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BEFORE THE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH  
AHMEDABAD

IA 98 of 2018 In C.P. (I.B) No. 40/7/NCLT/AHM/2017

Coram: Hon'ble Mr. HARIHAR PRAKASH CHATURVEDI, MEMBER JUDICIAL  
Hon'ble Ms. MANORAMA KUMARI, MEMBER JUDICIAL

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD  
BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 19.04.2018

Name of the Company: Numetal Ltd.  
V/s.  
Satish Kumar Gupta RP and Anr.

Section of the Companies Act: Section 60(5) of the Insolvency and Bankruptcy Code

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
	Sr. Adv. Mihir Thakur			
1.	SAURABH G. AMIN	ADVOCATE	} Applicant FOR NUMETAL LTD.	for
2.	KEWAL J. SHAH	II		

Mr. Shelin Mehta, Sr. Adv.  
Mr. Anupam Prakash, Adv.  
Mr. Archit Desai, Adv.

} For ArcelorMittal India Pvt. Ltd.

MR. NAVIN PAHWA, SR. ADV.  
MR. SAHIL SHAH  
MS. SALONI KAPADIA & MR. PARTH SHAH  
BY CYRIL AMARCHAND  
MANGALDAS & ADV. SAHIL SHAH

} FOR RESOLUTION PROFESSIONAL.

MR. AMEYA GOKHALE  
MR. NITAG PATHAK  
MS. GRISHMA ANUJA

} FOR SBI for COG

MR. SHALIN JAIN  
FOR, SHARAD AMARCHAND  
MANGALDAS & CO

**ORDER**

Senior Advocate Mr. Mihir Thakore with Senior Advocate Mr. Saurabh Soparkar with Advocate Mr. Saurabh Amin with Advocate Mr. Kewal Shah present for Numetal Ltd/ Applicant.

Senior Advocate Mr. Navin Pahwa with Advocate Mr. Sahil Shah with Advocate Ms. Saloni Kapadia with Advocate Mr. Parth Shah present for Resolution Professional.

Advocate Mr. Ameya Gokhale with Advocate Ms. Grishma Ahuja with Advocate Mr. Shalin Jani with Advocate Mr. Nirag Pathak present for SBI for COC.

Senior Advocate Mr. Shalin Mehta with Advocate Mr. Anupm Prakash with Advocate Mr. Nachiket Dave present for Arcelor Mittal India Pvt Ltd. in IA 98 of 2018.

The order is pronounced in open Court. Vide separate sheets.

  
**MANORAMA KUMARI**  
**MEMBER JUDICIAL**

  
**HARIHAR PRAKASH CHATURVEDI**  
**MEMBER JUDICIAL**

Dated this the 19th day of April, 2018.

**BEFORE ADJUDICATING AUTHORITY  
(NATIONAL COMPANY LAW TRIBUNAL)  
AHMEDABAD BENCH**

**IA No. 98/NCLT/AHM/2018  
IA No. 110/NCLT/AHM/2018  
IA No. 111/NCLT/AHM/2018  
IA No. 112/NCLT/AHM/2018  
IA No. 121/NCLT/AHM/2018  
Inv. P 7/NCLT/AHM/2018  
Inv. P 8/NCLT/AHM/2018**

**In  
In CP (IB) No. 40 of 2017**

**IA No. 98 of 2018:**

**In the matter of:**

**Numetal Limited**

Registered Office at  
International Financial Services  
Limited (Sanne Mauritius),  
IFS Court, Bank Street,  
Twenty Eight, Cybercity,  
EBENE 72201,  
Republic of Mauritius.

: Applicant.

Versus

1. **Mr. Satish Kumar Gupta**  
Resolution professional  
Essar Steel India Limited  
Registered Office at  
Essar House, 27 KM,  
Surat Hazira Road,  
Hazira, Surat-394270  
Gujarat.
2. **State Bank of India**  
On behalf of Committee of  
Creditors,  
State Bank Bhavan,  
Madame Cama Road,  
Nariman Point, Mumbai,

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Maharashtra-400021  
India.  
And a Corporate Banking Branch at  
State Bank of India  
Corporate Accounts Group II  
The Capital, A Wing,  
16<sup>th</sup> Floor, Bandra Kurla Complex,  
Bandra East,  
Mumbai-400051, India.

: Respondents.

**IA No. 110 of 2018:**

**In the matter of:**

**Arcelormittal India Private Limited**

8, JD Corporate, 3<sup>rd</sup> Floor,  
Near Mahabir Tower,  
Jokhiram Durgadutt Compound,  
Main Road, Ranchi,  
Jharkhand-834001  
Through  
Mr. Subir Kumar Khasnobis  
Authorised Signatory.

: Applicant.

Versus

**Satish Kumar Gupta**

Resolution Professional  
Essar Steel India Limited,  
Flat No. 17012, Building No.17,  
Phase 2, Kohinoor City,  
Near Kohinoor Hospital,  
Off LBS Road, Kurla,  
Mumbai-400070

: Respondent.

**And In the matter of:**

1. **State Bank of India**  
State Bank Bhawan  
Madame Cama Road,  
Nariman Point,  
Mumbai,  
Maharashtra-400021
2. **Standard Chartered Bank Limited**  
1, Basinghall Avenue,  
London, England-EC2V5DD.

: Financial Creditor.



Versus

**Essar Steel India Limited**

Essar House, 27 Km,  
Surat Hazira Road,  
P.O. Hazira, Surat.

: Corporate Debtor.

**IA No. 111 of 2018:**

**In the matter of:**

**Numetal Limited**

Registered Office at  
International Financial Services  
Limited (Sanne Mauritius),  
IFS Court, Bank Street,  
Twenty Eight, Cybercity,  
EBENE 72201,  
Republic of Mauritius.

: Applicant.

Versus

1. **Mr. Satish Kumar Gupta**

Resolution professional  
Essar Steel India Limited  
Registered Office at  
Essar House, 27 KM,  
Surat Hazira Road,  
Hazira, Surat-394270  
Gujarat.

2. **State Bank of India**

On behalf of Committee of  
Creditors,  
State Bank Bhavan,  
Madame Cama Road,  
Nariman Point, Mumbai,  
Maharashtra-400021  
India.  
And a Corporate Banking Branch at  
State Bank of India  
Corporate Accounts Group II  
The Capital, A Wing,  
16<sup>th</sup> Floor, Bandra Kurla Complex,  
Bandra East,  
Mumbai-400051, India.



3. **Arcelormittal India Private Limited**

8, JD Corporate, 3<sup>rd</sup> Floor,  
Near Mahabir Tower,  
Jokhiram Durgadutt Compound,  
Main Road, Ranchi,  
Jharkhand-834001, India.

: Respondents.

**IA No. 112 of 2018:**

**In the matter of:**

**Numetal Limited**

Registered Office at  
International Financial Services  
Limited (Sanne Mauritius),  
IFS Court, Bank Street,  
Twenty Eight, Cybercity,  
EBENE 72201,  
Republic of Mauritius.

: Applicant.

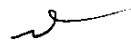
Versus

1. **Mr. Satish Kumar Gupta**

Resolution professional  
Essar Steel India Limited  
Registered Office at  
Essar House, 27 KM,  
Surat Hazira Road,  
Hazira, Surat-394270  
Gujarat.

2. **State Bank of India**

On behalf of Committee of  
Creditors,  
State Bank Bhavan,  
Madame Cama Road,  
Nariman Point, Mumbai,  
Maharashtra-400021  
India.  
And a Corporate Banking Branch at  
State Bank of India  
Corporate Accounts Group II  
The Capital, A Wing,  
16<sup>th</sup> Floor, Bandra Kurla Complex,  
Bandra East,  
Mumbai-400051, India.



**IA No. 121 of 2018:**

**In the matter of:**

**Numetal Limited**

Registered Office at  
International Financial Services  
Limited (Sanne Mauritius),  
IFS Court, Bank Street,  
Twenty Eight, Cybercity,  
EBENE 72201,  
Republic of Mauritius.

: Applicant.

Versus

1. **Mr. Satish Kumar Gupta**

Resolution professional  
Essar Steel India Limited  
Registered Office at  
Essar House, 27 KM,  
Surat Hazira Road,  
Hazira, Surat-394270  
Gujarat.

2. **State Bank of India**

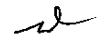
On behalf of Committee of  
Creditors,  
State Bank Bhavan,  
Madame Cama Road,  
Nariman Point, Mumbai,  
Maharashtra-400021  
India.  
And a Corporate Banking Branch at  
State Bank of India  
Corporate Accounts Group II  
The Capital, A Wing,  
16<sup>th</sup> Floor, Bandra Kurla Complex,  
Bandra East,  
Mumbai-400051, India.

**Inv. P. 7 of 2018:**

**In the matter of:**

**ArcellorMittal India Private Limited**

8, JD Corporate, 3<sup>rd</sup> Floor,  
Near Mahabir Tower,  
Jokhiram Durgadutt Compund,  
Main Road, Ranchi, Jharkhand-834 001  
Through  
Mr. Subir Kumar Khasnobis

: Applicant 

AND IN THE MATTER OF:

**Numetal Limited**

Having its Registered Office at;  
International Financial Services Ltd. (Sanne Mauritius)  
IFS Court, Bank Street,  
Twenty Eight, Cybercity  
Ebene 72201, Republic of Mauritius

Applicant

Versus

1. **Satish Kumar Gupta**

Resolution Professional,  
Essar Steel India Ltd.  
Having its Registered office at,  
Essar House, 27km  
Surat Hazira Road,  
Hazira, Surat- 374270  
Gujarat

Respondent No.1.

2. **State Bank of India**

On behalf of Committee of Creditors  
State Bank Bhavan, Madame Cama Road  
Nariman Point, Mumbai  
Maharashtra- 400 021

Respondent No. 2.

Inv. P. 8 of 2018:

In the matter of:

**Numetal Limited**

Having its Registered Office at;  
International Financial Services Ltd. (Sanne Mauritius)  
IFS Court, Bank Street,  
Twenty Eight, Cybercity  
Ebene 72201, Republic of Mauritius

Applicant

Versus

1. **ARCELLOR MITTAL INDIA PRIVATE LIMITED**

8, jd corporate, 3<sup>rd</sup> floor  
near mahabir tower,  
Kokhiram Durgadutt Compound,  
Main Road, Jharkhand- 834 001





1. **Satish Kumar Gupta**  
Resolution Professional,  
Essar Steel India Ltd.  
Having its Registered office at,  
Essar House, 27km  
Surat Hazira Road,  
Hazira, Surat- 374270  
Gujarat
  2. **State Bank of India**  
On behalf of Committee of Creditors  
State Bank Bhavan, Madame Cama Road  
Nariman Point, Mumbai  
Maharashtra- 400 021
- Respondents.

Order Reserved on 6<sup>th</sup>, April, 2018.

Order delivered on 19<sup>th</sup> April, 2018.

**Coram: Hon'ble Mr. Harihar Prakash Chaturvedi, Member (J) -  
And  
Hon'ble Ms. Manorama Kumari, Member (J).**

**Appearance:**

Senior Advocate Mr. Mukul Rohatgi with Senior Advocate Mr. Mihir Thakor with Senior Advocate Mr. Saurabh Soparkar with Advocate Mr. Saurabh Amin with Advocate Mr. Kunal Shah, present for the Numetal/Applicant.

Senior Advocate Mr. Soli Cooper with Advocate Mr. Ameya Gokhale with Advocate Mr. Sapan Gupta with Advocate Ms. Sukriti Jaiswal with Advocate Ms. Grishma Ahuja with Advocate Mr. Shalin Jani present for the SBI for CoC.

Senior Advocate Mr. Darius Khambata with Senior Advocate Mr. Ramji Srinivasan Senior Advocate Mr. Naveen Pahwa with Advocate Mr. Aditya Mehta with Advocate Mr. Indranil Deshmukh with Advocate Mr. Sahil Shah with Advocate Mr. Parth Shah with Advocate Mr. Raunak Dillon with Advocate Ms. Saloni Kapadia present for the RP.

Senior Advocate Mr. Abhishek Manu Singhvi with Senior Advocate Mr. S N Mukherjee with Senior Advocate Mr. Kamal Trivedi with Senior Advocate Mr. Shalin Mehta with Advocate Ms. Ruby Singh Ahuja with Advocate Mr. Sudhir Sharma with Advocate Mr. Abhishek Swaroop present for the Arcelor Mittal India Pvt. Ltd.





## ORDER

1. The case is fixed for pronouncement of order in respect of pending Interlocutory Applications No. 98, 110, 111, 112, 121 and Inv. P 7 of 2018 and Inv. P 8 of 2018 wherein the arguments of learned Counsel appearing from both the sides were earlier heard at length and concluded on 6<sup>th</sup> April, 2018, and the orders therein are reserved.

2. Since the facts as narrated in the above mentioned two Interlocutory Applications ["IAs" for short] bears a common legal issue, as has been more particularly stated in IA No. 98 of 2018 (filed by the Applicant, M/s. Numetal Limited), and in IA No. 110/2018 (filed by M/s. Arcelor Mittal India Ltd.) therefore we feel appropriate to deal with together these issues involved in all the IAs and, for the sake of convenience, dispose them same by passing a common order in the interest of justice. The averment in brief as narrated in these IAs those are necessary for disposal may be described as under;

I. IA No. 98 of 2018:

(i) In this application, the Applicant, M/s. Numetal Limited, has sought for a declaration from this Court to this effect that it is an eligible Resolution Applicant for submitting a Resolution Plan in respect of the Essar Steel India Limited [hereinafter referred to as "ESSAR"] under the provisions of the Insolvency and Bankruptcy Code, 2016 ["the Code" for short] by looking to the best interest of the Corporate Debtor Company more particularly for its revival and resolution.

The facts of the case raising to this Application and necessary for disposal are stated as under;



(ii) On two separate Applications preferred under Section 7 of the Code being CP No. (IB) 39 of 2017 and CP No. (IB) 40 of 2017 by Standard Chartered Bank and State Bank of India against ESSAR, this Tribunal, while admitting the said Applications, initiated Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor ESSAR and appointed Mr. Satish Kumar Gupta as Interim Resolution Professional.

(iii) As a part of the CIRP, the RP by way of an advertisement dated 6.10.2017 in Economic Times invited Expressions of Interest [EOI] from all interested Resolution Applicants to present Resolution Plans.

(iv) The Applicant in response to the advertisement submitted EOI on 20.20.2017 by presenting a Resolution Plan which was accepted and confirmed by the RP on 31.10.2017. The said EOI inter alia stated that the Applicant was in advanced talks with VTB Capital Plc., Russia which was willing to participate in the Resolution Plan for ESSAR by way of providing support in the form of debt or equity etc., to the Applicant. However, the Applicant has not annexed the copy of the said EOI in order to maintain confidentiality.

(v) Post submission of the aforesaid EOI by the Applicant, and by virtue of introduction and insertion of Section 29A of the Code through an Ordinance promulgated by the President of India, being Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, by amending certain provisions of the Code, prohibited certain persons from submitting its resolution plan for entities undergoing insolvency under the Code. After promulgation of the Insolvency Ordinance, the Insolvency and Bankruptcy Code (Amendment) Act, 2017 was also enacted by the Parliament on.....by replacing the Insolvency Ordinance.

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(vi) In furtherance of legislative changes and the intent recorded in the EOI VTB Bank Group and other potential strategic investors may invest in the Applicant and the shareholding of the Applicant was reorganized as such.

(vii) (a) Crinium Bay Holdings Limited, a company incorporated in Cyprus ("Crinium") is held by VTB Bank PJSC; VTB Bank and its subsidiaries form a Russian financial group, 'VTB' group which offers banking services and products in Russian and other countries; VTB Bank is one of the largest emerging market banking groups with huge market capitalization, assets and net worth which is having a robust reputation internationally; some of the shares of VTB Bank are listed on the Loan and Moscow Stock Exchanges and remaining shares are held by the Russian Government;

(b) Indo International Trading FZCO ("INDO") which has been engaged in international commodity trading of steel and steel related raw materials etc., is having major counterparties and it has a presence in UAE, Singapore and Zug with significant trading experience;

(c) JSC VO Tyazhpromexport ("TPE") is one of the largest engineering associations in Russia, and being one of the leading players in ferrous and non-ferrous metallurgy project construction TPE is able to leverage its knowledge and expertise and provide technical assistance and equipment supplies for the metallurgy and mining industry and other services related to construction, refurbishment etc. TPE has notable prior experience in the steel sector across the Indian subcontinent and it has executed various projects for various Steel Plants in India;

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(d) Aurora Enterprise Limited ("AEL") a company incorporated under the laws of Mauritius and which is owned by a discretionary trust, called Prima Trust, is a pure financial investor in Applicant without any control or management rights.

(e) It is further submitted that as per the terms and conditions of Request for Proposal ("RFP") dated 24.10.2017 was further amended by the RP by addendum dated 8<sup>th</sup> February, 2018 and therefore the Applicant submitted a Resolution Plan on 12.2.2018 in accordance with requirements of the RFP, the Code and the IBBI Regulations, 2016, as amended from time to time. In support of its contention, the Applicant has annexed a copy of the RFP as Annexure-3 and its terms being internal in nature there is need to maintain confidentiality.

(f) It is further submitted that as per the Resolution Plan the Applicant is an eligible Resolution Applicant under the provisions of the Code and it does not suffer any ineligibility under Section 29A of the Code.

(g) The Applicant has given clause-wise analysis to show how Applicant is not ineligible under Section 29A of the Code as under;

CLAUSE	PARTICULARS	ANALYSIS
Section 29A(a)	Is an undischarged insolvent	Applicant is not an undischarged insolvent
Section 29A(b)	Is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act 1949	Applicant is not a wilful defaulter.
Section 29A(c)	Has an account, or an account of a corporate debtor under the	Neither Applicant's own account nor any other account under the

	management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor.	management or control of Applicant or of which Applicant is a promoter, has been classified as NPA in accordance with the RBI guidelines.
Section 29A(d)	Has been convicted for any offence punishable with imprisonment for two years or more	Applicant has not been convicted for any offence punishable with imprisonment for two years or more
Section 29A(e)	Is disqualified to act as a director under the Companies Act, 2013	Not applicable
Section 29A(f)	Is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets	Applicant is not prohibited from trading in securities or accessing the securities markets.
Section 29A(g)	Has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an	Applicant has not been a promoter or in the management of a corporate debtor in which any of the transactions mentioned under section 29A(g) has taken place

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	order has been made by the Adjudicating Authority under this Code	
Section 29A(h)	Has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code	Applicant has not executed any guarantee in favour of a creditor in respect of a corporate debtor against which insolvency has been commenced under the Code
Section 29A(i)	Has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India	Applicant has not been subject to any corresponding disability under any law in a jurisdiction outside India
Section 29A(j)	Has a connected person not eligible under clauses (a) to (i) Explanation - For the purposes of this clause, the expression "connected person" means - (i) any person who is the promoter or in the management or control of the resolution applicant; or (ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or (iii) the holding company, subsidiary company, associate	Crinium, TPE and Indo have certain management rights in the Applicant, including right to appoint director/s on the board of the Applicant. Accordingly, only Crinium, TPE and Indo, may be said to be the promoters of or persons in management or control of Applicant and the promoters or the persons in management or control of the Corporate Debtor, during the implementation of the resolution plan. No holding company, subsidiary company, associate company or related parties or Crinium, TPE or Indo

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	<p>company or related party of a person referred to in clauses (i) and (ii);</p>	<p>have any ineligibility under clauses (a) to (i) of Section 29A.</p> <p>For completeness, please refer below for the analysis of the non-applicability of definition of 'connected persons' with respect to AEL. Accordingly, Applicant does not have any connected person who is not eligible under clauses (a) to (i).</p>
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For the reasons as stated above, the Applicant, M/s. Numetal Limited, being felt aggrieved with the decision dated 23/3/2018 of the Resolution Professional, ("RP" for short) by declaring it ineligible, has now impugned the same in this IA seeking for following directions/reliefs among the others from this Court;

- a. **"That this Tribunal be pleased to declare that the Applicant is eligible to present a Resolution Plan for Essar Steel India Limited;**
- b. **That this Tribunal be pleased to declare that the change in the shareholding of the Applicant post the submission of the Resolution Plan for Essar Steel India Limited is in compliance with the requirements of the RFP issued by the Professional of Essar Steel India Limited and does not require the approval of the Resolution Professional or the Committee of Creditors of Essar Steel India Limited;**
- c. **That pending hearing and final disposal of the present Application, this Tribunal be pleased to direct the Resolution Professional and the Committee of Creditors of Essar Steel India Limited not to reject the Resolution Plan of the Applicant and/or invite bids/resolution plans afresh for Essar Steel India Limited;**
- d. **An ex-parte relief in terms of para (c) may be granted....;"**

*Adit*



3. Notwithstanding the above as per of record, of the case during the pendency of the IA No. 98 of 2018, the Applicant, M/s. Numetal Limited, preferred another application bearing IA No. 111 of 2018 under Section 60(5) of the Code wherein it partly conceded with the decision of the RP so far as it pertains to another contestant, namely "Arcelor Mittal India Private Limited" [hereinafter referred to as "AM"], while for declaring the AM as ineligible hence it further sought for a declaration from this Bench to confirm the decision of the RP on the ineligibility on of the AM on some other additional grounds also to submit a Resolution Plan in respect of the Corporate Debtor, ESSAR. The reliefs, as being sought for in this IA among the other, are read as under;

- a. **That this Tribunal be pleased to declare AM India and its connected persons ineligible to present a Resolution Plan for Essar Steel India Limited by reason of its connected persons being promoters and in the management or control of KSS Petron and/or Uttam Galva for a period of more than one year from their classification as NPA, until the overdue amounts in respect of accounts of each of KSS Petron and Uttam Galva are paid;**
- b. **That this Tribunal be pleased to declare that sale of shares of KSS global BV and Uttam Galva will not clear ineligibility of AM India and its connected persons to present a Resolution Plan for Essar Steel India Limited, and that AM India and its connected persons cannot be considered to be eligible to submit such Resolution Plan until the overdue amounts in respect of accounts of each of KSS Petron and Uttam Galva are paid;**
- c. **That pending hearing and final disposal of the present Application, this Hon'ble Tribunal may direct the Resolution Professional and Committee of Creditors of Essar Steel India Limited not to proceed with the**

*Adarsh*

*[Signature]*

**process of inviting fresh bids/resolution plans for Essar Steel India Limited;**

- d. That in the alternative to para (c) above, pending hearing and final disposal of the present Application, this Hon'ble Tribunal may direct the Resolution Professional of Essar Steel India Limited to not consider the resolution plan submitted by AM India in any rebidding that may be conducted under the Code or in terms of the RFP, as amended, in relation to Essar Steel India Limited, until the overdue amounts in respect of accounts of each of KSS Petron and Uttam Galva are paid;**
- e. An ex-parte relief in terms of para (c) and (d) above may be granted."**

4. Thus, it can be seen that the above mentioned Applications are filed by M/s. Numetal Limited not only against the impugned action/decision taken by the RP and by the Committee of Creditors ["COC" for short) for rejecting its resolution plan but have also sought for further additional directions against another contestant, Resolutions applicant, M/s. Arcelormittal India Private Limited.

5. As per the material available on record, the Arcelor Mittal equally has preferred an IA No. 110 of 2018 before this Court seeking certain reliefs/ direction against M/s. Numetal Ltd., and thus has partially conceded with the decision taken of the RP so far it concern with M/s. Numetal Ltd., for declaring it ineligible but on other side it equally has challenged such RP's decision so far as it goes against by it declaring (Herein AM) as ineligible for submission of a Resolution Plan. Thus, the prayer made and relief sought for in the IA No. 110/2018 can also be reproduced here under so as to deal with the

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properly main IA No. 98/2018 the relief sought for in the IA No. 110/2018 reads as under;

**Prayers:**

- a) To pass an order/direction setting aside and declaring as invalid the decision of the Resolution Professional dated 23.3.2018 disqualifying the Applicant and rejecting the resolution plan dated 12.2.2018 submitted by the Applicant; and
- b) Pass an order directing the Committee of Creditors to consider the Resolution Plan dated 12.02.2018 submitted by AIMPL; and
- c) Pass an order setting aside the amended RFP dated 23.3.2018 issued by the Resolution Professional inviting fresh/new resolution plans; and
- d) Pass any other order(s) or direction as this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the present case.

**Interim Relief:**

- a) Pass an order/direction staying the effect, operation and implementation of the decision of the Resolution Professional dated 23.03.2018 disqualifying the Applicant and rejecting the resolution plan dated 12.02.2018 submitted by the Applicant; and
- b) Pass an order/direction staying the effect, operation and implementation of the decision of the Resolution Professional dated 23.03.2018 of issuing the amended RFP inviting fresh/new resolution plans; and
- c) Pass an order/direction restraining the Resolution Professional and the Committee of Creditors from proceeding with the present corporate insolvency resolution process of Essar during the pendency of the present application;

*Chauhan*

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- d) **Pass ad interim order(s) in terms of prayer (a), (b) and (c) above;..”**

6. Therefore, from a perusal of the record of case it is evident that both the contestants have preferred IA No. 98 of 2018 and IA No. 110 of 2018 by partly assailing the decision of the RPs to the extent. It goes as against their interest in their respective Resolution Plans, but has equally supported such impugned decision of the RP, if it relets to other contesting party/ Competitor and thus, sought for a direction from this Tribunal against each other by declaring ineligible for submission of a proper Resolution Plan to the RP.

7. This Tribunal during the course of hearing of these IAs, passed an interim order on 20<sup>th</sup> March, 2018 by expressing that this Tribunal is not inclined to stall the meeting of COC nor to interfere with the process for passing any Resolution or to take a decision, but issued a Notice to the RP and COC to file their Reply to the present Applications and gave such a direction that any decision that may be taken by the RP or any resolution may be passed by the COC in its proposed meetings would however be subject to final outcome of the present Applications. Accordingly, a date of hearing was further fixed on 4<sup>th</sup> April, 2018.

8. Subsequent thereto, the Applicant, M/s. Numetal Limited filed a Purshis P-1 by seeking for preponement of the of hearing of the case in pending IAs stating inter alia that as per the newspaper reports the COC has already decided by declaring both the contestants as ineligible for the purpose of submission of Resolution Plan and has gone for inviting fresh Bid.

*Alina*

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9. By considering the above narrated circumstances and looking to the urgency in the matter, this Bench decided to prepone the hearing date of the matter by listing the case on 27<sup>th</sup> March, 2018. Thereafter on 26.3.2018, the Arcelormittal India Private Limited being a third party filed an Intervention Application No. P-7 of 2018 seeking for impleadment in the present IA No. 98 of 2018 and for passing appropriate order/direction from this Court in the present matter.

10. During the course of hearing it was further brought to our notice that the RP and the COC have already decided to go for fresh bids as per their amended RFP, because as per the RP both contestants/Resolution Applicants were found ineligible as on cut of date 12.2.2018 meant for the purpose of submission of a valid and proper Resolution Plan.

11. Subsequent, there to the present Applicant, M/s. Numetal Limited also preferred two IAs, I.A. No. 112 of 2018 and I.A. No. 121 of 2018 proposing an amendment in the main I.A. No. 98 of 2018 by incorporating new clause and sought further direction from this court. The proposed clause proposed to be incorporated reads as under;

**(A) This Tribunal be pleased to allow the Applicant to add and amend the Prayer Clause in Paragraph 21, to include:**

**“That this Tribunal be pleased to quash and set aside the decision of the Resolution Professional of Essar Steel India Limited conveyed through a letter dated 23<sup>rd</sup> March 2018”.**

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12. During the course of hearing it is brought to our notice and which is evident from a perusal of the record, and of the Minutes of the COC that the CoC has decided to go for afresh bids since as per its decision both the contestants/Resolution Applicants were found ineligible as on cut of date 12.2.2018 for the purpose of submission of a valid Resolution Plan to the RP.

13. In respect of I.A. No. 112 of 2018, the present Applicant, M/s.Numetal Limited has further prayed for additional/alternative reliefs by making additional/alternative pleas those are narrated in Para 21 of IA No. 112 of 2018. For the sake of convenience, the same are being reproduced hereinbelow;

**“21. In light of the aforesaid submissions, the Applicant prays for the following reliefs:**

- (a) That pending hearing and final disposal of the Interlocutory Application No. 98 of 2018, this Tribunal be pleased to order and direct the Resolution Professional and the Committee of Creditors of Essar Steel India Limited to not open the sealed envelopes in which fresh resolution plans are submitted by the resolution applicants pursuant to the second amendment to the Request for Proposal (or any other subsequent amendment to the Request for Proposal);**

**In The Alternative**

- (b) This Hon'ble Tribunal be pleased to direct the Resolution Professional and the Committee of Creditors of Essar Steel India Limited that the financial bids under the resolution plan be called for in a separate sealed envelope and that pending hearing and final disposal of the Interlocutory**

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**Application No. 98 of 2018, this Hon'ble Tribunal be pleased to order and direct the Resolution Professional and the Committee of Creditors of Essar Steel India Limited to not open such separate sealed envelope containing financial bids submitted by the resolution applicants pursuant to the second amendment to the Request for Proposal (or any other subsequent amendment to the Request for Proposal);**

- (c) An ex-parte relief in terms of para (a) above may be granted;**
- (d) Such other orders or order be passed as the Hon'ble Tribunal may deem fit and proper."**

14. Therefore, this Tribunal, after hearing the submissions of learned Counsel for both the parties, and by considering the facts and circumstances of the present case issued an interim direction vide its order dated 2<sup>nd</sup> April, 2018 directing to the RP not to open the bids till disposal of the present IAs, further the RP as well as the COC were directed to file their Reply/objection, if any, to these Applications initially moved by M/s. Numetal Limited as well as by Arcelor Mittal against the RP of the Corporate Debtor Company.

15. As a further development in the matter, on 3<sup>rd</sup> April, 2018, the present Applicant, M/s. Numetal Limited filed another Intervention Application P-8 of 2018 seeking prayer for impleading as party Respondent in this I.A. No. 110 of 2018 filed by another contestant M/s. Arcellormittal India Private Limited seeking with following reliefs;

**"In view of the facts and circumstances stated herein above, it is most respectfully prayed that this Hon'ble Court may kindly be pleased to:**

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- a) **Allow the Application and pass an order directing the Applicant in the Interlocutory Application to implead the Present Applicant as a party respondent in the Interlocutory Application; and**
- b) **Pass any other order(s) and/or direction(s) as this Tribunal may deem fit, proper and just in the facts and circumstances of the present case."**

16. By confronting to these interim applications and opposing of the interim direction issued by this Tribunal therein, the Resolution Professional as well as the COC of the Corporate Debtor Company through its main constituent SBI filed a detailed affidavit by strongly opposing the same and requested to vacate or suitably modify the interim direction so as to allow the RP as well as to the COC of the Corporate Debtor Company to go for opening of its fresh bid subject to outcome of the present pending IAs. The RP and COC in their Reply have contended inter alia by reminding that the maximum period prescribed for completion of 'CIRP' is going to be over by 29.4.2018, and hence there is time constraint and urgency in the matter, otherwise the purpose of initiation of 'CIRP' to bring a viable resolution plan for the Corporate Debtor may not be achieved. In support of their contention, the Resolution Professional has produced before us in sealed cover a copy of the Minutes of the COC as internal circulation to apprise of the deliberations made in the COC meeting and Resolution passed therein, to vindicate the impugned decision taken by the RP to declare the present Applicant M/s. Numetal Limited as well as in respect of another contestant M/s. Arcelormittal India Pvt. Ltd., as under the provisions of Section





29A of the IB Code which came into effect by way of an amendment made on 23.11.2017. The COC in its above referred meeting dated 21<sup>st</sup> March, 2018 (i.e., after filing of the present Application), gave reason for such decision in Agenda A5, which, for the sake of convenience, may be reproduced hereunder;

**Agenda A5 – Update on the resolution plans received and future course of action**

*The RP has stated that based on approval of Committee of Creditors from time to time, advertisement for inviting EOI was issued on October 6 and 7, 2017, pursuant to which we had received 7 EOIs by October 23, 2017 and VDR was opened in the first week of November 2017, Request for Proposal (RFP) was issued on December 24, 2017. Resolution Plans from Numetal Limited and Arcelormittal India Private Limited were received on last day of submission, February 12, 2018.*

*The RP has stated that the key activities undertaken by Alvarez and Marsal (A&M), Cyril Amarchand Mangaldas (CAM), Kroll and Grand Thornton (GT) since bids submission. Some of the key activities are as follows:*

- . Co-ordinated and interacted with Resolution Applicants (RAs) related to process, compliance (IBC, RFP and Sec.29A) and additional information required*
- . Engaged and interacted with legal counsel for opinion on eligibility of Resolution Plans and reference to Senior Counsel*
- . Evaluation and forming opinion on the eligibility of Plans as per IBC, RFP and Sec.29A.*
- . Floated RFP to all Big Four firms and Kroll. After confirming the conflict checks, Kroll was finalized including scope of work and fee*

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- **Kroli evaluated list of - 2,000 + entities & connected persons spread across in over 80 jurisdictions**

**RP requested GT to step out before apprising the CoC on the eligibility of the Resolution Applicants (RAs).**

**RP requested CAM to brief the CoC on the recent legal development. Representative from CAM stated that they have understand that one of the Resolution Applicants (RAs), Numetal, has filed an application in the NCLT, Ahmedabad asking for the stay on the 9<sup>th</sup> CoC meeting. RP and CAM team mentioned that they have not yet received the interim order issued by NCLT. SAM (lenders counsel) mentioned that SBI has received the order last night. Participants observed that NCLT has not granted stay on the proceedings of the 9<sup>th</sup> CoC meeting, however, order has mentioned that any decisions taken by the CoC would be subject to the outcome of the application filed by Numetal with NCLT. Representative from Edelweiss ARC requested COC to pass a resolution authorizing SBI to represent the COC before the NCLT. Further, SAM team would act as the legal counsel for this matter. Representative from State Bank of India mentioned that would recommend forming a core committee of lenders to approve the decision in regard to this matter and proposed name of SBI, IDBI Bank. Edelweiss ARC and ICICI Bank to be authorized as the representatives of the CoC to represent before the NCLT as regards the application filed by Numetal. It was also clarified that the application (in respect of which the order was passed) and the order were not served upon the RP and that the NCLT in its order had directed that a copy of the application be served on the COC, RP stated that as suggested by CoC, above resolution should be voted upon.**

**RP then briefed the CoC on determination of eligibility of Resolution Applicants. He mentioned that RP's legal counsel, CAM, had approached the Senior Counsel, Mr. Darius**

*Attorney*

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***Khambata, Former Advocate General, Maharashtra and Former Additional Solicitor General, for his opinion, and conference was held on March 13, 2018. Based on above legal opinion, CAM's minutes of the conference held with Mr. Khambata and his views (given in conference) in relation to the queries posed to him in the case for opinion, RP informed the CoC that both the Resolution Applicants are not eligible to present resolution plans under Section 29A of IBC.***

***RP explained the eligibility of both the RTAs in detail as follows:***

**Numetal Limited**

As on the Plan Submission Date:

- (a) Ravi Ruia (who is the father of Rewant Ruia (who is one of the ultimate beneficiaries and owners of a shareholder of Numetal through various holding companies and trusts and given that Numetal is relying on the credentials of its shareholders for the purposes of the resolution plan) is deemed to be acting in concert with) was the promoter of ESIL, whose account was classified as an NPA for more than 1 year prior to the commencement of corporate insolvency resolution process (AIRP) of ESIL on 2<sup>nd</sup> August, 2017, and***
- (b) Ravi Ruia (who Rewant Ruia is deemed to be acting in concert with) has executed guarantee in favour of SBI (for itself and a consortium of lenders) and the CIRP application filed by SBI has been admitted by the NCLT on 2 August 2017.***

***In light of the above, Rewant Ruia (who is acting jointly with the other shareholders of Numetal for the purposes of submission of the Resolution Plan) is ineligible under Section 29A of the IBC, specifically sub-section (c) and (h) and***

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accordingly, as on the Plan Submission Date (i.e. 12 February, 2018), Numetal (which is nothing but an incorporated joint venture investment vehicle through which its shareholders are submitting the Resolution Plan) was not eligible under Section 29A of the IBC.

Both CAM and Mr. Darius Khambata concurred that Numetal was ineligible to submit its resolution plan as on 12 February 2018 on account of Section 29A (c) and (h) of the IBC.

**ArcelorMittal India Private Limited (ArcelorMittal)**

**Eligibility of ArcelorMittal India Private Limited (AM India), the other Resolution applicant was tested on the facts relating to two instances: (i) KSS Petron; and (ii) Uttam Galva Steels Limited (Uttam Galva), each of which were NPAs for more than 1 year.**

**In case of KSS Petron, Mr. L.N. Mittal, Chairman and CEO of the ArcelorMittal group (through holding companies) exercised negative control whereas in the case of Uttam Galva, ArcelorMittal Netherlands (AM Netherlands, a connected person of AM India) and classified as a promoter as well as exercised positive control over Uttam Galva.**

**The RP informed the COC that:**

- (i) in CAM's view, negative control over an entity also constituted control for the purposes of testing under Section 29A(c) of the IBC and accordingly, CAM was of the opinion that KSS Petron was also a reason on account of which AM India was disqualified; and**
- (ii) in the view of Mr. Darius Khambata, negative control did not constitute 'control' for the purposes of Section 29A(c) of the IBC and accordingly, KSS Petron was not a ground for disqualifying AM India.**

**On account of above two views, CAM recommended to the RP to take the opinion of Mr. Darius Khambata and rely on his advice.**

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*Relying on Mr. Khambata's view, the RP stated that ArcelorMittal cannot be said to be in control of KSS Petron and hence KSS Petron was not a ground for disqualifying AM India.*

*As regards Uttam Galva, Both CAM and Mr. Darius Khambhata were of the view that positive control (of the nature which AM Netherlands had in relation to Uttam Galva) constituted control for the purposes of Section 29A(c) of the IBC.*

*Further, the RP informed the COC that:*

- (i) in CAM's view, since AM Netherlands exercised positive control over Uttam Galva, merely divesting the shareholding prior to submission of the resolution plan by AM India could not remove the disqualification of AM Netherlands under Section 29A(c) of the IBC unless cured by payment of the overdue amounts as mentioned in the proviso to Section 29A (c); and*
- (ii) in Mr. Khambata's view, if AM Netherlands has legitimately divested its shareholding in Uttam Galva and completed all legal and regulatory formalities relating to declassification of AM Netherlands as promoter of Uttam Galva, prior to submission of the resolution plan by AM India, it would be eligible to submit a resolution plan (and would not be subject to the disqualification under Section 29A(c) of the IBC for having an NPA of more than 1 year). Mr. Khambhata has opined that a resolution applicant needs to be eligible under Section 29A of the IBC not only on the date of submission of the resolution plan but must also remain eligible till the approval of its resolution plan by the NCLT under Section 31 of the IBC.*

*On account of above two views, CAM recommended to the RP to take the opinion of Mr. Darius Khambata and rely on his advice.*

*RP stated that as on the Plan Submission Date, AM Netherlands (a connected person of AM India), continued to be classified as*

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*a promoter of Uttam Galva and had not completed the regulatory compliances relating to declassification as a promoter of Uttam Galva and accordingly, the resolution plan was ineligible.*

*Accordingly, and for the reasons mentioned, pursuant to paragraph 4.11.2(a) of the RFP, the Resolution Plans received are not eligible and as CoC had asked only eligible plans to be presented, neither of these Resolution Plans are placed before CoC.*

*RP further mentioned that:*

- (i) the conclusion has been reached that the relevant Resolution Applicants are ineligible on the ground under sub-sections (c) and (h) of Section 29A of the IBC (after having tested for its compliance) as set out above;*
- (ii) other than as stated above, since the evaluation of the Resolution Plan was still ongoing (including with regard to eligibility of each Resolution Applicant and its connected persons under Section 29A of the IBC and the checks being undertaken by Kroli in this regard), it may be noted that the RP has not determined the eligibility, validity or compliance of any Resolution Applicant or its connected persons under Section 29A of the IBC (except as mentioned above).*

*The RP also mentioned that subsequent to the Plan Submission Date, various communication has been received from the Resolution Applicants regarding their views on eligibility as well as other Resolution Applicant. He stated that: (a) RP has to determine the eligibility of each Resolution Applicant as on the Plan Submission Date (including with regard to compliance with Section 29A of the IBC; and (b) paragraph 4.11.3 of the RFP stipulations that no change or supplemental information to the Resolution Plan shall be accepted after the Plan Submission Date. Accordingly, those communication does not*

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*in any manner alter their eligibility as on the Plan Submission Date.*

**Future Course of Action**

*In view of both Resolution Plans being ineligible, at the request of CoC, RP presented the potential options available for the CoC to consider based on advice of Legal Advisor and Process Advisor (Alvarez and Marsal) and these should be evaluated in the context of balance timeline under IBC, compliance, and being fair and transparent to all RAs. He stated that CoC may consider options as follows:*

*Option 1: Initiate a new process of inviting bids from all interested parties (starting with issuance of a new expression of interest) and follow the entire process as per new RFP approved by CoC; or*

*Option 2: Extend the Due Date (as defined in the RFP) and permit all the Potential Resolution Applicants (as defined in the RFP, along with its new addendum) to submit their new resolution plans in respect of ESIL.*

*RP informed that he has received email forwarded by Chief General Manager, CAG, State Bank of India last night (on March 20, 2018) forwarding a letter from JSW Steel Limited that addressed to Deputy Managing Director, SBI. Aforesaid, letter has requested SBI to consider allowing other interested parties also to submit the bids in the rebidding process of Essar Steel India Limited on as is where is basis, based on available limited information. Further, they have mentioned that they would be able to submit a competitive bid in a shorter time frame based on the data that may be made available to them.*

*Further, Nandini Chopra (Managing Director, Alvarez and Marsal) explained both the options available to CoC in details with revised timelines along with key activities.*

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Representative from Edelweiss ARC, ICICI bank and Punjab National Bank raised concern around the strict timelines. Representative from Edelweiss ARC requested RP to approach NCLT and seek for the extension of CIRP timelines beyond 270 days.

Representative from ICICI bank and Punjab National Bank were of the opinion that given the balance timelines and extent of checks required (if any new resolution applicants submit bid) it will be advisable to go with option 2.

Representative from SBI asked for the legal opinion and CAM briefed that legally both the options are possible but since JSW Steel has sent a letter to CoC, there are chances that JSW Steel might go to NCLT seeking NCLT's approval to participate in the bidding process of Essar Steel.

Representative from ICICI Bank stated that JSW had chosen to participate as per EOI (Express of Interest) issued earlier and therefore it would not be fair to allow them to participate in the process. It was felt that permitting JSW to participate in the process would mean that opportunity would have to be given to all other potential bidders for which fresh process will have to be initiated and given the timelines of CIRP, CoC advised that same was not feasible.

Nandini again explained the detailed timeline along with key activities under both the options 1 & 2.

She explained that since balance time available is short, slippage of any activity would go beyond 270 days.

This point was further debated by CoC members and based on the view of the majority CoC member it was concluded that option 2 should be put to vote.

17. In support of the above stated Resolution passed by the COC and deliberations made in its Meeting and by giving justification for opting for Plant No.2, the Respondent RP has filed reply dated



27.3.2018 opposing the IA No. 98/2018 and Additional Affidavit dated 4<sup>th</sup> April, 2018 by giving detailed reasons for declaring the Applicants, M/s. Numetal Ltd., as well as another contestant Arcelormittal (the Applicant in IA No.110/2018) as ineligible in view of the subsequent amendment in the Code itself by incorporating new provision 'Section 29A' with effect from 23.11.2017. The RP has determined that the Applicant is ineligible in view of sub-section (c) and (h) of Section 29 of the Code, and such decision were placed before the COC which has taken note of the same and further the Applicant was informed that his Resolution Plan has been rejected as being ineligible and therefore it will not be put forth before the COC and the reason, on account of which the Applicant was found to be ineligible, has been stated in the said letter communicated to the Applicant. Thereafter, the present Applicant (M/s.Numetal Ltd) has been given further opportunity to submit a Resolution Plan subject to its eligibility under Section 29A of the IB Code and as per the amended RFP (Request for Proposal) document issued by the RP. Thus, as per the Respondent RP, the Applicant has been given an opportunity to submit a fresh Resolution Plan as per the decision of COC dated 21<sup>st</sup> March, 2018. Therefore, the present Application as filed by the Applicant is baseless and without any substance and should be dismissed *in limine* with cost. The RP, while examining and determining the eligibility of the Resolution Applicants as on the date of submission of respective Resolution Plans, has contended as such in Paras No. 9 to 21 of his Reply, the verbatim **of such reply affidavit may be reproduced hereunder;**

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9. I say that following are some of the relevant facts in relation to the Resolution Plan submitted by the Applicant on a confidential basis (the "**Numetal Resolution Plan**"). I crave leave to refer and rely upon the said Numetal Resolution Plan if this Hon'ble Tribunal so requires.

- (a) I say that the Applicant was incorporated on 13<sup>th</sup> October 2017 for the purposes of submission of the Resolution Plan;
- (b) I say that at the time of incorporation of the Applicant, the entire shareholding of the Applicant was held by Aurora Enterprises Limited ("**AEL**"), which was in turn held entirely by Aurora Holding Limited ("**AHL**") which was in turn held entirely by Mr. Rewant Ruia (through a trust and another holding company);
- (c) I say that on 18<sup>th</sup> October 2017, AEL transferred 26.1% of its shareholding in the Applicant to Essar Communications Limited ("**ECL**");
- (d) I say that on 20<sup>th</sup> October 2017, the Applicant submitted its expression of interest ("**Numetal EOI**") (seven days after its incorporation) pursuant to the Advertisement. I crave leave to refer and rely upon the Numetal EOI if necessary;
- (e) I say that following the submission of the Numetal



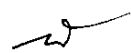


EOI, I understand that ECL transferred its entire shareholding in the Applicant to one Crinium Bay Holdings Limited (**Crinium Bay**), which is an indirect wholly owned subsidiary of VTB Bank; and AEL transferred its (i) 13.9% shareholding to Crinium Bay, (ii) 25.1% shareholding to Indo International Limited, and (iii) 9.9% shareholding to Tyazhpromexport;

(f) I say that as at the date of submission of the Numetal Resolution Plan (i.e. on 12<sup>th</sup> February 2018), the shareholding of the Applicant was as follows:

- 40% held by Crinium Bay;
- 25.1% held by Indo International Limited (**Indo**);
- 9.9% held by Tyazhpromexport (**TPE**); and
- 25% held by AEL.

(g) I say that as on the date of submission of Numetal Resolution Plan, the entire shareholding of AEL is beneficially held by Mr. Rewant Ruia through various companies and a trust which holds the entire shareholding of AHL, which shareholding is set out in more detail in Section 6.7 of the Numetal Resolution Plan.



- (h) I say that vide its letter dated March 2, 2018, I was informed by the Applicant that in order to allay any concerns regarding the eligibility of the Applicant under Section 29 A of the Code and to ensure that there is no hindrance in acceptance of the Numetal Resolution Plan, the shareholders of the Applicant *"have decided"* (emphasis supplied) to re-organise their shareholding by way of AEL selling its entire shareholding in the Applicant to the other shareholders of the Applicant, and that the same will be informed to the Resolution Professional once such revised shareholding has been given effect to by the Applicant. The letter dated March 2, 2018 is annexed as Annexure 7 to the Application.
- (i) I say that the Applicant by itself does not meet the financial eligibility criteria and is relying on its shareholders' strength for satisfying the requirements of the process documents – at the stage of submission of the EOI, it met the 'tangible net worth' requirement prescribed under the Advertisement by relying on the net worth of ECL and for the purposes of the Numetal Resolution Plan, it satisfies the minimum tangible net worth criteria on account of Crinium Bay.

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- (j) I say that Mr. Ravi Ruia is the father of Mr. Rewant Ruia and on account of Regulation 2(q)(2) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (**SAST Regulations**) is deemed to be acting in concert with Mr. Rewant Ruia.
- (k) I say that Mr. Ravi Ruia has executed a guarantee for the benefit of, *amongst others*, State Bank of India (**SBI**) in respect of credit facilities availed by Corporate Debtor from SBI;
- (l) I say that in the legal opinions submitted by the Applicant (as part of the Numetal Resolution Plan) stipulates that Applicant has confirmed that: (a) Mr. Ravi Ruia is as of the date of the opinion (dated January 16, 2018), the promoter of Corporate Debtor and (b) Mr. Ravi Ruia has also issued personal guarantees for the benefit of Corporate Debtor for securing loans obtained by Corporate Debtor from various banks including SBI.
- (m) I say that the Applicant has not submitted any agreement or understanding amongst parties to substantiate that the averment that AEL/ Mr. Rewant Ruia has no management rights, special rights, or the ability to participate in the

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management of Applicant either currently or going forward.

10. I say that at the 9<sup>th</sup> meeting of the Committee of Creditors ("CoC") of the Corporate Debtor held on 21<sup>st</sup> March 2018, the CoC was intimated of the determination of eligibility of each Resolution Applicant as on the date of submission of the respective resolution plans. In relation to the eligibility of Numetal it was informed to the CoC that:

- (a) Mr. Ravi Ruia: (i) was the promoter of the Corporate and the Corporate Debtor's account was classified as an NPA for more than 1 year prior to the commencement of corporate insolvency resolution process (CIRP) of the Corporate Debtor on 2 August 2017; and (ii) has executed guarantee in favour of SBI (for itself and a consortium of lenders) and the CIRP application filed by SBI has been admitted by the NCLT on 2 August 2017; and
- (b) Mr. Ravi Ruia is the father of Mr. Rewant Ruia (who is one of the ultimate beneficiaries and owners of a shareholder of Numetal through various holding companies and trusts). Numetal is relying on the credentials of its shareholders for the purposes of the Numetal Resolution Plan. Due to the aforementioned relationship between Mr. Ravi





Ruia and Mr. Rewant Ruia they are deemed in law to be persons acting in concert.



Ruia and Mr. Rewant Ruia they are deemed in law to be persons acting in concert.

11. I say that Numetal has relied on its shareholders at all points of time to comply with the financial eligibility requirements (at the stage of submitting the Applicant EOI as well as the Applicant Plan). During the course of the evaluation of the Resolution Plan, I have noted amongst others, the following:

- (a) Numetal was incorporated 13 October, 2017 i.e. 7 days before submission of the Numetal EOI on 20 October 2017 for the purposes of submission of the Numetal Resolution Plan (as mentioned in section 6.7 of the Numetal Resolution Plan);
- (b) as on the date of submission of the Numetal EOI, it relied on ECL, one of its then shareholders to comply with the eligibility requirement relating to its 'tangible net worth' (as stipulated in the section titled 'Eligibility Criteria' in the Numetal EOI);
- (c) as on the plan submission date i.e. 12 February, 2018 ("**Plan Submission Date**"), Numetal relied on Crinium Bay (its shareholder) to comply with the eligibility requirement relating to its tangible net

worth(as stipulated in Section 6.7 of the Numetal Resolution Plan);

- (d) Numetal is nothing but a newly incorporated joint venture between Aurora Enterprises Limited, Crinium Bay, Indo International Limited and Tyazhpromexport through which its shareholders are submitting the Resolution Plan;
- (e) Further, Applicant has relied on the financial and technical credentials of each of its four shareholders as more specifically set out in section 6.3 of the Numetal Resolution Plan.

12. I have considered each of the shareholders of Numetal as joint venture partners to be acting jointly for the purposes of submission of the Numetal Resolution Plan. Whilst considering the eligibility of the shareholders of Numetal, since AEL is held completely by Mr. Rewant Ruia (through various holding companies and a trust), I have considered Mr. Rewant Ruia, Crinium Bay, Indo International Limited and Tyazhpromexport for scrutiny under Section 29A of the Code.

13. I say that in light of the fact that Mr. Rewant Ruia (who is acting jointly with the other shareholders of the Applicant





for the purposes of submission of the Resolution Plan and is deemed to be acting in concert with Mr. Ravi Ruia) is ineligible under Section 29A of the Code, specifically under sub-section (c) and (h) and accordingly, as on the Plan Submission Date (i.e. 12<sup>th</sup> February 2018), the Applicant (which is nothing but an incorporated joint venture investment vehicle through which its shareholders are submitting the Numetal Resolution Plan) was not eligible under Section 29A of the Code.

14. I say that there are various averments in the Numetal Resolution Plan that AEL/ Mr. Rewant Ruia do not have any control over Applicant nor do AEL/ Mr. Rewant Ruia have any management rights in relation to Numetal or the power to direct management or policies of the Applicant and that AEL/ Mr. Rewant Ruia do not have the right to nominate any directors to the board of the Applicant (which also form the basis on which the legal opinions provided by Applicant along with the Numetal Resolution Plan conclude that AEL/ Mr. Rewant Ruia are not 'connected persons' of Applicant and accordingly do not need to be tested against Section 29A of the Code). The Applicant did not submit any documents in this regard as on the plan submission date. In any event, in response to

a requisition from me, I say that the Applicant submitted that a document from Crinium Bay Holdings Limited which did not categorically state that the shareholders of the



Applicant did not have any agreements with the promoters of the corporate debtor who are ineligible to submit a resolution plan. On the contrary, the document submitted by the Applicant clearly contemplated that there could be such agreements. A copy of the document is attached as **Exhibit "A"**.

15. In any event, since I have determined that the Applicant is ineligible for the reasons set out above, the fact that agreements regarding shareholding, control or management rights with VTB Bank were not produced, is being stated as a relevant fact and for completeness. Further, clause 4.11.3 of the RFP clearly provides that no change or supplemental information of the resolution plan shall be accepted after the due date.
16. I say that I acted on the legal advice of a reputed law firm and a reputed senior counsel.
17. Further, to ascertain the eligibility of the resolution applicants under Section 29A and other applicable

Provisions of the Code. I interacted with the process Advisors, my legal advisors and also engaged reputed



Consultants to conduct searches and checks in available public records in all relevant jurisdictions. This entailed checks in relation to over 2300 entities and connected persons spread over 70-80 jurisdictions. I further state this process was still ongoing and not completed.

18. I say that accordingly conclusion in relation to the eligibility of the Applicant as determined by me as the Resolution Professional of Corporate Debtor and communicated to the CoC was that the Applicant is ineligible in view of sub-sections (c) and (h) of Section 29A of the Code. The CoC noted my decision. A copy of the CoC minutes is being produced separately and will be tendered to this Hon'ble Tribunal in a sealed envelope. /

19. I say that vide letter dated 23<sup>rd</sup> March 2018, the Applicant was informed that the Numetal Resolution Plan submitted by the Applicant was rejected as being ineligible and therefore will not be put forth before the CoC. The reasons on account of which the Applicant was found to be ineligible have been stated in the said letter. A copy of the

Letter dated 23<sup>rd</sup> March 2018 is annexed hereto as **Exhibit**

**"B"**.

18. Further as per the CoC decision dated 21<sup>st</sup> March, 2018, the RP invited resolution plans from the shortlisted EOI applicants which

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includes the present Applicant. Therefore, the Applicant has been granted opportunity to submit a resolution plan subject to it being eligible to submit a resolution plan in conformity with the provisions of Section 29A and the amended RFP document issued by me and an opportunity has been given to the Applicant to submit a resolution plan as per the decision of the CoC on 21<sup>st</sup> March, 2018. A copy of the email sent to the Applicant intimating them of the decision of the CoC for submission of fresh resolution plans from all the applicants qualified under EOI has annexed with the affidavit.

19. In addition to the above stated reply of the RP, the State Bank of India representing the COC, also filed its Affidavit opposing the prayer sought for mainly in IA No. 98/2018 and 110/2018 and thus supporting the decision of the RP. The relevant contentions made on behalf of the COC as narrated in Para No. 2 to Para No. 13 of the affidavit of the State Bank of India may be reproduced hereunder;

**2. SBI has been authorised by the Committee of Creditors ("CoC") to file a reply (together with such other documents as may be necessary), on behalf of the CoC to the Application, at its meeting held on 21<sup>st</sup> March, 2018. The relevant extract of the Minutes of the said meeting of the CoC, and the record of voting thereon is annexed herewith and marked as Exhibit "A".**

**3. I say that I have read and understood the present Application filed by the Applicant ("Application"). I am filing the present Reply ("Reply") for the limited purpose of bringing on record certain facts in relation to the eligibility of the Applicant as a Resolution**

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*Applicant under Section 29A of the Insolvency & Bankruptcy Code, 2016 ("IBC"). SBI/Original Petitioner herein reserves its right to file a further detailed affidavit, if the same is required or if it is advised to do so.*

*4. At the very outset, it is stated that most of the issues raised in Application relate to Respondent No.1, the Resolution Professional of the Corporate Debtor, and are best dealt with by the said Respondent. The determination of the eligibility or ineligibility of the Applicant in terms of Section 29A of the IBC, is the duty of Respondent No.1 and as such, the substantive submissions made by the Applicant in the Application ought to be dealt with by the Resolution Professional. The CoC can only consider resolution plans that are placed before it by Respondent No.1, after Respondent No.1's determination of their eligibility.*

*5. It is further stated that the CoC considers the information that is placed before it by the Resolution Professional, and as such is not in a position to provide a detailed response to every allegation raised by the Applicant in the Application. In particular, the CoC does not have information with regard to the resolution plan submitted by the Applicant, or the Applicant's correspondence with Respondent No.1. the CoC hence does not admit any of the averments made in the Application, for want of specific information, except as stated herein. Nothing in the Reply ought to be deemed to be an admission for want of specific traverse.*

*6. It is further stated that the period for the Corporate Insolvency Resolution process of the Corporate Debtor expires on 29<sup>th</sup> April, 2018. The grant of any reliefs in the present Application will*

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*significantly impact the timelines for the completion of the process, resulting in grave detriment to various stakeholders of the Corporate Debtor, including the CoC. On this basis alone, the present Application ought not to be considered by this Hon'ble Tribunal.*

*7. Respondent No.1 issued a Request for Proposal dated 24<sup>th</sup> December, 2017 ("RPF") inviting resolution applicants to submit resolution plans for the Corporate Debtor. The RFP was amended by the First Addendum to the RFP dated 8<sup>th</sup> February, 2018, and the Second Addendum to the RFP dated 23<sup>rd</sup> March, 2018 ("Addendums"). A copy of the RFP and the Addendums are annexed hereto.*

*8. The CoC understands that Respondent No.1 has carried out the process of acceptance, consideration and evaluation of the resolution plans in accordance with the RFP and the Addendums, and within the parameters required by the IBC. The CoC has also been informed and has supported the appointment of Kroli India Private Limited, an investigation and analysis firm, by Respondent No.1, to carry out an analysis of connected parties to resolution applicants, for the purposes of examining compliance of the resolution applicants with Section 29A of the IBC.*

*9. It is stated that information with regard to the analysis carried out by Respondent No.1 with regard to the eligibility of the Applicant as a resolution applicant was placed before the CoC in their meeting dated 21<sup>st</sup> March, 2018 ("21<sup>st</sup> March Meeting"). As recorded in the Minutes of the 21<sup>st</sup> March Meeting, Respondent No.1 informed the CoC that as on Plan Submission Date i.e. 12<sup>th</sup> February, 2018 ("Plan Submission Date").*



- (a) *"Ravi Ruia (who is the father of Rewant Ruia (who is one of the ultimate beneficiaries and owners of a shareholder of Numetal through various holding companies and trusts and given that Numetal is relying on the credentials of its shareholders for the purposes of the resolution plan) is deemed to be acting in concert with) was the promoter of ESIL whose account was classified as an NPA for more than 1 year prior to the commencement of corporate insolvency resolution process (CIRP) of ESIL on 2 August 2017; and*
- (b) *Ravi Ruia (who Rewant Ruia is deemed to be acting in concert with) has executed guarantee in favour of SBI (for itself and a consortium of lenders) and the CIRP application filed by SBI has been admitted by the NCLT on 2 August 2017".*

*10. The CoC was also informed that "Rewant Ruia" (who is acting jointly with the other shareholders of Numetal for the purposes of submission of the Resolution Plan) is ineligible under Section 29A of the IBC, specifically sub-section (c) and (h) and accordingly, as on the Plan Submission Date (i.e. 12 February 2018), Numetal (which is nothing but an incorporated joint venture investment vehicle through which its shareholders are submitting the Resolution Plan) was not eligible under Section 29A of the IBC."*

*11. Respondent No.1 stated that he had taken opinions from its legal advisers with regard to the eligibility of the Applicant, and such opinions had*

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*confirmed that the Applicant was not eligible under Section 29A(c) and (h) of the IBC. On this basis, Respondent No.1 has found the resolution plan submitted by the Applicant ineligible.*

*12. As the CoC had only asked for presentation of plans that were eligible for consideration by it, the plan presented by the Applicant was not placed before the CoC. The Minutes of the Meeting of 21<sup>st</sup> March, 2018 only note the information provided by Respondent No.1 to the CoC; and there was no voting on the eligibility or ineligibility of the Applicant.*

*13. In view of the issues surrounding the eligibility of the Applicant, the CoC requested Respondent No.1 to present options for the way forward, with a view to being fair and transparent to all resolution applicants. Respondent No.1 presented the CoC with the following options:*

- i. Initiate a new process of inviting bids from all interested parties (Starting with issuance of a new Expression of Interest) and follow the entire process as per new Request For Proposals ("RFP") approved by CoC ("Option 1"); or*
- ii. Extend the Due Date for submission of Resolution Plans (as defined in the RFP) and permit all the potential resolution applicants (as defined in the RFP, along with its new addendum) to submit their new resolution plans in respect of the Corporate Debtor ("Option 2").*

*After discussions in the CoC, keeping in view the timelines available in the corporate insolvency resolution process, only Option 2 was put to vote and approved by a majority of the CoC.*

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20. In response there to the above stated replies of the RP and the CoC the applicant filed a rejoinder by controverting the stand of RP in determination of their eligibility for filing Resolution Plan as well as of the decision of the COC supporting such decision of RP and it maintained its stand contending that the recommendation of the RP and consequent decision of the COC in respect of the ESIL to invite a fresh Resolution Plan is erroneous, illegal and untenable. It has been further contended that opinion of Legal Advisors as relied upon by the RP do not appreciate the correct position of law. The applicant took such a stand by denying the stand of the RP and COC stated that serious prejudice would be caused to the Applicant, if the decision of the COC for inviting fresh Resolution plan/ bid is not set aside and the Applicant agreed only to submit a fresh Resolution Plan **under protest** without prejudice to its rights and contentions in the Application. The Applicant further reiterated its stand that its Application under Section 98 merits consideration by this Tribunal and deserves to be allowed as prayed for. The Applicant by challenging the decision taken by the RP as stated in its Additional Affidavit, contended by holding that the Resolution Applicant is an incorporated Joint Venture and the shareholders of the Applicants are acting jointly in submission of Resolution Plan as incorrect decision. It further contended that the Aurora Enterprises Ltd., ("AEL") is not a promoter of or in control or management of the Resolution Applicant. Hence, as per the Applicant, the AEL cannot be put to its scrutiny under Section 29A of the Code as has been done in the present case by the learned RP and also clarified that in any event the present Applicant has not relied on the credentials of AEL

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in the Resolution Plan. The relevant portion of Rejoinder Affidavit, as stated in Para 4 (iii) to (vi) is reproduced as under;

**4. Without prejudice to the above, the Applicant will now provide a paragraph-wise response to the Affidavit in Reply as follows:**

**(a)....(e) (i) and (ii)....”**

**(iii) Aurora Enterprises Limited (“AEL” is not the promoter of or in control or management of the Resolution Applicant. Accordingly, AEL cannot be put to scrutiny under Section 29A of the Code, as done by the RP. In any event, the Applicant has not relied on the credentials of AEL in the Resolution Plan.**

**(iv) Rewant Ruia does not own AEL, as contended by the RP. As disclosed in the Resolution Plan, Rewant Ruia is merely one of the beneficiaries of Prisma Trust, a discretionary trust. Prisma Trust holds the share capital of Aurora Holdings Limited (“AHL”) the holding company of AEL. It is a well settled principle of law that ownership and control over the assets of a trust vests with the trustees. A beneficiary cannot be said to be the owner of the assets of the trust or otherwise said to control the trust, especially in case of a discretionary trust. As such, even assuming without admitting that AEL can be put to scrutiny under Section 29a of the Code, Mr. Rewant Ruia cannot be put to such test.**

**(v) Assuming without admitting that Rewant Ruia can be put to test under Section 29A of the Code, it cannot be ‘deemed’ that Rewant Ruia is necessarily acting in concert with his father. Even under the Section 2(q)(2) of the Securities and Exchange Board of India (Substantial Acquisition of**

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***Shares and Takeovers) Regulations, 2011 (on which the RP has relied upon), any 'deeming fiction' of immediate relatives acting in concert is rebuttable. Rewant Ruia should have been provided an opportunity to rebut such a presumption, which was admittedly not provided. The RP has not provided any facts that would establish that Rewant Ruia is acting in concert with his father.***

***(vi) Assuming without admitting that Rewant Ruia is acting in concert with his father, it cannot be said that the Applicant is consequently acting in concert with Rewant Ruia's father. As mentioned above, Resolution Plan has been submitted by the Applicant and Rewant Ruia is neither the promoter of the Applicant nor does he exercise any control or management over the Applicant. Accordingly, Rewant Ruia (or persons acting in concert with him, if any) cannot direct the course of or otherwise negatively control the actions of the Applicant."***

21. As per the matter available on the record, a 3<sup>rd</sup> party contestant, Arcelormittal India Pvt.Ltd., by filing Additional Application No. P-7/2018 has also sought for impleading itself in Intervention Application No. IA 98/2018 the Numetal has filed a Reply opposing Such relief as being sought for by the present Applicant, Numetal Ltd., and in the present IA and also sought a declaration in its favour to be declared as eligible for filing a valid Resolution Plan as on 12.2.2018 thus, it has opposed the Application alleging disability/ineligibility on the part of M/s. Numetal Ltd., to file a valid and proper Resolution Plan as on date of 12.2.2018. Since we have not decided the Impleadment Application in favour of Arcelormittal by formally impleading it as party in the present IA

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No. 98 of 2018 and only audience were given to its learned Counsel in support of its resolution plan, therefore, we find it appropriate to confine the issue of determination of eligibility mainly on the reason which formed a basis for the RP and COC for not founding eligible for submission of resolution plan by the Resolution Applicant, M/s. Numetal Limited and not on additional ground as putforth by the Arcelormittal. However, the oral submissions advanced by the Learned Counsel for parties including the Arcelor Mittal duly supported by their Written Submissions are being taken into consideration for deciding the issue involved in the present application.

For arriving at such findings/conclusion of the RP has obtained legal opinion and its such findings is based on such opinion which were explained to the CoC for reaching to appropriate conclusion/ decision. Equally, the Applicant in IA No. 98/2018 also obtain legal opinion from renowned jurists e.g. (former judge of the Hon'ble Supreme Court) and from former Learned Law Officer of the GOI which are placed on record along with the present IA also in support of their case in this opinion it is expressed the Numetal Limited (Resolution Applicant) is a single and independent corporate entity and it cannot be termed as a consortium of its shareholders not it intend to implement the Resolution Plan jointly with another person hence, in view of this the amended clause 4.11.2 (1) to the RFP would neither be applicable or binding upon the resolution applicant and thus, it

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is not required at all to seek an approval from the RP or the CoC. In respect of proposed change its shareholding of ESIL in terms of RFP and also are required under the other provisions of the Law. It has been also emphasised that the Numetal Limited is not a SPV brought into existence merely for the purpose of submitting the Resolution Plan in respect of Corporate Debtor ESIL as it has recently entered into an agreement to acquire majority stock in Odisha Slurry Pipeline Infrastructure Limited by an independent contract from the Resolution Plan. Thus, it cannot be presume that the applicant is such a Corporate entity which is brought into the existence only for the purpose of putting forth resolution plan for the ESIL.

Since, there is difference in the legal opinions among the Learned Luminaries and law firms and more than one views are possible in present case to be acted upon then, it cannot be said that there is patently illegality in the conclusion of the RP or it acted arbitrarily or malafidely in rejecting the resolution plan by relying on the legal opinion received and believed to be true by him and which were placed before the CoC. Moreover, the RP under the provision of the Code it is expected to make scrutiny of a resolution plan in conformity with the law of the land and to take such a prudent decision which a common man in normal course may arrive and think just and proper. This court being Adjudicating Authority under the Code is not expected to substitute its view upon the discretion and wisdom of the RP

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and CoC to opt for only which a particular view until and unless it is the case of patent illegality or arbitrariness.

Therefore, for the aforesaid reason in our prima facie view we do not find any patent illegality in the decision of the RP for declaring ineligible to applicants which is a prudent decision where there is possibility of more than one legal view then this court at this stage is not expected to substitute its view and to interfere with the conclusion of the RP.

**22. IA 110 of 2018**

1. The instant application IA 110 of 2018 is filed by the applicant under Section 60 (5) (c) of the Insolvency & Bankruptcy Code by ArcelorMittal India Private Limited on 26th March, 2018 with the following prayers: -
  - a) Pass an order/direction setting aside and declaring as invalid the decision of the Resolution Professional dated 23.03.2018 disqualifying the Applicant and rejecting the resolution plan dated 12.02.2018 submitted by the applicant; and
  - b) Pass an order setting aside the amended RPF dated 23.03.2018 issued by the Resolution Professional inviting fresh/new resolution plans; and

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c) Pass any other order(s) or direction as this Hon'ble Tribunal may deem fit and proper in facts and circumstances of the present case.

2. On filing of IA 110/2018 notices were served upon the RP as well as notices were served upon the respondents and financial creditors viz. State Bank of India and Standard Chartered Bank Ltd. Meanwhile, on 2nd April, 2018 Intervening Application No. 8/2018 is filed on behalf of Numetal Limited., seeking permission for impleadment in IA (IB) No. 110 of 2018 in CP (B) No. 39-40/7/NCLT/AHMD/2017. Accordingly, RP i.e. Respondent No. 1 and Numetal Limited filed its reply in IA 110/2018.

3. During the course of argument the applicant i.e. AMIPL submitted that the instant application is moved against the arbitrary and legally untenable rejection of its resolution plan by the resolution professional, inter alia, on the ground that AMIPL was in contravention/violation of Section 29A (c) read with (J) of the code, and therefore, ineligible to submit the resolution plan. It is further submitted that, resolution professional vide its decision dated 23.03.2018 have opined that ArcelorMittal Netherlands BV (hereinafter referred as "AMNLBV") was a shareholder of and had a management of Uttam Galva Steels Limited ("UG") whose loan account was classified as non-performing assets (NPA) by its lender, and in

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view of AMIPL and AMNLBV being related parties and as such connected persons within the meaning under Section 29 A (j), AMIPL is disqualified from submitting the resolution plan ("the Impugned Order"). It is further alleged that, while rejecting the resolution plan, the Resolution Professional has materially erred in misapplying and misunderstanding the true scope, purport and objectives of the newly inserted Section 29 A of the Code, and therefore, has wrongly rejected the resolution plan submitted by AMIPL. Keeping aside the fact that the resolution applicant filed his resolution plan in the best interest of corporate insolvency resolution process of the corporate debtor i.e. Essar, especially keeping in mind the object and intent of the code i.e. to achieve insolvency resolution of the corporate persons/debtors to ensure the maximum benefits to all stakeholders whether financial creditor, operational creditor or other statutory creditors.

4. It is further submitted that, the company is registered and is incorporated under the provision of (Indian) Companies Act, 1956 having paid up capital of INR 583.00 crores (USD 90 mm). The 99.99% of the share of AMIPL are held by Oakey Holding BV ("Oakey") a company incorporated in Netherlands, which, in itself, is wholly owned subsidiary of ArcelorMittal Belval & Differdange ("AMBD") an unlisted company incorporated in Luxembourg. AMBD, in turn, is a 100% indirect subsidiary of ArcelorMittal Societe Anonyme ("AMSA") which is a listed





company incorporated in Luxembourg. AMBD has substantial operations and substantial net worth as the world's largest rolling mill of hot rolled steel sheet piles and beams. AMBD, through Oakey, is the promoter of AMIPL.

5. It is further submitted that the Resolution Applicant, along with its holding companies is part of the ArcelorMittal group of companies (collectively referred as "ArcelorMittal Group").
6. It is further submitted by the learned lawyer appearing on behalf of the applicant that, on 24.12.2017, the RP published a Request for Proposal inter-alia inviting resolution plans for the corporate debtor (RFP). The said RFP invited all prospective investors, lenders and other interested parties who meet the qualification requirements to put forward resolution plans. The RFP, inter-alia, stated that all relevant documents showing qualification of eligibility criteria were to be submitted. **Annexure A/7** is the true copy of the RPF dated 24.12.2017 filed by the applicant in IA 110 of 2018.

7. It is further submitted by the applicant that, AMNBLBV, a 100% indirect subsidiary of AMSA, held 29.05% shares of UG, a listed company incorporated under the provisions of the Companies Act, 1956. AMNBLBV had entered into a co-promotion agreement (CPA) dated 04.09.2009 with UG and the Indian promoters of



UG (the Indian Promoters). The CPA inter alia provided AMNLBV several affirmative voting rights the right to nominate one half of the non-independent directors, the right to nominate independent directors jointly with Indian Promoters etc.

8. During the course of argument the applicant submitted that, the account of UG was classified as NPA on 31.03.2016 under the relevant RBI guidelines and a period of more than one year has lapsed since last classification. However, on the date of submission of Resolution Plan by the applicant herein, the UG was not entered into corporate insolvency resolution process. It is further submitted that on 7.2.2018, AMNLBV transferred its entire shareholding in UG to Sainath Trading Company Private Limited, one of the Indian promoters by way of an off-market sale" and consequently ceased to be a shareholder of Uttam Galva (UG). Accordingly, the CPA entered amongst UG, Indian Promoters of UG and AMNLBV was also terminated and an agreement to record the said termination (CPA Termination) and the terms of the transfer of shares was also executed on the same date i.e. 07.02.2018 (Agreement).

9. It is submitted that in view of the CPA entered amongst the UG and AMNBV, the relevant filings with the Registrar of Companies, Mumbai (ROC) and the relevant disclosures to SEBI, BSE and the NSE. On 08.02.2018, UG filed Form No. GNL-2 for intimating the Registrar of Companies regarding

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AMNLBV ceasing to be a promoter of UG with effect from 07.02.2018 and Form No. MGT-10 in relation to changes in shareholding pattern pursuant to the sale of shares by AMNLBV. The disclosures under Regulation 30 (6) of the SEBI (Listing obligations and Disclosure Requirements) Regulations, 2015 (LODR Regulations) and Regulation 7 (2) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 have also been made by UG to the stock exchanges on 07.02.2018. Both UG and AMNLBV have also made disclosures under Regulation 29 (2) of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 2011 on 07.02.2018 to the stock exchanges. Pertinently, the request for modification of status under Regulation 31A (2) of the LODR, requesting the relevant stock exchanges to declassify AMNLBV as the promoter of UG has been made by AMNLBV. The said request has been allowed by the NSE on 21.03.2018 and by the BSE on 23.03.2018. In this regard, UG also has submitted a letter dated 24.03.2018 to BSE and the NSE categorically disclosing the receipt of the aforesaid approvals that AMNLBV has been declassified as a Promoter of UG under Regulation 31A (2) of the LODR. True copy of the letter dated 21.03.2018 issued by NSE, letter dated 23.03.2018 issued by BSE and the letter dated 24.03.2018 submitted by UG are filed and marked as Annexure A/8, Annexure A/9 and Annexure A/10 respectively to the application.

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10. Applicant submitted that, after completing the aforesaid formalities of the disclosure to the SEBI, BSE and NSE, the applicant submitted the resolution plan on 12.02.2018 as per the Code and the Regulation and RFP as amended from time to time and declared that AMIPL was not covered by disqualifications mentioned under Section 29 A of the Code, as inserted vide Insolvency & Bankruptcy Code (Amendment) Act, 2018.
11. In support of their contention, learned counsels placed reliance on different rulings of Hon'ble Supreme Court relating to interpretation of Section 29A:
- (1) Harbhajan Singh v. Press Council of India (2002) 3 SCC 722 – para 5, 7 to 10
  - (2) Sri Ram Saha v. State of W.B. (2004) 11 SCC 497 – paras 16, 19
  - (3) Kanai Lal Sur v. Paramnidhi Sadhukhan AIR 1957 SC para 6
  - (4) Principal Chief Conservator of Forests v. J.K. Johnson (2011) 10 SCC 794 – paras 39 – 41.

There is no dispute with regard to ruling so filed by the applicant, however, each case turns to its own merits.

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12. The Respondent No. 1 the Resolution Professional filed written objection/reply in the instant application, filed by the applicant (AMIPL) challenging the decision of the Resolution Professional dated 23.03.2018 disqualifying the applicant and rejecting the resolution plan dated 12.02.2018 apart from other correlated grievances relating to rejection of the resolution plan.
13. During the course of argument learned counsel appearing on behalf of the resolution professional submitted that on 12.02.2018 ArcelorMittal India Private Limited (applicant herein) and Numetal Limited submitted their resolution plan. After going through the resolution plan the RP again sought certain clarifications from the applicant on 26.02.2018 (Request for Clarification 1) and on 14th March 2018 (Request for clarification 2). The responses to these clarifications were received from the applicant on 28.02.2018 and 15.03.2018. On perusal of the said responses as annexed in the reply i.e. Exhibit A, the RP came to the conclusion that the applicant i.e. ArcelorMittal India Private Limited was ineligible under Section 29 A on account of the following facts: -

- (a) That ArcelorMittal Netherlands B.V. (AM Netherlands) is mentioned as a connected person of the applicant in the Arcelor Resolution Plan;



- (b) Further, the applicant responses discloses AM Netherlands as the 'promoter' of Uttam Galva Steels Limited (Uttam Galva);
- (c) AM Netherlands had acquired 29.05% of the shareholding in Uttam Galva in 2009 and has since been classified as a promoter of Uttam Galva;
- (d) AM Netherlands had entered into a "co-promoter agreement" dated 4th September, 2009 with the other promoters of Uttam Galva (Co-promoter agreement) under which AM Netherlands had various rights including certain participative rights. The recitals of the Co-promoter Agreement clearly provide that the intention of the parties was that AM Netherlands should become a co-promoter of Uttam Galva and Clause 6 of the Co-Promoter Agreement provides that the relationship of the parties is that of co-promoters. A copy of the Co-promoter Agreement is attached with the application marked Exhibit A-2.
- (e) AM Netherlands and was also disclosed as promoter of Uttam Galva in stock exchange filings and as a co-promoter in the annual report for the financial year ended 31st March 2017. Copy of the stock exchange filings and

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the annual report are attached with the reply of RP marked as Exhibit B and Exhibit C respectively.

- (f) Uttam Galva's account was classified as a non-performing asset (NPA) on 31st March 2016 by Canara Bank and Punjab National Bank;
- (g) Based on filings made with the National Stock Exchange Limited and the BSE Limited (Stock Exchanges), AM Netherlands sold its shares in Uttam Galva on 7th February, 2018 to an existing promoter of Uttam Galva. The agreement signed between the other promoters of Uttam Galva and AM Netherlands dated 7th February, 2018 states that the parties shall cooperate to de-classify AM Netherlands as the promoter of Uttam Galva and obtain all the necessary approvals in this regard. Copies of the relevant stock exchange filings and the agreement dated 7th February, 2018 are attached with the reply of RP, marked as Exhibit D and Exhibit E respectively.
- (h) AM Netherlands had applied to the Stock Exchanges on 8th February, 2018 for its declassification as a promoter of Uttam Galva under Regulation 31A (2) of the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (SEBI LODR Regulations) (Stock Exchange Approvals).



14. Learned counsel appearing on behalf of the RP further submitted that, on the date of submission of resolution plan, i.e. 12th February, 2018, AM Netherlands had not completed all the regulatory compliance relating to declassification as a promoter of Uttam Galva and had continued to be classified as a promoter of Uttam Galva, whose account was classified as an NPA for more than 1 year and in the light of the above, the applicant is ineligible under the provisions of Section 29A (c) of the IBC and pursuant to paragraph 4.11.2 (a) of the RFP, the Arcelor Resolution Plan was rejected. In support of the contention RP relied on the following citations: -

- (1) New Horizons Ltd. V. Union of India (1995) 1 SCC 478 the Hon'ble Supreme Court
- (2) Juggi Lal Kamlapat v. CIT AIR 1969 SC 932 the Hon'ble Supreme Court.

15. State Bank of India on behalf of the CoC also filed its objection in the application so filed by ArcelorMittal India Private Limited wherein in para No. 9 it is specifically mentioned with regard to the ineligibility of ArcelorMittal India Private Limited which is as under: -

"As recorded in the Minutes of the 21st March Meeting, the respondent informed the CoC that as on





plan submission date i.e. 12th February, 2018 (Plan Submission Date):

“Eligibility of ArcelorMittal India Private Limited (AM India), the other Resolution Applicant was tested on the facts relating to two instances: (i) KSS Patron; (ii) Uttam Galva Steels Limited (Uttam Galva), each of which was NPAs for more than one year.”

In case of KSS Patron, Mr. L.N. Mittal, Chairman and CEO of the ArcelorMittal group (through holding companies) exercised negative control whereas in the case of Uttam Galva, ArcelorMittal Netherlands (AM Netherlands, a connected person of AM India) was classified as a promoter as well as exercised positive control over Uttam Galva.”

16. In pursuant to Intervention Application No. 8 of 2018 wherein Numetal Limited made a prayer to implead him as a party, respondent in the instant Interlocutory Application i.e. IA No. 110 of 2018 filed an affidavit in reply to the application made by the instant applicant (ANIPIL) stating inter-alia that the Instant Application filed by AM India is required to be rejected in view of the fact that the account of Uttam Galva Steel Limited (Uttam Galva) and KSS Petron Private Limited (KSS Petron) of



which AM India is a promoter was classified as non-performing assets (NPA) and a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency process of Essar Steels India Limited (ESIL) on the ground as stated by Respondent Numetal -

- (a) On 04.09.2009 co-promotion agreement was executed between ArcelorMittal Netherland BV.
- (b) KSS Petron is a wholly owned subsidiary of KazStroy Service Global BV (incorporated under the laws of Netherlands) (KSS Global BV). KSS Petron has a subsidiary company called Petron Engineering & Construction Limited (Petron Engineering).
- (c) Vide a Share Purchase Agreement (SPA) dated 3 March 2011, Freseli Investments Sarl (Fraseli) a company owned and controlled by a company called by Mittal Investments Sr (Mittal Investments) acquired about one third of the share capital of KSS Global BV. Pursuant to such acquisition, Fraseli acquired control over KSS Global BV which in turn controls KSS Petron and Petron Engineering. Mittal Investments is owned and controlled by LN Mittal Group, the promoters of the applicant.



- (d) Consequent to such acquisition of control by Fraseli, on 23 May 2011 a public announcement was made under SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (the Takeover code) for the acquisition of shares of Petron Engineering inter alia by KSS Global BV and Fraseli. The public announcement was followed by the mandatory letter of the offer required under the Takeover Regulations.
- (e) The public announcement and the letter of offer, clearly disclose that Fraseli is a company owned and controlled by Mittal Investments, which is owned and controlled by the LN Mittal Group.
- (f) The public announcement records that Fraseli had the right to appoint directors on the Board of KSS Global BV and had affirmative voting rights on decisions regarding various matters at the board and shareholder level in respect of KSS Global BV and all companies controlled by KSS Global BV. Such right of Fraseli to appoint directors on the Board of KSS Global BV and the right to exercise affirmative voting rights in respect of KSS Global BV and its subsidiaries (including KSS Petron) also recorded in the articles of association (AoA) of KSS Global BV. It is a matter of record that Fraseli exercised such rights and



nominated directors on the Board of KSS Global BV, of which KSS Petron is a wholly owned subsidiary.

- (g) Therefore, it is clear from each of the public announcement and the letter of offer as well as the AoA of KSS Global BV, that Mittal Investments, wholly owned by LN Mittal Group, is the promoter of and in management and control of KSS Petron, which is an NPA.
- (h) Accordingly, it is easily discernible that then LN Mittal Group, a connected person of the applicant, is the promoter and is in control and management of KSS Petron since 2011. It is during such tenure of control over KSS Petron by the connected persons of the applicant that the accounts of KSS Petron were classified as an NPA by multiple banks and accordingly, a CIRP was initiated against KSS Petron on 1st August, 2017.
- (i) Since, an asset under the management and control of the connected party of the applicant has been declared an NPA, the applicant is disqualified under Section 29 A (i) read with Section 29A (c) of the Code.

In support of the contention, Numetal also placed reliance on the following citations: -



- (1) Raipur Development Authority vs. Anupam Sahkari Nirman Samiti & Ors. Reported in (2000) 4 SCC 357
- (2) H.N. Shankara Shastlry v. Assistant Director of Agriculture reported in (2004) 6 SCC 230
- (3) Nazir Ahmad v. Kind Emperor reported in AIR 1936PC 253  
(2)
- (4) Zuari Cement Ltd. v. ESI Corporation reported in (2015) 7 SCC 690
- (5) State of Jharkhand v. Ambay Cements (2005) 1 SCC 368

17. Before proceeding further it is expedient to reproduce Section 29 A and Section 30 (1) (2) (3) & (4) of IB Code below: -

**Section 29A: Persons not eligible to be resolution applicant**

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person –

- (a) is an undischarged insolvent;
- (b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949);
- (c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor.

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**PROVIDED** that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

- (d) has been convicted for any offence punishable with imprisonment for two years or more;
- (e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013);
- (f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;
- (g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;
- (h) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;
- (i) has been subject to any disability, corresponding to clauses (a) to (h),
- (j) has a connected person not eligible under clauses (a) to (i)

Explanation: For the purposes of this clause, the expression "connected person" means –

any person who is the promoter or in the management or control of the resolution applicant;

or

- (ii) any person who shall be the promoter or in management or control of the business of the

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corporate debtor during the implementation of the resolution plan; or

- (iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii) :

PROVIDED that nothing in clause (iii) of this Explanation shall apply to –

- (A) a scheduled bank; or
- (B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002); or
- (C) an alternate investment fund registered with the Securities and Exchange Board of India”

**Section 30 (1) (2) (3) & (4) – Submission of resolution plan**

- (1) A resolution applicant may submit a resolution plan 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 repayment of other debts of the corporate debtor;
  - (b) provides for the repayment of the debts of operational creditors in 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;

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- (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.
- (3) Then 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 vote of not less than seventy-five per cent 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 29A 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 29A, 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 29A:

**PROVIDED ALSO** that nothing in the second proviso shall be construed as extension of period for the purpose 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"

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18. In the light of the above discussions and the documents annexed therein as well as the submissions made by both the sides, admittedly, as on 12.02.2018, ArcelorMittal is not qualified to submit the Resolution Plan in as much as per Section 29A of the Code speaks that "a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person;

(a)xxxxxx

(b)xxxxx

(c) has an account, or an account of Corporate Debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing assets in accordance with the guidelines of Reserve Bank of India issued under the Banking Resolution Act 1949 (10 of 1949) and at least a period of one year has lapsed from the date of such classification **till the date of commencement of the corporate insolvency resolution process** of the corporate debtor -

**Provided** that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing assets, accounts before the submission of resolution plan.

19. Thus, the date on which a person stands disqualified would be the **date of commencement of the Corporate Insolvency Resolution Process of the Corporate debtor** i.e. ESIL. This date is 02.08.2017, on which date, ArcelorMittal India Private Limited, is disqualified in view of the fact that its connected



persons of AM Netherland and LN Mittal are disqualified as they have an account or an account of Corporate Debtor under their management and control or of whom they are a promoter classified as NPA under the guidelines of Reserve Bank of India and at least a period of one year has lapsed from the date of such classification till the date of commencement of Corporate Insolvency Resolution Process of the Corporate debtor. The said disqualification starts from 02.08.2017 can only be remedied in the manner provided in the proviso to clause (c) of Section 29A read with Section 30 (4) proviso and in no other manner. The disqualification commenced on 02.08.2017, continues till 12.02.2018 and the same disqualification cannot be relieved by merely ceasing to be the promoter or by selling shares in the companies whose accounts are NPA such as Uttam Galva or KSS Petron.

20. On perusal of annexure R/4 i.e. shareholding pattern annexed with the reply of Numetal Limited, it is found that ArcelorMittal is a publically known promoter of Uttam Galva and its shareholding is classified under "promoter and promoter group" in the filings made in the Stock Exchange of India. As per shareholding pattern of Uttam Galva disclosed in the stock exchange as on December, 2017 ArcelorMittal was a single largest shareholder having significant shareholding of 29.05% in Uttam Galva.



21. On perusal of the record it is found that connected person of the applicant are the promoter of KSS Petron Private Limited, a company incorporated under the Companies Act, 1956 having registered office at Swastik Chamber, 6th Floor, Sion Trombay Road, Chembur, Mumbai has been NPA for more than a year and CIRP has been initiated against the KSS Petron vide order dated 01.08.2017 by Mumbai Bench of NCLT.
22. It is also pertinent to mention herein that, in the Minutes of the meeting of the Committee of Creditors which reproduces the decision of the RP pursuant to the opinions received by the RP from Cyril Amarchand Mangaldas and Mr. Khambatta.

Cyril Amarchand Mangaldas had opined that AM Netherlands exercised positive control over Uttam Galva and merely divesting the shareholding prior to the submission of the resolution plan could not remove the disqualification under Section 29A(c) of the Code, unless cured by payment.

23. It is an admitted position that AM Netherlands is an indirect 100% subsidiary of ArcelorMittal Societe Anonyme (AMSA) which is a listed company incorporated in Luxemburg. On the other hand, AM India is also an indirect subsidiary (99.99%) of AMSA. Accordingly, AMSA is promoter, in management and in control of AM India, the resolution applicant and AM Netherlands is a subsidiary company/associate company of AMSA in view of which AM Netherlands becomes a connected person and such connected person has an account of corporate





debtor Uttam Galva under its management, control or of whom such connected person namely AM Netherlands is a promoter is classified as NPA for more than one year before 02.08.2017. Consequently, AM India shall not be eligible to submit a resolution plan as on 12.02.2018.

24. It is an admitted position that Laxminarayan Mittal is controlling AM India being an indirect subsidiary of AMSA. Accordingly, LN Mittal/AMSA is promoter in management and in control of AM India, the resolution applicant, and LN Mittal is also in management and control of KSS Global BV in view of what is stated above and KSS Petron which is a 100% subsidiary of KSS Global BV is also under management and control of LN Mittal. KSS Petron has a NPA for more than one year and consequently, LN Mittal being a promoter/in control of KSS Global BV/KSS Petron Pvt. Ltd. is a connected person whose account is classified non-performing. Consequently, AM India shall not be eligible to submit a resolution plan.

25. From a bare reading of Section 29A (c) it is very clear that a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person; has an account, or an account of a corporate debtor under the management or control of such person or whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of



India issued under the Banking Regulation Act, 1949 (10 of 1949) and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor,

**PROVIDED** that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan.

Section 29A does not distinguish between positive and negative control. Any person who is either promotor or in the management or in the control of the business of the corporate debtor and in default is ineligible. Person connected to ArcelorMittal India Private Limited who are either promoter or in the management with KSS Petron and Uttam Galva Steels Limited are ineligible. Mere sale of shares and declassification as promoter after the companies have gone into default cannot be absolved them responsibility. In order to become eligible, overdue amounts to lenders in both the cases of KSS Petron and Uttam Galva Steels Limited should be paid by ArcelorMittal before being eligible to bid, as provided in Section 29A itself.

Further, section 30 (4) proviso provide that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of Section 29A, the resolution applicant shall be allowed by the Committee of Creditors such period, not exceeding 30 days, to make payment of overdue amounts in accordance with the proviso to clause (c) of Section 29A. Thus

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a plain reading of clause (c) of Section 29A as well as Section 30 (4) second proviso clearly says that the applicant would become eligible only after paying the overdue amounts to the lenders in both the cases of KSS Petron and Uttam Galva Steels Ltd. before being eligible to bid and 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 29A. The said opportunity to pay the overdue amounts to the lenders is not provided to the applicant (AMIPL).

26. However, irrespective of our above stated observation we are constrained to observe that RP and CoC did not adhere to some mandatory provision of the Code as provided under Section-30(3)(4) which are to be read jointly with its disability of clause section-29(A) specifically sub clause (C). it is evident from the record and cause shown in the affidavit filed by the SBI on behalf of the CoC as stating inter alia that CoC has acted as per the view expressed by the RP on the eligibility of the resolution applicant for submission for valid resolution plan as on 12.02.2018 and it did not go into the issue of determination of eligibility or otherwise of any resolution applicant and by accepting the conclusion of the RP it decided to invite fresh bid since both resolution applicant were found ineligible for submitting a valid resolution plan in conformity with the amended section-29(A) of the IB Code. Even assuming so we are of the view that CoC did not follow the mandatory and salutary

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provision of the Section-29(A) and 30(3) and (4) of the Code which provided as under;

*"29A....(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor.*

*PROVIDED that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;"*

*"30....(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 seventy-five per cent 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 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it:*

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PROVIDED FURTHER that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, 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 29A."

Which means the intention of the Legislature for enabling such provision to give an opportunity to a Resolution Applicant is even found ineligible under clause (c) of Section 29A, and to allow to make payment of its overdue, within prescribed period in the proviso of the Section 30(4) of the IB Code, so as to remove disability. (c) of Section 29A. For the sake of convenience, the relevant clauses may be reproduced hereunder: -

*"29A....(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor.*

*PROVIDED that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;"*

27. Further, we are of the view that RP ought to have produced both the resolution plan before the CoC, along with his comments of eligibility of both resolution applicants for consideration of the COC and to follow the provision of 29(A) (C)







read with section 30(4) for the purpose of affording the opportunity to the resolution applicants before declaring them ineligible. In our view, such procedure has not been followed hence, it vitiates the proceeding of the CoC and hence the present matter can be remanded back to the RP and CoC on this ground alone for their reconsideration.

28. Even assuming this there is no such expressed bar or any fetter to the right and jurisdiction of the CoC to go for inviting a fresh bid in order to safeguard the paramount interest of the corporate debtor company and to receive a practical and valuable resolution plan but in our humble view, the CoC is equally expected to follow the procedure of the code specifically to Section -30(4) of the Code, even if, a fresh bid is allowed to be opened then there is every possibility that some of them may be found ineligible under section-29(A)(C) of the Code and the RP and the CoC would again legally be expected to provide the opportunity to such Resolution applicant as per Section-30(4) i.e. not exceeding 30 days to make payment overdue amount in accordance with the proviso of clause (c) of Section-29A removing its disability.

29. It is pertinent to mention herein, that the nature of duties assigning to a RP is similar to a public servant, as he is being an appointee of this code, that a part, CoC is also a creature of the statute i.e. the present code, hence, they can be termed as an instrumentality of state and, are under the statutory obligation to follow the mandate of the code and law of the land.

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30. Notwithstanding, the above that a reading of the internal minutes of the CoC dated 21.03.2018 goes on to shows that the RP has suggested to the CoC for taking future course of action as both the resolution applicant/plan were found ineligible hence, he submitted before the CoC to go for options available, which are based on a legal advice received by him and both option is legally permissible. In the option no.1 it has been suggested to initiate a new process for inviting bid from all interested parties (starting with initiation of new expression of interest) and follow the entire process as per new RFP as approved by the CoC which were not considered as viable and appropriate by the CoC keeping in view of the time constrain, while in our humble view such option seems to be more sound reasonable and legally transparent keeping in view of the statutory change/ amendment took place in Section-29 of the Code by inserting new clause i.e. section-29(A) in the Code with effect from 23.11.2017, therefore, we feel, while remanding back the matter to the CoC for reconsideration of the resolution plan and resolution applicant, the CoC may relook to opt for option-1 as per the deliberation made in the CoC meeting dated 21.03.2018 and to take appropriate decision looking to the time constraint and paramount interest of the Corporate Debtor Company.

31. We heard the submissions at length of Learned Senior Advocates Learned Senior Counsels for both the parties and by perusing the written argument as well as the judicial precedents of Hon'ble Apex Court and Hon'ble High Courts and other legal





forums and for the sake of brevity we are not discussing in detailed the issue of the ratio decidendi of the above stated decision applicable to the facts and circumstances of present petition and for sake of convenience we are only giving reference to some of rulings which were cited before us which include the decision of the Hon'ble Supreme Court and High Court namely;

- i) 1. New Horizons Limited and Another V/s. Union of India and others. (1995) 1 SCC 478. 2. Shipping Corporation of India V/s. Machado Brothers and others. (2004) 11 SCC 168. 3. Harbhajan Singh V/s. Press Council of India and others. (2002) 3 SCC 722 On behalf of the RP and CoC.
- ii) 1. Vodafone International Holdings B.V. V/s. Union of India and Anr. 2012 (1) UJ 0334.  
2. Pearlless General Finance and Investment Co. Limited V. Reserve Bank of India (1992) 2 SCC 343.  
3. R. Ramakrishna Rao V. State of Kerala (1968) 2 SCR 819.

In addition, above stated judicial precedent by the Learned Counsel for the respective parties in support of their contention this Court also considered the law as laid down by the Hon'ble Supreme Court in the matter of R D Reddly V International Airport Authority of India (reported in 1979 AIR SC page 162) and in Mohirnder Singh Gill V. Chief Election Commissioner (reported in 1978 AIR 851, 1978 SCR (3) 272.)





32. **In the light of above stated discussion in the present IAs, our findings and conclusion can be summarised as under: -**

As per the material available on record and as per affidavits of the State Bank of India (as being major constituent in the CoC) on behalf of the Committee of Creditors, it acted as per the view an eligibility expressed by the RP for submission of a valid and proper resolution plan and it did not decide the issue of determination of the eligibility/ ineligibility of the Resolution applicant(s). According to the CoC, it is the duty of the RP, (the Respondent No.1), to decide the issue of the eligibility and to make scrutiny of a Resolution plan and to determine. Therefore, the CoC acted only upon the report of the RP and invited a fresh bid since both the Resolution Applicants, as per RP found ineligible for filing a valid and proper resolution plan in conformity with the amended Section 29A of the Insolvency and Bankruptcy Code, 2016 (as amended upto date). The extract from the CoC minutes as well as the letter of RP dated 23.3.2018 send to Resolution Applicant namely, Numetal Pvt. Ltd. and AMIPL, it is evident that the Resolution Plans of applicants were/ are not placed before CoC.

Notwithstanding above, a joint reading of Section 29A read with Section 30 (4) of the IB Code makes some salutary provisions as provided in Section 30(3), (4) with its proviso(s),



for the sake of convenience the same are being reproduced herein below: -

*"29A....(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor.*

*PROVIDED that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;"*

*"30....(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 seventy-five per cent 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 29A 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 29A, 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 29A."

It is clear from the above referred enabling provision that, if Resolution Applicant(s) is/ are found ineligible under clause (c) of Section 29A, he shall be allowed by the CoC such period not exceeding 30 days to make payment of overdue amount in accordance with proviso to clause (c) of Section 29A. For the sake of convenience may be reproduced hereunder: -

Considering the above stated statutory provisions, we find that the CoC did not follow the prescribed procedure in above stated provision(s) of the Code, i.e. Section-29-A(c) read with specifically proviso to Section 30 (3) (4) to afford reasonable opportunity by making payment of overdue amount in order to remove such disability of the Resolution Applicant(s) as prescribed under clause (c) of Section 29A and/or to make good the disability.

In our view such irregularity may vitiate the entire proceeding of the CoC, hence, we are of the view that the RP ought to have produced both the resolution plans before the CoC along with his notes comments on ineligibility for consideration of the CoC before rejection, by following the provisions of Section 29A(c) read with proviso of Section- 30(4) to consider for affording an opportunity by the Resolution Applicants before declaring them ineligible. We further hold that, while rejecting resolution





plan(s) such procedure has not been followed by RP, thus, IA No.98 of 2018 and IA 110 of 2018 partly succeeds on this limited ground alone and the matter is remanded back to the RP and the CoC with such direction to place all the resolution plans as received by him before initiation of fresh bid for consideration of CoC in the light of statutory provisions of Section 29A(c), read with Section 30(4) and other relevant provisions including the legal question of eligibility of the Resolution Applicants on the date of commencement of CIRP of Corporate Debtor, as prescribed under Section-29A(c), hence, we do not propose to rule on this issue which is required to be considered by CoC in accordance with law and prescribed procedure and without being influenced by the observations made, if any, during the course of hearing or in this order.

As we have already held in preceding paras that the RP as well as the CoC have omitted to follow the prescribed procedure as mandated by the Code under the provisions of Section 29A(c) read with Section 30(4) and the proviso thereto, their decision to go for inviting a fresh bid may appear prudent but is not legally sound and valid. Even assuming so that there is no express bar or any fetter on the right and jurisdiction of the CoC to invite a fresh bid, with a view to safeguard the paramount interest of the corporate debtor company and to receive a practicable and viable resolution plan, however, in our humble view the RP and CoC are required to follow the prescribed procedure of the Code, specifically proviso to Section 30(4) of the Code, in the paramount interest of Corporate Debtor for revival of the

company keeping in view the constraints of timeframe before final rejection of the Resolution Plans, as submitted by the present applicants.

Even if fresh bid is allowed to be opened, there may be some or any resolution applicant(s), who may be ineligible under Section 29A(c) of the Code, in that event the RP and the CoC are again bound to provide an opportunity not exceeding 30 days for making payment of overdue amounts or to remove its disability as per the proviso of Section-30 (4) of the Code, which again consume considerable time.

Moreover, in our humble view, the nature of duties as assigned to the RP is/are similar to public servant because he is an appointee of this Court further the Committee of Creditors is also a creature of the statute, and, can be termed as the instrumentality of a state, hence, they are under statutory obligation to follow the basic principles of administrative law. Our such view is fortified with a decision of Honourable Supreme Court in the matter of RD Shetty v. International Airport Authority of India, (reported in AIR 1979 SC 1628) wherein, it has been ruled that instrumentality of the state has to act in transparent and fair manner and not to take arbitrary decision or to adopt a discriminatory practice.

Therefore, in view of the above stated decision of the Honourable Supreme Court the decision of the CoC by not providing sufficient opportunity to the Resolution Applicants concerned under the proviso of Section 30(4) is not only, in





contravention of the proviso of Section-30(4) of the IB Code but is also not in conformity with the law of the land as declared by the Honourable Supreme Court in the above stated judgment and it's another decision in the matter of Mohinder Singh Gill & Another v. The Chief Election Commissioner, (reported in 1978 AIR 851) wherein the Honourable Supreme Court has laid down a law about the application of natural justice in administrative proceedings. As per the Hon'ble Apex Court the rules of natural justice are rooted in all legal systems and are not any 'new theology'. They are manifested in the twin principles of memo index in sua causa and audi alteram partem. It has been pointed out that the aim of natural justice is to secure justice, or, to put it negatively to prevent miscarriage of justice. These rights can operate only in areas not covered by any law validly made; they do not supplant the law of the land but supplement it. What particular rule of natural justice should apply to a given case must depend to a great extent on the facts and circumstances of that case. Whenever a complaint is made before a court that some principle of natural justice has been contravened, the court has to decide whether the observation of that rule was necessary for a just decision on the facts of that case. Which is also theme of the IB Code, as is found in other Section i.e. 86 and 87 of the Code.

By following the above stated decision and in the light of above discussion held, the IA 98/2018 and 110/2018, are partly succeeds on the above mentioned limited ground alone. Hence, we do not wish to deal with the other issues at this stage and go



into controversy involved therein, which are kept open. The RP and the CoC are hereby directed to revisit/reconsider their decision which is the subject matter of this petition by following and in the light of the provisions of Section 29A(c) read with Section 30(4) proviso and to act in accordance with law. The parties are at liberty to challenge the reconsidered decision of the RP and CoC in accordance with law before appropriate forum including this Authority.


Since, the time is essence of the Code and as per the normal extended period prescribed for CIRP of 270 days is going to be over by 29<sup>th</sup> April, 2018, we, rely upon the decision dated 20<sup>th</sup> February, 2018 of the Honourable NCLAT in the matter of *Quantum Limited v. Indus Finance Corporation Limited*, feel just and appropriate to exclude such period for all purposes from the date of filing of present IA No.98 of 2018, i.e. 20<sup>th</sup> March, 2018 till the date of pronouncement of this order, from the CIRP as per the provisions of Sections 12, 14 and 15 of the Limitation Act, which permit for exclusion of time consumed in legal proceeding pending before a court of law which includes this Court. Further, by reading Section 60(6) of the IB Code prescribed that irrespective of the provision of the Limitation Act, the time prescribed for filing legal proceeding by or against corporate debtor company is to be excluded here considering the present case on similar footing. We are of the view, such exclusion of time may be allowed by this Court, hence the period from the date of filing the present application, i.e. 20.03.2018, till the date



of pronouncement of order has to be excluded from the prescribed period of the CIRP.


In the light of the above stated IAs filed by Numetal India Limited and Arcellor Mittal India Private Ltd. are partly succeeds by this common order and other IAs i.e. IA 111/2018, 112/2018, 121/2018, Inv. P 7/2018 and Inv. P. 8/2018 accordingly, stand disposed of. In the light of this order and interim order passed, if any, therein, in such applications stands merged with the present order. No order as to costs.

Signature:

  
**Manorama Kumari,**  
**Member (Judicial)**

B..

Signature:

  
**Harihar Prakash Chaturvedi,**  
**Member (Judicial)**