs.719,98,48,660/-, it has received only Rs.69,75,59,053/- in three instalments, and therefore, its claim has not been fully discharged.

(iii) R1 submits that the onus to clear and release the cargo lies entirely with R2. The Applicant filed Bill of Entry No. 2202166 dated 22.06.2017, which was provisionally assessed to IGST of Rs. 32,07,62,283/- on 14.07.2017. The importer neither paid the assessed duty nor obtained an "Out of Charge" order. Consequently, the cargo remains uncleared within the meaning of Section 48 of the Customs Act, 1962, and is under the custody of R2.

(iv) R1 asserts that it has extended full cooperation and that no further action is warranted from its end. It prays that the present application be dismissed.

6. **Counter of Respondent No. 2 (Paradip Port Authority)**

(i) R2 submits that the Applicant has approached this Authority with unclean hands and has deliberately suppressed material facts. During the ordinary course of business, one vessel, MV Leader SW, berthed at the Paradip Port on 04.07.2017 and discharged Cargo weighing approximately 5,092 Metric Tonnes belonging to the Applicant Company. Upon issuance of lease permits to the Applicant, the said Cargo was stored at Plot No. CD-14 and Plot No. RoRo situated within the Customs-bonded area of Paradip Port. The Applicant, however, filed a Bill of Entry only for 1,385 Metric Tonnes of Cargo.

(ii) R2 issued multiple notices to the Applicant calling upon it to file Bills of Entry for the balance quantity of 3,707 Metric Tonnes and to produce the Out-of-Charge Certificate from the Customs Authority (R1). Despite repeated communications, the Applicant failed to comply. R2, vide its letter dated 28.02.2018, also informed the Applicant of the applicable port charges payable prior to the release of the Cargo.

(iii) As the Applicant failed to take any action, R2 initiated steps for disposal of the Cargo in accordance with Section 48 of the Customs Act, 1962 and Section 62 of the Major Port Trusts Act, 1963. A notice dated 30.03.2019 was accordingly issued to the Applicant informing the proposed disposal. Further, R2 sought a No-Objection Certificate (NOC) from R1 to enable such disposal under Section 62 of the Major Port Trusts Act, 1963 read with Section 142A of the Customs Act, 1962.

(iv) Pursuant to the initiation of the CIRP, R2 submitted its claim by email dated 21.11.2019 to the Interim Resolution Professional.

(v) The IRP, vide email dated 25.11.2019, advised R2 to submit its claim in Form–B instead of Form–F and further clarified that only those dues accrued prior to 03.10.2019 would be considered as operational dues, while dues arising thereafter would fall within the ambit of CIRP costs. (**Annexure R2-6).**

(vi) Accordingly, R2 filed its claim for Rs.1,51,62,220/–, which the RP admitted at Rs.1,48,83,392/– vide letter dated 10.06.2022. R2 continued to correspond with the RP at regular intervals seeking updates on the status of the CIRP. (**Annexure R2-7)**

(vii) By letter dated 12.09.2022, R2 requested the RP to evacuate or shift the Cargo lying at Plot No. CD-14 to enable continuation of port development works. However, the RP neither responded to the said request nor took any steps for evacuation, thereby causing delays in the Western Dock Project undertaken by R2.

(viii) It was only upon receipt of a letter dated 18.04.2025 from JSW Energy Limited that R2 became aware of the approval of the Resolution Plan in IA (IBC) (Plan) No. 02 of 2025 and the subsequent acquisition of the Applicant by JSW. R2 was surprised to note that the Applicant, in its representation, claimed that no dues were payable to R2. R2 submits that the Applicant is liable to pay an amount of Rs.7,27,69,346/– towards charges for holding the Cargo during the CIRP period (04.10.2019 to 13.02.2025), as per the calculation sheet annexed as Annexure R2–8.

(ix) The IRP's email dated 25.11.2019 specifically recorded that all dues accruing post–CIRP commencement date would constitute CIRP costs. R2 submits that the said sum of Rs.7,27,69,346/– clearly falls within the definition of "Insolvency Resolution Process Costs" under the IBC. R2, however, is unaware whether any provision for this amount has been made under the approved Resolution Plan.

(x) In addition, R2 submits that the Applicant is liable to pay Rs.50,16,453/– towards port charges for the period from 14.02.2025 to 28.07.2025, together with further port charges accruing thereafter until complete evacuation of the cargo. The details of the dues payable to R2 are summarised below:

PERIOD	AMOUNTS DUE AND PAYABLE	STATUS
Prior to initiation of Corporate Insolvency Resolution Process, i.e., before 03.10.2019	Claim made for Rs. 1,51,62,220.00/- of which an amount of Rs.1,48,83,392/- was admitted amount	An amount of Rs. 18,81,812.65/- received by the second Respondent in Four installments
From 04.10.2019 till 13.02.2025 (CIRP Costs)	Rs.7,27,69,346/-	No payments received; remains due and payable
From 14.02.2025 till 28.07.2025	Rs.50,16,453/-	No payments received; remains due and payable
From 28.07.2025 till evacuation of the cargo	Yet to be determined	Remains due and payable

(xi) R2 further submits that under the procedure prescribed by law, port dues are collected from the importer only after submission of the Customs Clearance / Out-of-Charge Certificate issued by R1. The Applicant has failed to produce the said certificate. R2 addressed a letter dated 25.07.2025 to R1 (in reply to R1's letter dated 01.07.2025) seeking such clearance. In terms of Section 45 of the Customs Act, 1962, R2, being the custodian, cannot release any Cargo without express permission from R1.

(xii) A plain reading of Section 45 of the Customs Act confirms that the custodian of imported goods (here, R2) is prohibited from releasing any cargo without authorization from Customs. Despite being fully aware of this statutory requirement, R1 has attempted to shift the responsibility to R2.

(xiii) R2 submits that while R1 had, on one hand, directed R2 to proceed with the auction of the Cargo under Section 48 of the Customs Act, 1962, on the other hand, it issued a contradictory communication dated 01.07.2025 questioning the need for an NOC from R1 for the release of the Cargo. These inconsistent directions from R1 have caused procedural uncertainty and delay in the release of Cargo.

(xiv) R2 had requested RP for evacuation of the Cargo as it was obstructing developmental activities. However, instead of taking steps for evacuation, the RP requested R2 to forgo its legitimate dues and release the Cargo. Also, no steps were taken by the RP.

(xv) The Applicant, therefore, continues to owe Rs.7,27,69,346/– towards CIRP period charges (04.10.2019 to 13.02.2025), Rs.50,16,453/– towards post–CIRP charges (14.02.2025 to 28.07.2025), and further port charges accruing after 28.07.2025 until complete evacuation of the Cargo.

(xvi) Upon receiving communication from the Applicant regarding approval of the Resolution Plan, R2 advised the Applicant to obtain the necessary NOC from R1 and simultaneously requested payment of the above dues. R2 states that it has only followed the established legal procedure, deviation from which could lead to regulatory complications in the future.

(xvii) It is stated by R1, vide its letter dated 28.05.2025, that no NOC is required under Section 48 of the Customs Act, 1962. R2 submits that it never sought to act under Section 48 of the Customs Act, but merely requested R1 to issue an NOC / Out-of-Charge

Certificate, as required under the standard clearance procedure. R2 reiterates that it is ready and willing to release the Cargo to the Applicant, provided the established customs procedure is duly complied with.

(xviii) R2 has extended full cooperation throughout and has been following the statutory procedure applicable before release of any imported Cargo. The delays are entirely attributable to the contradictory stands taken by R1.

(xix) R2 acknowledges that the Cargo has been lying at the Port since 2017 and that its pre–CIRP liabilities stand discharged under the approved Resolution Plan. However, the Applicant continues to be liable for Rs.7,27,69,346/– towards CIRP costs and Rs.50,16,453/– towards post–CIRP dues.

(xx) R2 further submits that the judicial precedents relied upon by the Applicant have no application to the present facts, as R2 is not asserting any claim forming part of its pre–CIRP admitted dues. The present claim pertains only to charges arising during and after the CIRP period.

(xxi) In view of the above, R2 sought this Authority to issue the following directions:

a. Direct the Applicant company to pay the second Respondent an amount of Rs.7,27,69,346/- as CIRP costs incurred by second Respondent.

b. Direct the Applicant to pay an amount of Rs. 50,16,453/- which are the dues that accrued after the completion of the CIRP process i.e., from 14.02.2025 till 28.07.2025.

c. Direct the Applicant to pay the dues from 29.07.2025 till the evacuation of the Cargo from the second Respondent's premises.

d. Direct the first Respondent to issue Out of Charges/No-Objection certificate from the first Respondent so that the second Respondent can release the subject Cargo of the Applicant on as is where is, as is what is, and whatever there is basis.

7. **Rejoinder to the Counter filed by R1 in I.A No. 1044 of 2025**

(i) The Applicant reiterated the facts about the arrival & value of Cargo, the commencement of CIRP against the Applicant and the subsequent approval of the Resolution Plan. It is contended that if R1 maintains that R2 (Paradip Port Authority) is responsible for the release of the Cargo, then R1 must unconditionally disclaim any and all claims over the said Cargo and coordinate with R2 to ensure its release. Despite evading its responsibility, R1 has raised untenable objections concerning the said cargo.

(ii) On one hand, R1 has asserted that the responsibility of releasing the Cargo rests with R2 as the custodian; on the other hand, R1 has issued directions to R2 to initiate action under Section 48 of the Customs Act, 1962 read with CBIC Circular No. 49/2018-Customs dated 03.12.2018 for clearance of the Cargo. Such contradictory conduct reflects a violation of approved Resolution Plan and provisions of IBC.

(iii) R1, vide its letter dated 14.05.2025, alleged a typographical error in accounting for the assessable value of a Bill of Entry dated 27.10.2012 during final assessment dated 29.10.2019, resulting in an under-accounting by Rs.9,70,65,310/–. The said demand pertains to a period prior to the commencement of CIRP. All such pre-CIRP liabilities stand extinguished upon approval of the Resolution Plan. R1 has completely disregarded the overriding effect of Section 238 of the Insolvency and Bankruptcy Code, 2016 (IBC), which is further reinforced by Section 142A of the Customs Act, 1962.

(iv) The Applicant has made all payments to R1 strictly in accordance with the terms of the approved Resolution Plan. Hence, R1 is not entitled to demand the alleged amount of Rs. 719,98,48,660/– as against its admitted claim of Rs. 69,75,59,053/–.

(v) The payments made to R1 were duly acknowledged by it on 22.04.2025 and 15.05.2025, as reflected in its Counter Affidavit. Having accepted the payments without demur and not having challenged the approved Resolution Plan, R1 is now estopped from raising any further demands or allegations inconsistent with the said Plan.

(vi) The Applicant further submits that the emails dated 22.04.2025, 23.04.2025, 25.06.2025 and 26.06.2025 from R1 seeking extracts of the approved Resolution Plan were addressed to the RP and not to the Applicant. The Applicant was, therefore, unaware of the same. Nevertheless, in the communications dated 19.03.2025, 24.04.2025, 15.05.2025 and 03.06.2025, furnished relevant extracts of the Resolution Plan to R1. Consequently, R1 cannot feign ignorance of the Plan's operative provisions.

(vii) Under Clause 2.3.7 of the approved Resolution Plan, after making payments as stipulated therein, the Cargo lying at the Port is to be taken into possession by the Applicant. Furthermore, Clause 3.3.12(b) provides for the permanent discharge, settlement and extinguishment of all claims of operational creditors from and after the Closing Date. Thus, R1's claims stand conclusively settled.

8. **<u>Rejoinder to the Counter filed by R2 in I.A No. 1044 of 2025</u>**

(i) The Applicant reiterates the facts concerning the Cargo, the initiation of CIRP, and the approval of the Resolution Plan as stated in the preceding rejoinder to the Counter filed by R1.

(ii) As per Clause 2.3.7(k) of the Resolution Plan, upon completion of payments, the Cargo is required to be taken into possession by the Applicant. In furtherance thereof, the Applicant addressed letters dated 18.04.2025 and 13.06.2025 to R2 requesting release of the Cargo. However, R2 directed the Applicant to obtain a No-Objection Certificate (NOC) from R1. R1, in turn, contended that it was R2's responsibility to release the Cargo, while simultaneously directing R2 to dispose of the same under CBIC Circular No. 49/2018-Customs, dated 03.12.2018 read with Section 48 of the Customs Act, 1962.

(iii) The conduct of the Respondents demonstrates a persistent attempt to shift responsibility upon each other, thereby causing inordinate delay in the release of the Cargo. R2 has admitted that all its pre-CIRP dues stand settled; however, it now claims Rs.7,27,69,346/– towards alleged CIRP costs, Rs.50,16,453/– towards post-implementation dues, and further port charges till evacuation. R2 further asserted that it is willing to release the Cargo but only upon payment of such alleged dues particularly as such claims arise after the commencement of CIRP.

(iv) R2 never raised any invoices or communicated any such demands to the RP during the CIRP period. The alleged claims were, for the first time, raised only through its Counter Affidavit. R2 is, therefore, estopped from asserting such belated claims which do not form part of the approved Resolution Plan. Under Regulation 31B of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, all CIRP costs are required to be approved by the Committee of Creditors (**CoC**).

(v) The Applicant further relies upon the judgments of the Hon'ble NCLAT in ***Bharat Hotels Ltd., v. Tapan Chakraborty***, Company Appeal (AT) (Insolvency) No. 1074 of 2022, ***Avil Menezes Liquidator of Sunil Hitech and Engineers Ltd. vs. Abdul Quddusкhan and Anr.***, ***[(2024) ibclaw.in 320 NCLAT]*** and ***Calyx Chemicals and Pharmaceuticals Private Limited vs. Ravindra N. Athavale & Anr.***, ***[(2024) ibclaw.in 840 NCLAT],***, wherein it has been categorically held that all CIRP-related costs must be duly approved by the CoC, and no post-facto or surprise claims can be raised against the Successful Resolution Applicant.

(vi) R2 has also failed to furnish any supporting documentation or invoices substantiating its alleged claims. The computation filed by R2 lacks any underlying contractual or evidentiary basis.

Further, R2's letter dated 06.06.2025 contains no reference whatsoever to the alleged Port charges. The Applicant had, in fact, shared the relevant extracts of the approved Resolution Plan with R2, and hence R2 cannot plead ignorance thereof.

(vii) The Applicant reiterates that Clause 2.3.7(k) of the Resolution Plan obliges it to take possession of the Cargo upon completion of payments, while Clause 3.3.12(b) provides for the permanent discharge and extinguishment of all operational claims from the Closing Date.

(viii) From the Counter filed by R2, it is evident that R2 is willing to release the Cargo, subject to obtaining the requisite permissions from R1 (as seen in paras 8, 14, and 20 of its Counter). Hence, R2 ought to disclaim any purported liabilities against the Applicant and proceed with the release of the Cargo without further delay.

(ix) R2 itself, in para 13 of its Counter, expressed its inability to understand as to why R1 had advised it to proceed under Section 48 of the Customs Act, 1962 and CBIC Circular No. 49/2018-Customs dated 03.12.2018, which are inapplicable to the facts of the present case. R2 further admitted that it never intended to act under Section 48 in relation to the Applicant's Cargo.

(x) The nature of the Cargo is such that prolonged storage would result in deterioration and substantial loss of value. The said Cargo is essential for operation of the Applicant's remaining units in accordance with the approved Resolution Plan.

(xi) The Applicant reiterates that in view of Section 238 of the IBC, the provisions of the Code have an overriding effect over any inconsistent provisions contained in other enactments, including the Customs Act, 1962.

(xii) We have heard Learned Counsel for the parties and have also gone through the entire record.

9. **<u>Findings</u>**

(i) Prior to initiation of CIRP against *KSK Mahanadi Power Company Limited* under Section 7 of the IBC, vide Order dated 03.10.2019 in CP (IB) No. 492/7/HDB/2019, the Applicant had imported certain Cargo which arrived at Paradip Port, Odisha, in pursuance of Invoice dated 15.06.2017 (**Annexure B, page 24 of the Application**). The said Cargo has since remained in the custody of the R2.

(ii) During the CIRP, both Respondents filed their respective claims before the Resolution Professional. The claim of Respondent No. 1, amounting to Rs.719,98,48,660/- was admitted, against which a sum of Rs.69,75,59,053/- was paid under the Resolution Plan. Similarly, the claim of Respondent No. 2 towards licence fee amounting to Rs.1,51,62,220/- was admitted and Rs.1,48,83,392/- was paid. The admitted claims were thus dealt with in accordance with the approved Resolution Plan.

(iii) The grievance of the Applicant is that despite approval of the Resolution Plan by this Authority and payment of claims, the Respondents have not released the cargo. R1 has raised a subsequent demand for an alleged differential customs duty of

Rs. 9,70,65,310/- on account of a purported error in a Bill of Entry of 2012 and further shifting the liability for releasing the goods on R2, while R2 has raised a demand of Rs.7,27,69,346/- towards alleged port charges during CIRP and Rs.50,16,453/- for the post-implementation period etc. Respondent No. 2 has further refused to release the Cargo citing non-payment of these dues and the absence of NOC or "out-of-charge" certificate from R1.

(iv) Learned counsel for the Applicant has vehemently argued that once the Resolution Plan has been approved by this Authority, the Respondents are bound to release the Cargo without demur. Reliance was placed on ***Ghanshyam Mishra & Sons Pvt. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd***. ***2021*** ibclaw.in 54 SC***, Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta (2020) 8 SCC 531, Monnet Ispat & Energy Ltd. v. State of Odisha W.P. (C) No. 1177 of 2020*** and ***ABG Shipyard Ltd. (Liquidator) v. Central Board of Indirect Taxes & Customs (2023) 1 SCC 472***, to contend that Section 238 of the IBC has overriding effect and that all pre-CIRP dues stand extinguished upon approval of the Resolution Plan. On the question, whether the dues for CIRP are to be considered as CIRP costs, he has referred to the decisions in ***Bharat Hotels Ltd., v. Tapan Chakraborty***, ***Avil Menezes Liquidator of Sunil Hitech and Engineers Ltd. v. Abdul Qudduskhan and Anr.***, ***and Calyx Chemicals and Pharmaceuticals Private Limited vs. Ravindra N. Athavale & Anr.***, Company Appeal supra, to argue that all CIRP-related costs must be duly approved by the CoC, and no post-facto or surprise claims can be raised against the Successful Resolution Applicant.

(v) On the other hand, Learned Counsel for Respondent No. 1 submitted that further payment towards pre-CIRP dues is still outstanding and that the Cargo, being “uncleared goods” within the meaning of Section 48 of the Customs Act, 1962, lies in the custody of Respondent No. 2, who must therefore bear the responsibility for its clearance.

(vi) On behalf of Respondent No.2, it is contented by Learned Counsel that the Cargo cannot be released until full payment of these dues and further that, in terms of Section 62 of the Major Port Authorities Act and Sections 142A/45 of the Customs Act, Respondent No. 1 must issue the requisite NOC.

(vii) It is not in dispute that both Respondents submitted their claims during the CIRP and that such claims were admitted and paid as operational debts under the approved Plan.

(viii) The Resolution Plan has been duly approved under Section 31(1) of the Code. Clause 2.3.7 of the Plan specifically records the liability towards Paradeep Customs Division and provides that upon settlement of such admitted claim, the material lying at the Port shall be taken into possession for completion of the balance work. The said Clause provides as follows:

> *“A final assessment order dated October 29, 2019, has been issued by the Paradeep Customs Division, whereby a liability of INR 719,98,48,660 (Indian Rupees Seven Hundred Nineteen Crores Ninety Eight Lakhs Forty Eight Thousand Six Hundred and Sixty) was imposed on Corporate Debtor with respect to the*

custom duty related benefits availed under the Provisional Certificates. The aforesaid order specifies that imposition of such liability was on account of non-submission of installation certificate, reconciliation statement and other documents related to completion of project contract. This claim has been admitted in full by the Resolution Professional. Turnaround strategy: The Resolution Applicant envisages payout to the Paradeep Customs Division against their claim under this Resolution Plan. Thereafter, the material lying on the port would be taken into possession for completion of the balance works of Unit."

(ix) Clause 3.3.12(b) of the Plan further provides that on and from the Closing Date, all claims and liabilities of Operational Creditors, including Statutory Authorities, shall stand reduced to NIL and permanently extinguished, in the following terms:

"On and from the Closing Date and to the extent permissible under applicable Law, all 10 Claims, Debt, and liabilities including contingent liabilities (whether reduced to judgment or not) of the Corporate Debtor towards each and every Operational Creditor (including Workmen and Employees, and further including the Employees Provident Fund Organisation), including (but not limited) in relation to or arising out of or pertaining to ... (d) any claims, demands, or dues, whether claimed or unclaimed, whether admitted or unadmitted, whether crystallized or uncrystallised payable to any custom authority, and other Governmental Authorities, in relation to any period

until and including the Plan Approval Date, shall stand reduced to NIL and permanently discharged, extinguished and settled and no amounts shall be payable to any Operational Creditors whether or not set out in the Information Memorandum. Virtual Data Room/ VDR. balance sheets or the profit and loss account statements of the Corporate Debtor ... ".

(x) Therefore, the Resolution Plan covers the goods lying with the R2. It is now a well settled law that once a Resolution Plan is approved by the CoC no new claims can be entertained and that the SRA shall not be pestered with any previous or belated claims. All such claims not forming a part of the Plan shall stand extinguished. Any demand or recovery action in respect of a pre-CIRP or extinguished claim would directly contravene the binding and overriding effect of the Resolution Plan and the Code. Resolution Plan approved under Section 31(1) of the IBC has a binding effect on the Corporate Debtor, its employees, members, creditors (financial and operational), guarantors, and statutory authorities, including departments of the Central and State Governments.

(xi) The Corporate Debtor having been acquired on a *clean-slate* basis, the Successful Resolution Applicant cannot be burdened with any pre-CIRP dues. The Hon'ble Supreme Court in ***Ghanshyam Mishra (supra)*** authoritatively held that once a Resolution Plan is approved, all claims not included therein stand extinguished and no statutory authority can subsequently assert such claims. The same principle was reiterated in ***Essar Steel* and *Monnet Ispat (supra)***.

(xii) Despite this settled position, R1 issued a demand dated 14.05.2025 for alleged differential customs duty of Rs.9,70,65,310/-, purportedly arising from a typographical error in a Bill of Entry of 2012. This relates to a period well before commencement of CIRP. Such pre-CIRP liability stands permanently extinguished under Section 31(1) of the Code, rendering the demand unsustainable.

(xiii) Similarly, Respondent No.2's demand for Rs. 7,27,69,346/- towards alleged port charges during CIRP as R2 has not demonstrated that these claims were ever placed before the RP or CoC for approval as CIRP costs in compliance with the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

(xiv) The law is well-settled that CIRP costs can only include those expenses which are duly approved by the CoC and form part of the Information Memorandum or cost statement submitted to the Adjudicating Authority. Any subsequent or unilateral claim raised after the approval of the Resolution Plan cannot be treated as CIRP costs.

(xv) In this regard, we refer to Order of the Hon'ble NCLAT in ***Bharat Hotels v. Tapan Chakraborthy (RP) supra,*** wherein it was categorically held that the issue of CIRP costs falls exclusively within the domain of the Committee of Creditors (CoC), and cannot be examined by the Adjudicating Authority before the CoC has taken a decision. The Hon'ble NCLAT held as follows:

> *"5. ......Question of cost and its approval lays in the domain of the CoC. The CoC may ratify, modify or set aside the cost claimed. These issued may be decided in the meeting of the CoC and are not to be examined by the Adjudicating Authority even before the CoC takes a decision. It shall be always open for the appellant to raise issue regarding the cost in the meeting of the Committee of Creditors."*

(xvi) Further, in ***Avil Menezes Liquidator of Sunil Hitech and Engineers Ltd. v. Abdul Qudduskhan and Anr. (supra)*** the Hon'ble NCLAT clarified that for any dues or expenses to qualify as CIRP costs**,** such costs must be expressly approved by the CoC. The Hon'ble NCLAT held:

> *"49. ..... Further, it is clear from Regulation 31 and the guidance provided by IBBI vide the above-mentioned circular that unless the CoC has approved the dues and they directly relate to the CIRP, the dues cannot be classified as CIRP cost."*

(xvii) Similarly, in ***Calyx Chemicals and Pharmaceuticals Pvt. Ltd. v. Ravindra N. Athavale and Anr. (supra),*** the Hon'ble NCLAT observed that once a Resolution Plan has been approved and implemented, and the CoC ceases to exist, any interference or introduction of new claims would prejudice the Successful Resolution Applicant. It was held:

> *"Allowing any interference with the plan at this stage by introducing new claims would prejudice the SRA and put the Corporate Debtor into the throes of grave*

and unpredictable uncertainty at a time when the resolution plan has been implemented and the CoC not in existence anymore.”

(xviii) In light of the above settled legal position, we are of the view that no post-facto or unapproved claim can be imposed upon the Successful Resolution Applicant after the approval of the Resolution Plan. The claim of Respondent No.2 amounting to Rs.50,16,453/- towards alleged post-implementation charges cannot be sustained, particularly when the Port Authority has not handed over possession of the Cargo in accordance with the directions issued by this Authority. It is only in the event that the Applicant had failed to take possession despite being permitted to do so, that any claim for subsequent expenses could have been considered.

(xix) Applying these settled legal principles, it is evident that both Respondents are bound by the approved Resolution Plan and cannot raise or enforce any claim—whether pre-CIRP or during CIRP—beyond what has been provided therein.

(xx) The correspondence between R1 and R2 also reflects inconsistency and lack of coordination. While R1 has at one stage directed R2 to proceed under Section 48 of the Customs Act, 1962 for disposal of Cargo, it simultaneously contends that no NOC is required. Conversely, R2 maintains that release of Cargo is not possible without an NOC or “Out-of-Charge” Certificate from R1. Such conflicting stances have led to an avoidable procedural deadlock, defeating the purpose and finality of the Resolution Plan.

(xxi) It is pertinent to note that Section 238 of the Insolvency and Bankruptcy Code, 2016 gives the provisions of the Code an overriding effect over any other inconsistent provisions contained in any other law for the time being in force, including the Customs Act, 1962 and the Major Port Authorities Act, 2021. Therefore, once the Resolution Plan has been approved and implemented, the Respondents are legally bound to comply with the same and facilitate release of the Applicant's cargo without insisting on any further payment or clearance under any other statute.

Final Order

10. In view of the above, we hold that:

a. All pre-CIRP and CIRP-period dues of both Respondents stand fully settled and extinguished under the approved Resolution Plan dated 29.11.2024;

b. The subsequent demands raised by R1 and R2 are contrary to Section 31(1) of the IBC and hence unenforceable;

c. R1 and R2 are bound by the Resolution Plan and must act in conformity therewith; and

d. The continued detention of the Applicant's Cargo by R2, or the conditionality imposed by R1, is contrary to law and the directions of this Authority in approving the Plan.

Thus, both the Respondents are directed to coordinate and ensure release of the Cargo lying at Paradip Port in favour of the Applicant within a period of fifteen (15) days from the date of this Order**,** without insisting upon any payment, clearance, or condition inconsistent with the terms of the approved Resolution Plan.

11. Accordingly, IA (IBC)1044 of 2025 and IA (IBC) 1043 of 2025 in CP (IB) No. 492/7/HDB/2019 are hereby **allowed** and disposed of.

Sd/-	**Sd/-**
(YOGENDRA KUMAR SINGH) **MEMBER (TECHNICAL)**	**(RAJEEV BHARDWAJ)** **MEMBER (JUDICIAL)**