

**IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH-I
KOLKATA**

**IA (IB) No.1101/KB/2021
IA (IB) No.307/KB/2020
IA (IB) No.310/KB/2020
IA (IB) No.443/KB/2020
IA (IB) No.441/KB/2020
IA (IB) No.73/KB/2020
IA (IB) No.1459/KB/2020
IA (IB) No.388/KB/2020
IA (IB) No.401/KB/2020
IA (IB) No.400/KB/2020
IA (IB) No.442/KB/2020
IA (IB) No.430/KB/2020
IA (IB) No.399/KB/2020
IA (IB) No.431/KB/2020
IA (IB) No.496/KB/2020**

in

CP (IB) No.361/KB/2017

In the matter of

*Applications under section 60(5) of the Insolvency and Bankruptcy Code, 2016
read with rule 11 of the National Company Law Tribunal Rules, 2016*

CP (IB) No.361/KB/2017

In the matter of

State Bank of India

...

Financial Creditor

Versus

Electrosteel Steel Limited

...

Corporate Debtor

IA (IB) No.1101/KB/2021

Electronic India, a partnership firm, represented by one of its partners Shri Satish Kumar Singh, s/o Shri Indradeo Singh, resident of Kargali Bazar, P.O. Bermo, District Bokaro, Jharkhand

.... Applicant

Versus

- 1. Electrosteel Steel Limited**, a company incorporated under the Companies Act 1956 and an existing company within the meaning of the Companies Act 2013 having its registered office at 801, Uma Shanti Apartments, Kanke Road, Ranchi-834008

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IA (IB) No.1459/KB/2020, IA (IB) No.388/KB/2020, IA (IB) No.401/KB/2020,
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IA (IB) No.399/KB/2020, IA (IB) No.431/KB/2020, IA (IB) No.496/KB/2020
inCP(IB) No.361/KB/2017

In the matter of Electrosteel Steel Ltd

2. **Vedanta Limited** (formerly known as Vedanta Star Limited), successful resolution applicant, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093
3. **Committee of Creditors** of Electrosteel Steel Limited and service through the State Bank of India, State Bank Bhavan, Madam Cama Road, Mumbai 400021 and branch office at 34, Jawaharlal Nehru Road, Kolkata 700071

....Respondents

IA (IB) No.307/KB/2020

Naskar Delco Mechanical Engineering Privat Limited, having its registered address at Benaras Road, Debipara 1 No.Chamrail, Howrah- 711114, West Bengal

....Applicant

Versus

1. **Dhaivat Anjaria**, Resolution Professional, PWC House, 252, Veer Savarkar Road, Shivaji Park, Dadar, Mumbai – 400028 (MH)
2. **Vedanta Limited** (formerly known as Vedanta Star Limited), successful resolution applicant, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093
3. **Committee of Creditors**, Led by Lead Banker, State Bank of India, 34, Jawaharlal Nehru Road, Kolkata 700071 (WB)

.... Respondents

IA (IB) No.310/KB/2020

Dey Steel Fabricators (India) Private Limited, having registered office at Sukanta Nagar, P.O. Sukchar, Kolkata- 700115, West Bengal

....Applicant

Versus

1. **Dhaivat Anjaria**, Resolution Professional, PWC House, 252, Veer Savarkar Road, Shivaji Park, Dadar, Mumbai – 400028 (MH)
2. **Vedanta Limited** (formerly known as Vedanta Star Limited), successful resolution applicant, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093 (Maharashtra)

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IA (IB) No.400/KB/2020, IA (IB) No.442/KB/2020, IA (IB) No.430/KB/2020,
IA (IB) No.399/KB/2020, IA (IB) No.431/KB/2020, IA (IB) No.496/KB/2020
inCP(IB) No.361/KB/2017

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3. Committee of Creditors, Led by Lead Banker, State Bank of India, 34,
Jawaharlal Nehru Road, Kolkata 700071 (West Bengal)

.... Respondents

IA (IB) No.443/KB/2020

A.R.Services Private Limited, Plot No.1 & 2, Road No.04, Project 04, Vastu Vihar,
Near Talgoria More, Chas, Bokaro, Jharkhand, Pin Code – 827013, through its
Director being the authorised signatory Mr. Anurag Pandey, son of Late Shri Kapil
Dev Pandey

....Applicant

Versus

- 1. Electrosteel Steel Limited,** 801, Uma Shanti Apartments, Kanke Road, Ranchi-
834008, Bihar, through its director;
- 2. Vedanta Limited** (formerly known as Vedanta Star Limited), successful
resolution applicant, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects,
Chakala, Andheri (East), Mumbai 400093 (Maharashtra);
- 3. Dhaivat Anjaria,** Resolution Professional, PWC House, 252, Veer Savarkar
Road, Shivaji Park, Dadar, Mumbai – 400028 (MH);
- 4. Committee of Creditors,** Led by Lead Banker, State Bank of India, 34,
Jawaharlal Nehru Road, Kolkata 700071 (West Bengal)

.... Respondents

IA (IB) No.441/KB/2020

SpacetechnEquipments& Structural Private Limited, P.N Kothari Estate, 213,
Bhandup (W), Mumbai 400078, Maharashtra, Through its authorised representative
Mr. Ashis Chakraborty, son of Late Abinash Chakraborty, of: 719 Jogendra Garden,
Kasba, Kolkata – 700078

....Applicant

Versus

- 1. Electrosteel Steel Limited,** 801, Uma Shanti Apartments, Kanke Road, Ranchi-
834008, Bihar, through its director

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2. **Vedanta Limited** (formerly known as Vedanta Star Limited), successful resolution applicant, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093 (Maharashtra)
3. **Dhaivat Anjaria**, Resolution Professional, PWC House, 252, Veer Savarkar Road, Shivaji Park, Dadar, Mumbai – 400028 (MH)
4. **Committee of Creditors**, Led by Lead Banker, State Bank of India, 34, Jawaharlal Nehru Road, Kolkata 700071 (West Bengal)

.... Respondents

IA (IB) No.73/KB/2020

MRT Signals Limited, a company incorporated under the Companies Act 1956 and an existing company within the meaning of the Companies Act 2013 having its registered office at 2, Raja Woodmunt Street, Kolkata 700001.

....Applicant

Versus

1. **Vedanta Limited** a company incorporated under the Companies Act 1956 and an existing company within the meaning of the Companies Act 2013 having its registered office at 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093
2. **Electrosteel Steel Limited**, a company incorporated under the Companies Act 1956 and an existing company within the meaning of the Companies Act 2013 having its registered office at 801, Uma Shanti Apartments, Kanke Road, Ranchi-834008
3. **Committee of Creditors** of Electrosteel Steel Limited and service through the State Bank of India, State Bank Bhavan, Madam Cama Road 400021 and branch office at 34, Jawaharlal Nehru Road, Kolkata 700071

....Respondents

IA (IB) No.1459/KB/2020

Saraogi Udyog Private Limited, a company incorporated under the provisions of the Companies Act, 1956 and an existing company within the meaning of the Companies

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IA (IB) No.400/KB/2020, IA (IB) No.442/KB/2020, IA (IB) No.430/KB/2020,
IA (IB) No.399/KB/2020, IA (IB) No.431/KB/2020, IA (IB) No.496/KB/2020
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In the matter of Electrosteel Steel Ltd

Act, 2013 having its registered office at 21, Hemanta Basu Sarani, Suite No.212, Kolkata- 700001.

.... Applicant

Versus

1. **Vedanta Limited** a company incorporated under the Companies Act 1956 and an existing company within the meaning of the Companies Act 2013 having its registered office at 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093
2. **Electrosteel Steel Limited**, a company incorporated under the Companies Act 1956 and an existing company within the meaning of the Companies Act 2013 having its registered office at 801, Uma Shanti Apartments, Kanke Road, Ranchi- 834008
3. **Committee of Creditors** of Electrosteel Steel Limited and service through the State Bank of India, State Bank Bhavan, Madam Cama Road 400021 and branch office at 34, Jawaharlal Nehru Road, Kolkata 700071

....Respondents

IA (IB) No.388/KB/2020

Royal Construction, Q No.1271, Sector- 12F, BS City, District Bokaro- Jharkhand 827012, through its proprietor Mr. Md. Aslam, son of Ashraf Ali

....Applicant

Versus

1. **Electrosteel Steel Limited**, 801, Uma Shanti Apartments, Kanke Road, Ranchi- 834008
2. **Vedanta Limited**, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093
3. **Shri Dhaivat Anjaria**, Resolution Professional, PWC House, 252 Veer Savarkar Road, Shivaji Park, Dadar, Mumbai- 400028 (MH)
4. **Committee of Creditors** through the State Bank of India, 34, Jawaharlal Nehru Road, Kolkata 700071 (WB)

...Respondents

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IA (IB) No.400/KB/2020, IA (IB) No.442/KB/2020, IA (IB) No.430/KB/2020,
IA (IB) No.399/KB/2020, IA (IB) No.431/KB/2020, IA (IB) No.496/KB/2020
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In the matter of Electrosteel Steel Ltd

IA (IB) No.401/KB/2020

S.P. Enterprises, a proprietorship firm having office at: Near G.M. Office, Dakra, Khalari, Ranchi – 829201 (Jharkhand) represented through its Proprietor Pradeep Kumar, son of Mr. Suresh Prasad.

....Applicant

Versus

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- 3. Shri Dhaivat Anjaria**, resolution Professional, PWC House, 252 Veer Savarkar Road, Shivaji Park, Dadar, Mumbai- 400028 (MH)
- 4. Committee of Creditors** of Electrosteel Steel Limited and service through the State Bank of India, State Bank Bhavan, Madam Cama Road 400021 and branch office at 34, Jawaharlal Nehru Road, Kolkata 700071

....Respondents

IA (IB) No.400/KB/2020

Khurana Engineering Company, a partnership firm, having its office at: Bunglow B22, Candituft Lane, Ashiana Garden, Sonari, Jamshedpur, Pin – 831011, Through its authorized representative/Signatory Tavleen Uppal, son of Sutinder Singh Uppal, residing at Bunglow B22, Candituft Lane, Ashiana Garden, Sonari, Jamshedpur, Pin – 831011.

....Applicant

Versus

- 1. Electrosteel Steel Limited**, 801, Uma Shanti Apartments, Kanke Road, Ranchi-834008
- 2. Vedanta Limited** (formerly known as Vedanta Star Limited), successful resolution applicant, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093

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3. Shri Dhaivat Anjaria, resolution Professional, PWC House, 252 Veer Savarkar Road, Shivaji Park, Dadar, Mumbai- 400028 (MH)

4. Committee of Creditors of Electrosteel Steel Limited and service through the State Bank of India, State Bank Bhavan, Madam Cama Road 400021 and branch office at 34, Jawaharlal Nehru Road, Kolkata 700071

....Respondents

IA (IB) No.442/KB/2020

Khenco Cranes & Machineries, a proprietorship firm, having its office at: Bunglow B22, Candituft Lane, Ashiana Garden, Sonari, Jamshedpur 831011, through its authorized representative/Signatory Tavleen Uppal, son of Sutinder Singh Uppal, residing at Bunglow B22, Candituft Lane, Ashiana Garden, Sonari, Jamshedpur, Pin – 831011.

....Applicant

Versus

1. Electrosteel Steel Limited, 801, Uma Shanti Apartments, Kanke Road, Ranchi- 834008, through its Director

2. Vedanta Limited, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093

3. Shri Dhaivat Anjaria, Resolution Professional, PWC House, 252 Veer Savarkar Road, Shivaji Park, Dadar, Mumbai- 400028 (MH)

4. Committee of Creditors through the State Bank of India, 34, Jawaharlal Nehru Road, Kolkata 700071

.... Respondents

IA (IB) No.430/KB/2020

Maruti Nandan, a partnership firm, having office at: Surya Auto Campus, Jharia Road, Post office: Dhansar, District: Dhanbad, Jharkhand, Pin Code - 828106 Through its Partner and Authorised Signatory Mr. Ashok Khaitan, son of Late Gajanand Khaitan, residing at: Flat No.3A, 12C Judges Court Road, Alipore, Kolkata - 700027

....Applicant

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In the matter of Electrosteel Steel Ltd

1. **Electrosteel Steel Limited**, 801, Uma Shanti Apartments, Kanke Road, Ranchi-834008, through its Director
2. **Vedanta Limited**, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093
3. **Shri Dhaivat Anjaria**, Resolution Professional, PWC House, 252 Veer Savarkar Road, Shivaji Park, Dadar, Mumbai- 400028 (MH)
4. **Committee of Creditors** through the State Bank of India, 34, Jawaharlal Nehru Road, Kolkata 700071

.... Respondents

IA (IB) No.399/KB/2020

Deepak Electricals, 48/F, Mandirpath, Shivnagar, Kadma, Jamshedpur, District – East Singhbhum, Jharkhand, Pin – 831005, Through its Proprietor Bhanu Sen being the authorized Signatory

... Applicant

Versus

1. **Electrosteel Steel Limited**, 801, Uma Shanti Apartments, Kanke Road, Ranchi-834008, through its Director
2. **Vedanta Limited**, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093
3. **Shri Dhaivat Anjaria**, Resolution Professional, PWC House, 252 Veer Savarkar Road, Shivaji Park, Dadar, Mumbai- 400028 (MH)
4. **Committee of Creditors** through the State Bank of India, 34, Jawaharlal Nehru Road, Kolkata 700071

.... Respondent

IA (IB) No.431/KB/2020

N.R. Construction Pvt. Limited, M-5, City Centre, Section -4, Bokaro – 827004, Jharkhand, Through its Managing Director Mr. Daya Shankar Rai, son of Late K.D. Roy, the residential address being the same as the company address.

....Applicant

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In the matter of Electrosteel Steel Ltd

1. **Electrosteel Steel Limited**, 801, Uma Shanti Apartments, Kanke Road, Ranchi-834008, through its Director
2. **Vedanta Limited**, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093
3. **Shri Dhaivat Anjaria**, Resolution Professional, PWC House, 252 Veer Savarkar Road, Shivaji Park, Dadar, Mumbai- 400028 (MH)
4. **Committee of Creditors** through the State Bank of India, 34, Jawaharlal Nehru Road, Kolkata 700071

....Respondents

IA (IB) No.496/KB/2020

Royal Infra & Logs, A Partnership firm, having office at: Jorapokhar, Post Office – Jamadoba, Police Station Jorapokhar, District Dhanbad, Jharkhand 828112, through its Partner Lalan Kumar Singh being the authorized Signatory

....Applicant

Versus

1. **Electrosteel Steel Limited**, 801, Uma Shanti Apartments, Kanke Road, Ranchi-834008, through its Director
2. **Vedanta Limited**, 1st Floor, C Wing, Unit 103, Corporate Avenue Atul projects, Chakala, Andheri (East), Mumbai 400093
3. **Shri Dhaivat Anjaria**, Resolution Professional, PWC House, 252 Veer Savarkar Road, Shivaji Park, Dadar, Mumbai- 400028 (MH)
4. **Committee of Creditors** through State Bank of India, 34, Jawaharlal Nehru Road, Kolkata 700071

.... Respondents

Date of hearing: 10 June 2022

Date of pronouncement: 28 June 2022

Coram:

Shri Rajasekhar V.K.	:	Member (Judicial)
Shri Balraj Joshi	:	Member (Technical)

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In the matter of Electrosteel Steel Ltd

Appearances:

For the Successful Resolution Applicant : /Corporate Debtor	Mr Ratnanko Banerji, Sr Advocate Mr. Anuj Singh, Advocate Mr. Aniket Agarwal, Advocate Ms. Rusha Mitra, Advocate
For Applicant in IA (IB) No.307/KB/2020 : &IA (IB) No.310/KB/2020	Mr. Rishav Banerjee, Advocate Mr. Ritoban Sarkar, Advocate Ms. Madhuja Barman, Advocate Mr. Avishek Das, Advocate
For Applicant in IA (IB) 1101/KB/2021 :	Mr. Ritoban Sarkar, Advocate Ms. Madhuja Barman, Advocate
For Committee of Creditors (CoC) :	Mr. Om Narayan Rai, Advocate Mr. Rajesh Choubey, Dy. Manager (Law), SBI
For Applicant in IA (IB) No.1459/KB/2020: and IA (IB) No.73/KB/2020	Ms. Manju Bhuteria, Advocate Ms. Rajshree Kajaria, Advocate Mr Satadeep Bhattacharya, Advocate Mr Uttam Sharma, Advocate
For Applicant in IA (IB) No.442/KB/2021 :	Mr Subhabrata Chowdhury, Advocate

ORDER

Rajasekhar V.K., Member (Judicial):

1. Preliminaries

- 1.1. This Court convened through hybrid mode.
- 1.2. This is a batch of interlocutory applications filed by various Operational Creditors of the Corporate Debtors, seeking the following consolidated reliefs:
 - a. Leave to intervene in the present proceeding.*
 - b. The Respondents be directed to pay the full and final amount as approved under the Resolution Plan and payable to Operational Creditors*
 - c. That the delay be condoned in filing the said application and an opportunity of hearing be given to the Applicant;*

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- d. That the Resolution Professional is to be directed to form the Committee of Creditors and convene a meeting and re-exercise its commercial wisdom to figure out the mode and the manner in which the operational creditors including the Applicant is to be repaid;*
- e. An Order directing the committee of creditors to reconsider nil payment to all Operational Creditors as per the Resolution Plan submitted in accordance with and or in compliance with the sacrosanct common final order dated 27.11.2019 passed by the Hon'ble Supreme Court in Civil Appeal No.1133/2019 (SP Enterprises v Electrosteel Steels Limited & Ors.) and other analogous Orders thereto;*
- f. An Order directing the Resolution Applicant to enhance the amount that has been paid by the Resolution Applicant;*
- g. An Order in compliance with the sanctimonious Order passed by the Hon'ble Supreme Court Ordering further haircut to the Secured Creditors so that the Operational Creditors may also receive some proportion of debts owed to them;*
- h. An Order directing any competent authority to investigate whether the valuation of the Corporate Debtor as had been accepted by the Resolution Professional and endorsed by the Committee of Creditors was proper or had been undervalued either deliberately or ignorantly or perfunctorily*
- i. The Process which was earlier followed by the Resolution Professional and the Committee of Creditors in approving the resolution plan as far as it relates to the payment of the Operational Creditors in concerned be read down;*
- j. That the Resolution Professional be directed to conduct the entire exercise in a fair and transparent manner by notifying this Hon'ble Tribunal by filing reports and serving a copy upon the applicant.*

- 1.3. Originally, the Company Petition being CP(IB) No.361/KB/2017 was filed by State Bank of India (SBI) under section 7(1) of the Insolvency and Bankruptcy Code, 2016 (Code) read with rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, seeking to initiate

Corporate Insolvency Resolution Process (CIRP) against Electrosteel Steel Limited (the Corporate Debtor).

- 1.4. This Adjudicating Authority *vide* order dated 21 July 2017 admitted the Corporate Debtor into CIRP and appointed Mr. Dhaivat Anjaria as the Interim Resolution Professional (IRP). Subsequently, he was also appointed as the Resolution Professional (RP).
- 1.5. On the very same date the Resolution Professional also went ahead to cause public announcement to receive and verify the claims of various stakeholders. Accordingly, various creditors submitted their proofs of claim along with all supporting documents as prescribed in Insolvency & Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) before the Resolution Professional.
- 1.6. The total claim submitted by the Operational Creditors was ₹1,688.40 crore, out of which the Resolution Professional admitted claim of ₹783.41 crore, thereby rejecting claims to the extent of ₹904.99 crore. The same is reflected in the report of the Resolution Professional wherein a brief overview of claims received (excluding employees and workmen dues) has been provided.
- 1.7. Thereafter, upon submission of the resolution plan by the Successful Resolution Applicant being Vedanta Limited, the Committee of Creditors by 100% votes approved the same. This Adjudicating Authority, *vide* order dated 17 April 2018, approved the said resolution plan.
2. ***Submissions of Ms Manju Bhuteria, Ld Counsel for the Applicant in IA (IB) 1459/KB/2020***
 - 2.1. Ms Manju Bhuteria, learned counsel appearing for the Applicant in IA (IB) No.1459/KB/2020 in CP (IB) No.361/KB/2017, led the main arguments on behalf of the applicants.

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IA (IB) No.1459/KB/2020, IA (IB) No.388/KB/2020, IA (IB) No.401/KB/2020,
IA (IB) No.400/KB/2020, IA (IB) No.442/KB/2020, IA (IB) No.430/KB/2020,
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- 2.2. Ms Bhuteria submitted that there is no proper reason for providing NIL payments to the Operational Creditors. She relied on paras 50,¹ 52² and 53³ of the order of the Adjudicating Authority approving the resolution plan.⁴ The question which was considered was *not* one regarding NIL payment to the operational creditors.⁵ The operational creditors were not aware that they were being paid nil value. The total claim of the operational creditors is ₹783.41 crore.
- 2.3. Ms Bhuteria then referred to order of the Hon'ble NCLAT.⁶ Saraogi Udyog is the main appellant before the Hon'ble NCLAT. There were several orders who challenged the approval of the Resolution Plan by this Adjudicating Authority. The appeals came to be dismissed on 20 August 2018, by referring to the 10 August 2018 order.⁷ The order of 10 August 2018 primarily dealt with the eligibility or otherwise of Vedanta Limited in terms of section 29A of the Code.
- 2.4. Ms Bhuteria placed regulation 38(1A)⁸ of the CIRP Regulations, which was inserted in to the statute book with effect from 05 October 2017. The SRA cannot now come and argue that the amount earmarked for the operational creditors should be enhanced or not. Ms Bhuteria submitted that as far as the operational creditors are concerned, it cannot be NIL payment.

¹ Page 50 of IA No.1459/KB/2020

² Page 51 of IA No.1459/KB/2020

³ Page 52 of IA No.1459/KB/2020

⁴ Page 34 of IA No.1459/KB/2020

⁵ Para 15 of IA No.1459/KB/2020

⁶ Page 54 of IA No.1459/KB/2020

⁷ Page 59 of IA No.1459/KB/2020, last para

⁸ **38(1A). Mandatory contents of Resolution Plan.**-A resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

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IA (IB) No.400/KB/2020, IA (IB) No.442/KB/2020, IA (IB) No.430/KB/2020,
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- 2.5. Concentrating on the reply of R3 (CoC), Ms Bhuteria pointed out two aspects – the CoC’s view was that if they take any more haircuts, the resolution plan will not be viable. Further, the CoC has raised one more objection that the applicants did not prefer any appeal either before the Hon'ble NCLAT or before the Hon'ble Supreme Court.
- 2.6. In so far as the SRA is concerned, the objection taken is that as per the judgment of the Hon'ble Supreme Court ***Ghanashyam Mishra & Sons Private Limited v Edelweiss Asset Reconstruction Company Ltd***,⁹ the SRA will not be liable.
- 2.7. Ms Bhuteria further submitted that after the judgment of the Hon'ble Supreme Court, there was a scheme of amalgamation, on which this Tribunal passed order dated 31 January 2020¹⁰ sanctioning the scheme of amalgamation of Vedanta Ltd. Therefore, it does not lie in the mouth of R2 to come and say now that in view of ***Ghanashyam Mishra*** we are not liable.
- 2.8. Ms Bhuteria submitted that the commercial wisdom of the CoC may be there, but the Adjudicating Authority will have to see whether the interests of all the stakeholders have been considered or not. Power of judicial review is available with the Adjudicating Authority. In no situation can the payment to the operational creditors be nil because it can never balance the interests of all the stakeholders.
- 2.9. Ms Bhuteria relied on the judgment of the Hon'ble NCLAT in ***Hammond Power Solutions v Sanjit Kumar Nayak & others***.¹¹ This judgment in turn

⁹ 2021 SCC OnLine SC 313 decided on 13 April 2021

¹⁰ Page 112 of R1 & R2’s reply affidavit in IA No.1459/KB/2020

¹¹ 2020 SCC OnLine NCLAT 199 decided on 14 February 2020 (para 16)

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IA (IB) No.1459/KB/2020, IA (IB) No.388/KB/2020, IA (IB) No.401/KB/2020,
IA (IB) No.400/KB/2020, IA (IB) No.442/KB/2020, IA (IB) No.430/KB/2020,
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refers to para 128 and 129 of the *Essar Steel* judgment of the Hon'ble Supreme Court.

3. Submissions of Mr Rishav Banerjee, Ld Counsel for the applicant in IA (IB) No.307/KB/2021 & IA (IB) No.310/KB/2021

3.1. Mr Rishav Banerjee, Ld Counsel appearing for the applicant in IA (IB) Nos.307/KB/2021 and 310/KB/2021, adopted the submissions of Ms Manju Bhuteria. All operational creditors are not being treated fairly, he submitted.

3.2. Mr Rishav Banerjee submitted the first and foremost question concerns the maintainability of the applications at this stage. He stressed that section 61(3)¹² of the Code enables an applicant to prefer an appeal against an order approving the resolution plan if the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. As far as the scope of enquiry and the grounds on which the approval of the resolution plan by the CoC can be interfered with by the Adjudicating Authority, has been set out in section 31(1) read with section 30(2) of the Code. This has been set out in the decision of the Hon'ble Supreme Court in

¹² 61.(3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—

- (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;
- (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;
- (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;
- (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or
- (v) the resolution plan does not comply with any other criteria specified by the Board.

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IA (IB) No.1459/KB/2020, IA (IB) No.388/KB/2020, IA (IB) No.401/KB/2020,
IA (IB) No.400/KB/2020, IA (IB) No.442/KB/2020, IA (IB) No.430/KB/2020,
IA (IB) No.399/KB/2020, IA (IB) No.431/KB/2020, IA (IB) No.496/KB/2020
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***K. Sashidhar v Indian Overseas Bank,*¹³ and *Committee of Creditors of Essar Steel v Satish Kumar Gupta.*¹⁴**

- 3.3. The present set of applications is an exception to the test of primacy of the commercial wisdom of the CoC. The grounds of challenge constitute an exception to the said test of primacy, as affirmed in the *Essar Steel (supra)* judgment.
- 3.4. Mr Rishav Banerjee submitted that the total admitted claims of the financial creditors were to the tune of ₹14,177.43 crore. The total admitted claims of operational creditors was about ₹780 crore. Under the waterfall mechanism, all payments will first go to the secured creditors. Since the liquidation value was about ₹2,899.98 crore and the claims of the financial creditors were far in excess, all payments would be distributed between the financial creditors and the operational creditors will not be entitled to any payment. The question is whether this argument is sustainable before the Adjudicating Authority.
- 3.5. Mr Rishav Banerjee placed reliance on the judgment of the Hon'ble Supreme Court in *Swiss Ribbons Pvt Ltd v Union of India*,¹⁵ in support of his contentions. The proposition that if nothing is paid to the operational creditors, this would not balance the interest of all stakeholders of maximise the value of assets of a Corporate Debtor, has been reiterated by the Hon'ble Supreme Court in *Hammond Power Solutions Pvt Ltd v Sanjit Kumar Nayak & others*.
- 3.6. Referring to the Statement of Objects & Reasons in the Insolvency & Bankruptcy (Amendment) Bill, 2019, whereby section 30(2)(e)(i) was

¹³ (2019) 12 SCC 150

¹⁴ (2020) 8 SCC 531

¹⁵ (2019) 4 SCC 17 (para 27)

introduced into the Code, Mr Rishav Banerjee submitted that as per para 2, there is a need to ensure that all creditors are treated fairly. The view taken in *Essar Steel (supra)* was later on affirmed in the judgment of the Hon'ble Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Association & others v NBCC (India) Ltd & others*.

3.7. Further, after the Amendment Act of 2019, section 30(2)(b) not only provided that operational creditors would receive an amount that is not less than liquidation value of their debts, or the amount that they would have received if the amount to be distributed under the Resolution Plan had been distributed in accordance with the order of priority in section 53(1), whichever is higher.

3.8. Mr Rishav Banerjee then submitted that the judgment of the Hon'ble Supreme Court in *Ghanashyam Mishra (supra)* is not applicable to the facts of the present case, because the claims of the operational creditors are not undecided claims and have not popped up at the post-approval stage. The operational creditors have diligently pursued their remedies by challenging the validity of the resolution plan. They have come before this Adjudicating Authority after being directed to agitate their grievance before this Adjudicating Authority.

4. Submissions of Mr Subhabrata Chowdhury, Ld Counsel for the applicant in IA (IB) No.442/KB/2021

4.1. Mr Subhabrata Chowdhury, Ld Counsel for the applicant in IA (IB) No.442/KB/2021, adopted the submissions of Ms Bhuteria. Additionally, he referred to para 46 of the *Essar Steel* judgment of the Hon'ble Supreme Court.

5. Submissions of Mr Ratnanko Banerji, Ld Sr Counsel appearing for R1 (SRA) & R2 (Corporate Debtor)

5.1. Mr Ratnanko Banerji, Ld Sr Counsel for the Successful Resolution Applicant (R1) & the Corporate Debtor (R2), submitted that the Resolution Plan was

sanctioned, and still stands approved. This has not been interfered with right upto the Hon'ble Supreme Court. The liquidation value is ₹2899 crore; while the Financial Creditors' dues were ₹13,395 crore. The Operational Creditors' dues were ₹783.41 crore. The liquidation value is far less than the dues of the creditors.

- 5.2. The order of the Adjudicating Authority records¹⁶ the submission of the RP that the liquidation value that becomes due to the Operational Creditors becomes nil. In the order of the Hon'ble Supreme Court, the Resolution Plan is not affected at all.
- 5.3. Mr Ratnanko Banerji submitted that the use of the definite article "*the*" identifies the Resolution Plan which has already been approved. Whether the CoC should be asked to take fresh look, has been left to the discretion of the Adjudicating Authority. All of these should be only within the overall plan. If this is not the interpretation, then the process will be open-ended. It will be unfair on the Resolution Applicant who has come with a fixed kitty.
- 5.4. Distinguishing the *Hammond(supra)* judgment, Mr Banerji submitted that in para 16 thereof, the order approving the Resolution Plan was set aside. Directions were given for resubmitting the Resolution Plan. In the present case, even though this option was available, both the Hon'ble Appellate Authority and the Hon'ble SC did not deem it fit to take recourse to this. The Hon'ble Supreme Court was very guarded in its order. He drew particular attention to para 72 and 73 of the judgment (which corresponds to para 46 and 47 of the original judgment of the SC). The Hon'ble Supreme Court was aware of the Resolution Plan. It did not ask for the plan to be resubmitted. It perhaps felt that if the operational creditors were paid something, they might

¹⁶ Page 38, para 13

continue to supply goods and services to the corporate debtor under new management. If the approval was thought to be deficient in some manner, the approval may have been kept on hold. That has not been done.

- 5.5. Mr Ratnanko Banerji submitted that there are two gates to be crossed. The first is to determine whether the approved resolution plan should at all go back to the CoC for reconsideration. The second is whether the CoC will reconsider nil payment to all the Operational Creditors.
- 5.6. The applicants made a submission that the order approving the Resolution Plan did not deal with the NIL payment aspect to the OCs. This is not correct, it dealt with the same in para 50 of the order. It was also submitted that since the Operational Creditors did not get a copy of the plan, they could not raise objections before the Adjudicating Authority. However, this is not a good ground at this stage, since the Hon'ble NCLAT order is there, and even then the Hon'ble NCLAT did not set aside the approval.
- 5.7. The applicants have also relied on the order dated 31.01.2020¹⁷ which approved the scheme. Vedanta Star got merged with Electrosteel Steels Limited. In that order, there are some observations which was relied upon.¹⁸ The order does not further assist the applicants, Mr Ratnanko Banerji submitted.
- 5.8. In so far as the observations with regard to NIL payment of Operational Creditors, Mr Ratnanko Banerji submitted that this is well within the domain of the CoC's commercial wisdom. The applicants are free to raise this issue with the CoC, if the Adjudicating Authority decides to remit it back to the CoC.

¹⁷ Page 112 of the reply

¹⁸ Page 121 of the reply

5.9. The Hon'ble Supreme Court could have also remanded the matter to the CoC by setting aside the Adjudicating Authority's order. That was not done. As on date, the entire plan stands implemented.

6. Submissions of Mr Om Narayan Rai, Ld Counsel for R3 (CoC)

6.1. Mr Om Narayan Rai, Ld Counsel appearing for the CoC, divided his arguments into two limbs.

(1) The operational creditors as a class have not been paid NIL, it is only some classes who have suffered NIL payment.

(2) The haircut suffered by the CoC in this case is vastly different from that suffered in *Essar Steel*.

The operational creditors as a class have not been paid NIL

6.2. Mr Rai submitted that the mechanism adopted by the CoC is in absolute conformity with the orders of the Hon'ble Supreme Court in *Essar Steel*. The present case is not a case of NIL payment for the operational creditors as a class.

6.3. Mr Rai relied on the judgment of the Hon'ble NCLAT in *Genius Security & Allied Services Ltd*,¹⁹ where the Hon'ble Appellate Tribunal dismissed the challenge to the approved resolution plan even though it provided for nil payment to unsecured creditors including operational creditors.

The haircut that has been suffered in this case is vastly differently from Essar Steel.

¹⁹ Company Appeal (AT) (CH) (Insolvency) No.110 of 2021, decided on 07 Apr 2022 (paras 38 to 44)

6.4. Mr Rai then took us through the Supplementary Affidavit filed by R2 and R3, which contains the Resolution Plan.²⁰ The payments that have come in are indicated in para 3.2(vii)(A).²¹ The haircuts are quite large already.

6.5. Mr Rai also placed the thirty-second Report of the Parliamentary Standing Committee of Finance.²² It reads as follows: -

“It needs to be kept in mind that the fundamental aim of this statute is to secure creditor rights which would lower borrowing costs as the risks decline. Therefore, greater clarity in purpose is needed with regard to strengthening creditor rights through the mechanism devised in the Code, particularly considering the disproportionately large and unsustainable “hair-cuts” taken by the financial creditors over the years. As the insolvency process has fairly matured now, there may be an imperative to have a benchmark for the quantum of “hair-cut”, comparable to global standards.”

6.6. Mr Rai then addressed the arguments of Mr Rishav Banerjee, who sought to establish that the implementation of the Resolution Plan was not stayed and therefore, any further amounts should not come from the Resolution Applicant but from somewhere else. In this regard, Mr Rai submitted that at the point of time when the Hon'ble Supreme Court passed this order, the plan was already implemented. The Resolution Plan was approved by an order dated 17.04.2018. The matter was carried in appeal without success. Thereafter the matter travelled to the Hon'ble Supreme Court. The Hon'ble Apex Court's first order is at page 64, where delay was condoned, and *status quo* was ordered. At page 65, there is a stay of operation of the impugned judgment of the Hon'ble NCLAT. Ultimately, on 27 November 2019, the final order was passed by the Hon'ble Supreme Court, remanding the entire matter back to the

²⁰ Page 21 of the Supplementary Affidavit filed by R2 and R3 in IA (IB) No.1459/KB/2020

²¹ Page 24 of the Supplementary Affidavit filed by R2 and R3 in IA (IB) No.1459/KB/2020

²² Page 21, unnumbered para 2 of the Report

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Adjudicating Authority. By this time, the entire plan was already implemented.

6.7. Whether further haircuts should be taken by them so that the operational creditors should be paid something, it was not decided by the Hon'ble Supreme Court. It merely expressed a desire.

6.8. As far as the judgment of **Jaypee Kensington(supra)** judgment is concerned, para 66.4 forms the basis of the order. This is the context in which the order is passed. The NCLT had modified the order on its own. The Hon'ble Supreme Court has said that if the Adjudicating Authority finds that there is some illegality in the plan, the way out is to refer the matter to the CoC.

6.9. The Resolution Plan should not be tinkered with at all. If the Adjudicating Authority still feels that there is scope for interference, then it should be sent back to the CoC.

7. Submissions of Ms Manju Bhuteria, Ld Counsel for the Applicants in IA (IB) No.1459/KB/2020, in reply

7.1. Ms Manju Bhuteria submitted that the order of the Hon'ble Supreme Court remanding the matter back to the NCLT was made only because the Hon'ble Court felt that the operational creditors being paid NIL was not alright, and that the Operational Creditor should not be treated in this way.

7.2. In so far as the judgment of the Hon'ble NCLAT in **Genius Security (supra)** is concerned, Ms Bhuteria submitted that the same does not consider the judgment of the Hon'ble Supreme Court in **Essar Steel (supra)**.

7.3. It is denied that any further hair cut would have led the plan becoming unviable as alleged or at all. The reasons given for Nil payment to the Operational Creditors is not tenable. It is further denied that the payment to

the Operational Creditors could have led to the liquidation of the Corporate Debtor.

8. Analysis and findings:

8.1. Heard the Ld. Counsels for the Applicants and the Ld. Counsels for the Respondents and perused the records.

8.2. The operative part of the Hon'ble Supreme Court's order dated 27 November 2019 in ***S.P. Enterprises v Electrosteel Steels Limited*** reads as follows:

“Having heard learned counsel for all the parties, and given our most recent judgment in the Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors. (Civil Appeal Nos. 8766-8767 of 2019) delivered on 15.11.2019, we send the matter back to the National Company Law Tribunal (hereinafter referred to as ‘NCLT’ for brevity) to decide this case in accordance with paragraphs 46 and 56 CIVIL APPEAL NO.1133 OF 2019 etc. of the said judgment so that the NCLT may then consider whether the matter should be sent back to the Committee of Creditors to balance the interests of all the stakeholders, and ask the Committee of Creditors to reconsider nil payment to all Operational Creditors as per the Resolution Plan submitted.

It will be open for the parties to argue before the NCLT that the amount that has been paid by the Resolution Applicant should not be enhanced and that the secured creditors should be asked to take a call on whether a further hair-cut needs to be ordered so that the Operational Creditors may also receive some proportion of debts owed to them.

We make it clear that all arguments will be open to all the parties to make before the NCLT which will be decided strictly in accordance with our latest judgment.

We make it clear that the implementation of the Resolution Plan is not stayed.”

8.3. It has been contended by the Ld. Counsel for the Committee of Creditors that the mechanism adopted in the instant matter is in absolute conformity with the

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Supreme Court orders in Essar Steel judgment as even in the Essar matter, a class of Operational Creditors were paid, and a certain class were not paid. In this regard, we would rely on the Hon'ble NCLAT's judgment in the matter of *Standard Chartered Bank v. Satish Kumar Gupta*.²³

- 8.4. On Page 22 of the said order, para 110 provides the chart of distribution as proposed by 'Resolution Applicant' at the instance of the Committee of Creditors. The said distribution is approved by Committee of Creditors. Further, on page 24, Serial No.D1 and D2 gives details of Operational Creditors other than workmen and employees. Serial No.D2 on the next page has subsequently been revised and the same is reflected in serial No.D2 of the Revised chart of distribution as proposed by 'Resolution Applicant' at the instance of the Committee of Creditors given from page 36 to 39. It can be seen that while in the original chart, the amount proposed to be paid to the Operational Creditors with admitted claims equal to or more than ₹1 crore was NIL, the same was later modified.
- 8.5. Therefore, the contention of the Ld. Counsel of the Committee of Creditors in this regard is not correct. Following the precedent of the *Essar Steel* matter, it cannot be that the Operational Creditors are given NIL payments.
- 8.6. The Ld. Counsel for the Committee of Creditors has further relied on the Hon'ble NCLAT's judgement in the matter of *Genius Security (supra)*.²⁴ However, the said judgment cannot be taken into consideration as it is per incuriam and fails to take into account the law laid by Hon'ble Supreme Court's decision in the *Essar Steel* matter.

²³ 2019 SCC OnLine NCLAT 388

²⁴ Company Appeal (AT) (CH) (Insolvency) No.110/2021 decided on 07 April 2022

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- 8.7. It has been further contended by the Ld. Counsel on behalf of the Committee of Creditors that the plan already stands implemented, and that the Hon'ble Supreme court has not decided as to whether further haircuts should be taken by the members of the Committee of Creditors so that the Operational Creditors get paid something, The Hon'ble Court has merely expressed a desire that if the Adjudicating Authority finds that there is some illegality in the plan, the way out is to refer the matter to the Committee of Creditors. As such the Resolution Plan should not be tinkered with at all. If the Adjudicating Authority still feels that there is scope for interference, then it should be sent back to the Committee of Creditors.
- 8.8. In this regard, the Ld. Counsel on behalf of the various Applicants have argued that the order remanding the matter back to the Adjudicating Authority was passed after submissions were made in the matter. The Ld. Counsel has posed the question that if the Hon'ble Supreme Court was of the view that it was fine if the Operational Creditor was to be given NIL payment, then why was the matter remanded back to the Adjudicating Authority? The Ld. Counsel had contended that had there been no illegality in the matter, the appeal filed before the Hon'ble Supreme Court would have been dismissed outright. On the contrary, the matter was sent back to the Adjudicating Authority because the Hon'ble Supreme Court felt that the Operational Creditors should not be treated in such a way.
- 8.9. The Hon'ble Supreme Court's order dated 27 November 2019 in ***S.P. Enterprises v Electrosteel Steels Limited*** specifically instructed this Adjudicating Authority to –
- a. Decide the instant matter in accordance with the paragraphs 46 and 56 of the judgment in ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.***; and

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- b. to consider whether to send back the matter to the Committee of Creditors to check the balance of the shareholders and to reconsider the NIL payment being made to the Operational Creditor.
- 8.10. While the commercial wisdom is paramount and needs to be respected, it is apparent that the Operational Creditors, with total admitted claims amounting to ₹783.41 Crores have not been placed at a fair footing in the resolution plan. While the law laid by the above decision does not guarantee equal pay for Financial Creditors and Operational Creditors under a resolution plan, it does mandate that the Operational Creditors receive at least a minimum payment, the same not being less than liquidation value of the Corporate Debtor. Therefore, in the instant matter, to balance the interests of all the stakeholders, the payments to the various classes of Operational Creditors who have been paid nil value, needs to be reassessed and re-considered by the Committee of Creditors.
- 8.11. In this view of the matter, the resolution plan in respect of the Corporate Debtor needs to be sent back to the CoC to consider the claims made by the class of operational creditors who are before us in the present batch of interlocutory applications, in the light of the law laid down by the Hon'ble Supreme Court in its judgments. We order accordingly.
- 8.12. The instant batch of Interlocutory Applications, bearing IA (IB) No.1101/KB/2021, IA (IB) No.307/KB/2020, IA (IB) No.310/KB/2020, IA (IB) No.443/KB/2020, IA (IB) No.441/KB/2020, IA (IB) No.73/KB/2020, IA (IB) No.1459/KB/2020, IA (IB) No.388/KB/2020, IA (IB) No.401/KB/2020, IA (IB) No.400/KB/2020, IA (IB) No.442/KB/2020, IA (IB) No.430/KB/2020, IA (IB) No.399/KB/2020, IA (IB) No.431/KB/2020, IA (IB) No.496/KB/2020 in CP(IB) No.361/KB/2017 shall stand disposed of with the above directions.

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IA (IB) No.1459/KB/2020, IA (IB) No.388/KB/2020, IA (IB) No.401/KB/2020,
IA (IB) No.400/KB/2020, IA (IB) No.442/KB/2020, IA (IB) No.430/KB/2020,
IA (IB) No.399/KB/2020, IA (IB) No.431/KB/2020, IA (IB) No.496/KB/2020
inCP(IB) No.361/KB/2017

In the matter of Electrosteel Steel Ltd

- 8.13. The Registry is directed to send e-mail copies of the order forthwith to all the parties and their Ld. Counsel for information and for taking necessary steps.
- 8.14. Certified Copy of this order may be issues, if applied for, upon compliance of all requisite formalities.

BALRAJ
JOSHI

Digitally signed by
BALRAJ JOSHI
Date: 2022.06.28
20:45:21 +05'30'

Balraj Joshi
Member (Technical)

Suman M (LRA)

Rajasekhar
V K

Digitally signed by Rajasekhar V.K.
DN: c=IN, o=Personal, title=0605,
pseudonym=490a45134c9ad68ed2365d8f55b7504ee43a
6491c4e480a5d57baccf6e5cc, postalCode=400018,
st=Tamil Nadu,
serialNumber=f05120aee967978ef74f18a3ac75eb59d05e0
36c9208505938c5cdecd4dc7396, cn=Rajasekhar V.K.
Date: 2022.06.28 18:38:28 +05'30'
Adobe Acrobat Reader version: 2022.001.20142

Rajasekhar V.K.
Member (Judicial)