

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH, NAGPUR.

WRIT PETITION NO. 8620 OF 2018

PETITIONER :- M/s. Tata Steel BSL Ltd.,
Org.Defendant No.1 Formerly Known as Bhushan Steel Limited, A Company incorporated under the Provisions of the Companies Act, 1956 having its registered office at Ground Floor, Mira Corporate Suites, Plot No.1 & 2, Mathura Road, Ishwar Nagar, New Delhi-11065
Through its Power of Attorney holder Shri Dilip Rath.

...**VERSUS**...

RESPONDENTS :- 1. Varsha W/o. Ajay Maheshwari,
Org.Plaintiff Aged about Major, Occ: Business, Proprietor of M/s. Parijat Enterprises and Resident of A-3/41, "Vrindavan" Apartments, Near Hislop College, Civil Lines, Nagpur-440 001.
Through its Power of Attorney holder Shri Ajay S/o Deendayalji Maheshwari, Aged about : Major, Occupation: Business, Resident of A-3/41, "Vrindavan" Apartments, Near Hislop College, Civil Lines, Nagpur-440 001.

Org.Defendant No.2 2. B.K.Sinha, General Manager, Purchase Department, Bhushan Steel Ltd., Aged about : Major, Occupation: Employee of

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Bhushan Steel Ltd., As G.M.Purchase,
R/o At Bhushan Steel Ltd., Narendrapur,
P.O.Kusupanga Via – Meramandali, Dist.
Dhenkanal, Pin – 759121, Orissa (India).

Mr. Shyam Dewani, counsel for the petitioner.
Respondent No.1 in person.
None for respondent No.2

CORAM : MANISH PITALE, J.

DATE OF RESERVING THE JUDGMENT: 15.02.2019.

DATE OF PRONOUNCING THE JUDGMENT: 28.03.2019.

ORAL JUDGMENT

Heard.

2. **Rule.** Rule made returnable forthwith. Though respondent No.2 is duly served, he chose to remain absent. The writ petition is heard finally.

3. The question that arises for consideration in the present petition is, as to whether the petitioner herein (original

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defendant) is justified in contending that upon process of corporate insolvency resolution being triggered under the Insolvency and Bankruptcy Code, 2006 (IBC) and respondent No.1 (original plaintiff) having participated in the same, the suit for recovery of amount filed by respondent No.1 could no longer survive and that the Court of Joint Civil Judge, Senior Division, Nagpur (Trial Court) committed an error in rejecting the application filed by the petitioner for dismissal of the suit. The contention raised on behalf of the petitioner rests on the assertion that the IBC has overriding effect over other laws and that the effect of the corporate insolvency resolution process having been triggered in the context of the petitioner in the present case resulted in rendering all proceedings like the suit filed by respondent No.1 as not maintainable and liable to be dismissed.

4. The facts in brief leading to the filing of the present writ petition are that respondent No.1, a proprietary concern, filed a summary suit under Order XXXVII of the Code of Civil Procedure, 1908 (CPC) for recovery of amount of Rs.38,89,674.14 against M/s. Bhushan Steel Ltd. and General Manager of the said

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Company. The said defendants were granted conditional leave to defend by furnishing bank guarantee to the tune of the outstanding amount and written statement was filed. Respondent No.1 had filed the suit for recovery of the aforesaid amount as being due from the said M/s. Bhushan Steel Ltd. for supply of magnetite powder to the factory of the said Company at Meramandali, District Dhenkanal, Odisha (formerly Orissa). The payment of the said amount was disputed by the said Company i.e. M/s. Bhushan Steel Ltd. on the ground that the quality of the material supplied was not satisfactory and it was substandard. The aforesaid suit was at the stage of recording of evidence when the IBC was enacted in the year 2016.

5. As per the procedure prescribed in the IBC, the State Bank of India being one of the main creditors of M/s. Bhushan Steel Ltd. filed an application under section 7 of the IBC for initiation of corporate insolvency resolution process. In pursuance thereof, a resolution professional Mr. Vijay Kumar V. Iyer (C/o Deloitte Touche Tohmatsu India LLP) was appointed. As per the detailed procedure prescribed under the IBC, upon initiation of the

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said process, public announcements were made to invite applications from creditors, both financial creditors and operational creditors to lay their claim before the resolution professional. Respondent No.1 claiming dues from the said Company i.e. M/s. Bhushan Steel Ltd. for supply of the aforesaid material was an “operational creditor”, as recognized under section 5 (20) of the IBC. Therefore, respondent No.1 submitted its application as an operational creditor to bring on record its claim against M/s. Bhushan Steel Ltd. and the resolution professional included respondent No.1 in the list of operational creditors.

6. The petitioner herein i.e. M/s. Tata Steel BSL Ltd. submitted its resolution plan as a resolution applicant before the resolution professional under the provisions of the IBC. The resolution professional took into consideration all the material on record and as per the provisions of the IBC, prepared and submitted a resolution plan dated 03/02/2018 before the Adjudicating Authority i.e. the National Company Law Tribunal. In

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the said resolution plan, the resolution professional dealt with the claims of financial creditors as well as operational creditors, including the claim of respondent No.1 herein.

7. As required under the IBC, the resolution plan prepared by the resolution professional was approved by the Committee of Creditors and then it was placed before the Adjudicating Authority i.e. National Company Law Tribunal. The said Authority passed an order on 15/05/2018 granting approval to the aforesaid resolution plan. The said order was challenged by various parties before the National Company Law Appellate Tribunal under the provisions of the IBC. The National Company Law Appellate Tribunal passed its order on 10/08/2018 dismissing all such appeals. As a consequence, the resolution plan of the petitioner, being the resolution applicant, stood accepted and the petitioner i.e. M/s.Tata Steel BSL Ltd. took over all the assets and liabilities of M/s. Bhushan Steel Ltd., as per the provisions of the aforesaid resolution plan.

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8. In this backdrop, on 11/09/2018, the petitioner filed an application (Exhibit-153) in the aforesaid suit filed by respondent No.1 bearing Regular Civil Suit No.153 of 2011, pending before the Trial Court, claiming that the suit was required to be dismissed in view of the aforesaid orders of the Adjudicating Authority and the Appellate Authority under the provisions of the IBC, finally approving the resolution plan submitted by the resolution professional, whereby the petitioner had come into the picture. It was contended that the resolution plan specifically stipulated that no amount was payable to operational creditors like respondent No.1 herein and that the liability of the petitioner to pay any amount to respondent No.1 stood extinguished. It was contended that when respondent No.1 had participated in the corporate insolvency resolution process under the IBC and it had failed to challenge the resolution plan approved by the Adjudicating Authority, it had no right to continue with the aforesaid suit for recovery filed against the petitioner. This was opposed by respondent No.1 by relying upon the resolution plan itself and contending that notwithstanding the IBC, it could not be

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said that the suit for recovery filed by respondent No.1 had become not maintainable and liable to be dismissed. It was submitted that the resolution plan itself provided for a specific identified fund for meeting the liability payable to operational creditors like respondent No.1 and that the suit must reach its logical end for crystallizing the exact amount payable by the petitioner to respondent No.1.

9. By the impugned order dated 25/10/2018, the Trial Court rejected the application filed by the petitioner and it was held that the proceedings undertaken as per the provisions of the IBC did not have the effect of extinguishing the right of respondent No.1 to continue to prosecute the suit for recovery filed against erstwhile M/s. Bhushan Steel Ltd. and now the petitioner. The present writ petition challenges the aforesaid order passed by the Trial Court.

10. Mr. Shyam Dewani, learned counsel appearing for the petitioner, submitted that a proper interpretation of the provisions

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of the IBC, particularly sections 63 and 238 thereof, would show that the Trial Court was not justified in rejecting the application filed by the petitioner and that the suit filed by respondent No.1 could not survive in the face of the orders passed by the National Company Law Tribunal and the National Company Law Appellate Tribunal under the provisions of the IBC. It was contended that the moment respondent No.1 participated by applying as an operational creditor to the resolution professional, upon initiation of corporate insolvency resolution process and orders were passed on the resolution plan submitted by the petitioner, respondent No.1 could no longer pursue the suit for recovery filed before the Civil Court. It was submitted that the Constitutional validity of the IBC had been upheld by the Hon'ble Supreme Court wherein, it was emphasized that the object of the IBC was to put the corporate debtor back on its feet and that the IBC was not a mere recovery legislation for creditors. It was submitted that the objects and reasons for which the IBC was enacted, demonstrated that there was now a paradigm shift in the policy governing cases of insolvency and bankruptcy and that once the corporate insolvency

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resolution process had run its course under the provisions of the IBC, no litigation before Civil Court could survive.

11. It was further contended that having subjected itself to the aforesaid process under the provisions of the IBC, wherein the resolution plan approved by the Adjudicating Authority and upheld by the Appellate Authority, provided that no amount was due to respondent No.1 as an operational creditor, it could not turn around to prosecute the aforesaid civil suit filed before the Trial Court. Reference was made to various provisions of the IBC to emphasize that the civil suit filed by respondent No.1 could not survive any longer and that the Trial Court had erred in rejecting the application for dismissal of the suit filed by the petitioner. The learned counsel relied upon judgments of the Hon'ble Supreme court in the case of **Swiss Ribbons Pvt. Ltd. v. Union of India, 2019 SCC OnLine SC 73, Innoventive Industries Ltd. v. ICICI Bank and another, (2018) 1 SCC 407, K. Sashidhar v. Indian Overseas Bank and others, Civil Appeal Nos.10673, 10719, 10971 and 29181 of 2018** decided on 05/02/2019, Jaipur

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Metals & Electricals Employees Organization v. Jaipur Metals & Electricals Ltd., 2018 SCC OnLine SC 2801 and judgment of this Court in the case of **Murli Industries Ltd. v. Primo Pick N Pack Private Limited and others** (Company Application No.10 of 2017 in Company Petition No.6 of 2012) decided on 02/11/2018 and judgment of Delhi High Court in the case of **Liberty House Group Pte. Ltd. v. State Bank of India and others, 2019 SCC OnLine Del 7256.**

12. On the other hand, respondent No.1 appearing in person, contended that the impugned order passed by the Trial Court was in consonance with law and that no interference was warranted by this Court, exercising writ jurisdiction. It was submitted that the interpretation sought to be placed on the provisions of the IBC, on behalf of the petitioner, was based on misconception and that a proper construction of the provisions of the IBC demonstrated that the suit for recovery filed by respondent No.1 could not be dismissed, only because the corporate insolvency resolution process had been undertaken as

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per the provisions of the IBC. It was contended that if the relevant clauses of the resolution plan dated 03/02/2018 were appreciated in the correct perspective, the suit for recovery filed by respondent No.1 was required to be taken to its logical end and the exact amount crystallized upon decision of the Civil Court would then be recoverable from the petitioner out of the operational creditors settlement amount, separately identified in the aforesaid resolution plan. It was submitted that the dues of operational creditors like respondent No.1, which were sub judice, were properly addressed and taken care of under the resolution plan and that the petitioner was deliberately misinterpreting the same in order to escape its liability. It was submitted that the enactment of the IBC and the proceedings initiated under the same did not have the effect of extinguishing the right of operational creditors like respondent No.1 to pursue its remedy in the form of civil suit that was already initiated way back in the year 2011 and that if the interpretation canvassed on behalf of the petitioner was accepted, it would leave high and dry entities like respondent No.1 having genuine claims against the petitioner, which would be a

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travesty of justice. On this basis, it was contended that the writ petition deserved to be dismissed. Respondent No.1 relied upon judgment of the Hon'ble Supreme Court in the case of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited, (2018) 1 SCC 353.**

13. Heard learned counsel for the parties and perused the record. In order to appreciate the rival contentions raised on behalf of the parties, it would be necessary to refer to the relevant provisions of the IBC. These, provisions include definitions of specific terms and the scheme that emanates from these provisions. The relevant provisions of the IBC read as follows:-

“3. Definitions.— In this Code, unless the context otherwise requires, –

(6) "claim" means—

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

(8) "corporate debtor" means a corporate person who owes a debt to any person;

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(10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree- holder;

(11) "debt" means a liability or obligation in respect of a claim which is due from any person and includes a financial debt and operational debt;

5. Definitions.— In this Part, unless the context otherwise requires, –

(1) "Adjudicating Authority", for the purposes of this Part, means National Company Law Tribunal constituted under section 408 of the Companies Act, 2013 (18 of 2013);

(6) "dispute" includes a suit or arbitration proceedings relating to—

- (a) the existence of the amount of debt;
- (b) or
- (c) the breach of a representation or warranty;

(12) "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be;

[Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;]

(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;

(25) "resolution applicant" means any person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (h) of sub-section (2) of section 25;

(26) "resolution plan" means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;

(27) "resolution professional", for the purposes of this Part, means an insolvency professional appointed to conduct the corporate insolvency resolution process and includes an interim resolution professional;

7. Initiation of corporate insolvency resolution process by financial creditor.— (1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Explanation.—For the purposes of this sub-section, a default includes a default in respect of a financial debt

owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish—

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

(5) Where the Adjudicating Authority is satisfied that—

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate—

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be.

14. Moratorium.— (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) shall not apply to

(a) such transaction as may be notified by the Central Government in consultation with any financial sector regulator.

(b) a surety in a contract of guarantee to a corporate debtor.

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:

Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

22. Appointment of resolution professional.— (1) The first meeting of the committee of creditors shall be held within seven days of the constitution of the committee of creditors.

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than six sixty percent of the voting share of the financial creditors, either resolve to appoint the interim resolution

professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) Where the committee of creditors resolves under sub-section (2)—

(a) to continue the interim resolution professional as resolution professional subject to a written consent from the interim resolution professional in the specified form, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional along with a written consent from the proposed resolution professional in the specified form.

(4) The Adjudicating Authority shall forward the name of the resolution professional proposed under clause (b) of sub-section (3) to the Board for its confirmation and shall make such appointment after confirmation by the Board.

(5) Where the Board does not confirm the name of the proposed resolution professional within ten days of the receipt of the name of the proposed resolution professional, the Adjudicating Authority shall, by order, direct the interim resolution professional to continue to function as the resolution professional until such time as the Board confirms the appointment of the proposed resolution professional.

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 29-A 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) conforms 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 sixty six percent 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 29-A 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 29-A, 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 29-A :

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 sub-section:

Provided also that the eligibility criteria in section 29-A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (Ord. 6 of 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 (Ord. 6 of 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.

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, 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.

(2) Where the Adjudicating Authority is satisfied that the resolution plan does not conform to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan.

(3) After the order of approval under sub-section (1),—

(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and

(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.

32. Appeal. – Any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of section 61.

60. Adjudicating Authority for corporate persons.–

(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.

63. Civil Court not to have jurisdiction.– No civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter on which National Company Law Tribunal or the National Company Law Appellate Tribunal has jurisdiction. Civil court not to have jurisdiction.

238. Provisions of this Code to override other laws.– The provisions of this Code shall have effect,

notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law.”

14. A perusal of the above quoted provisions and other provisions of the IBC show that the scheme envisaged in the IBC is that a process for the corporate insolvency resolution can be initiated under section 7 of the said Code by a financial creditor and upon the said process being triggered, all creditors including operational creditors like respondent No.1 herein can apply as per prescribed form to raise their claim against the corporate debtor, which in the present case was M/s. Bhushan Steel Ltd. A resolution professional is appointed, who takes over the management of affairs of the corporate debtor and resolution applicant like the petitioner herein can approach the resolution professional to submit application in order to revive the corporate debtor into continuing its operations, while at the same time providing for a plan to repay the debts of creditors including operational creditors like respondent No.1. The resolution plan is required to be approved by the committee of creditors and then it is to be submitted before the Adjudicating Authority i.e. the

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National Company Law Tribunal for approval. The Adjudicating Authority, upon being satisfied that the resolution plan meets the requirements under section 30(2), approves the resolution plan and if any person is aggrieved by the said order, it can file an appeal before the National Company Law Appellate Tribunal under section 32 read with section 61 of the IBC. Upon the resolution plan being approved by the Adjudicating Authority under section 31 of the IBC, the moratorium order passed by the Adjudicating Authority under section 14 of the IBC ceases to have its effect. The said moratorium is initiated on the date when the application under section 7 of the IBC for initiation of the insolvency process is admitted. During this period, institution of fresh suits or proceedings is prohibited and continuance of already instituted suits and proceedings is also suspended. Upon the resolution plan being finally approved or modified by the Appellate Authority, it is to be implemented.

15. In the present case, upon the corporate insolvency resolution process being initiated under section 7 of the IBC by an

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application made by one of the financial creditors i.e. the State Bank of India, the process of inviting applications and making the process public was undertaken and claims of financial creditors, operational creditors and others were taken on record. The resolution professional was appointed, who took over the management of affairs of the corporate debtor i.e. M/s. Bhushan Steel Ltd. and went ahead with the process of preparing a resolution plan. In this process, respondent No.1, also being an operational creditor, approached the resolution professional and staked its claim to the amounts due from the corporate debtor in terms of the aforesaid suit pending before the Trial Court. The relevant documents were also placed by respondent No.1 before the resolution professional.

16. The petitioner as the resolution applicant under section 5(25) of the IBC placed its resolution plan for approval. The said plan was approved by the committee of creditors and it was then placed before the Adjudicating Authority i.e. the National Company Law Tribunal, under section 5 (1) of the IBC. By order

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dated 15/05/2018 the Adjudicating Authority approved the resolution plan. Some parties, who were aggrieved by the said order, approached the National Company Law Appellate Tribunal to challenge the same, but their appeals were rejected by order dated 10/08/2018 passed by the aforesaid Appellate Authority. Therefore, there is no doubt about the fact that the resolution plan dated 03/02/2018 attained finality.

17. It is on the interpretation of various clauses of the said resolution plan that the rival parties have raised their respective contentions. According to the petitioner, the resolution plan stipulates that the claim of operational creditors like respondent No.1 stood extinguished and that once such a resolution plan had attained finality, by virtue of section 63 read with section 238 of the IBC, the Civil Court in the present case i.e. the Trial Court could no longer continue with the suit for recovery filed by respondent No.1. This interpretation is vehemently opposed by respondent No.1 and it is contended that a proper and harmonious construction of various clauses of the resolution plan would show

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that a fund earmarked as the operational creditors settlement amount of Rs.1200 Crore had been specifically identified in the resolution plan and payment of amount due to the operational creditors like respondent No.1 herein is required to be made from such fund, upon the amount due being finally calculated and crystallized by a decree of the Civil Court, where the suit for recovery is pending. Respondent No.1 invited attention of this Court to notice appended to the list of claims of operational creditors.

18. A proper appreciation of the above quoted provisions of the IBC would show that the IBC has been enacted in order to bring about a legislation to revive a corporate debtor and to put it back on its feet and that the IBC is not merely a recovery legislation for creditors. In that sense, the emphasis of the IBC is on creating a situation where a corporate debtor does not spiral into financial destruction, and at the same time resolution of the difficulties of a corporate debtor is achieved while taking care of the interests of creditors. In this balancing act sought to be achieved by the IBC, the scheme that emerges from the provisions

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is that a creditor, including operational creditor like respondent No.1, is required to approach the resolution professional with details of its claim, including information about pending litigation regarding the same. These aspects are required to be taken into consideration by the resolution professional when it recommends resolution plan of a resolution applicant like the petitioner herein, in tune with the object of the IBC.

19. A perusal of the provisions of the IBC and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, as amended, shows that the amounts due to operational creditors under a resolution plan are to be given priority in payment over financial creditors. This is evident from Regulation 38 of the said Regulations, which 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 interest of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.”

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20. Thus, the IBC gives importance to the amounts due to operational creditors like respondent No.1. The question is, whether an operational creditor like respondent No.1 could be deprived of amounts due to it, only because a civil suit initiated before the Civil Court is still pending and the dues, if any, are yet to be crystallized. In other words, whether a resolution plan takes into account and encapsulates sub judice claims of operational creditors like respondent No.1 herein.

21. In this context, a perusal of the resolution plan dated 03/02/2018 in the present case shows that in the list of claims by operational creditors as of claims received till 08/01/2018, the name of respondent No.1 has been recorded at Sr.No.543, wherein the claim amount is stated as Rs.34,27,895/-, the verified amount as Re.1 with notes 'C' and '3' stated against the name of respondent No.1. Note 'C' reads as follows:-

“C. Incomplete/incorrect supporting documentation, i.e. Form B/affidavit”

and note '3' reads as follows:-

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“3. Claims are subject to disputes pending before various authorities and have been admitted/marked as verified with a notional amount of INR 1 (Indian Rupee One only) and the liability is subject to the outcome of ongoing proceedings.”

22. Similarly, in the list of claims by operational creditors as of 26/07/2017 received up to 20/03/2018, the name of respondent No.1 is at Sr.No.688 with the claim amount as Rs.1,66,66,707/- and admitted amount of INR 1. Note '2' appended to the said list reads as follows:-

“2. Claims which are subject to disputes pending before various authorities have been verified with a notional amount of INR 1 (Indian Rupee One only)”.

23. With this backdrop, it would be necessary to refer to relevant portions of the resolution plan dated 03/02/2018, in order to examine the veracity of the contentions raised on behalf of the petitioner that the clauses of the resolution plan lead to only one conclusion that no amount is payable towards the claim of operational creditors like respondent No.1 and that proceedings initiated before the Civil Court stand terminated by implication or extinguished under the resolution plan.

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24. The relevant clauses of the aforesaid resolution plan reads as follows:-

“4.2. Term of the Plan and Schedule of implementation

4.2.1. This Plan shall become binding on the Company and its employees, members, creditors, guarantors and other stakeholders involved in this Plan on the date on which this Plan is approved by the Adjudicating Authority (such date being the “**Effective Date**”). The date on which all the implementation of the steps set out in **Annexure 5** are completed shall be the “**Closing Date**”. The term of the Plan shall be from the Effective Date until the payment of the Operational Creditors Settlement Amount.

8.2 Operational Creditors

8.2.1 The Operational Creditors of the Company are classified under the following five categories of creditors based on the nature of relationship with the Company and the critically of the creditors vis-a-vis the business viability of the Company. Various categories of Operational Creditors shall be paid the amounts detailed in the Section in order to provide an equitable solution for stakeholders of the Company, although, as per the information provided by the Resolution Professional in the information Memorandum, the liquidation value payable to the Operational Creditors under Regulation 38(1)(b) of the CIRP Regulations is NIL.

- (i) Related Party Creditors;
- (ii) Capital and Sundry Trade Creditors;

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- (iii) Statutory Creditors ; and
- (iv) Operational Creditors being employees and workmen.

Please refer to **Annexure 8** for details of the aforementioned categories of Operational Creditors.

8.2.2. Amounts to be paid to Operational Creditors pursuant to this Plan.

- (i) As per the Information Memorandum, the Liquidation Value of the Company is less than the Outstanding Financial Debt and therefore the Liquidation Value available to Operational Creditors is NIL. Accordingly no amounts are due to be paid to the Operational Creditors.
- (ii) Pursuant to the terms of the Plan, the following amounts are proposed to be paid to certain Operational Creditors, even though no such amounts are due and payable to such Operational Creditors under the IBC:
 - (a) The Outstanding Employees Dues shall be paid to the employees and workmen on the Closing Date: and
 - (b) an amount equivalent to Rs.200 crores shall be paid to the Operational Creditors (excluding Related Party Creditors and Operational Creditors being employees and workmen) on a pro rata basis within 12 (twelve) months from the Closing Date.
- (iii) In addition to (ii) above, the Resolution Applicant, based on the critically vis-a-vis the continued business viability of the Company proposes to pay the following Operational Creditors as stated below within 12 months from the Closing Date.

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Category of Operational Creditors	Amount to be paid within 12 months from the Closing Date.
Capital and Sundry Trade Creditors	Rs.1,000 crore
Related Party Creditors	NIL
Statutory Creditors	NIL
Employees and Workmen	NIL
Total	Rs.1,000 crore

It is clarified that the Resolution Applicant shall pay the above mentioned amount at its discretion, to be exercised based on the following criteria:

- (A) Those required to complete the existing capital projects of the Company or those who may be required during the growth projects of the Company.
 - (B) Those who are supplying essential and critical goods and services and are critical for the continued business viability of the Company.
 - (C) Those who are involved with critical operations and maintenance of the Company.
- (iv) It is clarified that the amounts proposed to be paid to the Capital Creditors, Sundry Trade Creditors, Statutory Creditors, and the employees and workmen forming part of the Operational Creditors, shall be paid by the Resolution Applicant only to the extent of valid claim amounts.
- (v) The aggregate amount to be paid to the Operational Creditors (Excluding Operational Creditors being employees and workmen and Related Party

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Creditors) based on the details set out in this section is Rs.1,200 crore (Indian Rupees One Thousand Two Hundred Crore) (“**Operational Creditors Settlement Amount**”).

- (vi) If any further claims of Operational Creditors (other than employees and workmen), relating to the period prior to the Effective Date, arise and/or made and/or are admitted, prior to approval of this Plan by the Adjudicating Authority, then the Operational Creditors Settlement Amount shall remain unaltered and shall be paid to the relevant Operational Creditors as specified above (whose claims have been admitted by the Resolution Professional, including those set out in **Annexure 8**) in accordance with the terms set out hereinabove.

8.2.3 **Treatment of Claims by Operational Creditors on Matters under Verification by the Resolution Professional**

Under the Section 3(11) of the IBC, the term “debt” is defined to mean “....a liability or obligation in respect of a claim which is due from any person...”, and under Section 3(6) of the IBC states that a “claim” includes “a right to payment, whether or not such right is reduced to judgment, fixed disputed, undisputed, legal, equitable, secured or unsecured.” Therefore, each such claim, which is under verification (including any further claims admitted for verification at any time prior to the Effective Date) are “claims” and “debt”, each as defined under the IBC, and would consequently qualify as “operational debt” (as defined under the IBC). In relation to claims from Operational Creditors relating to matters which are under verification by the Resolution Professional, as of the Insolvency Commencement Date, the full amount of

such claims/amounts shall be deemed to be owed and due as of the Insolvency Commencement Date, the Liquidation Value of which is NIL and therefore no amount is payable in relation thereto.

8.2.4. Treatment of Claims by Operational Creditors on matters that are sub Judice

Tata Steel understands that in addition to the list of claims in **Annexure 9** and **Annexure 10**, there are claims submitted by certain persons (including Operational Creditors), including but not limited to the claims set out in **Annexure 12** hereto, relating to matters which are sub judice before various judicial forums. The matters set out in **Annexures 9, 10, and 12** (and the corresponding claims against the Company). Together with all other monetary claims against the Company which may be pending or sub judice before any forum as on the Effective Date (whether or not such claims are included in the list of claims of Operational Creditors as set out in **Annexures 9, 10 and 12**, and, including but not limited to any proceedings in relation to Taxes initiated against the Company), are collectively the “**Sub Judice Claims**”. Each such Sub Judice Claim, is a “claim” and “debt” (as defined under the IBC) and therefore the full amount of such Sub Judice Claims shall be deemed to be owed and due as of the Insolvency Commencement Date, the Liquidation Value of which is NIL and therefore no amount is payable in relation thereto other than the payment of Operational Creditors Settlement Amount as set out herein.

8.6.13 No action by Operational Creditors

Pending the occurrence of the Closing Date, no Operational Creditor shall be entitled to take, initiate or continue any steps or proceedings against

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the Company or its assets (whether by way of demand, legal proceedings, alternative determination process (including arbitration or an expert determination process), the levying of distress, execution of judgment or otherwise) in any jurisdiction whatsoever for the purpose of obtaining payment of any Liability, or for the purpose of placing the Company into liquidation or any analogous proceedings.

8.7.3. Extinguishment and Waiver of Claims & Liabilities

- (i) Extinguishment and Waiver of Other Claims & Liabilities: The Resolution Applicant does not have any knowledge of any liabilities or claims against the Company other than those set out in **Annexures 8, 9, 10, 11 and 12**. Accordingly, other than the obligations, claims or liabilities set out in **Annexures 8, 9, 10, 11 and 12** (i) all obligations, claims and Liabilities (Whether final or contingent, whether disputed or undisputed, and whether or not notified to or claimed against the Company) of the Company, (ii) all outstanding disputes or legal proceedings against the company and (iii) all rights or claims of any person against the Company, in each case, relating to the period prior to the Closing Date, shall immediately irrevocably and unconditionally stand extinguished, waived, withdrawn and abated on and from the Closing Date, and no person shall have any further rights or claims against the Company in this regard.”

25. The name of respondent No.1 is specifically mentioned at Sr.No.543 in Annexure-8 pertaining to claims of

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operational creditors (excluding employees and workman) and the aforesaid civil suit of respondent No.1 pending before the Civil Court at Nagpur is specifically mentioned at Sr.No.43 in Annexure-10, pertaining to claims of operational creditors that are sub judice.

26. A proper reading of the above quoted clauses of the resolution plan shows that an operational creditor like respondent No.1, who has filed a suit for recovery against the original corporate debtor cannot be deprived of its claim under the resolution plan. The sub judice claims like that of respondent No.1-operational creditor have been taken into consideration under the resolution plan and since the amount due is yet to be finalized or crystallized, it has been shown as an admitted amount of INR 1, subject to determination of the amount upon finalization of the proceedings before the Civil Court. It is because the claim of the respondent No.1-operational creditor is yet to be crystallized and it is sub judice that the exact amount has not been stated in the resolution plan, although liability to make payment to respondent No.1 as recognized operational creditor has been

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preserved. It is in this context that Clause 8.2.2(V) assumes significance as it specifies that the aggregate amount to be paid to operational creditors, like respondent No.1 herein, is Rs.1200 crores and it is earmarked as “operational creditors settlement amount”. A proper and harmonious construction of the provisions of the IBC and the aforesaid resolution plan shows that the amount due to operational creditors like respondent No.1 would be paid from the said operational creditors settlement amount, upon the amount being finalized and crystallized in the pending civil suit before the Civil Court. To accept the interpretation sought to be placed by the petitioner on the provisions of the IBC read with the resolution plan, would lead to a travesty of justice and a situation not intended at all by the provisions of the IBC. It would do violence to the entire scheme of the IBC and the regulations framed there under, wherein the dues of the operational creditors have been given priority even above the dues of financial creditors. Clause 8.6.13 of the resolution plan quoted above can only mean that an operational creditor shall not be entitled to obtain orders for execution of decrees or judgments or

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to take any such steps that would bring distress to the petitioner, but it does not mean that a legal proceeding pending in a Civil Court or otherwise would stand terminated upon the resolution plan attaining finality. All that the resolution plan provides is an identified operational creditors settlement amount of Rs.1200 crores from out of which the dues of operational creditors would be satisfied. Therefore, there is no substance in the contentions raised on behalf of the petitioner and no error can be attributed to the Trial Court in passing the impugned order, thereby rejecting the application for dismissal of suit filed on behalf of respondent No.1.

27. The emphasis placed by the learned counsel appearing for the petitioner on section 14 of the IBC and the moratorium contemplated therein, can be of no assistance to the petitioner to show any error in the impugned order passed by the Trial Court. There can be no quarrel with the proposition that upon the commencement of the insolvency proceedings, there shall be moratorium on institution of suit or continuation of pending suits,

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but the said moratorium does come to an end upon completion of the corporate insolvency resolution process. Such a moratorium cannot lead to a conclusion that pending suits like the suit for recovery filed by respondent No.1 herein, would be liable to be dismissed, upon the resolution process being undertaken.

28. The emphasis placed on sections 63 and 238 of the IBC by the learned counsel for the petitioner to claim that the suit filed by respondent No.1 deserves to be dismissed, is wholly misplaced because the jurisdiction of the Civil Court is barred under section 63 of the IBC in respect of any matter on which the National Company Law Tribunal or the National Company Law Appellate Tribunal have jurisdiction under the IBC. The said jurisdiction necessarily pertains to the corporate insolvency resolution process and the Civil Court can obviously not encroach upon the same. Section 238 of the IBC is also to be read in that context to mean that when the question of corporate insolvency resolution process arises, IBC would have an overriding effect. As noted above in the present case, respondent No.1 did participate

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in the resolution process due to which, the claim of respondent No.1 as an operational creditor stood recognized in the resolution plan dated 03/02/2018 and the suit pending before Trial Court would certainly survive and it would be relevant for determining the amount due from the petitioner, to be satisfied from the amount of Rs.1200 crore set apart under the resolution plan as the operational creditors settlement amount. It cannot be held that the Adjudicating Authority or the Appellate Authority under the provisions of the IBC would be equipped to decide the objection raised on behalf of the petitioner before the Trial Court regarding alleged sub-standard quality of goods supplied by respondent No.1 for denying its liability to pay the dues. Therefore, the civil suit pending before the Trial Court cannot be extinguished merely because the resolution plan came into existence, which stood approved by the Adjudicating Authority as well as the Appellate Authority.

29. In this context, 8.7.3(i) of the resolution plan pertaining to extinguishment and waiver of other claims and

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liabilities assumes significance. The said clause specifically states that the petitioner as the resolution applicant has knowledge only of liabilities or claims that are set out in annexures-8, 9, 10, 11 and 12 of the resolution plan and obligations other than those set out in the said annexures would stand irrevocably and unconditionally extinguished. This makes it very clear that the claim of respondent No.1 recognized in the said annexures to the resolution plan is within the knowledge of the petitioner as a resolution applicant and that such claim does not stand extinguished. The aforesaid clause read with the entire resolution plan and its annexures shows that there can be no reason why respondent No.1 should have challenged the resolution plan, because a specific amount of Rs.1200 crore stood set apart in the resolution plan itself as operational creditors settlement amount and that therefore, it could not be said that upon the resolution plan being approved by the Adjudicating Authority, the aforesaid suit pending before the Trial Court was liable to be dismissed.

30. Since the learned counsel for the petitioner referred to and relied upon number of judgments, it would be necessary to

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consider them and to examine if the said judgments support the contentions raised on behalf of the petitioner. In the case of **Swiss Ribbons Pvt. Ltd. v. Union of India** (*supra*), the Hon'ble Supreme Court has considered the constitutional validity of various provisions of the IBC. The Hon'ble Supreme Court has taken into consideration the objectives of the IBC and it has been found that the approach of addressing the issue of insolvency has undergone a paradigm shift by enactment of the IBC and that its provisions could not be held to be invalid only because a different policy approach was adopted. The Hon'ble Supreme Court took into consideration various provisions of the IBC to emphasize that the concern of the operational creditors had been given due consideration in the IBC, particularly upon amendment of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, whereby amount due to the operational creditors under a resolution plan has been given priority in payment over financial creditors. On this basis, the Constitutional validity of various provisions of the IBC has been upheld. The said judgment would not in any manner

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assist the petitioner to claim that the suit filed by respondent No.1, in the facts of the present case, was required to be dismissed upon finalization of the resolution plan.

31. In **Innoventive Industries Ltd. v. ICICI Bank and another** (*supra*) the Hon'ble Supreme Court was concerned with repugnancy of a State Law in the context of a Parliamentary Law and how the IBC as a complete Code would prevail. In the said judgment, it is relevant that the State Law under consideration pertained to suspension of remedies for enforcement of liabilities for a temporary period when the State Act was applied to the facts of a particular case. In that context, it was held by the Hon'ble Supreme Court that the provisions of the IBC would prevail in view of section 238 of the IBC. It was emphasized that section 238 of the IBC was a non obstante clause of wide dimension so that any right of the corporate debtor under any other law cannot come in the way of the IBC. But, in the present case, the suit filed by respondent No.1 does not come in conflict with the IBC because the resolution plan clearly recognizes sub judice claims like that of

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respondent No.1 and it indicates that where the dues against the corporate debtor are yet to be crystallized, the payment of such dues would be subject to result of such proceedings, like the suit filed by respondent No.1 in the present case and a corpus of Rs.1200 crore stands set apart under the resolution plan for satisfaction of such dues of operational creditors like respondent No.1. Therefore, the ratio of the aforesaid judgment would be of no assistance to the petitioner to claim that the suit filed by respondent No.1 was liable to be dismissed.

32. In **Jaipur Metals & Electricals Employees Organization v. Jaipur Metals & Electricals Ltd.** (*supra*) the Hon'ble Supreme Court was concerned with an order passed by the High Court holding that proceedings before the National Company Law Tribunal were without jurisdiction because Company Petition for winding up proceedings was pending before the High Court. It was held that the proceedings under the IBC before the National Company Law Tribunal must run their entire course. In the present case, the corporate insolvency resolution

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process stood initiated, leading to the resolution plan and the same was approved by the Adjudicating Authority as well as the Appellate Authority. The resolution plan itself provides an inbuilt mechanism to recognize the sub judice claims of operational creditors like respondent No.1 and the suit for recovery filed by respondent No.1 before the Trial Court cannot be annihilated, only because the process under the IBC was undertaken and that respondent No.1 participated in the same. Therefore, the aforesaid judgment of the Hon'ble Supreme Court has been rendered in a different context and it would not further the contentions raised on behalf of the petitioner in the present case.

33. In **K. Sashidhar v. Indian Overseas Bank and others** (*supra*) the Hon'ble Supreme Court was concerned with a question about the manner in which the resolution plans were to be approved by the process of voting of the committee of creditors. The said issue does not arise in the present case and, therefore, the said judgment of the Hon'ble Supreme Court would not help the petitioner.

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34. In the judgment of this Court in the case of **Murli Industries Ltd. v. Primo Pick N Pack Private Limited and others** (*supra*), it was held by this Court that the corporate insolvency resolution process would continue wherein the creditors, including operational creditors could submit their respective claims and that if the National Company Law Tribunal failed to revive or successfully implement the resolution plan under the provisions of the IBC, this Court seized with the winding up petitions would proceed to deal with the petitions in accordance with law. It was held that the order passed by this Court appointing professional official liquidator would be kept in abeyance. The facts of the said case and the issue arising therein before this Court do not have relevance for the question raised on behalf of the petitioner in the present case.

35. In the case of **Liberty House Group Pte. Ltd. v. State Bank of India and others** (*supra*) the Delhi High Court was concerned with a suit filed for permanent injunction restraining

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the respondents from invoking or encashing bank guarantees or seeking remittance in the backdrop of proceedings initiated under the IBC. It was held that if conflicting orders were passed by Civil Court and by the National Company Law Tribunal, it would be detrimental to the resolution process and on this basis, it was held that the suits could not be entertained by the Court. In the present case the resolution plan itself recognizes sub judice claims like that of respondent No.1 and there is no question of the proceedings before the Trial Court being in conflict with the resolution plan. As noted above, the resolution plan itself provides for operational creditors settlement amount to take care of the amount due, if any, that would be identified and crystallized in the proceedings before the Trial Court. Hence, the aforesaid judgment of the Delhi High Court does not help the petitioner in the present case.

36. Respondent No.1 relied upon judgment of the Hon'ble Supreme Court in the case of **Mobilox Innovations Private Limited v. Kirusa Software Private Limited** (*supra*). In the aforesaid case, the Hon'ble Supreme Court was concerned with the

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question of existence of a dispute or a suit or other proceedings. The Hon'ble Supreme court has held that the dispute, existence of which is claimed ought not to be spurious, mere bluster, plainly frivolous or vexatious and that such a pre-existing dispute could be pursued. In the present case, suit was filed by respondent No.1 way back in the year 2011, wherein the liability was disputed by the petitioner on the ground that sub-standard quality of goods were supplied by respondent No.1. Such a dispute, which not only existed but stood recognized as a sub judice claim for which an inbuilt mechanism was incorporated in the resolution plan, could not be extinguished, merely because corporate insolvency resolution process had been undertaken. Respondent No.1 is justified in relying upon the said judgment in support of its contention. Apart from this, it is relevant to note that in the case of **Innoventive Industries Ltd. v. ICICI Bank and another** (*supra*) while distinguishing between initiation of corporate insolvency process by financial creditors under section 7 of the IBC and insolvency resolution process by operational creditors under section 8 of the IBC, it has been held that when insolvency

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resolution is by an operational creditor, the moment there is existence of dispute, the operational creditor gets out of clutches of the IBC. In the present case, although the resolution process was initiated by a financial creditor under section 7 of the IBC, the resolution plan prepared under the provisions of the IBC and the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, recognized the claim of respondent No.1 as an operational creditor and under Regulation 38 of the aforesaid Regulation of 2016, priority is given to the amount due to respondent No.1 as an operational creditor over the dues of financial creditors. Thus, when the resolution plan provides for the dues payable to respondent No.1, subject to the pending suit, it cannot be said that any error was committed by the Trial Court in passing the impugned order.

37. The aforesaid position of law, when applied to the facts of the present case clearly demonstrates that the attempt on the part of the petitioner to escape liability of paying dues of respondent No.1 as an operational creditor, was correctly shot

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down by the Trial Court by passing the impugned order. Therefore, it is held that the suit filed by respondent No.1 cannot be dismissed as claimed by the petitioner in the application at Exhibit-153. Accordingly the writ petition is found to be without any merit and it is dismissed.

38. Rule stands discharged. No costs.

JUDGE

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