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**IN THE HIGH COURT OF ORISSA AT CUTTACK**

**WRIT PETITION (CIVIL) No.20286 of 2020**

*Ferro Alloys Corporation Ltd.* .... *Petitioner*

*-versus-*

*State of Odisha and Others* .... *Opposite Parties*

**Advocates, appeared in this case:**

*For Petitioner* : Mr. A. Vasist, Senior Advocate  
Mr. S.K. Acharya, Advocate

*For Opposite Parties* : Mr. P.K. Muduli  
Addl. Government Advocate

**CORAM:  
THE CHIEF JUSTICE  
JUSTICE A.K. MOHAPATRA**

**JUDGMENT**

**10.12.2021**

**Dr. S. Muralidhar, CJ.**

***Introduction***

1. Seeking a direction to the Director of Mines, Government of Odisha (Opposite Party No.2) to issue it a mining dues clearance certificate (MDCC) and a direction to the Mining Officer at Baripada (Opposite Party No.3) to renew its trading licence in terms of the Orissa Minerals (Prevention of theft, Smuggling & Illegal Mining and Regulation of Possession, Storage, Trading and Transportation) Rules, 2007 ('Mining Rules'), the Ferro

Alloys Corporation Limited (FACOR) has filed this writ petition under Article 226 of the Constitution of India. The further prayer is for setting aside an order dated 8<sup>th</sup> September, 2020 passed by the Directorate of Mines rejecting FACOR's representation for waiving the demand raised against it by virtue of the Resolution Plan approved by the National Company Law Tribunal (NCLT), Cuttack Bench, Cuttack by its order dated 30<sup>th</sup> January, 2020. A consequential direction sought is to the Opposite Parties to refund the imposed sum of Rs.12,02,28,202/- paid by the Petitioner under protest or adjust it against the dues payable by the Petitioner to the Opposite Parties.

2. Initially, when the matter was heard on 24<sup>th</sup> August, 2020 the Court passed the following order:

"Heard Mr. Abhinav Vasisht, learned Senior Counsel along with Sri S.K. Acharya, learned counsel for the petitioner and Mr. P.K. Muduli, learned Additional Government Advocate for the State-opposite parties by Video Conferencing mode.

Mr. Abhinav Vasisht, learned Senior Counsel for the petitioner submits that in view of Sections 5(21), 30, 31 and 238 of the Insolvency and Bankruptcy Code, 2016; the Director of Mines would be obliged in law to issue Mining Dues Clearance Certificate (MDCC) to the petitioner by taking the earlier dues as 'Nil', considering that the resolution plan has been approved by the NCLT. Mr. P.K. Muduli, learned Additional Government submits that the petitioner ought to first approach the Director of Mines-opposite party No.2 and press for disposal of his application for issuance of Mining Dues Clearance

Certificate (MDCC). The petitioner may for that purpose appear before the Director, physically or by virtual mode, on the date that may be fixed by this Court and agitate all his arguments before him.

In view of the above submissions, we require the petitioner to appear before the opposite party No.2-Director of Mines, on 03.09.2020 at 11.00 A.M. by virtual mode for issuance of MDCC. On appearance of the petitioner, the Director of Mines will do well to dispose of the application of the petitioner by a speaking order.

The matter to come up on 09.09.2020.

Till then no coercive action shall be taken against the petitioner for the reason of non-renewal of trade license."

3. It is in compliance with the above order that the aforementioned order dated 8<sup>th</sup> September, 2020 was passed by the Director of Mines, Odisha. This led later to FACOR being permitted to amend the writ petition by an order dated 15<sup>th</sup> September, 2020 of this Court. The interim order passed initially on 24<sup>th</sup> August, 2020 has continued throughout.

4. It may be mentioned here that during the pendency of the present petition, there have been developments that resulted in a second amendment to the petition. FACOR paid amounts under protest and has been issued the MDCC and its trading licence has also been renewed. Thus, the prayer in the petition has been

limited to seeking either refund or adjustment of the excess amount paid by FACOR in the sum of Rs.12,02,28,202/-.

***Background facts***

5. The background facts of the case are that FACOR is engaged in the business processing, end use and sell of various minerals and residuals within Orissa. FACOR is required to obtain a trading license from the Opposite Party No.3 in terms of Rules 4 to 7 of the Mining Rules. On 26<sup>th</sup> May, 2015 FACOR in law applied to Opposite Party No.3 for grant of trading license which is then issued to it with a validity period from 25<sup>th</sup> August, 2015 to 24<sup>th</sup> August, 2020.

6. Under Rule 8(1) of the Mining Rules the licensee is required to be issued with a trading licence renewed 90 days before its expiry. Accordingly, on 22<sup>nd</sup> May, 2020 FACOR preferred an online application to Opposite Party No.3 for renewal of its licence.

7. While the documents in relation to such renewal have been scrutinized by a letter dated 10<sup>th</sup> June, 2020, Opposite Party No.3 informed the FACOR that it has not furnished a valid MDCC which was a condition precedent for renewal of the trading licence. Accordingly, on 16<sup>th</sup> June, 2020 FACOR applied to Opposite Party No.2 for the MDCC.

8. FACOR underwent a Corporate Insolvency Resolution Proceedings (CIRP) which commenced by an order dated 6<sup>th</sup> July,

2017 passed by the NCLT, Kolkata Bench in an application under Section 7 of the Insolvency and Bankruptcy Code, 2017 (IBC).

9. A CIRP was conducted and finally a Resolution Plan (RP) was submitted by Sterlite and Power Transmission Ltd. (SPTL). This was in turn approved by the Committee of Creditors (CoC) of FACOR on 14<sup>th</sup> November, 2019. Thereafter, it was approved by the NCLT Cuttack Bench on 30<sup>th</sup> January, 2020. The Approved RP (ARP) provided for extinguishment of all claims demands liabilities/obligations/score payable to any operational creditors (including any State or Central Government authority) by FACOR for the period prior to the plan effective date which is the date on which the NCLT accepted and approved the RP submitted by the STPL.

10. The case of FACOR is that in terms of the ARP, it was not liable for any liability towards claims made on it *inter alia* by the State Government and/or its departments. At the time of applying for renewal of trade licence, FACOR became aware of the demand raised by mining department against it by virtue of ten demand notices of different dates. All of the demands were for periods prior to the 'plan effective date' with the exception of one online demand dated 16<sup>th</sup> June 2020 which pertained to the period from 1<sup>st</sup> July to 31<sup>st</sup> December 2020, which according to the FACOR it has duly paid. FACOR contends that in terms of the ARP all of the aforementioned demand notices stood extinguished.

11. Apprehending that it was not being issued by MDCC on account of the outstanding demand notices, FACOR on 17<sup>th</sup> July 2020, 24<sup>th</sup> July, 2020 and 1<sup>st</sup> August, 2020 wrote to the Officers issuing the demand notices about the CIRP and pointed out that in terms of the ARP no payments were due and payable against the demand notices. A letter to the same effect was sent on 8<sup>th</sup> August, 2020 by FACOR to the concerned Officer to process its application for MDCC.

12. With the Opposite Parties failing to act upon the Petitioner's request, FACOR filed the present petition seeking the reliefs as noted hereinbefore. Referring to Rule 8(1) of the Mining Rules it is contended by FACOR that there was a failure by Opposite Party No.3 to process the renewal application within the time prescribed. Pointing out that under Rule 6, Opposite Party No.3 was required to dispose of the application for grant of trade licence within one month, it is contended that the same applies to the renewal applications as well. The Mining Officer, Bolangir Circle, Bolangir issued a demand notice to FACOR on 13<sup>th</sup> July, 2020 for the period 2000-01 to 2010-11. FACOR has in a tabular form indicated the total demand outstanding towards surface rent and dead rent, all of which, according to FACOR, pertains to the period prior to the 'plan effective date'.

13. Pursuant to the order passed by this Court, FACOR was heard and the impugned order dated 8<sup>th</sup> September, 2020 was passed by Opposite Party No.3 observing that the "pursuant to the orders of

Supreme Court in W.P.(c) No.114 of 2014, the State authorities are bound to recover the amounts imposed on the Petitioner company.” It was further held that grant of MDCC in favour of the Petitioner “will be in complete violation of the Orders passed by the Hon'ble Supreme Court from time to time in WP (C) No.114 of 2014.” Accordingly, FACOR’s application dated 16<sup>th</sup> June, 2020 for MDCC was rejected.

***Pleadings in the petition***

14. FACOR filed an additional affidavit dated 8<sup>th</sup> September, 2020 seeking to place on record the letter dated 26<sup>th</sup> August, 2020 written by it to the Joint Director, Mines for reactivation of its access to the online portal. It also placed on record copy of the written submissions filed on 4<sup>th</sup> September, 2020 before the Opposite Party No.2 and letter dated 5<sup>th</sup> September, 2020 addressed to the Joint Director, Mines in relation to the regularization of the online services on the i3MS portal.

15. On the same date, a counter affidavit was filed by the Opposite Party contending *inter alia* that by virtue of the order passed on 2<sup>nd</sup> August 2017 by the Supreme Court of India in ***Common Cause v. Union of India (2017) 9 SCC 499***, the State Government had no option but to raise a demand of Rs.10,79,07,355/- against FACOR towards penalty under Section 21(5) of the Mines and Minerals (Development and Regulation) Act, 1947 (MMDR Act). It is, contended that neither the Resolution Professional (RP) nor the NCLT is competent that the

amounts demanded pursuant to the order dated 2<sup>nd</sup> August, 2017 of the Supreme Court in W.P.(C) No.114 of 2014 is not enforceable in view of the Resolution Plan. Except the Hon'ble Supreme Court, no Tribunal can say that the demands raised by the State Authorities in compliance of the judgment dated 2<sup>nd</sup> August 2017 of the Hon'ble Supreme Court passed in W.P.(C) No.114 of 2014 are not enforceable."

16. It was stated by the Opposite Parties that on 16<sup>th</sup> June, 2020 FACOR submitted an online application before Opposite Party No.2 for issuance of MDCC. While examining the said application "it was found that a large amount of money is outstanding against the lessee". The contention of the Opposite Parties is that the demand amount of Rs.204,63,06,573/- is sub-judice in different Courts/Tribunals at the instance of the lessee. Since the demands could not been finalized, the State was not in a position to lodge claims or file proceedings before NCLT. It was further claimed by the Opposite Parties that with its application, FACOR had uploaded an MDCC format of a third party i.e. M/s. MCL pertaining to year 2011 and not its own. In the i3MS system unless the MDCC certificate is uploaded, the application for renewal would be incomplete.

17. FACOR has filed a rejoinder affidavit disputing all of the above contentions. In para 8 of the rejoinder affidavit, it is stated as under:

"it is pertinent to mention that since the filing of the present writ petition on 19 August 2020, Vedanta Limited has acquired the entire equity shareholding of the Petitioner company on September 21, 2020, and has taken over the control over the operations and management of the Petitioner Company, in accordance with the Approved Resolution Plan. Therefore, the Approved Resolution Plan has already been given effect to and has already been acted upon. Further, the resolution of the Steering Committee dated 16.08.2020 on the basis of which the present writ petition has been filed, has also been ratified and confirmed by the Board of the Petitioner company".

18. As regards the contention of the Opposite Party that FACOR had uploaded the wrong MDCC at the time of filing the renewal application, it is submitted as under:

"...the Petitioner received the letter dated 10 June 2020 from the Opposite Party No.3, directing the Petitioner to obtain the MDCC for further action on renewal of the Trading License of the Petitioner. It is humbly submitted that there would have been no occasion for the Opposite Party No.3 to direct the Petitioner to "obtain the MDCC from the Directorate of Mines, Odisha, Bhubaneswar....", had the Petitioner uploaded an MDCC on the I3MS portal. It is further submitted that the acknowledgement of Online Form B dated 28 May 2020 issued on the I3MS portal is a digitally signed automated computer-generated receipt. In light thereof, the Opposite Parties' contention that the Petitioner uploaded an invalid or incorrect MDCC is belied by the said automated receipt issued by the I3MS portal, which also bears the signature of the Opposite Party No.3."

19. The sum of Rs.215,92,02,538/- stated to be owing by the FACOR is explained as relating to a period prior to the 'plan effective date' and therefore, standing extinguished by order of the NCLT.

20. A reply has been filed to the rejoinder affidavit by the State. This is actually a reiteration of all the contentions made earlier. Thee relevant portion thereof reads as under:

"Neither the Resolution Professional nor the NCLT is competent to hold that demand of Rs.10,79,07,355.00 raised by the State Authorities towards penalty U/s. 21(5) of the MMDR Act, 1957 in compliance of the order dtd. 02.08.2017 of the Hon'ble Supreme Court passed in W.P.(C) No.114 of 2014 is not enforceable in view of the Resolution Plan. Except the Hon'ble Supreme Court no Tribunal can say that the demands raised by the State Authorities in compliance of the Judgment dtd. 02.08.2017 of the Hon'ble Supreme Court passed in W.P.(C) No.114 of 2014 are not enforceable."

21. It may be noted here that there was a second amendment to the writ petition by I.A. No.8896 of 2021 filed by FACOR which was allowed by this Court on 7<sup>th</sup> July, 2021. By way of the said amendment, the following averments have been made in para 1 of the said petition:

"...However, without prejudice to its rights the Petitioner, in order to ensure unhindered continuity of its business operations, made payments under protest against some of the claims raised by way of the Demand Notices. In view thereof, on 6 May 2021, the Opposite Party No.2 has issued the MDCC to the Petitioner. Consequently, the Petitioner requested the

Opposite Party No.3 to renew its Trading License, which has been done by the Opposite Party No.3 on 18 June 2021. The Petitioner is thus aggrieved by the Demand Notices wherein the Opposite Parties continued to insist on payments, despite the Approved Resolution Plan, wherein such demands have been approved to be extinguished. The Petitioner is also aggrieved by the retention by the Opposite Parties of amounts deposited under protest by the Petitioner, against some of the Demand Notices raised by the Opposite Parties.”

22. As a result of the above developments, the prayer in this petition has been limited to FACOR seeking either refund or adjustment of the amount paid by it in excess.

***Analysis and reasons***

23. The central issue being the alleged outstanding dues owed by FACOR to the Opposite Parties. It is not disputed by the State that the aforementioned demand pertains to the period prior to the ‘plan effective date’ of the ARP. As pointed out in the rejoinder affidavit, the ARP also talks about "government dues" which fall within the definition of 'operational debt' as indicated in Section 5 (21) of the IBC. In this regard, the following clauses of ARP are relevant:

***"Clause 3(g) (ii):***

Accordingly, all claims or demands made by, or liabilities or obligations owned or payable to or assessed by, the Government Authorities including but not limited to the Central government, the State Governments, any regulatory or local authority or body or any agency or instrumentality thereof, in relation to any taxes, including all such dues, duties, direct or

indirect, penalties, fees, interest, fines, levies, cesses, assessments or additions or any other charges or payments whatsoever (including without limitations or liabilities set out in the IM, ongoing material litigations as set out in Annexure 3 of this ..., known or unknown secured or unsecured, disputed or undisputed present or future, whether or not set out in the IM, the balance sheets of the Company or the profit and loss account statements of the Company or the List of Creditors, in relation to any period prior to the Plan Effective Date or arising on account of the acquisition of control by the Applicant over the Company pursuant to this Resolution Plan, will be written off in full and will be deemed to be a permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company or the Applicant or SPV shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto"

***Clause 3(g)(iii)***

"Specifically, all dues under the provisions of Applicable Laws relating to ongoing litigations (including without limitation, liabilities dues set out in Annexure-3) whether admitted or not, due or contingent, whether or not set out in the IM, the balance sheets of the Company or the profit and loss account statements of the Company or the list of creditors, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, in relation to any period prior to the Plan Effective Date or arising on account of the acquisition of control by the Applicant over the Company pursuant to this Resolution Plan, shall stand extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company shall not be liable to pay any amount against such dues."

***Clause 3(g) (iv):***

"all liabilities (including without limitation, for any penalty, interest, fines or fees) or obligations of the Company, in relation to: (A) any unmet export obligations under the Export Promotions Capital Goods Licenses held by the company (whether subsisting or not) (B) any mining leases or rights including such mining leases or rights as may have lapsed, expired or may have been cancelled and/or agreements in relation to mining rights held by, the Company.....whether admitted or not, due or contingent asserted or unasserted, crystallized or uncrystallized known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the IM, the balance sheets of the Company or the profit and loss account statements of the company or the list of creditors, in relation to any period prior to the Plan Effective Date or arising on account of the acquisition of control by the Applicant over the Company pursuant to this Resolution Plan, will be treated as Operational Creditors and will be settled at NIL value, and all such Civil matters will be written off in full and will be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and all such investigations, inquiries or show-cause in relation to the foregoing shall be disposed of, and the company or the Applicant or SPV shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto and no action will be taken in respect of the Company or its assets or business pursuant to the same.

***Clause 3(e) (vi)***

"any and all rights and entitlements of any actual or potential third party, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown,

disputed or undisputed, present or future, in relation to any period prior to the Plan Effective Date or arising on account of the acquisition of control by the Applicant over the Company pursuant to this Resolution Plan, shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this resolution Plan and the Company or the Applicant or SPV shall at no point of time, directly or indirectly have any obligation, liability or duty in relation thereto.

***Clause 3(o)(v):***

"...the Applicant and the Company shall have no responsibility or liability in respect of any claims against the Company attributable to the period prior to the Plan Effective Date or arising on account of the acquisition of control by the Applicant over the Company pursuant to this Resolution Plan, other than any payments specified to be made under this Resolution Plan and all claims along with any related legal proceedings, shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity".

24. Section 31(1) of the IBC further makes it clear that once the ARP is in place, approved by the CoC, it shall be binding on the corporate debtor and its employees, members, creditors including the Central Government, any State Government "to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan..."

25. Indeed, Opposite Party No.2 as an Officer of the State Government is equally bound by the ARP. He is precluded from raising any demand for a period prior to the Plan Effective Date. The legal position in this regard is well settled. In ***Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta (2020) 8 SCC 531***, the Supreme Court of India held that under Section 31(1) of the IBC, once the CoC approves the resolution plan, it binds all the stakeholders, it is observed as under:

"Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were."

26. The plea of the Opposite Parties that the State Authorities were unable to file their respective claims before the NCLT in the sum of Rs.204,63,06,573/- since it has not been finalized and in any event NCLT is not competent to decide the legality of the demands is untenable. Under Section 3(6) of the IBC a 'claim' *inter alia* includes "a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, weakened, equitable secured or unsecured". In ***Committee of Creditors of Essar Steel (supra)*** the Supreme Court clarified as under:

"All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution

applicant does on a fresh slate, as has been pointed out by us hereinabove.”

27. At this juncture, it must be noted that Mr. Muduli, learned Additional Government Advocate (AGA) placed reliance on certain observations of the Supreme Court in *Common Cause (supra)*, and in particular the directions issued in para 188 thereof and submitted that the liability arising out of the said judgment of the Supreme Court was equally binding on FACOR and that if the authorities do not proceed to recover the dues as indicated by the Supreme Court, they would be acting contrary to the decision of the Supreme Court. He also placed reliance on the decision in *Union of India v. Association of Unified Telecom Service Providers of India (2020) 9 SCC 748*, where the Supreme Court dealt with the issue whether on account of some of the telecom services providers being before the NCLT under the IBC, they could be exempted from the liability to pay the spectrum bills. There the Supreme Court has answered the question in negative. Reliance is also placed on the decision in *BPL Ltd. v. R. Sudhakar (2004) 7 SCC 219*.

28. This Court has considered the above submissions and in particular the observations of the Supreme Court in *Common Cause (supra)*. The answer perhaps lies in a recent decision of the Supreme Court in *Ghanashyam Mishra and Sons Private Ltd. v. Edelweiss Asset Reconstruction Company Ltd. 2021 SCC Online SC 313*. There the Supreme Court considered all of the earlier decisions including *Committee of Creditors of Essar Steel*

(*supra*), *Maharashtra Seamless Limited v. Padmanabhan Venkatesh* (2020) 11 SCC 467 and *Innovative Industries v. ICICI Bank* (2018) 1 SCC 407. The Supreme Court also referred to its earlier decision in *Sashidhar v. Indian Overseas Bank* (2019) 12 SCC 150. After discussing all of the above judgments, the Supreme Court in *Ghanashyam Mishra and Sons Private Ltd.* (*supra*) held as under:

“57. It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by Adjudicating Authority is limited to the extent provided under Section 31 of I&B Code and of the Appellate Authority is limited to the extent provided under subsection (3) of Section 61 of the I&B Code, is no more *res integra*.”

58. Bare reading of Section 31 of the I&B Code would also make it abundantly clear, that once the resolution plan is approved by the Adjudicating Authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in subsection (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival of the Corporate Debtor and to make it a running concern.

59. The resolution plan submitted by successful resolution applicant is required to contain various provisions, viz., provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under section 53; or the amount that would

have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in subsection (1) of section 53, whichever is higher. The resolution plan is also required to provide for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, which also shall not be less than the amount to be paid to such creditors in accordance with sub section (1) of section 53 in the event of a liquidation of the Corporate Debtor. Explanation 1 to clause (b) of sub section (2) of Section 30 of the I&B Code clarifies for the removal of doubts, that a distribution in accordance with the provisions of the said clause shall be fair and equitable to such creditors. The resolution plan is also required to provide for the management of the affairs of the Corporate Debtor after approval of the resolution plan and also the implementation and supervision of the resolution plan. Clause (e) of subsection (2) of Section 30 of I&B Code also casts a duty on RP to examine, that the resolution plan does not contravene any of the provisions of the law for the time being in force.

60. Perusal of Section 29 of the I&B Code read with Regulation 36 of the Regulations would reveal, that it requires RP to prepare an information memorandum containing various details of the Corporate Debtor so that the resolution applicant submitting a plan is aware of the assets and liabilities of the Corporate Debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities are also required to be contained in the information

memorandum. So also the details regarding the number of workers and employees and liabilities of the Corporate Debtor towards them are required to be contained in the information memorandum.

61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the Adjudicating Authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is, that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is, that he should start with fresh slate on the basis of the resolution plan approved.”

29. The above observations in ***Ghanashyam Mishra and Sons Private Ltd.*** (*supra*), are also complete answer to the plea of Mr. Muduli, learned AGA that the dues arising out of the judgment of the Supreme Court in ***Common Cause*** were not specifically dealt with in the ARP. As pointed out in ***Ghanashyam Mishra*** (*supra*) “after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant”. Further, the resolution Applicant “should start with fresh slate on the basis of the resolution plan approved”.

30. The decision in ***Association of Unified Telecom Services Providers*** (*supra*), was obviously in the peculiar facts and circumstances of that case. A careful perusal of the judgment reveals that the particular

question whether “deferred/default payment of instalments of spectrum acquisition cost can be termed as operational dues besides AGR dues” was left to be considered first by the NCLT. In other words, the question whether the licensee companies before the NCLT under the IBC were liable for the AGR dues was left to the decision of the NCLT. The Supreme Court made it clear that “we have not observed on the merits of the case, and we have kept all the questions open to be examined by the NCLT”.

31. The decision in *BPL Ltd. V. R. Sudhakar (supra)* is also distinguishable since it did not involve the effect of the ARP under the IBC after its approval by both the NCLT and the NCLAT. With the IBC a different legal regime has been put in place and which has been lucidly explained in several decisions of the Supreme Court as noted hereinbefore.

32. In terms of Section 31 of the IBC, the ARP is binding on all creditors including Central Government and the State Government. Since all of the impugned demands raised against FACOR pertain to the period prior to the Plan Effective date i.e. 31<sup>st</sup> January, 2020, all such demands stand automatically extinguished in terms of the ARP.

33. In that view of the matter, the impugned demand raised against the Petitioner by the Opposite Parties on the strength of the decision of the Supreme Court in *Common Cause (supra)* are unsustainable in law and are hereby set aside. Consequently, a direction is issued to the Opposite

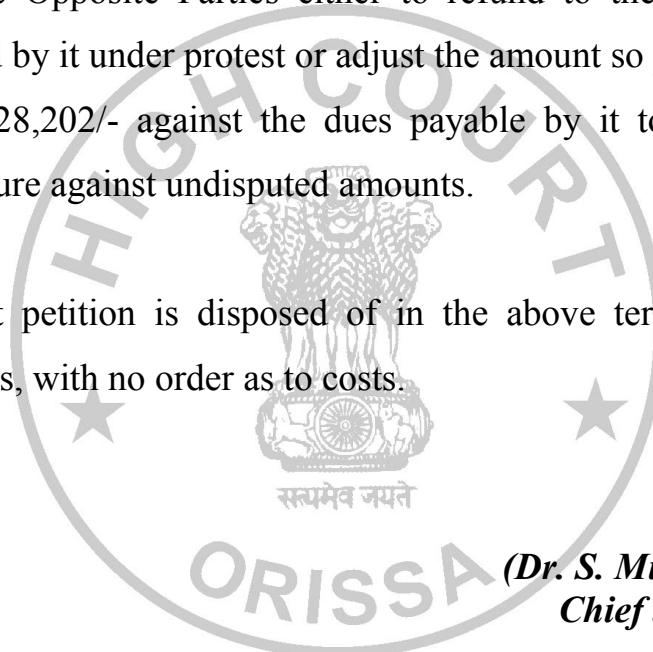
Parties to refund the amounts paid by the Petitioner under protest for the purpose of issuance of the MDCC and renewal of the trading licence.

34. For the reasons explained hereinbefore, the following directions are issued:

(a) the demand notices set out in para 13 (z) of the petition stands quashed;

(b) with the quashing of the impugned demand notices, a direction is issued to the Opposite Parties either to refund to the Petitioner the amounts paid by it under protest or adjust the amount so paid in the sum of Rs.12,02,28,202/- against the dues payable by it to the Opposite Parties in future against undisputed amounts.

35. The writ petition is disposed of in the above terms, but in the circumstances, with no order as to costs.



**(Dr. S. Muralidhar)**  
**Chief Justice**

**(A.K. Mohapatra)**  
**Judge**

*S.K.Jena/PA*