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

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 08.03.2019

Name of the Parties :

1) **IA No. 431 of 2018 in CP(IB) 39 & 40 of 2017**
The Resolution Professional for Essar Steel India Ltd.
[Section 30(6) of the Insolvency & Bankruptcy Code]

2) **IA No. 468 of 2018 in CP(IB) 39 & 40 of 2017**
State Tax Officer V /s. Essar Steel India Ltd.
[Section 60(5) of the Insolvency & Bankruptcy Code]

3) **IA No. 28 of 2018 in CP(IB) 40 of 2017**
Dakshin Gujarat Vij Co. Ltd.. V/s. Essar Steel Ltd.
[Section 60(5) of the Insolvency & Bankruptcy Code]

4) **IA No. 14 of 2019 in CP(IB) 39 of 2017**
Oil & Natural Gas Corporation Ltd. V /s. Satish Kumar Gupta, RP & Anr.
[Section 60(5) of the Insolvency & Bankruptcy Code]

5) **IA No. 443 of 2018 in CP(IB) 40 of 2017**
Gujarat Energy Transmission Co. Ltd V/s. Satish Kumar Gupta Resolution Professional of Essar Steel India Ltd. & Anr.
[Section 60 (5) of the Insolvency & Bankruptcy Code]

6) **IA No. 436 of 2018 in CP(IB) 39 & 40 of 2017**
COC for Essar Steel India Ltd. (Through State Bank of India) V/s. Essar Steel India Ltd.
[Section 60(5) of the Insolvency & Bankruptcy Code]

7) **IA No. 438 of 2018 in CP(IB) 39 & 40 of 2017**
Gail (India) Ltd. V/s. Satish Kumar Gupta Resolution Professional of Essar Steel India Ltd.
[Section 60(5) of the Insolvency & Bankruptcy Code]

8) **IA No. 442 of 2018 in CP(IB) 39 of 2017**
Berger Becker Coatings Pvt. Ltd. V/s. Essar Steel India Ltd. & Anr.
[Section 60(5)of the Insolvency & Bankruptcy Code]

9) **IA No. 439 of 2018 in CP(IB) 39 & 40 of 2017**
Standard Chartered Bank V/s. Satish Kumar Gupta & Anr.
[Section 60(5)of the Insolvency & Bankruptcy Code]

10) **IA No. 446 of 2018 in CP(IB) 40 of 2017**
Dakshin Gujarat Vij Co. Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd. & Anr.
[Section 60 of the Insolvency & Bankruptcy Code]

11) **IA No. 325 of 2018 in CP(IB) 40 of 2017**
Indian Oil Corporation ltd. RP V/s. Satish Kumar Gupta Resolution Professional of Essar Steel India Ltd.
[Section 60(5) of the Insolvency & Bankruptcy Code]

12) **IA No. 469 of 2018 in CP(IB) 39 & 40 of 2017**
Indian Oil Corporation ltd. RP V/s. Satish Kumar Gupta Resolution Professional of Essar Steel India Ltd.
[Section 31 r.w 60(5) (c) of the Insolvency & Bankruptcy Code]

13) **IA No. 467 of 2018 in CP(IB) 40 of 2017**
Dakshin Gujarat Vij Co. Ltd. RP V/s. Satish Kumar Gupta Resolution Professional of Essar Steel India Ltd. & Anr.
[Section 60 of the Insolvency & Bankruptcy Code]

14) **IA No. 470 of 2018 in CP(IB) 39 & 40 of 2017**
Global Transnational Trading FZE RP V/s. Satish Kumar Gupta Resolution Professional of Essar Steel India Ltd. & Ors.
[Section 60(5) r.w. 37 & 39 of the Insolvency & Bankruptcy Code]

15) **IA No. 481 of 2018 in CP(IB) 40 of 2017**
L & T Infrastructure Finance Co. Ltd. RP V/s. Essar Steel India Ltd.(through Resolution Professional Satish Kumar Gupta)
[Section 60(5) of the Insolvency & Bankruptcy Code]

16) **IA No. 15 of 2019 in CP(IB) 39 & 40 of 2017**
Arkay Logistics Ltd. RP V/s. State Bank of India & Ors.
[Section 60(5) of the Insolvency & Bankruptcy Code]

17) **IA No. 472 of 2018 in IA 431 of 2018 in CP(IB) 39 & 40 of 2017**
Gail India Ltd. V /s. Satish Kumar Gupta Resolution Professional of Essar Steel India Ltd. & Ors.
[Section 60(5) of the Insolvency & Bankruptcy Code]

18) **IA No. 53 of 2019 in CP(IB) 40 of 2017**
Bharat Petroleum Corporation Ltd. V /s. Satish Kumar Gupta Resolution Professional of Essar Steel India Ltd.
[Section 60(5) of the Insolvency & Bankruptcy Code]

19) **IA No. 60 of 2019 in CP(IB) 39 & 40 of 2017**
Arfin India Limited. V /s. State Bank of India
[Section 60(5) of the Insolvency & Bankruptcy Code]

19) **IA No. 61 of 2019 in CP(IB) 39 & 40 of 2017**
Essar Bulk Terminal Limited V /s. State Bank of India
[Section 60(5) of the Insolvency & Bankruptcy Code]

20) **IA No. 62 of 2019 in IA 431 of 2018 in CP(IB) 39 & 40 of 2017**
NTPC V /s. Satish Kumar Gupta Resolution Professional of Essar Steel India Ltd.
[Section 60(5) of the Insolvency & Bankruptcy Code]

21) **IA No. 64 of 2019 in IA 431 of 2018 in CP(IB) 39 & 40 of 2017**
Dilip Oomman & Ors. V /s. State Bank of India & Ors.
[Section 60(5) of the Insolvency & Bankruptcy Code]

22) **IA No. 49 of 2018 in CP(IB) 39 of 2017**
Essar Power Ltd. V /s. Satish Kumar Gupta, RP
[Section 60(5) of the Insolvency & Bankruptcy Code]

23) **IA No. 50 of 2018 in CP(IB) 40 of 2017**
Bhander Power Ltd. V /s. Satish Kumar Gupta, Resolution Professional
[Section 60(5) of the Insolvency & Bankruptcy Code]

24) **IA No. 52 of 2019 in CP(IB) 40 of 2017**
MSTC Limited V /s. Satish Kumar Gupta, RP of Essar Steel India Ltd.
[Section 60(5) of the Insolvency & Bankruptcy Code]

25) **IA No. 125 of 2019 in IA 482 of 2018 in CP(IB) 39 & 40 of 2017**
Hill View Hire Purchase Pvt. Ltd. V /s. Satish Kumar Gupta, Resolution Professional of Essar Steel India Ltd.
[Section 424 of the Insolvency & Bankruptcy Code]

26) **IA No. 126 of 2019 in IA 483 of 2018 in CP(IB) 39 & 40 of 2017**
D. R. Patnaik V /s. Satish Kumar Gupta, Resolution Professional of Essar Steel India Ltd.
[Section 424 of the Insolvency & Bankruptcy Code]

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
1.	Mr. Kamal Trivedi, Sr. Adv.	Adv. For Standard Chartered Bank. (Sr. No. 9 I.A./439/2018)		
	Mr. Rashesh Sanjanwala, Sr. Adv.			
	Mr. Sandeep Singhi,			
	Mr. Siddhart Joshi,			
	Mr. Gaurav Mathur,			
	Mr. Abhishek Shah,			
	Ms. Trisha Baxi & Ms. Ankita Rajput			
	i/b. Singhi & Co.			

Sr. No.

25 } Jaimin R. Dave
26 } Priyank S. Dave } ADV. } Intervenor
Shivam D. Parikh

(21) IA/64/2019.

MIHIR J. THAKORE SR. ADVOCATE APPLICANT for

ANUJ K. TRIVEDI ADVOCATE APPLICANT

(1) I.A 431/2018

– For ArcelorMittal India Private Ltd. (Resp. No. 3).

1. Mr. Shalin Mehta, Sr. Adv.
2. Mr. Abhishek Swaroop, Adv.
3. Mr. Naman S. Bagga, Adv.
4. Ms. Misha Chandna, Adv.
5. Mr. Ajay Dave, Adv. [for Nachiket Dave, Adv.].

S.NO.	NAME (CAPITAL LETTERS)	DESIGNATION	REPRESENTATION	SIGNATURE
3.	MR. MANISH R. BHATT WITH MR. MUNJAAL BHATT	SR. ADV. ADV.	APPLICANT in Sr.no. 12 [IA No.469/18] for IOCL	MMBhatt
4.	Pranjal Buch	Advocate	Operational Creditor	Sr. No. 8.
5.	Mr. Saurabh N. Soparkar (Sr. Advocate) Mr. Ajay R. Mehta, Mr. Anmol A. Mehta	Advocates	Operational Creditor (Sr. No. 11 and 18) [IA/325/2018 with IA/53/2019].	
6.	MR. RAMJI SRINIVASAN, MR. NAVIN PAHWA, MR. SOHAIL SHAH; MS. SALONI KAPADIA, MS. SURBHI PAREEK, MR. PARTH SHAH i/by CYRIL AMARCHAND MANGALDAS	SENIOR ADV; ADVOCATES	RESOLUTION PROFESSIONAL	SAlapedia
7.	MR. RAVI KADAM, MR. SOLI COOPER, MR. ARUN KATHPALIA, MR. DEVEN PARIKH; MR. SAPAN GUPTA, MR. SIDHANT KANT, MS. GRISHMA AHUJA, MS. MRIDA LAKHMANI, MR. SHALIN JANI, MR. NISHANT DOSHI, Mr. Prateek Seksaria FOR, SHARDUL AMARCHAND MANGALDAS & Co	SR. ADVOCATE; ADVOCATE	FOR COC	
8.	MR. ARJUN R SHETH, MS. ANUJA M. SARAIYA	ADV & SOLICITOR, ADV	PETITIONER IN SR. NO. 24 [IA 481 of 2018 IN (PCLB) 40 of 2017]	A. M. Saraiya Petitioners
9.	Appearance for Sr. No. 9 Mr. Ravi Kadam, Senior Advocate, Mr. Arun Kathpalia, Senior Advocate with Mr. Nirag Pathak, Advocate		for Resp. NOS. 2-5	Pathak

12	PREMAL R JOSHI	Advo	APPLICANT in Sr. No. 12 IA 28/18	Premal Joshi
19	PREMAL R JOSHI	Advo	APPLICANT in Sr. No. 19 IA 1446/18	Premal Joshi
22	PREMAL R JOSHI	Advo	APPLICANT in Sr. No. 22 IA/467/18	Premal Joshi
9	Damini V. Purohit for Mosonle Experts	ADVO	APPLICANT In Sr. No. 9 IA 1441/2019	Purohit Damini
26	Damini V. Purohit for Mosonle Experts	ADVO	APPLICANT. In Sr. No. 26 472/2018	Purohit Damini
30	Damini V. Purohit for Mosonle Experts	ADVO	APPLICANT In Sr. No. 30 IA No 62 of 2019 in/with CP (IB) 431/18 in with CP (IB) 39 & 40 of 17	Purohit Damini
IA 468/18	State Tax Officer Vs. Essar Steel India		Maithili Mehta ADV FOR GST DPT.	
24	Nishith P. Acharya for Aditya J. Pardya	Adv. Adv.	Applicant in Sr. No. 24 IA 52/2019 in CP(IB) 40/17	Acharya
7)	Akshat Pooja Singh For Akshat Khare Sudhir Nanavati	Adv.	Applicant In IA 438/2018 CP(IB) 39 & 40/2017	Pooja
17)	Pooja Singh For Akshat Khare Sudhir Nanavati	Adv	Applicant IA 472/2018 CP(IB) 39 & 40/2017	Pooja

ORDER

The parties are represented through their respective learned counsels.

The Order is pronounced in the open Court, vide separate sheet.

The Learned Counsel appearing for Respondent made such request for staying the operation of the order passed, which cannot be acceded to, in view of the fact that, the said order is passed in pursuant to the mandate of the Hon'ble Supreme Court of India as well as the direction given by the Hon'ble National Company Law Appellate Tribunal.

Accordingly, the oral prayer made for keeping in abeyance the operation order is declined.

MANORAMA KUMARI
MEMBER JUDICIAL
Dated this the 8th day of March, 2019

HARIHAR PRAKASH CHATURVEDI
MEMBER JUDICIAL

IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH

I.A. No.431 of 2018
with
I.A. No.468 of 2018
With
I.A. No. 28 of 2018
With
I.A. No. 14 of 2019
With
I.A. No. 443 of 2018
With
I.A. No. 436 of 2018
With
I.A. No. 438 of 2018
With
I.A. No. 442 of 2018
With
I.A. No. 439 of 2018
With
I.A. No. 446 of 2018
With
I.A. No. 325 of 2018
With
I.A. No. 469 of 2018
With
I.A. No. 467 of 2018
With
I.A. No. 470 of 2018
With
I.A. No. 481 of 2018
with
I.A. No. 15 of 2019
With
I.A. No. 472 of 2018 in I.A. 431 of 2018
With
I.A. No. 53 of 2019
with
I.A. No. 60 of 2019
with
I.A. No. 61 of 2019
with
I.A. No. 62 of 2019 in I.A. 431 of 2018
with
I.A. No. 64 of 2019 in I.A. 431 of 2018
with
I.A. No. 49 of 2018
with
I.A. No. 50 of 2018
with
I.A. No. 52 of 2019
with
I.A. No. 125 of 2019 in I.A. 482 of 2018
with
I.A. No. 126 of 2019 in I.A. 483 of 2018

In

CP(IB) Nos.39 & 40 of 2017

In the matter of:-

I.A. No.431 of 2018

The Resolution Professional for Essar Steel India Limited,
A company incorporated under the Companies Act, 1956 and having its registered office at 27 km., Surat-Hazira Road, P.O. Hazira, District Surat, Gujarat – 394 270. ... Applicant

In the matter between :

Standard Chartered Bank |
And |
State Bank of India | ... Financial Creditors

Vs.

Essar Steel India Limited
A company incorporated under the Companies Act, 1956 and having its registered office at 27 km., Surat-Hazira Road, P.O. Hazira, District Surat, Gumarat – 394 270. ... Corporate Debtor

I.A. No.468 of 2018

State Tax Officer
Unit-1, 3rd Floor
Commercial Tax Bhavan
Opp. Dutch Garden
Nanpura
Dist-Surat
Gujarat. ... Applicant

Vs.

Essar Steel India Ltd.
27 KMS Surat Hazira Road
Dist-Surat
Gujarat ... Respondent

I.A. No.28 of 2018

Dakshin Gujarat Vij. Co. Ltd.
Through its Executive Engineer, O & M
Opposite E-Space
Bhagwan Mahavir College Cross Road
New VIP Road
Surat-395 007 ... Applicant

Vs.

Essar Steel Ltd., through IRP
Mr. Satish Kumar Gupta
C/o. Alvarez & Marsal India Pvt. Ltd.
Units 703 and 704, 7th Floor,
Tower A, Peninsula Corporate Park
Ganpatrao Kadam Marg
Lower Parel (West)
Mumbai-400 013 ... Respondent

I.A. No.14 of 2019

Oil and Natural Gas Corporation Ltd.
Hazira Gas Processing Complex
P.O. ONGC Nagar
Surat-394 518
... Applicant

Vs

1. **Satish Kumar Gupta**
   Resolution Professional
   C/o. Alvarez & Marsal India Pvt. Ltd.
   Units 703 and 704, 7th Floor,
   Tower A, Peninsula Corporate Park
   Ganpatrao Kadam Marg
   Lower Parel (West)
   Mumbai-400012

2. **Essar Steel India Ltd.**
   27th Km, Surat-Hazira Road
   Village Hazira
   Dist: Surat

3. **Standard Chartered Bank**
   Address:
   i. 1 Basinghal Avenue
      London
      England-EC2V5DD

   ii. UG 4 and FF 4, Manav Mandir
      Parle Point
      Surat-395 007. ... Respondents

I.A. No.443 of 2018
Gujarat Energy Transmission Corporation Ltd.
Having its registered office at:
Sardar Patel Vidyut Bhavan
Race Course
Vadodara-390 007

... Applicant

Vs

1. Mr. Satish Kumar Gupta
Resolution Professional
Essar Steel India Ltd.
Essar House, 27 Km
Surat Hazira Road
Hazira, Surat-394 270
Gujarat State

2. State Bank of India
On behalf of Committee of Creditors
State Bank Bhavan
Madame Cama Road
Nariman Point, Mumbai
Maharashtra-400 021
And having Corporate Banking
Branch at
State Bank of India
Corporate Accounts Group II
The Capital, A Wing
16th Floor, Bandra Kurla Complex
Bandra East
Mumbai-400 051

... Respondents

I.A. No.436 of 2018

The Committee of Creditors for Essar Steel India Ltd.
A Company incorporated
under the Companies Act, 1956,
and having its registered office
at 27 km, Surat Hazira Road,
P.O. Hazira, District-Surat,
Gujarat-394 270 through
State Bank of India

... Applicant

Vs

Essar Steel India Ltd.

A Company incorporated
under the Companies Act, 1956
and having its registered office
at 27 km, Surat Hazira Road,
P.O. Hazira, District-Surat,
Gujarat-394 270.

... Respondent

I.A. No.438 of 2018

Gail (India) Ltd.
809, Sakar-2
Opp. Town Hall
Ellisbridge
Ahmedabad

... Applicant

Vs

Satish Kumar Gupta
Resolution Professional of
Essar Steel India Ltd.

... Respondent

I.A. No.442 of 2018

Berger Becker Coating Pvt. Ltd.
A Company incorporated under the
provisions of the Companies Act, 1956 and
having its registered office at Plot No.114,
Pilerne Industrial Estate
Post Saligao, Goa-403 511

... Applicant

Vs

1. **Essar Steel India Limited**
   Essar House
   27 KM, Surat Hazira Road
   P.O. Hazira,
   District: Surat-394 270

2. **Satish Kumar Gupta**
   Resolution Professional
   Essar Steel India Limited
   Essar House
   27 KM, Surat Hazira Road
   P.O. Hazira, District Surat
   Gujarat-394 270

... Respondents

I.A. No.439 of 2018

Standard Chartered Bank
1 Basinghal Avenue
London
England-EC2V5DD

... Applicant

Vs

Satish Kumar Gupta
Resolution Professional

Essar Steel India Limited
Essar House
27 KM, Surat Hazira Road
P.O. Hazira, District Surat
Gujarat-394 270

... Respondent

I.A. No.446 of 2018

Dakshin Gujarat Vij Co. Ltd.
Kapodra Char Rasta
Nana Varachha Road
Surat-395 006

... Applicants

Vs

1. **Mr. Satish Kumar Gupta**
Resolution Professional
Essar Steel Limited
Essar House
Surat Hazira Road
Hazira, Surat-394 270
Gujarat

2. **State Bank of India on behalf of Committee of Creditors**
State Bank Bhavan
Madame Cama Road
Nariman Point
Mumbai-400 021
Maharashtra
And having Corporate Banking
Branch at
State Bank of India
Corporate Accounts Group II
The Capital, A Wing
16th Floor, Bandra Kurla Complex
Bandra East
Mumbai-400 051

... Respondents

I.A. No.325 of 2018

Bharat Petroleum Corporation Ltd.
Having registered office at:
4&6, Currimbhoy Road
Ballard Estate
Mumbai-400 001

... Applicant

Vs

Mr. Satish Kumar Gupta
(Resolution Professional for Essar Steel India Ltd.)
C/o. Alvare & Marsal India Pvt. Ltd.
Units 703 and 704, 7th Floor,
Tower A, Peninsula Corporate Park
Ganpatrao Kadam Marg
Lower Parel (West)
Mumbai-400 013

... Respondent

I.A. No.469 of 2018

Indian Oil Corporation Ltd.
Having office at
Scope Complex, Core 2
7 Lodhi Road
New Delhi-110 003

And registered office at:
G-9, Dr. Ali Jayay Jung Marg
Bandra (East)
Mumbai-400 051

... Applicant/
Operational Creditor

Vs

Satish Kumar Gupta
(Resolution Professional for Essar Steel Limited)
C/o. Alvarez & Marsal India Pvt. Ltd.
Units 703 & 704, 7th Floor, Tower A
Peninsula Corporate Park
Ganpatrao Kadam Marg
Lower Parel (West)
Mumbai-400 013

... Respondent

I.A. No.467 of 2018

Dakshin Gujarat Vij. Co. Ltd.
Kapodra Char Rasta
Nana Varachha Road
Surat-395 006

... Applicant

Vs

1. **Mr. Satish Kumar Gupta**
   Resolution Professional
   Essar Steel Limited
   Essar House, Surat-Hazira Road
   Hazira, Surat-394 270
   Gujarat

2. **State Bank of India on behalf of Committee of Creditors**
   State Bank Bhavan
   Madame Cama Road
   Nariman Point
   Mumbai-400 021
   And having Corporate Banking Branch
   at State Bank of India, Corporate
   Accounts Group II, The Capital A Wing
   16th Floor, Banda Kurla Complex
   Bandra (East), Mumbai-400 051

... Respondents

I.A. No.470 of 2018

Global Transnational Trading FZE
Office No. B34BS330116
P.O. Box No.262481
Jebel Ali,
Dubai
U.A.E.

... Applicant

Vs

1. **Mr. Satish Kumar Gupta**
   Resolution Professional
   Essar Steel Limited
   C/o. Alvarez & Marsal India Pvt. Ltd.
   Units 703 & 704, 7th Floor, Tower A
   Peninsula Corporate Park
   Ganpatrao Kadam Marg
   Lower Parel (West)
   Mumbai-400 013

2. **State Bank of India on behalf of Committee of Creditors**
   State Bank Bhavan
   Madame Cama Road
   Nariman Point
   Mumbai-400 021

3. **Arcelor Mittal India Limited**
8, J.D. Corporate, 3rd Floor
Near Mahabeer Tower, Jokhiram
Durgadutt Compound
Main Road
Ranchi-834 001 ... Respondents

I.A. No.481 of 2018

L & T Infrastructure Finance Company Ltd.
A Company incorporated
under the Companies Act,
1956 having its registered office
at Brindavan Plot No.177,
C.S.T. Road, Kalina,
Santa Cruz (East), Mumbai-400 098,
through its authorized
representative Mr. Siddharth Bagga. ... Applicant

Vs

Essar Steel India Ltd.
Through its Resolution Professional
Satish Kumar Gupta
C/o. Alvarex & Marsal India Pvt. Ltd.
Units 703 and 704, 7th Floor
Tower A, Peninsula Corporate Park
Ganpatrao Kadam Marg
Lower Parel (W)
Mumbai-400 013 ... Respondent

I.A. No.15 of 2019

Arkay Logistics Ltd.
Essar House
11 KK Marg
Mahalaxmi
Mumbai ... Applicant

Vs

1. **State Bank of India on behalf of Committee of Creditors**
State Bank Bhavan
Madame Cama Road
Nariman Point
Mumbai-400 021

2. **Standard Chartered Bank**

1 Basinghall Avenue, London
England-EC2V5DD

3. **Satish Kumar Gupta**
Resolution Professional
Essar Steel India Limited
Essar House, 27 KM
Surat Hazira Road
Hazira, Surat-394 270
Gujarat

... Respondents

I.A. No.472 of 2018

M/s. GAIL India Ltd.
Mumbai Zonal Office (MZO)
GAIL Bhawan, Plot No.73
Road No.3, Sector 15
CBD Belapur
Navi Mumbai-400 614

... Applicant

Vs

Shri Satish Kumar Gupta
Resolution Professional of M/s. Essar
Steel India Ltd.
M/s. Essar Steel India Ltd.
Having its registered office at
27 kms. Surat Hazira Road
PO-Hazira, Dist. Surat
Gujarat-394 270

... Respondent

I.A. No.53 of 2019

Bharat Petroleum Corporation Ltd.
Having registered office at:
4 & 6, Currimbhoy Road
Ballard Estate
Mumbai-400 001

... Applicant/
Operational Creditor

Vs

1. **Satish Kumar Gupta**
(Resolution Professional for Essar Steel
India Limited)
C/o. Alvarex & Marsal India Pvt. Ltd.
Units 703 and 704, 7th Floor
Tower A, Peninsula Corporate Park
Ganpatrao Kadam Marg

Lower Parel (W)
Mumbai-400 013

2. **Committee of Creditors of Essar Steel India Ltd.**
State Bank of India
State Bank Bhavan
Madame Cama Road
Nariman Point
Mumbai
Maharashtra-400 021
And having its Corporate Bank at:
State Bank of India
Corporate Accounts Group II
The Capital, A Wing
16th Floor, Bandra Kurla Complex
Bandra East
Mumbai-400 051

... Respondents

I.A. No.60 of 2019

Arfin India Limited
Ashram Road
Ahmedabad-380 009 ... Applicant

Vs

1. **State Bank of India on behalf of Committee of Creditors**
State Bank Bhavan
Madame Cama Road
Nariman Point
Mumbai
Maharashtra-400 021

2. **Standard Chartered Bank**
1 Basinghall Avenue, London
England-EC2V5DD

3. **Satish Kumar Gupta**
Resolution Professional
Essar Steel India Limited
Essar House, 27 KM
Surat Hazira Road
Hazira, Surat-394 270
Gujarat ... Respondents

I.A. No.61 of 2019

Essar Bulk Terminal Ltd.
27 KM Surat – Hazira Road
Hazira
Surat-394 270

... Applicant

Vs

1. **State Bank of India on behalf of Committee of Creditors**
   State Bank Bhavan
   Madame Cama Road
   Nariman Point
   Mumbai
   Maharashtra-400 021

2. **Standard Chartered Bank**
   1 Basinghall Avenue, London
   England-EC2V5DD

3. **Satish Kumar Gupta**
   Resolution Professional
   Essar Steel India Limited
   Essar House, 27 KM
   Surat Hazira Road
   Hazira, Surat-394 270
   Gujarat.

... Respondents

I.A. No.62 of 2019 in IA 431 of 2018

NTPC Ltd.
(formally known as National Thermal
Power Corporation Ltd.)
Having its registered office at
NTPC Bhavan, Scope Complex
7, Institutional Area, Lodhi Road
New Delhi-110 003

And

Having its project address at
Kawas Gas Power Project
Village: Mora
P.O. Aditya Nagar
Surat, Gujarat.

... Applicants

Vs

Satish Kumar Gupta
Resolution Professional of M/s. Essar

Steel India Limited
Having its registered office at
27 kms. Surat Hazira Road
PO-Hazira, Dist. Surat
Gujarat-394 270

... Respondent

I.A. No.64 of 2019 in IA 431 of 2018

1. **Dilip Oommen**
D-3/4, Nand Niketan
Essar Township, Hazira
Surat Road
Surat-394 270

2. **Rajiv Kumar Bhatnagar**
C2/11, Nand Niketan
Essar Township
Hazira
Surat-394 270

3. **Prashant Ruia**
Lereve Tower 4300
Dubai Marina
PO Box 293 778
Dubai

... Applicants

Vs

1. **State Bank of India on behalf of Committee of Creditors**
State Bank Bhavan
Madame Cama Road
Nariman Point
Mumbai
Maharashtra-400 021

2. **Standard Chartered Bank**
1 Basinghall Avenue, London
England-EC2V5DD

3. **Satish Kumar Gupta**
Resolution Professional
Essar Steel India Limited
Essar House, 27 KM
Surat Hazira Road
Hazira, Surat-394 270
Gujarat

4. ArecelorMittal India Ltd.
8, JD Corporate, 3rd Floor
Near Mahabir Tower
Jokhiram Durgadutt Compound
Main Road, Ranchi
Jharkhand-834 001 ... Respondents

I.A. No.49 of 2018

Essar Power Ltd.
Essar House
11, K.K. Marg
Mahalaxmi
Mumbai-400 034

And

27 Km, Surat Hazira Road
Surat-394 270
Gujarat ... Applicant

Vs

Satish Kumar Gupta
The Resolution Professional of
Essar Steel India Limited
C/o. Alvarez & Marsal India Pvt. Ltd.
Units 703 & 704, 7th Floor, Tower A
Peninsula Corporate Park
Ganpatrao Kadam Marg
Lower Parel (West)
Mumbai-400 013 ... Respondent

I.A. No.50 of 2018

Bhander Power Ltd.
Essar House
11, K.K. Marg
Mahalaxmi
Mumbai-400 034
And
27th KM, Surat Hazira Road
Surat-394 270
Gujarat ... Applicant

Vs

Satish Kumar Gupta
(The Resolution Professional of Essar Steel Limited)
C/o. Alvarez & Marsal India Pvt. Ltd.
Units 703 & 704, 7th Floor, Tower A
Peninsula Corporate Park
Ganpatrao Kadam Marg
Lower Parel (West)
Mumbai-400 013 ... Respondent

I.A. No.52 of 2019

MSTC Limited
A Company incorporated under
the Companies Act, 1956 and
having its registered office at 225-C,
Acharya Jagdish Chandra Bose Road
Kolkata-700 020 ... Applicant

Vs

Satish Kumar Gupta
Resolution Professional
Essar Steel India Limited,
having his office at
11, K.K. Marg, Mahalaxmi
Mumbai-430 034 ... Respondent

I.A. No.125 of 2019 in IA 482 of 2018

Hill View Hire Purchase Pvt. Ltd.
(CIN: U72300OR1991PTC027621)
A/6, Commercial Estate, Civil Township
Rourkela-769 004
District-Sundargarh, Odisha ... Applicant

Vs

Satish Kumar Gupta
Resolution Professional for
Essar Steel India Limited (ESIL) ... Respondent

I.A. No.126 of 2019 in IA 483 of 2018

D.R. Patnaik
A/6, Commercial Estate,
Civil Township
Rourkela-769 004
District-Sundargarh
Odisha ... Applicant

Vs

Satish Kumar Gupta
Resolution Professional for
Essar Steel India Limited(ESIL) ... Respondent

Order delivered on 8th March, 2019.

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

Appearance in I.A. No.431 of 2018

Mr. Navin Pahwa, Sr. Advocate with Messrs Rawnak Dhillion, Sahil Shah, Gautam S and Parth Shah, Advocates on behalf of M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Mr. Siddharth Joshi and Ms. Trisha Baxi, Advocates i/b. M/s. Singhi & Co. for Standard Chartered Bank.

Dr. Abhishek Manu Singhvi, Mr. Niraj Kaul, Sr. Advocates with Messrs Shalin Mehta, Abhishek Swaroop, Anupam Prakash, Vishal Gehrava and Nachiket Dave and Ms. Ruby Singh Ahuja, Advocates for M/s. ArcelorMittal India Pvt. Ltd.

Mr. Soli Cooper, Sr. Advocate with Messrs Sapan Gupta, Siddhant Kant, Shalin Jani and Nishant Doshi and Ms. Mrida Lakhmani, Advocates for Committee of Creditors.

Appearance in I.A. No.468 of 2018

Ms. Maithili Mehta, Advocate, for the Applicant.

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.28 of 2018

Mr. Premal Joshi, Advocate, for the Applicant.

Mr. Aspi Kapadia, Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh, Advocates i/b M/s. Cyril Amarchand Mangaldas, for M/s. Essar Steel India Limited.

Appearance in I.A. No.14 of 2019

Mr. Rituraj Meena, Advocate, for the Applicant

Mr. Navin Pahwa, Sr. Advocate with Messrs Rawnak Dhillion, Sahil Shah, Gautam S and Parth Shah, Advocates on behalf of M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited

Appearance in I.A. No.443 of 2018

Mr. Anal Shah, Advocate, for the Applicant

Mr. Satish Kumar Gupta, Resolution Professional.

Mr. J.H. Modi, CFM, GETCO.

Mr. Vasant Patel, GETCO.

Mr. Aspi Kapadia, Advocate with Messrs Rawnak Dhillion, Animesh Bisht, Sahil Shah and Parth Shah, and Ms. Surbhi Parekh, Advocates i/b M/s. Cyril Amarchand Mangaldas, for M/s. Essar Steel India Limited.

Mr. Soli Cooper and Mr. Deven Parikh, Sr. Advocates with Messrs Sapan Gupta, Siddhant Kant and Shalin Jani and Ms. Grishma Ahuja and Ms. Moushmi Mehta, Advocates for Committee of Creditors.

Mr. Rajiv Nayyar, Sr. Advocate with Messrs Abhishek Swaroop, Anupam Prakash and Nachiket Dave and Ms. Misha Chandana, Advocates for M/s. ArcelorMittal India Pvt. Ltd.

Appearance in I.A. No.436 of 2018

Mr. Rajiv Nayyar, Sr. Advocate with Messrs Abhishek Swaroop, Anupam Prakash and Nachiket Dave and Ms. Misha Chandana, Advocates for M/s. ArcelorMittal India Pvt. Ltd.

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah, Parth Shah and Mr. Rawnak Dhillion, Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Mr. Siddharth Joshi, Mr.Abhishek Shah and Ms. Trisha Baxi Advocates i/b. M/s. Singhi & Co. for the Standard Chartered Bank.

Mr. Prateek Seksaria with Messrs Sapan Gupta and Siddhant Kant and Ms. Mrida Lakhmani and Ms. Grishma Ahuja, Advocates for Committee of Creditors.

Appearance in I.A. No.438 of 2018

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.442 of 2018

Mr. Pranjal Buch, Mr. Devan Desai and Mr. Samrat Sengupta, Advocates for the Applicant.

Appearance in I.A. No.439 of 2018

Mr. Kamal Trivedi, Mr. Rashesh Sanjanwala and Mr. Sandeep Singhi, Sr. Advocates with Messrs Gaurav Mathur, Siddharth Joshi and Abhishek Shah and Ms. Trisha Baxi and Ms. Ankita Rajput, Advocates on behalf of M/s. Singhi & Co., for the Applicant.

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Gautam S., Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Mr. Satish Kumar Gupta, Resolution Professional.

Mr. Arun Kathpalia, Sr. Advocate with Mr. Nirag Pathak, Advocate for the Respondent no. 2 to 5.

Appearance in I.A. No.446 of 2018

Mr. Premal Joshi, Advocate for the Applicant.

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.325 of 2018

Mr. Saurabh Soparkar, Sr. Advocate with Mr. Ajay Mehta and Mr. Anmol Mehta, Advocates for the Applicant.

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.469 of 2018

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.467 of 2018

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.470 of 2018

Mr. Rasesh Parikh, Advocate for the Applicant

Mr. Rajiv Nayyar, Sr. Advocate with Messrs Abhishek Swaroop, Anupam Prakash and Nachiket Dave and Ms. Nisha Chandana, Advocates for M/s. ArcelorMittal India Pvt. Ltd.

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah, Parth Shah and Mr. Rawnak Dhillion, Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Mr. Soli Cooper, Sr. Advocate with Messrs Sapan Gupta and Siddhant Kant and Ms. Mrida Lakhmani and Ms. Moushmi Mehta, Advocates for Committee of Creditors

Appearance in I.A. No.481 of 2018

Mr. Arjun Sheth, Advocate with Mr. Manish Bhatt, Sr. Advocate for the Applicant

Mr. Navin Pahwa, Sr. Advocate with Messrs Sahil Shah and Parth Shah Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.15 of 2019

Mr. Aditya C. Yagnik, Advocate for the Applicant

Mr. Navin Pahwa, Sr. Advocate with Messrs Sahil Shah and Parth Shah Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Mr. Rajiv Nayyar, Sr. Advocate with Messrs Abhishek Swaroop, Anupam Prakash and Nachiket Dave and Ms. Misha Chandana, Advocates for M/s. ArcellorMittal India Pvt. Ltd.

Appearance in I.A. No.472 of 2018

Mr. Akshat Khare, Advocate on behalf of M/s. Moson Le Exparts, for the Applicant.

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.53 of 2019

Mr. Saurabh Soparkar, Sr. Advocate with Mr. Ajay Mehta and Mr. Anmol Mehta, Advocates for the Applicant.

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Mr. Soli Cooper, Sr. Advocate with Messrs Sapan Gupta and Siddhant Kant and Ms. Mrida Lakhmani and Ms. Moushmi Mehta, Advocates for Committee of Creditors.

Appearance in I.A. No.60 of 2019

Ms. Natasha Shah with Mr. Monaal Davawala, Advocates for the Applicant.

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.61 of 2019

Mr. Rajiv Nayyar, Sr. Advocate with Messrs Abhishek Swaroop, Anupam Prakash and Nachiket Dave and Ms. Misha Chandana, Advocates for M/s. ArcellorMittal India Pvt. Ltd.

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.62 of 2019

Mr. Akshat Khare i/b. M/s. Moson Le Experts, Advocate for the Applicant

Mr. Navin Pahwa, Sr. Advocate with Messrs Animesh Bisht, Sahil Shah and Parth Shah and Ms. Surbhi Parekh Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.64 of 2019

Mr. Mihir Thakore, Sr. Advocate with Mr. Anuj K. Trivedi, Advocate for the Applicant.

Mr. Shalin Mehta, Sr. Advocate with Messrs Abhishek Swaroop, Anupam Prakash, Vishal Gehrava and Nachiket Dave and Ms. Misha Chandana and Ms. Rubey Singh Ahuja, Advocates for M/s. ArcellorMittal India Pvt. Ltd.

Mr. Navin Pahwa, Sr. Advocate with Messrs Sahil Shah, Parth Shah, Mr. Rawnak Dhillion, Gautam S. and Ms. Surbhi Parekh, Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Mr. Arun Kathpalia, Sr. Advocate with Messrs Sapan Gupta and Siddhant Kant and Ms. Mrida Lakhmani and Ms. Moushmi Mehta, Advocates for Committee of Creditors.

Appearance in I.A. No.49 of 2018

Mr. Navin Pahwa, Sr. Advocate with Messrs Sahil Shah, Parth Shah, Mr. Rawnak Dhillion, Gautam S. and Ms. Surbhi Parekh, Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.50 of 2018

Mr. Navin Pahwa, Sr. Advocate with Messrs Sahil Shah, Parth Shah, Mr. Rawnak Dhillion, Gautam S. and Ms. Surbhi Parekh, Advocates i/b M/s.

Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.52 of 2019

Mr. Manish R. Bhatt, Sr. Advocate, on behalf of Mr. Aditya J. Pandya, Advocate for the Applicant

Mr. Navin Pahwa, Sr. Advocate with Messrs Sahil Shah, Parth Shah, Rawnak Dhillion and Gautam S. and Ms. Surbhi Parekh, Advocates i/b M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Appearance in I.A. No.125 of 2019

Mr. Jaimin R. Dave and Mr. Priyank Dave, Advocates, for the Applicant.

Mr. Navin Pahwa, Sr. Advocate with Mr. Sahil Shah, Ms. Saloni Kapadia and Ms.Surbhi Parekh, Advocates on behalf of M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Mr. Nachiket Dave, Advocate, for ArcelorMittal India Pvt. Ltd.

Appearance in I.A. No.126 of 2019

Mr. Jaimin R. Dave and Mr. Priyank Dave, Advocates, for the Applicant.

Mr. Navin Pahwa, Sr. Advocate with Mr. Sahil Shah, Ms. Saloni Kapadia and Ms.Surbhi Parekh, Advocates on behalf of M/s. Cyril Amarchand Mangaldas, for the Resolution Professional of M/s. Essar Steel India Limited.

Mr. Nachiket Dave, Advocate, for ArcelorMittal India Pvt. Ltd.

COMMON ORDER

[Per se: Harihar Prakash Chaturvedi, Member (J)]

1. These Interlocutory Applications are filed during the Corporate Insolvency Resolution Process as triggered by this Adjudicating Authority pursuant to admission of the CP (IB) Nos. 39 and 40 of 2017 against the Corporate Debtor Company, Essar Steel India. The Resolution Professional, Shri Satish Kumar Gupta has filed the main I.A. No.431 of 2018, seeking approval of a Resolution Plan from this Adjudicating Authority under Section 31 of the Insolvency and Bankruptcy Code. The other

I.As. are filed by either financial creditors or operational creditors including Government authorities or by other stakeholders. Since all these I.As. arise out of the same CIRP, all the I.As. were heard together and are being disposed of by this common order.

For the sake of convenience, a list of all the I.As. and Intervention Petitions filed in post admission stage of the main IB Petition No.39 & 40 of 2017, can be described well through the following chart;

Sr.	Case No.	Under Section	Name of the Parties
1	IA 14 of 2019 in/with CP(IB) 39 of 2017	60(5) IBC	Oil & Natural Gas Corporation Ltd V/s Satish Kumar Gupta RP & Ors
2	IA 15 of 2019 in CP(IB) 39 & 40 of 2017	60(5) IBC	Arkay Logistics Ltd V/s State Bank of India & Ors
3	IA 16 of 2019 in IA 468 of 2018 in CP(IB) 39 & 40 of 2017	60(5) IBC	State Tax Officer V/s Essar Steel India Ltd
4	IA 52 of 2019 in/with CP(IB) 40 of 2017	60(5) IBC	MSTC LTD V/s Satish Kumar Gupta RP of Essar Steel India Ltd
5	IA53 of 2019 in/with CP(IB) 40 of 2017	60(5) IBC	Bharat Petroleum Corporation Limited V/s Satish Kumar Gupta (RP of Essar Steel India Ltd) & Anr
6	IA 54 of 2019 in/with CP(IB) 39 of 2017	60(5) IBC	Reliance Industries Ltd V/s Satish Kumar Gupta RP & Anr

7	IA 55 of 2019 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	Reliance Industries Ltd V/s State Bank of India & Ors
8	IA 56 of 2019 in/with CP(IB) 39 & 40 of 2017	7IBC	Karur Vysya Bank Ltd V/s Satish Kumar Gupta RP & Anr
9	IA 57 of 2019 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	Karur Vysya Bank Ltd V/s Satish Kumar Gupta RP & Anr
10	IA 58 of 2019 in IA 431 of 2018 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	COC for Essar Steel India Ltd V/s Satish Kumar Gupta RP of Essar Steel India Ltd & Ors
11	IA 59 of 2019 in IA 431 of 2018 in/with CP(IB) 39 & 40 of 2017	30(6) IBC	Arcelormittal India Pvt Ltd V/s Satish Kumar Gupta RP of Essar Steel India Ltd
12	IA 60 of 2019 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	Arfin India Ltd V/s State Bank India & Ors
13	IA 61 of 2019 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	Essar Bulk Terminal Ltd V/s State Bank of India & Ors
14	IA 62 of 2019 in IA 431 of 2018 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	NTPC V/s Satish Kumar Gupta RP of Essar Steel India Ltd
15	IA 63 of 2019 in IA 431 of 2018 in CP(IB) 39 & 40 of 2017	60(5) r.w 151 IBC	Duferco S.A V/s Satish Kumar Gupta RP of Essar Steel India Ltd & Ors
16	IA 28 of 2018 in CP(IB) 40 of 2017	60(5) IBC	Dakshin Gujarat Vij. Co. Ltd. V/s. Essar Steel Ltd.

17	IA 49 of 2018 In CP(IB) 39 of 2017	60(5) IBC	Essar Power Ltd. V/s. Satish Kumar Gupta RP
18	IA 50 of 2018 In CP(IB) 40 of 2017	60(5) IBC	Bhander Power Ltd. V/s. Satish Kumar Gupta RP
19	IA 261 of 2018 in/with CP(IB) 39 & 40 of 2017	43(1)	The RP forESSAR STEEL INDIA LTD.V/s.Arkay Logistics Limited
20	IA 322 of 2018 in/with CP(IB) 39 & 40 of 2017	43(1)	The RP for ESSAR STEEL INDIA LTD. V/s. Vadinar Power Company Ltd
21	IA 325 of 2018 in CP(IB) 40 of 2017	60(5)	Bharat Petroleum Corporation Ltd V/s Satish Kumar Gupta RP of Essar Steel India Ltd
22	IA 397 of 2018 in CP(IB) 40 of 2017	60(5)(c) IBC	Jalesh Kumar Grover RP Of GPI Textiles Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd. & Ors.
23	IA 431 of 2018 in CP(IB) 39 & 40 of 2017	30(6)	The Resolution Professional for ESSAR STEEL INDIA LTD.
24	IA 432 of 2018 in/with CP(IB) 39 & 40 of 2017	43(1) IBC	The Resolution Professional for ESSAR STEEL INDIA LTD. V/S.

			EPC Offshore Subsea Projects Ltd.
25	IA 433 of 2018 in/with CP(IB) 39 & 40 of 2017	43(1) IBC	The Resolution Professional for ESSAR STEEL INDIA LTD. V/S. India Coke & Power Pvt. Ltd
26	IA 434 of 2018 in CP(IB) 39 & 40 of 2017	60(5) IBC	The Resolution Professional for ESSAR STEEL INDIA LTD. V/S. L & T Infrastructure Finance Company Ltd.
27	IA 435 of 2018 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	Orissa Stevedores Ltd. V/S. Satish Kumar Gupta & Anr
28	IA 437 of 2018 in/with CP(IB) 39 & 40 of 2017	7 IBC	Essar Steel Asia Holdings Ltd. V/S. Satish Kumar Gupta & Ors.
29	IA 438 of 2018 in CP(IB) 39 & 40 of 2017	60(5) IBC	Gail (India) Ltd. V/S. Satish Kumar Gupta RP of Essar Steel India Ltd.
30	IA 440 of 2018 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	Arkay Logistics Ltd V/s State Bank of India & Ors
31	IA 441 of 2018 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	Essar Bulk Terminal Ltd & Ors V/s State Bank of India & Ors

32	IA 442 of 2018 in/with CP(IB) 39 of 2017	60(5) IBC	Berger Becker Coatings Pvt. Ltd. V/s. Essar Steel India Ltd. & Anr.
33	IA 443 of 2018 in CP(IB) 40 of 2017	60 IBC	Gujarat Energy Transmission Corporation Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd & Anr.
34	IA 444 of 2018 in/with CP(IB) 40 of 2017	60(5) IBC	Kamaljeet Singh Ahluwalia & Ors.V/s.State Bank of India & Ors.
35	IA 445 of 2018 in/with CP(IB) 40 of 2017	60(5) IBC	Signode India Ltd. V/s. State Bank of India & Ors.
36	IA 446 of 2018 in CP(IB) 40 of 2017	60 IBC	Dakshin Gujarat Vij Co. Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd. & Anr.
37	IA 447 of 2018 in/with CP(IB) 40 of 2017	60(5) IBC	Timken India Ltd V/s State Bank of India & Ors
38	IA 448 of 2018 in/with CP(IB) 40 of 2017	60(5) IBC	Hind Aluminium Indutries Ltd V/s State Bank of India & Ors
39	IA 467 of 2018 in/with CP(IB) 40 of 2017	60IBC	Dakshin Gujarat Vij Co. Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd. & Anr.
40	IA 468 of 2018 in CP(IB) 39 & 40 of 2017	60(5) IBC	State Tax Officer V/s Essar Steel India Ltd

41	IA 469 of 2018 in/with CP(IB) 39 & 40 of 2017	31 r.w 60(5)(c) IBC	Indian Oil Corporation Ltd V/s Satish Kumar Gupta (RP) of Essar Steel India Ltd
42	IA 470 of 2018 in/with CP(IB) 39 & 40 of 2017	60(5) r.w 37 to 39 IBC	Global Transnational Trading FZE V/s Satish kumar Gupta (RP) of Essar steel India Ltd & Ors
43	IA 471 of 2018 in IA 431 of 2018 in CP(IB) 39 & 40 of 2017	7IBC	Essar Steel Asia Holdings Ltd V/s Satish Kumar Gupta & Ors
44	IA 472 of 2018 in/with IA 431 In CP(IB) 39 & 40 of 2017	60(5) IBC	Gail India Ltd V/s Satish Kumar Gupta RP of Essar Steel India Ltd & Ors
45	IA 473 of 2018 in/with CP(IB) 40 of 2017	60(5) IBC	Allied Metallurgical Products V/s State Bank of India & Ors
46	IA 481 of 2018 in/with CP(IB) 40 of 2017	60(5) IBC	L & T Infrastructure Finance Co Ltd V/s essar Steel India Ltd Through Its RP Satish Kumar Gupta
47	IA 482 of 2018 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	Hill View Hire Purchase Pvt. Ltd. V/S. Satish Kumar Gupta RP of Essar Steel India Ltd.
48	IA 483 of 2018 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	D.R.Patnaik V/S. Satish Kumar Gupta RP of Essar Steel India Ltd.
`49	Inv.P 78 of 2018 in/with IA 431 of 2018	7 IBC	Arcelormittal India Pvt. Ltd. (Intervener) Satish Kumar Gupta RPof Essar Steel India

	in CP(IB) 39 & 40 of 2017		Ltd.V/sEssar Steel India Ltd.
50	Inv. P 82 of 2018 in CP(IB) 39 & 40 of 2017	7IBC	State Tax Officer V/s Satish Kumar Gupta RP of Essar Steel India Ltd
51	IA 125 2019 in IA 482 of 2018 in/with CP(IB) 39/2017 & CP(IB) 40/2017	424	Hill View Hire Purchase Pvt. Ltd. V/S. Satish Kumar Gupta RP of Essar Steel India Ltd.
52	IA 126 2019 in IA 483 of 2018 in/with CP(IB) 39/2017 & CP(IB) 40/2017	424	D.R Patnaik V/s Satish Kumar Gupta RP of Essar Steel India Ltd.
53	IA 436 of 2018 in CP(IB) 39 & 40 of 2017	60(5) IBC	COC for Essar Steel India Ltd Through State Bank of India. V/S. Essar Steel India Ltd.
54	IA 439 of 2018 in CP(IB) 39 & 40 of 2017	60(5)	Standard Chartered Bank. V/S. Satish Kumar Gupta & Ors.
55	IA 64 of 2019 in CP(IB) 39 & 40 of 2017	60(5) IBC	Dilip Oommen & Ors V/s State Bank of India & Ors
56	IA 430 of 2018 in IA 431 of 2018 in/with CP(IB) 39 & 40 of 2017	60(5) IBC	Essar Steel Asia Holdings Ltd &Ors. V/S. Satish Kumar Gupta &Ors.
57	Inv. P. 77 of 2018 in CP(IB) 39 & 40 of 2017	7	Arcelormittal India Pvt. Ltd. (Intervener),Essar Steel Asia Holdings Ltd &Ors. V/s.

			Satish Kumar Gupta &Ors.

2. As per material available on record, out of these applications, some of the applications have already been disposed of by this Adjudicating Authority, which are described as under;

Sr. No.	Case No.	Name of Parties	U/s	Status	Date of disposal
1	IA 397 of 2018	Jalesh Kumar Grover RP of GPI Textiles Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd. & Ors.	60(5)	Dismissed	08.02.2019 (Withdrawn)
2	IA 430 of 2018	Essar Steel Asia Holdings Ltd &Ors. V/S. Satish Kumar Gupta &Ors.	60(5)	Disposed of	29.01.2019
3	Inv. P. 77 of 2018	Arcelormittal India Pvt. Ltd. (Intervener),Essar Steel Asia Holdings Ltd &Ors. V/s, Satish Kumar Gupta &Ors.	7	Disposed of	28.02.2019
4	Inv. P. 78 of 2018	Arcelormittal India Pvt. Ltd. (Intervener), Satish Kumar Gupta RP of Essar Steel India Ltd. V/s	7	Disposed of	29.01.2019

		Essar Steel India Ltd.			
5	IA 437 of 2018	Essar Steel Asia Holdings Ltd. V/S. Satish Kumar Gupta &Ors.	7	Disposed of	01.02.2019
6	IA 482 of 2018	Hill View Hire Purchase Pvt. Ltd. V/S. Satish Kumar Gupta RP of Essar Steel India Ltd	60(5)	Dismissed in Default	14.02.2019
7	IA 483 of 2018	D.R.Patnaik V/S. Satish Kumar Gupta RP of Essar Steel India Ltd.	60(5)	Dismissed in Default	14.02.2019
8	Inv. P 82 of 2018	State Tax Officer V/s Satish Kumar Gupta RP of Essar Steel India Ltd	7	Disposed of	26.02.2019
9	IA 434 of 2018	The Resolution Professional for, ESSAR STEEL INDIA LTD. V/S., L & T Infrastructure Finance Co Ltd	60(5)	Disposed of	28.01.2019
10	IA 471 of 2018	Essar Steel Asia Holding		Disposed of	14.02.2019
11	IA 16 of 2018	State Tax Officer. V/S. Essar Steel India Ltd.		Disposed of	25.02.2019
12	IA 54 of 2019	Reliance Indus.		Disposed of	26.02.2019
13	IA 55 of 2019	Reliance Indus		Disposed of	26.02.2019

14	IA 56 of 2019	Karur Vysya Bank		Disposed of	07.03.2019
15	IA 57 of 2019	Karur Vysya Bank		Disposed of	07.03.2019
16	IA 58 of 2019	CoC for Essar Steel India Ltd.		Disposed of	01.02.2019
17	IA 59 of 2019	Arcelormittal		Disposed of	01.02.2019
18	IA 63 of 2019	Duferco S. A		Disposed of	07.03.2019
19	IA 435 of 2018	Orissa Stevedores Ltd. V/S. Satish Kumar Gupta &Anr		Disposed of	28.02.2019
20	IA 444 of 2018	Kamaljeet Singh Ahluwalia &Ors. V/s. State Bank of India & Ors.		Disposed of	28.02.2019
21	IA 445 of 2018	Signode India Ltd. V/s. State Bank of India &Ors.		Disposed of	28.02.2019
22	IA 447 of 2018	Timken India Ltd V/s State Bank of India &Ors		Disposed of	28.02.2019
23	IA 448 of 2018	Hind Aluminium Industries Ltd V/s State Bank of India &Ors		Disposed of	28.02.2019
24	IA 440 of 2018	Arkay Logistics Ltd V/s State Bank of India &Ors		Disposed of	28.02.2019
25	IA 441 of 2018	Essar Bulk Terminal Ltd &Ors V/s		Disposed of	28.02.2019

		State Bank of India &Ors			

3. Therefore, it is evident that rest of the applications are not yet disposed. Hence, the same are taken up for disposal simultaneously along with the main I.A. No.431 of 2018, which are described as under:-

Sr. No.	Case No.	Parties
1	IA 28 of 2018	Dakshin Gujarat Vij. Co. Ltd. V/s. Essar Steel Ltd.
2	IA 431 of 2018	The Resolution Professional for ESSAR STEEL INDIA LTD
3	IA 443 of 2018	Gujarat Energy Transmission Corporation Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd &Anr
4	IA 436 of 2018	COC for Essar Steel India Ltd Through State Bank of India. V/S. Essar Steel India Ltd.
5	IA 438 of 2018	Gail (India) Ltd. V/S. Satish Kumar Gupta RP of Essar Steel India Ltd.
6	IA 442 of 2018	Berger Becker Coatings Pvt. Ltd. V/s. Essar Steel India Ltd. &Anr.
7	IA 439 of 2018	Standard Chartered Bank. V/S. Satish Kumar Gupta &Ors.
8	IA 446 of 2018	Dakshin Gujarat Vij Co. Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd. &Anr.

9	IA 325 of 2018	Bharat Petroleum Corporation Ltd V/s Satish Kumar Gupta RP of Essar Steel India Ltd
10	IA 469 of 2018	Indian Oil Corporation Ltd V/s Satish Kumar Gupta (RP) of Essar Steel India Ltd
11	IA 467 of 2018	Dakshin Gujarat Vij Co. Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd. &Anr.
12	IA 470 of 2018	Global Transnational Trading FZE V/s Satish kumar Gupta (RP) of Essar steel India Ltd &Ors
13	IA 481 of 2018	L & T Infrastructure Finance Co Ltd V/s essar Steel India Ltd Through Its RP Satish Kumar Gupta
14	IA 14 of 2019	Oil & Natural Gas Corporation Ltd V/s Satish Kumar Gupta RP &Ors.
15	IA 15 of 2019	Oil & Natural Gas Corporation Ltd V/s Satish Kumar Gupta RP &Ors
16	IA 472 of 2018	GAIL
17	IA 52 of 2019	MSTC LTD
18	IA 53 of 2019	BPCL
19	IA 60 of 2019	Arfin India
20	IA 61 of 2019	Essar Bulk Terminal
21	IA 62 of 2019	NTPC
22	IA 64 of 2019	Dilipooman
23	IA 49 of 2018	Essar Power Ltd
24	IA 50 of 2018	Bhander Power Ltd
25	IA 125 of 2019	Hill View Hire Purchase Pvt. Ltd.
26	IA 126 of 2019	D.R. Patnaik
27	IA 468 of 2018	State Tax Officer

4. Notwithstanding the above, some of the I.As. were adjourned to 28.03.2019 which are sr. no.1 to 4 and further at sr. no.5 to 11.03.2019, because these are not pertaining to the subject matter of these group of I.As.

Sr. No.	**Case No.**	**Parties**
1	IA 261 of 2018	The RP for ESSAR STEEL INDIA LTD. V/s. Arkay Logistics Limited
2	IA 322 of 2018	The RP for ESSAR STEEL INDIA LTD. V/s. Vadinar Power Company Ltd
3	IA 432 of 2018	The Resolution Professional for ESSAR STEEL INDIA LTD. V/S. EPC Offshore Subsea Projects Ltd.
4	IA 433 of 2018	The Resolution Professional for ESSAR STEEL INDIA LTD. V/S. India Coke & Power Pvt. Ltd
5	IA 41 of 2018	Satish Kumar Gupta, RP V/s. Union of India &Ors.

The **Amount claimed in pending I.As.** are described as under

Sr. No	Case No.	U/s.	Name of the Parties	Amount claimed (Rs.)
1	IA 49 of 2018		Essar Power Ltd	912,69,90,753
2	IA 50 of 2018		Bhander Power Ltd	18,09,79,500

3	IA 325 of 2018	60(5)	Bharat Petroleum Corporation Ltd V/s Satish Kumar Gupta RP of Essar Steel India Ltd	443,05,33,379
4	IA 435 of 2018	60(5) IBC	Orissa Stevedores Ltd. V/S. Satish Kumar Gupta & Anr	20,46,58,178
5	IA 438 of 2018	60(5) IBC	Gail (India) Ltd. V/S. Satish Kumar Gupta RP of Essar Steel India Ltd.	2,47,26,000
6	IA 439 of 2018	60(5)	Standard Chartered Bank. V/S. Satish Kumar Gupta & Ors.	2983,98,00,000
7	IA 440 of 2018	60(5) IBC	Arkay Logistics Ltd V/s State Bank of India & Ors	226,89,79,198
8	IA 441 of 2018	60(5) IBC	Essar Bulk Terminal Ltd & Ors V/s State Bank of India & Ors	1339,66,42,772
9	IA 442 of 2018	60(5) IBC	Berger Becker Coatings Pvt. Ltd. V/s. Essar Steel India Ltd. & Anr.	5,06,72,377
10	IA 443 of 2018	60 IBC	Gujarat Energy Transmission Corporation Ltd. V/s. Satish Kumar	896,52,00,000

			Gupta RP of Essar Steel India Ltd & Anr.	
11	IA 444 of 2018	60(5) IBC	Kamaljeet Singh Ahluwalia & Ors. V/s. State Bank of India & Ors.	360,39,65,311
12	IA 445 of 2018	60(5) IBC	Signode India Ltd. V/s. State Bank of India & Ors.	9,54,83,196
13	IA 446 of 2018	60 IBC	Dakshin Gujarat Vij Co. Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd. & Anr.	5882,28,00,000
14	IA 447 of 2018	60(5) IBC	Timken India Ltd V/s State Bank of India & Ors	4,42,44,835
15	IA 448 of 2018	60(5) IBC	Hind Aluminium Indutries Ltd V/s State Bank of India & Ors	3,77,36,394
16	IA 467 of 2018	60IBC	Dakshin Gujarat Vij Co. Ltd. V/s.Satish Kumar Gupta RPof Essar Steel India Ltd. & Anr.	606,49,00,000
17	IA 468 of 2018	60(5) IBC	State Tax Officer V/s Essar Steel India Ltd	544,00,00,000
18	IA 469 of 2018	31 r.w 60(5)(c) IBC	Indian Oil Corporation Ltd V/s Satish Kumar Gupta (RP) of Essar Steel India Ltd	3762,58,74,503

19	IA 472 of 2018		GAIL	1204,15,00,000
20	IA 473 of 2018	60(5) IBC	Allied Metallurgical Products V/s State Bank of India & Ors	1,21,73,329
21	IA 481 of 2018	60(5) IBC	L & T Infrastructure Finance Co Ltd V/s essar Steel India Ltd Through Its RP Satish Kumar Gupta	33,67,28,510
22	IA 482 of 2018	60(5) IBC	Hill View Hire Purchase Pvt. Ltd. V/S. Satish Kumar Gupta RP of Essar Steel India Ltd.	42,11,46,852
23	IA 483 of 2018	60(5) IBC	D.R.Patnaik V/S. Satish Kumar Gupta RP of Essar Steel India Ltd.	28,87,86,412
24	IA 14 of 2019	60(5) IBC	Oil & Natural Gas Corporation Ltd V/s Satish Kumar Gupta RP & Ors	6,99,21,956
25	IA 15 of 2019	60(5) IBC	Arkay Logistics Ltd V/s State Bank of India & Ors	226,89,79,198
26	IA 28 of 2019	60(5) IBC	Dakshin Gujarat Vij. Co. Ltd. V/s. Essar Steel Ltd.	313,23,33,224

27	IA 52 of 2019		MSTC LTD	813,30,00,000
28	IA 53 of 2019		BPCL	503,83,46,437
29	IA 54 of 2019		Reliance Ind	16,41,67,107
30	IA 55 of 2019		Reliance Ind	16,41,67,107
31	IA 56 of 2019		Karur Vysya Bank	3,43,96,866
32	IA 57 of 2019		Karur Vysya Bank	3,43,96,866
33	IA 60 of 2019		Arfin India	25,50,53,397
34	IA 61 of 2019		Essar Bulk Terminal	703,21,02,375
35	IA 62 of 2019		NTPC	10,45,00,264
36	IA 63 of 2019		Duferco S.A	
37	IA 64 of 2019		Dilip ooman	NA
38	Inv. P 82 of 2018	7IBC	State Tax Officer V/s Satish Kumar Gupta RP of Essar Steel India Ltd	NA
39	IA 261 of 2018	43(1)	The RP for ESSAR STEEL INDIA LTD. V/s. Arkay Logistics Limited	NA
40	IA 322 of 2018	43(1)	The RP for ESSAR STEEL INDIA LTD. V/s. Vadinar Power Company Ltd	NA
41	IA 397 of 2018	60(5)(c) IBC	Jalesh Kumar Grover RP	NA

			Of GPI Textiles Ltd. V/s. Satish Kumar Gupta RP of Essar Steel India Ltd. & Ors.	
42	IA 432 of 2018	43(1) IBC	The Resolution Professional for ESSAR STEEL INDIA LTD. V/S. EPC Offshore Subsea Projects Ltd.	NA
43	IA 433 of 2018	43(1) IBC	The Resolution Professional for ESSAR STEEL INDIA LTD. V/S. India Coke & Power Pvt. Ltd	NA
44	IA 431 of 2018	30(6)	The Resolution Professional for ESSAR STEEL INDIA LTD.	NA
45	IA 430 of 2018	60(5) IBC	Essar Steel Asia Holdings Ltd & Ors. V/S. Satish Kumar Gupta & Ors.	NA
46	Inv.P 77 of 2018	7 IBC	Arcelormittal India Pvt. Ltd. (Intervener),Essar Steel Asia Holdings Ltd & Ors. V/s, Satish Kumar Gupta & Ors.	NA
47	Inv.P 78 of 2018	7 IBC	Arcelormittal India Pvt. Ltd. (Intervener), Satish Kumar Gupta RP of Essar Steel India Ltd. V/s	NA

			Essar Steel India Ltd.	
48	IA 436 of 2018	60(5) IBC	COC for Essar Steel India Ltd Through State Bank of India. V/S. Essar Steel India Ltd.	NA
49	IA 437 of 2018	7 IBC	Essar Steel Asia Holdings Ltd. V/S. Satish Kumar Gupta & Ors.	NA
50	IA 41 of 2018	60 IBC	Satish Kumar Gupta, RP V/s. Union of India & Ors.	NA
51	IA 470 of 2018	60(5) r.w 37 to 39 IBC	Global Transnational Trading FZE V/s Satish kumar Gupta (RP) of Essar steel India Ltd & Ors	NA
52	IA 434 of 2018	60(5) IBC	The Resolution Professional for, ESSAR STEEL INDIA LTD. V/S., L & T Infrastructure Finance Co Ltd	NA
53	IA 471 of 2018		Essar Steel Asia Holding	NA
54	IA 16 of 2019		State Tax Officer. V/S. Essar Steel India Ltd.	NA
55	IA 58 of 2019		COC for Essar Steel India Ltd	NA
56	IA 430 of 2018	60(5) IBC	Essar Steel Asia Holdings Ltd &Ors. V/S.	NA

			Satish Kumar Gupta &Ors.	
57	Inv. P. 77 of	7	Arcelormittal India Pvt. Ltd. (Intervener),Essar Steel Asia Holdings Ltd &Ors. V/s. Satish Kumar Gupta &Ors.	NA

I.A. 125 of 2019 in I.A. 482 of 2018 and I.A. 126 of 2019 in I.A. 483 of 2018

1. By these applications, the applicants have sought a prayer for setting aside the ex-parte order passed against them by this Adjudicating Authority on 14.02.2019 whereby I.As. Nos. 482 of 2018 and 483 of 2018, of the applicants (viz., Hill View Hire Purchase Ltd. and D.R. Patnaik, respectively), filed against Mr. Satish Kumar Gupta, the Resolution Professional of M/s. Essar Steel India Ltd (Corporate Debtor company) came to be dismissed in default for want of prosecution.

2. Applicants in these applications have contended that they were under such impression that their I.As. would not reach for hearing and the matters would not be called out because of the order of the Honorable NCLAT to this Adjudicating Authority for day-to-day hearing of I.A. No. 431 of 2018 in a time bound manner. However, the aforesaid I.As. were called out and taken

up for hearing on 14.02.2019. As, on that day, none was present on behalf of the applicants, this Adjudicating Authority dismissed the applications for want of prosecution. Being aggrieved by such order, the applicants have now preferred present I.As. making common prayers for setting aside the impugned order dated 14.02.2019 of this Tribunal so far as it records rejection of I.As. 482 of 2018 and 483 of 2018 and, therefore, these I.As. be restored in file and heard and disposed of as per merits.

3. The counsels for the Respondents, i.e., Resolution Professional (RP) and Committee of Creditors (CoC), have seriously opposed the restoration of the applications by contending that applicants were not diligent and sincere enough in pursuing their matter since there was no representation from their side in such I.As. since 18.12.2018. According to them, when the matter listed for hearing on 29.01.2019, the applicants' previous counsel had informed to the respondents' counsel that his clients were proposing to withdraw I.As. No. 482 of 2018 and 483 of 2018 and, hence, he would not be able to appear in these matters. Thereafter, these I.As. were being listed for hearing from time to time. On 14.02.2019, also in spite of repeated calls none remained present for and on behalf of applicants at 4.30 pm these I.As. were dismissed for want of prosecution.

4. Therefore, according to respondents the present Restoration Applications are liable to be rejected on above stated reasons and keeping in mind the direction given by the Hon'ble NCLAT to complete the hearing in main I.A. 431 of 2018 along with other I.As. a time bound manner, which has now been concluded by this Bench on 18.02.2019 and orders are reserved. Hence, at such belated stage, such I.As. cannot be entertained. In case these I.As. happened to be allowed and I.As. No. 482 & 483/2018 are restored to file for hearing on merits, then it would amount to dilution of the direction of the Hon'ble NCLAT in its latest order dated 28.09.2019, wherein Their Lordships have expected this Tribunal to pronounce order(s) latest by 08.03.2019, while, the present Restoration Applications are filed before this Bench only on 06.03.2019.

5. Considering the above stated peculiar facts and circumstances of the present case, we are of the view that the present I.As., at this belated stage, cannot be entertained by this Adjudicating Authority, in view of the direction given by the Hon'ble NCLAT as well as mandate of the Hon'ble Supreme Court, for conclusion of the hearing in a time bound manner.

6. Notwithstanding the above, learned counsel, Mr. Jaimin Dave, appearing for the applicants of these I.As. has taken alternative plea that he is not pressing for fresh hearing in the I.As. 482 of 2018 and 483 of 2018, but only requesting this

Tribunal to consider the issue of rejection of applicants claims arbitrarily by the RP and their objection for approval of the proposed Resolution Plan, as their claims does not find place in the creditors list prepared by the RP. Hence, if their right to lodge a claim is not determined by this Adjudicating Authority, then it would cause serious prejudice to their interests, being operational creditors/stakeholders.

7. We duly considered such alternative pleas made by the applicants and have also gone through the contents of I.As. No. 482 and 483 of 2018, wherein a common prayer have been made against the rejection of the applicants' claim and for not including their name in the list of creditors dated 24.10.2018 as prepared by the RP. Moreover, on such pretext, the applicants have also opposed the approval of the resolution plan and prayed for rejection of the same, till their claims are not adjudicated upon and admitted.

8. We carefully examined that issue and perused the material available on record including the documents in question, which shows that the applicants' claims have not been admitted by the RP due to non-payment of requisite stamp duty and for non-completing the statutory formalities for not without furnishing the proof of making payment of requisite stamp duty as per the Indian Stamp Act. Hence, such agreement cannot be looked into as evidence nor it can be treated as valid claim. Therefore, in our view the RP cannot be found fault with due to non-admissions of

such claims of the applicants for want of proper stamp duty. Further, this being a disputed issue whether such agreements in question (i.e. inter-corporate deposit letters) has been properly stamped or otherwise at the time of producing it before the RP for consideration or not can only be looked into by the RP or by competent authority for registering claim. Hence, in our view, this can be adjudicated only by a competent Civil Court, having necessary jurisdiction and this Adjudicating Authority cannot be expected to deal the relevant provisions of Indian Stamp Act or to make a declaration about documents in question are properly stamped or otherwise, because it is the subject matter of scrutiny by the office of Collector of Stamps and is in the domain of a competent Civil Court.

9. In the light of above discussion, we feel that I.As. 482 and 483 of 2018 lack of substance and cannot succeed to. Even if I.As. No. 125 of 2019 and 126 of 2019 are allowed in the interest of justice by restoring the above stated I.As., it would not serve the purpose.

10. Hence, for the aforesaid reasons, the present I.As. No. 125 of 2019 in I.A. 482 of 2018 and 126 of 2019 in I.A. 483 of 2018 are liable to be rejected in view of the recent direction issued by the Hon'ble NCLAT, on 28.09.2019, to conclude the hearing and pronounce the order in I.A. 431 of 2018 in a time bound manner. Accordingly, these I.As are rejected with no order as to costs.

I.A. No. 472 of 2018 & I.A. 62 of 2019 in I.A. No. 431 of 2018

1. By these applications, the applicants, viz., M/s. GAIL (India) Ltd (GAIL). and the National Thermal Power Corporation Ltd (NTPC Ltd.)., have sought for a common relief against partly rejection of their respective claims by the Resolution Professional (RP).

2. The applicant, GAIL, in IA 472 of 2018, has stated that it is having claim of **Rs.1204.15 crore** against the Corporate Debtor company as per the Gas Sale Agreement (GSA) dated 28.03.2014 and such claim has not been admitted by the RP. Hence, an appropriate direction be issued to the Respondent to admit its entire claim in CIRP proceedings of the present Corporate Debtor company and further direction to the respondent to ensure the continuation of the executed Gas Sale Agreement dated 28.03.2014 under the resolution plan (as submitted by the resolution applicant), failing which the applicant has made prayer for rejection of such resolution plan of the resolution applicant M/s. ArcelorMittal India Pvt. Ltd., which is being considered by this Adjudicating Authority, in I.A. No.431 of 2018.

3. Thus, GAIL has prayed for a direction to the RP to admit its entire claim of Rs.1204.15 crore with respect to GSA dated 28.03.2014 and further prayed for direction to the respondents including the resolution applicant to honour the Gas Agreement

which was entered into between the applicant and the corporate debtor during the implementation of the resolution plan, otherwise the applicant, being Government of India undertaking will have to suffer loss of **Rs.1204.15** crore.

4. Similarly, the other applicant i.e. National Thermal Power Corporation Ltd. (formally known as NTPC Ltd.), has preferred I.A. No.62 of 2019, under Section 60(5) of the Code, claiming to be an operational creditor being aggrieved by partial rejection of its claim by the RP. It is further contended that as per the impugned email dated 22.10.2018, the RP has partly admitted the claim of NTPC only to the extent of Rs.1,19,44,783/- and has rejected the rest of its claim of **Rs.9,25,55,481/-**. Therefore, it challenged such decision. It is matter of record that the RP is stated to have not agreed to allow the entire claim of NTPC i.e. **Rs.10,45,00,264/-** and disallowed the interest portion therefrom despite such request of the applicant to reconsider interest component also. Hence, the present IA.

5. The applicants, therefore, have stated that they are being discriminated and are meted out with differential treatment by the RP arbitrarily rejecting their interest component from the total claim, which is not in the spirit of the judgment of the Honourable Supreme Court in the matter of ***Swiss Ribbons Pvt. Ltd. &Anr. Vs. Union of India &Ors.*** It is also contended that because of such arbitrary and biased action on the part of the

RP, the Government of India undertaking is going to lose **Rs.10,45,00,264/-** from the defaulter, i.e. corporate debtor.

6. Thus, the applicant has not only demanded a copy of the resolution plan along with relevant documents but also sought for a direction from this Adjudicating Authority to admit the entire claim of the applicant for **Rs.10,45,00,264/-** as per the Tripartite Agreement entered into between the applicant and the corporate debtor company on 09.11.1993. It further sought a direction be issued to the RP and to the CoC to ensure the continuance of the executed Tripartite Agreement and MoU dated 09.11.1993 under the proposed resolution plan otherwise in alternate such resolution plan is liable to be rejected. It also prayed for staying of the proceedings in I.A. No.431 of 2018.

7. We have duly considered the above stated contentions of these applications. It is an admitted position in the matter that present applicants are operational creditors and having dues of less than 10% (each) of the total debts owed by the corporate debtor company. Therefore, they cannot demand a copy of the resolution plan as a matter of right nor they can have locus to participate in the proceedings of the CoC and to oppose such resolution plan, in view of the recent decision of the Hon'ble Supreme Court in the matter of ***K. Sashidhar Vs. Indian Overseas Bank***.

8. Therefore, their prayer cannot be acceded to. However, their interest as being operational creditors can be adequately be

taken care at the time of dealing with main I.A. No. 431 of 2018, for judicious distribution/apportionment of the amount receivable through the resolution plan among financial / operational creditors and other stakeholders, in terms of Section 53 of the I & B Code, as it cannot be less amount, then amount payable as per the liquidation value of the assets of the company.

9. With the aforesaid observations, both the I.As. partly succeed and accordingly stand disposed of.

I.A. No. 28/2018, I.A. No.446/2018, I.A. No. 467/2018, I.A. No.468/2018, I.A. No. 443/2018, I.A. No. 325/18, I.A. No.53/2018, I.A. No.469/2018, I.A. No.52/2019, I.A. No.438/2018 and I.A. No.470/2018

1. By these applications, the applicants commonly felt aggrieved with a decision of the RP, rejecting their respective claims, which were filed as operational creditors and by partly admitting only notional value of Rs.1/-.

2. In these applications most of the applicants are Public Sector undertakings from the Central Government and from the State of Gujarat and its State Tax Department. Their grievance is that if their claim is not admitted or paid off in full, it would cause a serious prejudice to these undertakings and they have to lose a substantial amount as described (mentioned in respective applications). Hence, it will burden on public exchequer. Therefore, the applicants have prayed for a direction be issued to the Resolution Professional to admit their respective

claims in creditors list and further directions also to the CoC to consider their respective claims by adding suitable provisions in the proposed Resolution Plan so as to safeguard their interest, failing which the proposed Resolution Plan is liable to be rejected. That apart, they have also sought for permission to intervene in the present proceedings and also prayed for stay of the proceedings for approval of the proposed Resolution Plan (in IA No. 431 of 2018).

3. We duly considered the above stated prayers made in these applications. As we have already observed in preceding paragraphs that debts being claimed by these applicants do not necessary fall in the category of such operational debts having value of more than 10% of the total debt owned by the Corporate Debtor Company. Hence, these operational creditors cannot have locus to participate in the CoC proceedings nor can oppose the proposed Resolution Plan by expressing their dissent, in the light of the decision of the Hon'ble Supreme Court in the matter of ***K. Sashidhar Vs. Indian Overseas Bank***.

4. Notwithstanding the above, it is now a settled legal position that the Resolution Professional has not been conferred with such power to adjudicate the claim submitted before it. He is required only to collate the information, verify the claims as per the provisions of the I & B Code and to update such information in the list of creditors and, thereafter, place it before the CoC for its consideration.

5. Therefore, these I.As. can be partially succeed only to the extent of such direction may be issued to the Resolution Professional to register their respective claims and to update the claims in the list of creditors, because we have already held in our separate order passed in I.As. Nos. 54 & 55 of 2018. However, the apportionment of these claims cannot be made as a matter of right, but only their interest, if any, can be taken care of while dealing with the I.A.No.431 of 2018 in succeeding paragraphs for consideration and approval of the Resolution Plan.

6. It is also expedient in the present matter in view of the directions issued by the Hon'ble NCLAT to dispose of the pending I.As. (filed by the operational creditors) by hearing only one among them and also to one representative from the Suspended Management, thus, to conclude such hearing in time bound manner so as to dispose the main I.A. 431 of 2018, at the earliest as per the mandate of the Hon'ble Supreme Court.

7. With the above said observations, these I.As. filed by the various creditors/stakeholders, during the pendency of the main I.A.No.431 of 2018, are disposed of accordingly.

I.A. No. 14/2019

1. The applicant has sought prayer to intervene in the present proceedings, which pertains to approval of resolution plan, in I.A No. 431 of 2018. Since we have already recorded that claim of the Indian Oil Corporation Ltd. (in its I.A. No. 469 of 2018) can be admitted by the Resolution Professional in creditors list. Therefore, the purpose of this I.A. is achieved and, thus, it has now become infructuous, accordingly stands disposed of.

I.A. 49 of 2018 and I.A. 50 of 2018 in I.A. 431 of 2018

1. By these applications, the applicants, viz., M/s. Essar Power Limited and M/s.Bhander Power Limited, have put forth their grievances against the impugned email dated 25.10.2017 by rejecting their total claim submitted by them before the Resolution Professional.

2. As per the contents of the applications, it is stated that the reason for non-admission of such claims by the RP is that the remaining amount cannot be admitted, because as per the enclosed reconciliation statement as on 31.03.2017 and 30.06.2017, filed by both the applicants as per the RP neither there was any dispute nor any pending advice as claimed by the applicants in Form No.B. Therefore, the applicants, in the present I.As., have challenged such rejection of their substantial amount and has contended that there is no such provision under the I & B Code wherein the claims of the creditors can be rejected arbitrarily on account of mere reconciliation statement.

3. It is further contended that the claims of the applicants are pending settlement between the parties in terms of notice of resolution of dispute. It is further stated that mere pendency of dispute between the parties cannot be ground to reject the claims of the creditors in entirely.

4. It is further alleged that in case of the present Corporate Debtor, the Resolution Professional itself has recognized claims of several operational creditors under Note 18 which are under dispute and such claims had been admitted at notional value of Rs.1/- subject to the eventual outcome of such dispute. Therefore, these applicants have prayed for equity and parity with all the other creditors.

5. They have further contended that the claims of the applicants herein cannot be rejected arbitrarily by the RP as per the settled position of law that parties those are similarly situated are required to be treated equally. Hence, it is prayed for settling aside such decision of rejection of the claims in I.A. No.49/ 2018 to the tune of Rs.893,21,52,807/- and in I.A. No.50/2018 to the tune of Rs.1618,02,74,465/-. Hence, the present applications.

6. We have gone through the above stated contentions of the present applications and heard the counsel for the RP, who has opposed the present applications, stating that till the claims of applicants are not crystallized and quantified such claims

cannot be recognized during pendency of dispute and a payment on such claim can be made only after finalization of dispute crystallizing the amount payable.

7. We have considered the rival submissions made by both the parties in this respect and we are of the view that the role and duty of the RP is to collate the information by verifying the claims and update it in the list of the creditors. He has not been vested with power of adjudicating the claim such issue can be dealt with and decide by a competent court/authority and when such dispute attains its finality.

8. However, there appears some substance in the contentions of the applicants that the terms of claim comprise of two parts (i) **right to payment** (ii) **right to remedy for breach of contract**, if such breach gives a rise to payment. Hence, such claim made by the applicants during the pendency of reconciliation/settlement/dispute cannot be refused at threshold by the RP specifically when that RP is reported to have considered other disputed claims made by some other operational creditors **under Note 18** and such claims had been admitted at **value of Rs.1/-** subject to outcome of dispute. Therefore, we are of the view that the present applicants also deserve the similar treatment. The RP is required to include their name in the list of creditors under Note 18 with other similar type of disputed claims, which will be subject final outcome of such dispute. Hence, we feel appropriate to issue appropriate direction

to the RP to consider and admit their claims in the list of creditors as observe above subject to final outcome of dispute pending.

9. With the above said observations the present I.As. are partly allowed and disposed of.

I.A. No. 60 of 2019, I.A. No. 61 of 2019, I.A. No. 64 of 2019, I.A. No. 15 of 2019 and I.A. No. 442 of 2018.

1. By these I.As., the applicants have demanded a copy of the Resolution Plan from the RP and CoC to be supplied to them as a pre-requisite to consider the Resolution Plan by the and CoC for its approval. The present applicants claim to be either member of suspended management or Operational Creditor of the Corporate-Debtor-Company. The learned Senior Advocate, Shri Mihir Thakor drew our attention to the latest decision of Hon'ble Supreme Court of India in the matter of Vijay Kumar Jain Vs. Standard Chartered Bank, wherein, it has now been held that the supply of a copy of the Resolution Plan to members of suspended management or to such operational creditor whose debts/dues are more than 10% of the total debts of the company is necessary, so as to ensure the effective participation in the CoC proceedings, which is reported to have not been followed in the present case. Hence, present proceedings suffer from such irregularity and matter needs to be remanded back to the CoC for its re-consideration after making supply of a copy of Resolution Plan to the concerned party in the light of this recent

decision of Hon'ble Supreme Court. Otherwise, the proposed Resolution Plan is liable to be rejected on such ground alone.

2. We duly considered this aspect of the case. In the light of mandate of the Hon'ble Supreme Court, in the present matter, if a Resolution Plan is not approved, the corporate debtor shall go to the liquidation which is not the main object of the I.B. Code. It is a matter of record that except to the applicants in I.A. No. 64 of 2019, all other applicants are operational creditors and having debts value less than of 10%. Hence, they cannot demand a copy of the resolution plan as a matter of right.

3. It is also a matter of record that promotors/shareholders of the Corporate-Debtor-Company had earlier filed I.A. 430 of 2018 seeking for settlement of the present CIRP proceedings by redeeming its entire debt. Wherein, they have elaborately dealt with the contents of the Resolution Plan by making comparison with their settlement proposal. In fact, their comparative settlement proposal with present resolution plan is annexed with this I.A. Further, it was also released to press media, a copy thereof has been annexed with the I.A. No. 430 of 2018 which gives such impression that members of the suspended management are well aware of the content of resolution plan. Hence, non-providing a copy of the resolution plan does not necessarily prejudice their right nor can vitiate the CoC proceedings.

4. Our such view is fortified by the view and the stand taken by the Hon'ble Supreme Court in the matter of **Sashidharan Vs. Indian Overseas Bank,** wherein, Their Lordship did not remand back the proceedings of CoC for re-voting on a resolution plan in the light of subsequent amendment took place in the IB Code whereby the requisite majority for approval of a Resolution Plan has been reduced. The Hon'ble Supreme Court did not feel appropriate to reopen such plan for reconsideration and voting for CoC (which earlier were rejected) in the light of subsequent amendment took place in the I.B. Code.

5. It is an undisputed position in the matter that when the Law of the Land in this respect has been settled by the judgment of Hon'ble Supreme Court in the matter of Vijay Kumar Jain Vs. Standard Chartered Bank dated 9th February, 2019. However, before such decision, the legal view as then held by the Hon'ble NCLAT in its decision in the matter of Vijay Kumar Jain Vs. Standard Chartered Bank and Rajputana Properties Pvt. Ltd. Vs. Ultra Tech Cement Ltd. & Ors. was that a copy of the Resolution Plan being a document of confidential nature cannot be made available as a matter of right to the member of suspended management. The Lordship of the Hon'ble NCLAT had observed as such:

"6The aforesaid provisions have also been noticed by this Appellate Tribunal in "Rajputana Properties Pvt. Ltd. Vs. Ultra

Tech Cement Ltd. & Ors. in IA No. 594 of 2018 in Company Appeal (At) (Insolvency) No. 188 of 2018" on 15th May,2018 while disposing of IA in the said case this Appellate Tribunal observed as follows:

9. As per Section 30(2), the Resolution Professional is required to examine whether resolution plan confirm the provisions as mentioned therein but he cannot disclose it to any other person including Resolution Applicant(s), who has submitted the resolution plan. According to us, the resolution plan submitted by one or other Resolution Applicant being confidential cannot be disclosed to any other competitor Resolution Applicant nor any opinion can be taken or objection can be called for from other Resolution Applicants with regard to one or other resolution plan."

6. It is pertinent to note here that, the CoC was considering such Resolution Plan on 19.10.2018, the prevailing legal position as per the judgment of Hon'ble NCLAT was that, a copy of Resolution Plan could not be supplied. Hence no illegality can be attributed in the decision of the CoC by not providing a copy of the Resolution Plan at the relevant time to the suspended management nor on such basis such proceedings of the CoC meeting cannot be treated to have been vitiated.

7. Moreover, keeping in view of the mandate of Hon'ble Supreme Court under Article 142 of the Constitution of India, if a Resolution Plan is not approved on such ground, then the

company shall go in to liquidation. Hence, it would not be appropriate for this Adjudicating Authority to remand the matter back to the CoC for reconsideration after providing a copy of the Resolution Plan to suspended management because in our humble view, it would amount dilution of the mandate given by the Hon'ble Supreme Court.

8. Hence, for the aforesaid reasons, these applications cannot succeed and are liable to be rejected.

I.A. No. 436 of 2018

1. By this application, the committee of creditors for the Corporate Debtor Company has sought for prayers for day to day hearing of main IA No. 431 of 2018 filed under Section 30/31 of the Code along with other maintainable applicaion on day to day basis and to dispose of the same expeditiously in the light of judgment of the Hon'ble Supreme Court in the matter.

2. the applicant has also prayed for deciding the maintainability of the application filed by M/s. Essar Steel Holding Asia Ltd. (IA No. 430 of 2018) and another application filed by the Resolution Professional of the GPI Textiles Limited and to reject the same ***in limine*** as being verdict of the Hon'ble Supreme Court's order dated 04.10.2018 in the matter of Arcelormittal Vs. Satish kumar Gupta and Ors.

3. We, examined the contents of the present application. It is now a matter of record that hearing in main I.A. No. 431 were made on day to day basis pursuant to directions of the Hon'ble NCLAT and now stands concluded.

4. It is also undisputed position in the record that earlier IA No. 430 of 2018 filed by M/s. Essar Steel Holding India Ltd. has already been disposed of by this Tribunal by its order dated 29.01.2019. That apart, another application preferred by another Resolution Professional of M/s. GPI Textiles Ltd. also stood disposed as withdrawn.

5. In view of the above given facts of the case, nothing survives in the present application. Because the relief being sought for by the application has already been achieved. Hence, the present I.A. has now became infructuous and is dispose of accordingly.

I.A. No.481 of 2018.

1. By this application, the applicant L&T Infrastructure Finance Company Limited has claimed itself to be a Financial Creditor of the Corporate Debtor Company on the strength of some post-dated cheques issued by the Corporate Debtor Company in favour of it towards payment of some amount due under financial Facility Agreement entered into between the present applicant and one Essar Power Gujarat Limited

(borrower). The applicant has thus assailed a decision of the respondent-Resolution Professional communicated to it through e-mail dated 08.10.2018, whereby the applicant's claim has been rejected.

It is the case of the applicant that it sanctioned a Term Loan of Rs.75 crore to one Essar Power Gujarat Limited (EPGL) vide its sanction letter dated April 26, 2016. As per one of the terms and conditions contained in the Facility Agreement read with Addendum to such Agreement, the borrower (EPGL) was required to arrange post-dated cheques from the present Corporate Debtor to the satisfaction of the applicant towards the Debt Servicing Obligation.

2. It is submitted that the present Corporate Debtor, vide its letter dated May 13, 2016, has issued 45 crossed post-dated cheques in favour of the applicant for a total sum of Rs.61,71,68,861/-. Therefore, as per the applicant, the Corporate Debtor issuing such post-dated cheques, in favour of the applicant has assumed its liability in the nature of a guarantor to secure the loan/financial facility, given to the borrower-EPGL by the present applicant.

3. However, the applicant, felt aggrieved with such impugned decision of the respondent-Resolution Professional (communicated through e-mail dated 08.10.2018) whereby he has rejected the applicant's claim as Financial Creditor. Therefore, the applicant has assailed such decision of the

respondent-RP. The applicant, therefore, has prayed for grant of the following reliefs-

"(a) set aside the impugned communication (e-mail dated 08.10.2018 issued by the Respondent to the Applicant) and the decision of the RP whereby the RP declined to admit the claim of the Applicant as a Financial Creditor;

(b) direct the RP to admit the claim of the Applicant as a Financial Creditor;

(c) revise the Information Memorandum of the Corporate Debtor to include the debt owed by the Corporate Debtor to the Applicant;

(d) pass appropriate order directing the Respondent to revise the list of financial creditors of the Corporate Debtor by including the claims of the Applicant and grant the Applicant its voting share in the Committee of Creditors in proportion to such claims with all consequential benefits arising therefrom;

(e) direct the RP to treat the Applicant as a Financial Creditor of the Corporate Debtor and allow the Applicant to exercise all rights of a financial creditors in the corporate insolvency resolution process of the Corporate Debtor;"

4. We have gone through the contents of the application and heard the learned counsel for both the parties. Since the present application was being heard along with connected IAs in a time bound manner, the respondent-RP chose to file Written Submissions by opposing the present IA and by taking such stand that the present Corporate Debtor was not a party

at all to loan agreement entered into between the applicant and the borrower (EPGL) nor it at any point of time was a signatory to the Facility Agreement or the Addendum or any Promoter Obligation Agreement. Further the Corporate Debtor did not stand as a guarantor to the above stated loan because such guarantee requires a tripartite agreement entered into among the lender, the principal borrower and the guarantor. That apart, it is alleged that the present applicant filed its proof of claim before the RP (in Form-C) during the CIRP period on 19th September, 2018 which is after the expiry of statutory period of 270 days. It is also contended that the applicant's above stated claim is based on a letter dated May 30, 2016, being an unstamped instrument, cannot be admissible in evidence even for collateral purposes.

5. The respondent-RP, while opposing the present application and in order to fortify his stand, obtained legal opinion from his legal adviser, who also opined that the claim of the applicant-L&T Infrastructure Finance Company Limited cannot be classified as a **"financial debt"** because such post-dated cheques were issued by the Corporate Debtor **(ESIL)** due of its payment obligation towards Bhander Power Limited (BPL) and its instance such post-dated cheques were issued in favour of the applicant in order to discharge its obligation to BPL and not issued with a view to secure any payment obligation of EPGL.

Hence, it is contended that the present Corporate Debtor (ESIL) is not a party to the above stated Promoter Obligation Agreement or any Facility Agreement nor there is any kind of tripartite agreement among L&T Infrastructure Finance Company Limited, EPGL and with the present Corporate Debtor. As the Corporate Debtor, it cannot be termed as a guarantor, therefore, the applicant also cannot be called a Financial Creditor of the Corporate Debtor company not its debts fall under the definition of **'Financial Debt'** under Sections 5,7, and 8 of the I & B Code.

For the aforesaid reasons, the respondent-RP has prayed for rejection of the present application. In support of his contention, the respondent-RP placed reliance on a decision of the Honourable NCLAT in the matter of ***Nikhil Mehta & Sons v. AM Infrastructure Limited.*** For the sake of convenience, the relevant portions of the said decision are reproduced hereinbelow:-

"From the provisions of Law and discussion as made and quoted above, we find that following essential criteria's to be fulfilled for a Creditor to come within the meaning of 'Financial Creditor':-

(i) A person to whom a 'Financial debt' is owed and includes a person whom such debt has been legally assigned or transferred to

(ii) The debt along with interest, if any, is disbursed against the consideration for time value of money and include any one

or more mode of disbursed as mentioned in clause (a) to (i) of sub-section of Section 5" (Emphasis supplied)

The Honourable Appellate Tribunal further held and observed as follows:-

"Learned Adjudicating Authority has rightly held the opening word of the definition clause which indicate that a 'financial debt' is a debt along with interest which is disbursed against the consideration for the time value of money and may include any of the events enumerated in sub-clause (a) to (i). Therefore, it is to be seen whether the amount paid by the appellants to the Corporate Debtor, fulfil the other condition of "disbursement against consideration of time value and money", to come within the definition of "Financial Creditor"" (Emphasis Supplied)"

6. In the light of the above stated judicial precedent, we duly considered the rival submissions made before us by learned counsels for both the parties and also gone through the material available on record. It is evident that the present applicant filed its proof of claim in Form-C before the RP only on 19th September, 2018, much after the initiation of the CIRP. That apart, it may be seen that evident that the Corporate Debtor issued some post-dated cheques in favour of the applicant through its letter dated 30th May, 2016 pursuant to a request received from a third party company, namely, Bhander Power Limited, against discharge its financial obligation to such third party (BPL). By perusal of the record at page 167, it is evident that BPL had written a letter on 27th

May, 2016 to the Corporate Debtor requesting it to issue post-dated cheques in favour of **L&T Infrastructure Financial Company Limited** against payment due to BPL. By perusal of the contents of such letter, it is evident that the present Corporate Debtor, who issued some post-dated cheques in favour of the applicant so as to discharge its liability of making payment of amount due to BPL. Hence, Corporate Debtor did not step into the shoe of a surety or stood as guarantor of such loan facility. Hence, in our view, by no stretch of imagination, the applicant can be termed as a guarantor. Moreover, in the strict legal issue, the status of the Corporate Debtor can only be of a garnishee, as per the provisions of the Code of Civil Procedure, having money of M/s. BPL in its hand and was asked by the BPL to be paid to the present applicant- L & T, in order to discharge its financial obligation. Hence, it cannot be fastened with the liability of a surety of EPGL.

7. Therefore, by relying on the decision of the Honourable NCLAT in the matter of Nikhil Mehta (Supra), we are of the view that the present applicant does not fall within the purview and definition of a **"Financial Creditor"** nor the amount due and payable to BPL through post-dated cheques issued in favour of the present applicant can be treat as a financial debt.

8. Hence, we are of the view that the present IA is devoid of merits and liable to be rejected. Accordingly, the I.A No. 481 of 2018 stands disposed of. No order as to costs.

I.A. No. 439 of 2018

1. By this application, the applicant, M/s. Standard Chartered Bank, as being a dessenting financial creditor, has opposed the approval of resolution plan which is being considered by this Adjudicating Authority. It also assailed the Resolution passed by the CoC for approving the Resolution Plan on various reasons, as contained in the pleadings of the I.A. Thus, the applicant has prayed for rejection of the same and for quashing and setting aside the relevant resolution passed in this respect by the CoC through E-Voting on dates 24.10.2018 and 25.10.2018, whereby, approving the resolution plans submitted by the H1 Resolution Applicant, M/s. ArcelorMittal.

2. The applicant has also made some alternative prayer in the present application that this Adjudicating Authority should direct the Resolution Applicant (herein Respondent No. 28) to distribute a sum of Rs. 42,000 Crores in such a manner that each secure financial creditors be paid their respective pro-rata shares on the basis of the amount of admitted claim which are stated in prayer clause of the application which is being reproduced herein below:

"This Hon'ble Adjudicating Authority may be pleased to direct the Resolution Applicant to distribute a sum of Rs. 42,000 crores (plus closing adjustments in the form of Working Capital Adjustment and EBITDA) in a manner that each secured Financial Creditor is paid their respective pro-rata share on the basis of amount of admitted claims or at least the principal amount (as per the verification of claims done by the Respondent No. 1) with a further direction that the Applicant receives its pro-rata shares of Rs. 2,983.98 crores or at least Rs. 2,646.05 crores (plus the Applicant's share of the closing adjustments)."

3. In addition to this, the applicant has also prayed for a stay of the proceedings in respect of I.A. 431 and other action being taken up by the R.P. and CoC. It also called for relevant record of the CoC for adjudication of present application.

4. It is the case of the applicant that it lodged its claim before the R.P. and CoC as a financial Creditor claiming for **Rs. 3487.09 Crore**. Later on the applicant was also classified as a secured financial creditor and out of these, a sum of Rs. 2646.05 Crores is shown as principal outstanding due to the applicant which is payable by the Corporate Debtor Company. However, it has been alleged that such dues are not being paid as per the proof of admitted claim on pro-rata basis and proposed to be paid on a different criteria/ different formula adopted by the CoC, for

making apportionment of such amount, which is based on the value of security possessed by the applicant and in terms of the liquidation value of the assets of the company. Thereby, the applicant is going to receive only 1.7 % of its admitted claim amounting to a sum of Rs. 60.71 Crores, while, other financial creditors are receiving a sum of around 92% of their entire principal debt. Hence, such being discriminatory practice, cannot be treated fair and equitable.

5. The applicant has further proposed that there should be some reasonable apportionment of the amount receivable from the Resolution Applicant among all the financial creditors on a pro-rata basis and if each secured financial Creditors are given 85.6% of their admitted secured claim from such amount (of Rs. 42,000 Crores) then this applicant including other financial creditor will get reasonable and fair apportionment of such amount. It is also contended that the Resolution Applicant at one point of time was willing to make provision of Rs. 42,000 Crores, meant for up-front payment for dues of all financial creditors as such offer /proposal was also conveyed to the Hon'ble supreme Court during the course of hearing in the matter of Arcelormittal Vs. Satish Kumar Gupta and Ors. but could not be materialized while submitting the revised resolution plan which is not proper. Hence, on such reason also, the present Resolution plan fails and need not be approved. In alternate, this Adjudicating Authority may issue some direction to the

Resolution Applicant to make payment of amount due to all the financial secured creditors and operational creditors on pro-rata basis, so as to meet the end of justice.

6. In support of its stand, the applicant, M/s. Standard Chartered Bank has duly annexed a comparative chart, as Annexure - A at page no. 65 of the present application which proposed as under:

Sr. No	Lenders	Admitted Secured Claims	Share as per CoC Distribution	Recovery as % of claims - as per COC distribution	Share if Pro rata distribution amongst secured lenders	Recovery as % of claims in case of pro rata distributio
1	State Bank of India	13,220.91	12,161.73	92.0%	11,313.4	85.6%
2	IDBI Bank	2,481.61	2,282.79	92.0%	2,123.6	85.6%
3	Canara Bank	3,798.06	3,493.78	92.0%	3,250.1	85.6%
4	EARC Trust SC 114 (HDFC Bank)	602.39	554.13	92.0%	515.5	85.6%
5	EARC Trust SC 187 (Federal Bank)	92.25	84.86	92.0%	78.9	85.6%
6	EARC Trust SC 217 (ICICI Bank)	1,697.77	1,561.75	92.0%	1,452.8	85.6%
7	EARC Trust SC 233 (Axis Bank)	993.46	913.87	92.0%	850.1	85.6%
8	EARC Trust SC 292 (IOB)	1,966.31	1,808.78	92.0%	1,682.6	85.6%
9	EARC Trust SC 322 (J&K)	554.92	510.47	92.0%	474.9	85.6%
10	EARC Trust SC 327 (LVB)	137.25	126.25	92.0%	117.4	85.6%
11	EARC Trust SC 337 (BOB)	1,273.78	1,171.74	92.0%	1,090.0	85.6%
12	EARC Trust SC 323 (HDFC Limited)	978.63	900.22	92.0%	837.4	85.6%
13	EARC Trust SC 326 (BOB)	10	9.2	92.0%	8.6	85.6%
14	Bank of Baroda	5	4.6	92.0%	4.3	85.6%
15	Punjab National Bank	2,936.25	2,701.01	92.0%	2,512.6	85.6%

16	Deutsche Bank	2,829.88	2,603.17	92.0%	2,421.6	85.6%
17	ICICI Bank	2,294.11	2,110.31	92.0%	1,963.1	85.6%
18	Union Bank of India	2,122.60	1,952.55	92.0%	1,816.4	85.6%
19	Bank of India	1,985.08	1,826.04	92.0%	1,698.7	85.6%
20	Corporation Bank	1,566.62	1,441.11	92.0%	1,340.4	85.6%
21	Syndicate Bank	967.91	890.37	92.0%	828.3	85.6%
22	S C Lowy	900.12	828.01	92.0%	770.3	85.6%
23	UCO Bank	582.26	535.62	92.0%	498.3	85.6%
24	Exim Bank	556.26	511,7	92.0%	476.0	85.6%
25	Central Bank of India	510.04	469.18	92.0%	436.5	85.6%
26	Allahabad Bank	320.49	294.81	92.0%	274.3	85.6%
27	SREI Infrastructure Finance	175.28	161.24	92.0%	150.6	85.6%
28	**Standard Chartered Bank**	**3,487.10**	**60.71**	**1.7%**	**2,983..98**	**85.6%**
	Total	**49,046.34**	**41,970.00**		**41,970.00**	

8. In support of its above stated proposal the applicant further raised some objections contending that the committee of creditors ("CoC") including the RP could not have delegated with such power to decide manner of distribution of the amount among the secured financial creditor and other unsecured financial creditor or other stake holders nor such can be left to its (CoC) wisdom, which seems to be biased among to its dissenting members. Further, the CoC is not empowered to create a class within a class by making discrimination with the present applicant on some different footing which drastically reduced its claim from Rs. 3487.09 Crores (minimum principle amount of Rs. 2983.98 Crores) to the extent of only Rs. 60.71 Crores. Hence, the applicant has sought for a judicial intervention of this Adjudicating Authority, in the present matter.

9. The applicant in support of its above contentions has placed reliace on the decision of Hon'ble Supreme court in the matter of **Swiss Ribbon Vs. Union of India** along with the decision of Hon'ble NCLAT in the matter of M/s. Binani Industries Limited Vs. Bank of Baroda by submitting that there could be no discrimination among the financial Creditors, operational Creditors and stakeholders who are situated in similar position. The applicant has also demanded for an equitable treatment with it which is the main theme and object of the I.B. Code in the light of BLRC Report as well as the U.N. model of Insolvency laws. The applicant further contends that the liquidation value of the Corporate Debtor Company as per its report comes to **Rs. 17185.50 Crores** only, while the CoC, through this Resolution Plan is going to receive much more sum as good as double of amount of liquidation value. Therefore, it would neither be proper nor fair for the CoC to make apportionment of amount among the applicant and other unsecured financial/operational creditors on the basis of liquidation value. As per the applicant, even by reserving a sum of Rs. 17185 Crores for distribution as per the liquidation value among unsecured financial/operational creditor and other stakeholders. The rest of the sum of Rs. 24814.50 Crores must be distributed on pro-rata basis among the financial Creditors.

10. The applicant has further alleged that if the above-stated amount is allowed to be distributed among financial creditors on the ratio of security available in its hands in such financial packages under the revised resolution plan then this would lead to disparity in distribution to the dessenting member of the CoC. Further, in such packages, there seems no priority given to first charge holders over the second charge holders and subservient chaege holders nor it clarify that in such financial package what would be nature of charge over the tengible or intengible assets of the company. Therefore, as per the applicant, such distribution of the amount is not just nor fair. Thus, the entire decision making process of the CoC is with such intention to deny the present applicant to receive its legitimate dues and exclude it to be marginalised . Hence, such decision needs to be aside by this Adjudicating Authority.

11. The applicant has further challenged the process of CoC on the ground of material irregularity committee in setting up core committee, sub-committee and on other delegation of powers by the of CoC to this Core committee/ Sub-committee to negotiate with the Resolution Applicant about the Resolution Plan which is illegal as it dehorse the provision of the Code.

12. Hence, the present application seeking for above stated relief from this Court.

13. The respondent RP and Resolution Applicant have opposed the present I.A. by contending that the decision of the CoC for approval of the Resolution Plan was in conformity with the relevant provisions of IB Code. The committee of creditors has taken fair and reasonable decision to see the paramount interest of the corporate Debtor company. It can be protected only by bringing a viable Resolution Plan, which can be implemented and there is equitable apportionment of the receivable amount of Resolution Plan. It cannot be equal distribution.

14. Moreover, there is no such rider in the provision of I.B. Code which prevents the CoC to constitute a core committee or subcommittee so as to ensure its smooth conduct and effective CIRP. Because the function of the CoC is to bring a resolution plan in a time-bound manner.

15. The Learned Counsel appearing for the RP and CoC have further contended that as per the theme of the IB Code read with the UN model of Insolvency Law and report of the BLRC, there is a requirement to provide equitable treatment to all the creditors, including financial, operational and stakeholders, this does not necessarily mean for equal treatment among all creditors, hence, the applicant's claim does not survive on such ground because it is being provided the amount on the basis of the security available in its hand which amount to more than of the value of

the security available in its hand and is also much higher of the amount it would get at the time of liquidation of the Corporate Debtor Company. Hence, the present I.A. should be rejected on this ground also.

16. Further, the Learned Counsel for the Respondent RP and CoC also drew our attention on a recent decision of the Hon'ble supreme court in the matter of **Sashidharan Vs. Indian Overseas Bank** and contended that it is not open to this adjudicating authority to make a judicial review on a commercial decision of the members of CoC to substitute its view on commercial wisdom of the CoC. The Adjudicating Authority is having a limited role of making scrutiny of the Resolution plan which is submitted in terms of section 31 of the IB Code read with Section 30(2) and if this Adjudicating Authority satisfied with such requirement, it is bound to accept the resolution plan.

17. We have gone through the contents of the present application, reply thereof filed by the respondent. We duly considered the rival submissions made before us by the Learned Counsel for the Applicant, i.e. Shri Iqbal Chhgla along with Shri Kamal Trivedi, Learned Senior Advocate from the applicant side as well as Shri Ravi Kadam, Mr. Soli Cooper and Shri N. K. Kaul, Mr. Sriniwasan, Mr. Navin Pahva, Sr. Advocates from the Respondent side.

18. We find that as per record, the present applicant has been one of the main applicant for initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor company by filing CP(IB) No. 39/7/NCLT/AHM/2017 which was commonly decided by this bench with CP(IB) No. 40/7/NCLT/AHM/2017 on 02.08.2017 whereby this adjudicating authority has categorically given finding to this effect (in para 33 onwards of its judgment) that application filed by the Standard Chartered Bank as well as State Bank of India are complete in all respects, for triggering the CIRP against the Corporate Debtor Company. With such findings, it further held that the Corporate Debtor company has committed default in making payment of its financial debt to the financial creditors, including Standard Chartered Bank and the State Bank of India. The amount of debts has also been quantified by this Bench in the aforesaid judgment stating inter-alia that, the Standard Chartered Bank ("SCB") had provided loan of amount of USD 413000000 to M/s. Essar Steel Offshore Ltd. and the same was disbursed on 03.01.2014. The said loan was a secured loan as guarantee was given by the present Corporate Debtor Company, M/s. Essar Steel Holding India Ltd. Therefore, in our view, when there is guarantee furnished by the Corporate Debtor Company itself, then the recovery of debts cannot be restricted to the value of shares in Essar Steel Offshore Limited as pledged by the present Corporate Debtor. The recovery of such amount can

always be enforced from other assets of the Corporate Guarantor/ Corporate Debtor Company.

19. As per the settled legal norms, the finding reached at by a competent court of law including this bench by recording that the debt is established against and default has been committed by Corporate Debtor are to be treated as good as a decree of a Civil court and should be honoured in its true purport, then the CoC ought not have gone to ascertain to kinds and value of securities in the hand of the present applicant before making apportionment because a decree of a competent civil court can always be executable for recovery of decretal amount from other assets of the Corporate Debtor Company not necessarily from security provided or property pledged.

20. It is pertinent to note /hear the observation made and findings given by the Hon'ble Gujarat High Court in SCA No. 12434 of 2017, which was filed by the Corporate Debtor Company against the Reserve Bank of India as per the observations of Hon'ble Gujarat High Court, the Non-Performing Assets ("NPA") of the Corporate Debtor Company, as on 31.03.2017 was around Rs. 32,864 Crores. Hence, we see no justification for placing the applicant's claim on some different criteria or different footing.

21. The Hon'ble Supreme Court in its decision in B.C. Chaturvedi Vs. Union of India, (1995) 6 SCC 749, United Commercial Bank vs. PC Kakkad (2003) 4 SCC, page 364 and another decision in Chairman, All India Railway Rec. Board and Another Vs. K. Shyam Kumar & Others, reported in (2010) 6 SCR 291 came to examine the Wednesbury Principle of Unreasonableness and doctrine of Proportionality and held that:

"Normally, a Court should not interfere with an Administrative decision unless it is illogical or suffer from procedural impropriety or was shocking to the conscience of the Court in the sense that it was in defiance of logic or moral standards (Wednesbury principle). The court would not go into the correctness of the choice made by the administrator and will not substitute its decision to that of the administrator. The scope of judicial review is limited to the deficiency of the decision-making process and not the decision.

The duty of the court in exercising the power of judicial review is thus to confine itself to the following questions:
(1) Whether a decision-making authority exceeded its powers?
(2) Whether the authority has committed an error of law?
(3) Whether the authority has committed a breach of the principles of natural justice?
(4) Whether the authority has reached a decision which no reasonable person would have reached?
(5) Whether the authority has abused its powers?"

21. For the sake of convenience, the relevant portion of the aforesaid decision of the Hon'ble Supreme Court can be reproduced herein below:

"16. Judicial review conventionally is concerned with the question of jurisdiction and natural justice and the Court is not much concerned with the merits of the decision but how the decision was reached. In Council of Civil Service Unions Vs. Minister of State for Civil Service (1984) 3 All ER 935 the (GCHQ Case) the House of Lords rationalized the grounds of judicial review and ruled that the basis of judicial review could be highlighted under three principal heads, namely, illegality, procedural impropriety and irrationality. Illegality as a ground of judicial review means that the decision maker must understand correctly the law that regulates his decision making powers and must give effect to it. Grounds such as acting ultra vires, errors of law and/or fact, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, fettering discretion, unauthorized delegation, failure to act etc., fall under the heading "illegality". Procedural impropriety may be due to the failure to comply with the mandatory procedures such as breach of natural justice, such as audi alteram partem, absence of bias, the duty to act fairly, legitimate expectations, failure to give reasons etc.

17. Ground of irrationality takes in Wednesbury unreasonableness propounded in Associated Provincial Picture Houses Limited v. Wednesbury Corporation (1947)2 All ER 680,

Lord Greene MR alluded to the grounds of attack which could be made against the decision, citing unreasonableness as an 'umbrella concept' which covers the major heads of review and pointed out that the court can interfere with a decision if it is so absurd that no reasonable decision maker would in law come to it. In GCHQ Case (supra) Lord Diplock fashioned the principle of unreasonableness and preferred to use the term irrationality as follows:

"By 'irrationality' I mean what can now be succinctly referred to as "Wednesbury's unreasonableness", ... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

18. In R. v. Secretary of State for the Home Department ex parte Brind (1991) 1 All ER 720, the House of Lords re-examined the reasonableness of the exercise of the Home Secretary's discretion to issue a notice banning the transmission of speech by representatives of the Irish Republican Army and its political party, Sinn Fein. Court ruled that the exercise of the Home Secretary's power did not amount to an unreasonable exercise of discretion despite the issue involving a denial of freedom of expression. House of Lords however, stressed that in all cases raising a human rights issue proportionality is the appropriate standard of review. The House of Lords in R (Daly) v. Secretary of State for the Home Department (2001) 2 AC 532 demonstrated

how the traditional test of Wednesbury unreasonableness has moved towards the doctrine of necessity and proportionality. Lord Steyn noted that the criteria of proportionality are more precise and more sophisticated than traditional grounds of review and went on to outline three concrete differences between the two: -

(1) Proportionality may require the reviewing Court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions.

(2) Proportionality test may go further than the traditional grounds of review in as much as it may require attention to be directed to the relative weight accorded to interests and considerations.

(3) Even the heightened scrutiny test is not necessarily appropriate to the protection of human rights.

.....

22. Position in English Administrative Law is that both the tests that is. Wednesbury and proportionality continue to co-exist and the proportionality test is more and more applied, when there is violation of human rights, and fundamental freedom and the Wednesbury finds its presence more on the domestic law when there is violations of citizens ordinary rights. Proportionality principle has not so far replaced the Wednesbury principle and the time has not reached to say good bye to Wednesbury much less its burial.

.....

.....

30. Wednesbury and Proportionality - Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to `assess the balance or equation' struck by the decision maker. Proportionality test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalize or lay down a straight jacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a state burial, with full honours is surely not to happen in the near future.

31. Proportionality, requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision- maker has achieved

more or less the correct balance or equilibrium. Courts entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate, i.e. well balanced and harmonious, to this extent court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere."

22. Therefore, in the light of the above stated discussion, we are of the view that the present application can be suitably disposed of on the basis of the alternative prayers being made by the applicant seeking for equitable distribution of amount mentioned in the Rs. 42000 Crores among the financial creditors and other stakeholders which will be considered while dealing with and disposing of the IA No. 431 of 2018.

23. Further, this authority need not to go into the details of the controversy involved in the present IA and to examine merits thereof, or to make judicial review of a commercial decision of the CoC but this Adjudicating Authority can certainly make some observations and suggestions by following the well-known Wednesbury principle of unreasonableness and Doctrine of proportionality as widely accepted by the Hon'ble Supreme Court in catena of its decisions.

24. While relying on above stated principle, we are equally conscious enough about the jurisdiction of this Adjudicating Authority under Section 30 & 31 of the I.B. Code as per the decision the Hon'ble Supreme Court in the matter of Shshsidharan Vs. I.O.B. wherein, their Lordship have pleased to observe as such:

"61. Assuming that this provision was applicable to the cases on hand, non-recording of reasons for approving or rejecting the resolution plan by the concerned financial creditor during the voting in the meeting of CoC, would not render the final collective decision of CoC nullity per se. Concededly, if the objection to the resolution plan is on account of infraction of ground(s) specified in Sections 30(2) and 61(3), that must be specifically and expressly raised at the relevant time. For, the approval of the resolution plan by the CoC can be challenged on those grounds. However, if the opposition to the proposed resolution plan is purely a commercial or business decision, the same, being non- justiciable, is not open to challenge before the Adjudicating Authority (NCLT) or for that matter the Appellate Authority (NCLAT). If so, non-recording of any reason for taking such commercial decision will be of no avail. In the present case, admittedly, the dissenting financial creditors have rejected the resolution plan in exercise of business/ commercial decision and not because of compliance of the grounds

specified in Section 30(2) or Section 61(3), as such. Resultantly, the amended regulation pressed into service, will be of no avail.

In the present case, however, we are concerned with the provisions of I&B Code dealing with the resolution process. The dispensation provided in the I&B Code is entirely different. In terms of Section 30 of the I&B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of CoC, the proposed resolution plan is placed for discussion and after full interaction to the presence of all concerned and the resolution professional, the constituents of the CoC finally proceed to exercise their option business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-recording of reasons would not per se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the "commercial/business decision" of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.

63. It was then contended that NCLAT committed manifest error in not calling upon the dissenting financial creditors to respond to the applications filed in the concerned appeals pending before it, including with a prayer to allow the resolution applicant to revise

the resolution plan. We find no merits in this submission. The reliefs claimed in the stated application filed before the NCLAT would not take the matter any further. For, it is enough for the dissenting financial creditors to disapprove the proposed resolution plan by voting as per its voting share, based on commercial decision. Indeed, if the opposition of the dissenting financial creditors is in regard to matter(s) within the jurisdiction of the Tribunal ascribable to Sections 30(2) or 61(3), then the situation may be somewhat different. But that is not in issue in these cases.

64. As regards the application by the resolution applicant for taking his revised resolution plan on record, the same is also devoid of merits in as much as it is not open to the Adjudicating Authority to entertain a revised resolution plan after the expiry of the statutory period of 270 days. Accordingly, no fault can be found with the NCLAT for not entertaining such application."

25. By following the above stated preposition laid down by the Hon'ble Supreme Court, the contention made in the present application to oppose the Resolution Plan are not legally sustainable except to consideration for alternative prayers made therein seeking for judicious apportionment /distribution of the amount of Rs. 42,000 Crores among the financial creditors and other stakeholders.

26. Therefore, by following the above-stated judicial precedence on Wednesbury Principle of unreasonableness and doctorine of proportionality, which is now the law of land as per Article 141 of the Indian Constitution, this Adjudicating Authority can very well advise to the RP and the CoC to relook in to its decision(s) and consider for making apportionment/ distribution of amount on pro-rata basis on all admitted claim of all financial creditors including the present applicant and it can work out for a reasonable formula for percentage of payment that may be 85% pro-rata basis among all financial creditors and remaining 15% may be distributed among the Operational Creditor/ other stakeholders on pro-rata basis of their admitted dues/claims.

27. If such method of distribution is adopted by the CoC, their dues including the present applicant can substantially be paid off and thus would stand statisfied.

28. Therefore, we are of the view that the proposal made by the applicant by way of alternative prayer and by submitting its comparative chart prepared for making a distribution of amount on pro-rata basis (as Annexure-A at page 65) appears to be sound, prudent, equitable and can be considered and accepted by the CoC.

29. Therefore, the RP and CoC are hereby advised to consider the same and to take an appropriate decision in accordance with the Law.

30. With the aforesaid observation, the present I.A. No. 439 partly succeeds and accordingly stands dispose of.

Hence, we now proceed to deal with dispose of the main I.A. No.431 of 2018.

1. This I.A. is filed by Shri Satishkumar Gupta, Resolution Professional (RP) of Essar Steel India Limited, for the Corporate Debtor Company by submitting a resolution plan under Section 30(6) of the Insolvency & Bankruptcy Code, 2016 ("I&B Code"), which was duly approved by the requisite majority of the Committee of Creditors ("CoC") seeking approval of this Adjudicating Authority under Section 31 of the I&B Code. By this application, the applicant RP has sought for the following prayers :-

"(a) *That this Tribunal be pleased to pass order approving:- the Resolution Plan submitted by ArcelorMittal India Private Limited for the Corporate Debtor as per Section 31(1) of the Insolvency and Bankruptcy Code, 2016;*

(b) *approving the appointment of the Monitoring Committee, with the constitution as specified in the Resolution Plan, to function from the Plan Approval Date until the Effective Date in the manner provided in the Resolution Plan;*

(c) *directing that the powers of the Board of Directors of the Corporate Debtor shall continue to remain suspended until the Effective Date and shall be exercised by the Monitoring Committee;*

(d) *approving and directing the grant of the reliefs and concessions and key directions as set forth in Annexure I of this Application, for successful implementation of the Resolution Plan;*

(e) *directing that in accordance with Section 31(1) of the Code, the Resolution Plan shall be binding on the Corporate Debtor together with its employees, members, creditors, guarantors and all other stakeholders affected by the Resolution Plan.*

(f) *Upon approval by this Tribunal as mentioned in prayer (a) above, to declare that the moratorium order passed by the Hon'ble NCLT under Section 14 of the Code vide order dated August 2, 2017 shall cease to have effect; and*

(g) to pass such further or other order/s be made and/or directions be given as this Hon'ble Tribunal may deem fit and proper in the facts and circumstances of the case and in the interest of justice without prejudice to each other."

2. By perusal of the above stated reliefs, it may be seen that the applicant Resolution Professional has also sought from this Adjudicating Authority certain reliefs and concessions and some deemed statutory Sanction/No Objection for implementation of the scheme and deemed compliance of requisite statutory formalities. The applicant has further sought exemption from making payments of stamp duty, etc. as a pre-requisite for implementation of the proposed resolution plan, which is now under consideration before this Adjudicating Authority. For the sake of convenience, such reliefs, concessions, etc., which are annexed as Annexure-I to the application, are being reproduced hereinbelow :-

A. "Reliefs and Concessions.

The Resolution Applicant requests the Adjudicating Authority for the reliefs and concessions set out below for the successful implementation of the Resolution Plan. By approving this Resolution Plan, the Adjudicating Authority shall approve the reliefs and concessions listed below:

1. ***The (i) Department of Registration and Stamps and Governmental Authorities of Gujarat, Odisha, Andhra Pradesh, Maharashtra, Chattisgarh, Jharkhand, and such other States and geographies where the Corporate Debtor or the Resolution Applicant carries on its business and operations or where its assets are located; and (ii) the Ministry of Corporate Affairs; shall exempt the Resolution Applicant and the Corporate Debtor, from the levy of stamp duty and fees, applicable in relation to this Resolution Plan and its implementation.***

2. ***The requirement of obtaining a no objection certificate under Section 281 of the Income Tax Act, 1961 and provisions of taking over its predecessor's Tax liability under Section 170 of the Income Tax Act shall not be applicable. Further, the transaction shall not be treated as void under Section 281 of the Income Tax Act, 1961 for any claims in respect of Tax or any other sum payable by the Corporate Debtor. Similarly, any requirements to obtain waivers from any Tax Authorities including in terms of Section 79 and Section 115B of the Income Tax Act, 1961 is deemed to have been granted upon approval of this Resolution Plan on the Plan Approval Date.***

3. ***The Corporate Debtor and the Resolution Applicant shall be granted an exemption from all Taxes, levies,***

fees, transfer charges, transfer premiums, and surcharges that arise from or relate to implementation of the Resolution Plan, since payment of these amounts may make the Resolution Plan unviable. Foregoing reference to Taxes shall include the following:

Transaction Cost	***Relevant Governmental Authority***
Any transfer premiums or charges, change of ownerships/control charges payable in connection with the implementation of this Resolution Plan and the consequent change in ownership and control of the Corporate Debtor.	***Includes but is not limited to:*** ▪ ***Odisha Industrial Development Corporation, Government of Odisha*** ▪ ***Chhattisgarh Stage Government*** ▪ ***Board of Trustees of the port of Vishakhapatnam*** ▪ ***MP Audyogik Kendra Vikas Nigam***

4. ***All actions undertaken pursuant to implementation of the Resolution Plan approved by the Adjudicating Authority shall be deemed to be exempt from any Tax and stamp duty.***

5. ***Upon approval of the Resolution Plan by the Adjudicating Authority, all Non-Compliances of the Corporate Debtor for the period prior to the Effective Date (including but not limited to those relating to Tax), shall be deemed to be waived by all the Governmental Authorities. In relation to any non-compliance arising under any tax and duty benefit scheme (including, the Export Promotion Credit Guarantee Scheme), the relevant Government Authority (including, without limitation, the Director General of Foreign Trade) shall waive all such non-compliances by the Corporate Debtor without levying any fee, penalty or additional duty, and the Corporate Debtor shall be allowed sufficient time (and in any event not less than two years from the Effective Date) to fulfil its obligation under such tax and duty benefit schemes (including, any export obligations contained therein). The Resolution Applicant shall be granted a waiver, from all actions, Proceedings or penalties und any applicable Law for any Non-Compliances, for an additional period of 12 months starting from the day following the Effective Date.***

6. ***Without prejudice to the generality of the above, upon approval of the Resolution Plan by the Adjudicating Authority, the Ministry of Environment, Forest and***

Climate Change, the Central Pollution Control Board, the Gujarat State Pollution Control Board, the Odisha State Pollution Control Board, the Central Pollution Control Board, Inspector/Chief Inspector of Factories, Controller of Explosives, Chief Inspector of Boilers, Forest and Ecology Department, Gujarat, Reserve Bank of India, and all other Governmental Authorities concerned shall waive all Non-Compliances by the Corporate Debtor under Applicable Law prior to the Effective Date (including but not limited to any Non-Compliances under any Applicable Laws pertaining to anti bribery and prevention of money laundering.

7. ***Upon approval of the Resolution Plan, moratorium shall be deemed to have been granted to the Corporate Debtor from any actions/penalties under any laws for any non-compliance, which was existing on or prior to the Effective Date and which shall continue for a period of 12 months after the Effective Date.***

8. ***All Business Permits of the Corporate Debtor that may have lapsed or expired, shall be renewed by the respective Governmental Authorities with effect from the Plan Approval Date and the Corporate Debtor shall take all necessary steps to ensure such renewal in furtherance of its statutory duties under Section 20(1) read with Section 23(2) of the Code. For***

avoidance of doubt, it is hereby clarified that, all Business Permits rights, entitlements, benefits and privileges whether under applicable Law, contract, lease or license granted in favour of the Corporate Debtor or which the Corporate Debtor is entitled to or accustomed to, which have expired on or prior to the Plan Approval Date or the Effective Date, shall be renewed by the relevant Governmental Authority on an expedited basis and pending receipt of such Business Permits, the Corporate Debtor shall be permitted to continue to operate its business as a going concern without disruption for the benefit of the Corporate Debtor for a period of 24 months or until renewed by the relevant Governmental Authority, whichever is later. Without any liability for Non-Compliance by the Corporate Debtor, during the time specified above, the Resolution Applicant undertakes to cause the Corporate Debtor to obtain/renew such expired consents, licenses, approvals, rights, entitlements, benefits and privileges, whether under law, contract, lease or license, granted in favour of the Corporate Debtor or to which the Corporate Debtor is entitled to accustomed to, evaluate the steps required to address the same and takes steps remedy the same to the extent possible. During the 24 months period, the Resolution Applicant and the Corporate

Debtor shall have immunity from any actions and penalties under any applicable Law for any Non Compliance of applicable Law in relation to the Corporate Debtor as well as with the terms of any agreement or arrangement entered into with the Corporate Debtor which was existing as on the Plan Approval Date / Effective Date and which continues for a period of 24 months from the date of acquisition of control by the Resolution Applicant. If (i) any Governmental Authority has suspended, cancelled, revoked or terminated any Business Permits of the Corporate Debtor; or (ii) any Governmental Authority has threatened to suspend, cancel, revoke or terminate any Business Permits or the operations of any unit or facility of the Corporate Debtor; or (iii) where the Corporate Debtor has been in breach of the terms of any Business Permits or the provisions of applicable Law, then all such relevant Governmental Authorities shall provide 24 (Twenty Four) months after the Effective Date in order for the Resolution Applicant to assess the status of these Business Permits or such Non-Compliances and ensure that the Corporate Debtor is complaint with the terms of such Business Permits and applicable Laws – without such Governmental Authorities initiating any investigations, actions or Proceedings in relation to

such Non-Compliances or taking any adverse measure which may interrupt or suspend the operations of the Corporate Debtor or any facility/unit thereof.

9. ***From the Plan Approval Date, all inquiries, investigations and proceedings suits, claims, disputes, Proceedings in connection with the Corporate Debtor or affairs of the Corporate Debtor, pending or threatened, present or future in relation to any period prior to the Plan Approval Date, or arising on account of implementation of this Resolution Plan shall stand withdrawn and dismissed and all liabilities and obligations therefore, whether or not set out in the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor will be deemed to have been written off fully, and permanently extinguished and no adverse orders passed in the said matters should apply to the Corporate Debtor or the Resolution Applicant. Upon approval of this Resolution Plan, all new inquiries, investigations, notices, suits, claims disputes, litigations, arbitrations or other judicial, regulatory or administrative proceedings will be deemed to be barred and will not be initiated or admitted against the Corporate Debtor in relation to any period prior to the Effective Date.***

10. Upon approval of the Resolution Plan by the Adjudicating Authority, all financial obligations under any contract to which the Corporate Debtor is a party relatable to the period prior to the Plan Approval Date shall sand assigned or novated in favour of the Resolution Applicant unless extinguished as per directions of the Resolution Applicant. From and on the Plan Approval Date, all assets of the Corporate Debtor (including freehold properties, leasehold interests, or rights of the Corporate Debtor under leave and license agreements executed by it prior to the Plan Approval Date) shall be vested in the Corporate Debtor, free and clear of all Encumbrances, other than Encumbrances required to be assigned / novated along with the outstanding loans of the Corporate Debtor.

11. No Governmental Authority (including regulatory, judicial and quasi-judicial authority) shall issue any orders, directions, decrees, judgments, etc, that will be in contravention of the provisions of the Resolution Plan (including the Financial Plan).

12. Any approvals that may be required from Government Authorities (including Tax Authorities) in

connection with the implementation of the Resolution Plan including on account change in ownership/ control of the Corporate Debtor shall be deemed to have been granted on the Plan Approval Date.

13. ***Gas Procurement / Re-gasification Contracts: direct GAIL (India) Limited, Indian Oil Corporation Limited, Bharat Petroleum Corporation Limited and Ultra LNG Limited to engage with the Resolution Applicant for a viable solution with respect to the long term gas procurement contracts executed with the Corporate Debtor, whereby the Corporate Debtor is obligated make payments for the entire Contracted to purchase gas at uncompetitive prices even if there was no consumption requirement.***

14. ***The moratorium provisions under the Code including but not limited to Section 14 of the Code shall mutatis mutandis apply to the period between the Plan Approval Date and the Effective Date. Without prejudice to the generality of the foregoing, the Corporate Debtor shall be provided un-interrupted supply of essential services and goods during this period by all relevant stakeholders.***

3. The applicant-RP has further submitted about Key Directions being sought from this Adjudicating Authority in the present application, which read as under :-

B. Key Directions:

The Resolution Applicant has prepared this Resolution Plan with a view to maximize the value of the assets of the Corporate Debtor to resolve insolvency and improve utilization of such resources (in line with the legislative mandate of the Code). It is imperative that the following directions are granted in favour of the Corporate Debtor by the Adjudicating Authority, which directions are reasonable and just, in view of the present condition of the business of the Corporate Debtor. In the event the directions are denied or rejected by the Adjudicating Authority, the same will have an adverse impact on the business condition of the Corporate Debtor, its stakeholders and inter alia may result in failure of the Resolution Plan to resolve insolvency.

1. ***Assets Owned / Controlled by Existing Promoter Group****: Currently the Corporate Debtor's business is highly dependent on the assets and services provided by Related Parties (most of which are controlled by the Existing Promoter Group). Therefore, the Resolution Applicant and the Corporate Debtor will require protection by way of the directions sought below to ring-fence themselves from any*

the Corporate Debtor. In the event the directions are denied or rejected by the Adjudicating Authority, the same will have an adverse impact on the business condition of the Corporate Debtor, its stakeholders and inter alia may result in failure of the Resolution Plan to resolve insolvency.

1. ***Assets Owned / Controlled by Existing Promoter Group***: *Currently the Corporate Debtor's business is highly dependent on the assets and services provided by Related Parties (most of which are controlled by the Existing Promoter Group). Therefore, the Resolution Applicant and the Corporate Debtor will require protection by way of the directions sought below to ring-fence themselves from any actions that may be initiated/commenced by the Existing Corporate Group/its affiliates:*

   a. *Continued and Uninterrupted Supply of Power : The Resolution Applicant seeks a direction from Adjudicating Authority to Essar Power Hazira Limited, Essar Power Orissa Limited and Essar Power MP Limited, as essential service providers of the Corporate Debtor to continue to supply power to the Corporate Debtor on no less favourable terms than the terms and conditions on which the power supply is currently obtained for such period as the Corporate Debtor requires such access for its business and operations.*

b. *Transmission Infrastructure: the Resolution Applicant prays for a direction to Essar Power Transmission Company Limited for continuation of the contract of the Corporate Debtor for usage of the transmission infrastructure on terms no less favourable than the existing terms for such period as the Corporate Debtor requires such access for its business and operations.*

c. *Access to Port: The Resolution Applicant seeks the following direction from the Adjudicating Authority: (i) Gujarat Maritime Board, in its capacity as the concessioning authority to Essar Bulk Terminal Limited, to take all actions and grant all approvals and consents as may be required to facilitate use of the deep water jetty at Hazira Port for captive use of the Corporate Debtor, without the requirement to pay any additional fee or charge (other than those which were being paid by the Corporate Debtor prior to the Insolvency Commencement Date); and (ii) Essar Bulk Terminal Limited to facilitate use of the jetty by the Corporate Debtor, in the same manner and on the same terms as set out under the subsisting contact for such period as the Corporate Debtor requires such access for its business and operations.*

d. *Continuation of Cargo Service Contract in Paradip: The Resolution Applicant seeks a direction to Essar Bulk*

Terminal Paradip Limited for continuation of the cargo services arrangement with the Corporate Debtor on no less favourable terms than the existing terms, and further a direction to the Paradip Port Trust to direct Essar Bulk Paradip Terminal Limited to continue with the contractual arrangement with the Corporate Debtor for such period as the Corporate Debtor requires such access for its business and operations.

e. *Continuation of Cargo Service Contract in Vizag: The Resolution Applicant seeks a direction to Essar Vizag Terminal Limited for continuation of the cargo services arrangement with the Corporate Debtor on less favourable terms than the existing terms, and further a direction to the Vishakhapatnam Port Trust to direct Essar Vizag Terminal Limited to continue with the contractual arrangement with the Corporate Debtor for such period as the Corporate Debtor requires such access for its business and operations.*

2. *Third Party Assets:*

Land issues: the Resolution Applicant seeks indulgence from the Adjudicating Authority to direct the regularization of two land parcels in Hazira duly occupied by the Corporate Debtor in line with rates that were prevalent when the original application was preferred for

regularization and adjust the payables so computed against any amounts already paid by the Corporate Debtor towards the conversion process (for which the charges along with the applicable penalty has already been paid), and to waive any penalties and fines that are proposed to be levied as part of the regularization process.

4. In addition to the above, the Applicant-Resolution Professional has stated that the present resolution plan is law compliant and in conformity with the relevant provisions of the I&B Code. The Resolution Professional has further narrated [at point No.V of paragraph 50.4 (page 36) of the present application] about the manner of implementation and supervision of the resolution plan and (at point No.VI), compliance of the approved resolution plan with the requirements of Section 30(2) of the Code and Regulation 38 of the CIRP Regulations, which read as under:-

"V. ***Manner of implementation and supervision of the Resolution Plan***

Part C of Section X (Implementation Schedule (Acquisition Structure), Supervision of Implementation Plan and Management) provides the manner of supervision and implementation of the Resolution Plan. It states that during the Standstill Period (as defined in Section 1.72 of the Resolution Plan), the Monitoring

Committee will assist with implementation of the Resolution Plan. Further, the Monitoring Committee shall provide such information on the implementation of the Resolution Plan as may be reasonably requested by the Resolution Application from time to time. Further, the mechanism for supervision of the payments to stakeholders of the Corporate Debtor with effect from the Effective Date, shall be supervised by the Resolution Applicant with the co-operation of the management of the Corporate Debtor.

VI. The compliance of the Approved Resolution Plan with the requirements of Section 30 (2) of the Code and Regulation 38 of the CIRP Regulations are as follows:

Sr. No.	Relevant provision under the Code/CIRP Regulations	Description of the requirement	Resolution Plan reference addressing such requirement
1	Section 30(2)(a) of the Code.	Payment of the insolvency resolution process cost in priority to the repayment of any other debts.	Section X and Section XI
2	Section 30(2) (b) of Code and Regulation 38(1) of the CIRP Regulations.	Repayment of the operational creditors in priority to the repayment of the financial creditors such that amount	Section X and Section XI

		received by the operational creditors shall not be less than the amount which would have been otherwise received by them in the event of liquidation of the corporate debtor.	
3	Regulation 38(1A) of the CIRP Regulations.	Statement on how the resolution plan has dealt with the interests of all stakeholders, including financial creditors and operational creditors of the corporate debtor.	Section VIII
4	Regulation 38(2) (a) of the CIRP Regulations.	The term of the resolution plan and its implementation schedule.	Section VII and Section X
5	Section 30(2) (c) of the Code and Regulation 38(2) (b) of CIRP Regulations.	Mechanism regarding management and control of the affairs of the corporate debtor post approval of the resolution plan by this Tribunal.	Section X
6	Section 30(2) (d) of the Code and Regulation 38(2) (c) of CIRP Regulations.	The implementation and supervision of the resolution plan.	Section X
7	Section 30(2) (e) of Code.	Declaration that the Resolution Plan is not in contravention of provisions of applicable law.	Covering Letter

8	Regulation 38(3) of the CIRP Regulations.	Details of AM India and its connected persons.	Attached as Format V to the Resolution Plan.

5. The applicant, in this application, has further described about the salient features of the proposed Resolution Plan under the heading "Key Contents of the Resolution Plan", which are stated in paragraph 50 of the present application. For the sake of convenience, the same are also being reproduced hereinbelow :-

"50. ***Key Contents of the Resolution Plan***

The total admitted claims as on October 24,2018 in relation to the Corporate Debtor is **Rs. 54549,88,56,433 (Rupees Fifty Four Thousand Five Hundred Forty Nine Core Eighty Eight Lakh Fifty Six Thousand Four Hundred Thirty Three Only**) (**"Admitted Claim**"). Annexed herewith and marked as Exhibit-20 is a copy of the list of creditors dated October 24,2018. The terms of settlement proposed by AM India is as follows:

50.1 **Summary Proposal**

I. **Proposal to the Financial Creditors**

The financial proposal by AM India to the Financial Creditors (*as defined in Section I.30 of the Resolution Plan*) of ESIL is detailed in Section V.A of the Resolution Plan.

(a) Secured Financial Creditors

AM India has proposed an upfront payment of INR 42,000 crore to the Financial Creditors of ESIL who have provided secured debt to ESIL and have been identified as such by the Resolution Professional as of October 22,2018 ("**Secured Financial Creditor**") (including the Guaranteed Working Capital Adjustment, as specified in Section V of the Resolution Plan) to be paid on the Effective Date (*as defined in Section I.24 of the Resolution Plan*). The manner in which manner in the financial package being offered by the AM India to the Financial Creditors will be **distributed to the Secured Financial Creditors has been left to be decided by the CoC.**

(b) Upfront cash recovery for unsecured Financial Creditors.

AM India has proposed payment of INR 17.4 crores to the unsecured financial creditors to be paid on the Effective Date as an upfront amount, which shall be divided proportionately to the unsecured financial creditors. Further, an amount of **INR 3,055,738** is proposed to be paid as an upfront amount to the unsecured financial creditors, whose Admitted Claim is less than INR 10 lakhs on the Effective Date (*as defined in Section I.24 of the Resolution Plan*).

(c) Upfront Fresh Capital Infusion

AM India will provide **INR 8,000 crore** of upfront fresh capital infusion for improving operations and

enhancing revival prospects of the Corporate Debtor in the form of capex, working capital (for incremental operations) etc. Further, the upfront capital infusion would be made over one or more tranches within 90 days from the date on which this Hon'ble Tribunal approves the Resolution Plan ("**Plan Approval Date**"). Further, the AM India will inject the capital in the form of equity shares or equity linked instruments or shareholder loans.

II. **Proposal to the Operational Creditors and Other Creditors**

The financial proposal by AM India to the Operational Creditors and other Creditors (*as defined in Section I.49 and Section I.52 of the Resolution Plan*) of ESIL is detailed in Section V.B of the Resolution Plan.

(a) Proposal to Trade Creditors and Government Creditors

AM India has proposed to make payment of **INR 196 crores** to the Trade Creditors and Government Creditors (*as defined in Section I of the Resolution Plan*). The aforesaid amount includes the AM India's proposal to **pay all Admitted Claims to small Trade Creditors (defined as less than INR 1 crore in Admitted Claim)** in an initiative to **foster trust and support in the MSME segment.**

(b) Proposal for Workmen and Employees

AM India has proposed payment **to workmen and employees of an aggregate amount of INR 18 crores in full against their Admitted Claims.** These amounts shall be paid as lump sum amount by AM India.

(c) Proposal for Other Creditors

AM India has not proposed to make any payments to other Creditors.

50.2 ***Terms of Settlement***

Section XIII (Terms of Settlement) of the Resolution Plan inter alia provides as follows:

I. Financial Creditors

The following are terms of settlement in relation to the Claims of Financial Creditors:

(a) The payments to the Financial Creditors in accordance with the Resolution Plan shall be treated as full and final payment of all outstanding dues of the Corporate Debtor to each of the Financial Creditors as of the Effective Date, and all agreements and arrangements entered into by or in favour of each of the Financial Creditors, including but not limited to loan agreements and security agreements (other than corporate or personal guarantees provided in relation to the Corporate Debtor by the Existing Promoter Group or their respective affiliates) shall be deemed to have been (i) assigned/novated to AM India, or any Person nominated by AM India, with effect from the Effective Date, with no rights subsisting or accruing to the Financial Creditors for the period prior to such assignment or novation; and (ii) to the extent not legally capable of assigned or novated – terminated with effect from the Effective Date, with no rights accruing or subsisting to the Financial Creditors for the period prior to termination.

(b) In relation to the loans and financial assistance provided to the Corporate Debtor; each of the Financial Creditors, as the case may be, shall: (i) assign/novate all security given (including but not limited to Encumbrance over

assets of the Corporate Debtor and pledge of shares of the Corporate Debtor (but excluding the corporate guarantees and personal guarantees issued for and on behalf of the Corporate Debtor by the Existing Promoter Group or their respective affiliates) related in any manner to the Corporate Debtor) to AM India and/or its Connected Persons, and/or banks or financial institutions designated by AM India in this regard, pursuant to the Acquisition Structure, with effect from the Effective Date; (ii) issue such letters and communications, and take such other actions, as may be required or deemed necessary for the release, assignment or novation of (I) the Encumbrance over the assets of Corporate Debtor; and (II) the pledge over the shares of the Corporate Debtor; within 5(five) Business Days from the Effective Date; and (c) be deemed to have waived all claims and dues (including interest and penalty, if any) from the Corporate Debtor arising on and from the Insolvency Commencement Date, until the Effective Date.

(c) *Any claims made under any guarantees issued by the Corporate Debtor on behalf of its subsidiaries and third parties, excluding the guarantees dealt with above (i.e. as issued in favour of Financial Creditors of the Corporate Debtor), shall not constitute financial debt and all such guarantees shall also stand extinguished as a part of the Resolution Plan and the beneficiaries of such guarantees shall be expected to recover the monies with respect to uninvoked guarantees from the principal borrower and for any shortfall, they shall not have any recourse against the Corporate Debtor and/or the Resolution Applicant. For the sake of brevity, the*

underlying loans to such principal borrower shall continue with right to full recovery.

(d) *In the event that the Corporate Debtor is required to pay any amounts pursuant to the invocation of guarantees given for and on behalf of the Corporate Debtor or payments made thereunder, the Financial Creditor(s) which is the beneficiary of such guarantee shall reimburse such amounts in proportion to the amounts recovered by it under the said guarantee to the Corporate Debtor within a period of ninety days of any such payment being made by the Corporate Debtor. Further, in the event that a Financial Creditor requires the Corporate Debtor to contest any claim on the Corporate Debtor pursuant to the invocation of guarantees given on behalf of the Corporate Debtor (to which it is a beneficiary) or payments made thereunder, such Financial Creditor shall bear all litigation costs for contesting such claim.*

II. Operational Creditors

Trade Creditors and Government Creditors-

Pursuant to the approval of the Resolution Plan by the Hon'ble Tribunal, each of the Trade Creditors and Government Creditors shall be deemed to be bound by the following terms (a) The payments proposed to be made to the Trade Creditors and Government Creditors in accordance with the Resolution Plan, shall be treated as full and final payment of all outstanding dues of the Corporate Debtor to each of such Trade Creditors and Government Creditors. ***Except as stated above, the Government Creditors and Trade Creditors shall be deemed to have no outstanding claims against the Corporate Debtor; and (b) As on the Plan Approval Date, the Government***

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Creditors and Trade Creditors shall be deemed to have waived, until the Plan Approval Date, all termination rights on account of payment defaults and rights to payment of penalty, default payment or any payment of like nature under any agreement or arrangement against the Corporate Debtor.

III. ***Workmen and Employees***

Pursuant to the approval of the Resolution Plan by the Hon'ble Tribunal, each of the Workmen and Employees shall be deemed to have agreed and acknowledged that the Workmen and Employee Settlement Amount shall be treated as full and final payment of their respective outstanding dues as of Insolvency Commencement Date, and the Workmen and Employees shall have no further claims against the Corporate Debtor with respect to the same.

50.3 ***Acquisition of shareholding of the Corporate Debtor***

The Resolution Applicant has proposed to acquire 100% equity ownership of the Corporate Debtor and to extinguish all shareholding interest of the existing shareholders (equity and preference) of the Corporate Debtor (See Section VII and Section VIII of the Resolution Plan).

The detailed proposal is provided in Part B to Schedule X (Implementation Schedule (Acquisition Structure), Supervision of Implementation Plan and Management) of the Resolution Plan, which inter alia include as follows:

I. Equity, Equity Linked Instruments and Shareholder Loans

No later than the Effective Date, AM India shall commence the process to issue equity or equity linked instruments and, if necessary, other financial instruments permitted under the foreign exchange norms (including equity shares, preference shares and debentures) as well as accept (if appropriate) upfront funds' infusion by way of loans(s) from external parties and/ or ArecelorMittal group companies.

II. ***Equity Infusion in Corporate Debtor and Reduction of Current Share Capital***

Subject to the completion of the Conditions Precedent, as contemplated under Section XIV (Approvals Required for Implementation of the Resolution Plan), AM India will infuse equity in the Corporate Debtor at fair value (which will be a part of the Upfront Fresh Capital Infusion proposed to be invested in accordance with Section V). Upon the receipt of the approval of this Hon'ble Tribunal, as contemplated under Section XIV or upon such approval being received from this Hon'ble Tribunal under any proceedings under the Companies Act, 2013, the Corporate Debtor will undertake capital reduction and extinguish the entire share capital (both equity and preference) issued by it and held by the existing promoters and public shareholders (and for removal of doubt, other than the equity capital held by AM India), such that AM India remains its sole shareholder.

III. ***Acquisition of Debt***

AM India shall acquire the entire debt owed by the Corporate Debtor to the Financial Creditors along with all the underlying securities ***(but excluding the corporate***

guarantees and personal guarantees issued for and on behalf of the Corporate Debtor by the Existing Promoter Group or their respective affiliates); *and the Financial Creditors shall, simultaneously with the payment of Upfront Cash Recovery Amount, assign, and all the obligators shall be deemed to acknowledge and accept such assignment of rights under the loan and security documents in favour of AM India and/or its Connecter Persons, and/or banks or financial institutions designated by AM India.*

The external commercial borrowings of the Corporate Debtor shall be acquired, along with all the underlying securities but excluding the corporate guarantees and personal guarantees issued for and on behalf of the Corporate Debtor by the Existing Promoter Group or their respective affiliates, by an offshore compliant entity nominated in this regard by AM India.

50.4 ***Mandatory contents as per the provisions of the Code and the CIRP Regulations***

I. ***Payment of the Insolvency Resolution Process Cost***

Paragraph A.5 of Section X. (Implementation Schedule) (Acquisition Structure), Supervision of Implementation Plan and Management) of the Resolution Plan provides that the unpaid Insolvency Resolution Process Cost (as defined in Section I.37 of the Resolution Plan) shall be paid in priority to payments to the Financial Creditors. Further, Section XI (Source of Funds) the Resolution Plan provides that the Insolvency Resolution Process Cost shall be funded from the internal accruals and cash flow in priority over other debts of the Corporate Debtor. ***If the internal accruals or cash flows of the Corporate Debtor are insufficient to meet the Insolvency Resolution Process Costs, the same shall***

be met by AM India. *In this regard, AM India has provided a letter of commitment dated March 30, 2018 (as further extended by October 18, 2018) from Credit Agricole Corporate and Investment Bank ("**Letter of Commitment**"). Annexed herewith and marked as Exhibit-21 is a copy of the Letter of Commitment.*

II. Payment of Workmen and Employee Settlement Amount

As per Section VIII (Treatment of Various Stakeholders) 100% of the Claims (whether admitted, rejected or pending verification) of the Workmen and Employees (as defined in Section I.81 and I.25 of the Resolution Plan) are proposed to be paid. Further, paragraph A.5 of Section X. (Implementation Schedule (Acquisition Structure), Supervision of Implementation Plan and Management) of the Resolution Plan provides that the Workmen and Employees Dues Amount shall be paid in priority to payments to the Financial Creditors. Further, the current business plan does not envisage the retrenchment of the Workmen of the Corporate Debtor.

III. Payment of the Operational Creditors

Paragraph A.5 of Section X (Implementation Schedule (Acquisition Structure), Supervision of Implementation Plan and Management) of the Resolution Plan provides that any amounts payable to the Operational Creditors under the Resolution Plan shall be paid in priority to payments to the Financial Creditors. Further, Section XI (Source of Funds) of the Resolution Plan provides that the claims of Trade Creditors will be funded by AM India through the sources under the Letter off Commitment.

IV. ***Mechanism regarding management and control of the affairs of the Corporate Debtor post approval of the Resolution Plan.***

Section X (Implementation Schedule (Acquisition Structure), Supervision of Implementation Plan and Management) provides for the mechanism regarding management and control of the affairs of the Corporate Debtor once the Resolution Plan is approved.

*Part C of Section X inter alia provides that from the Plan Approval Date, the management of the affairs of the Corporate Debtor shall vest with a steering committee ("**Monitoring Committee**"). The Monitoring Committee shall comprise of (a) 3 representatives nominated by AM India and (b) 4 representatives, one each nominated by the representatives of the Sub-committee (comprising of representatives of State Bank of India, ICICI Bank, IDBI Bank and Edelweiss Asset Reconstruction Company Limited being the Financial Creditors of the Corporate Debtor). The Monitoring Committee shall provide such assistance as may be required by the Resolution Applicant for making necessary applications with the relevant Government Authorities including with any Foreign Government Authorities for the purposes of implementation of the Resolution Plan. Further, the Monitoring Committee may also approach this Tribunal for appointment of any insolvency professional of its choice (to assist the Monitoring Committee in its functions)."*

6. We have gone through the contents and the salient features of the Resolution Plan in the light of relevant statutory provisions of Section 30(2) & (6) read with Section 31(1) of the I&B Code. For the sake of convenience, the provisions of Section 31 and Section 30(2) of the I&B Code are reproduced hereinbelow :-

"***31. Approval of resolution plan***

(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

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

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

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

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

"***30. Submission of resolution plan***

(1) .....

(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 such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53;

(c) provides for the management of the affairs of the corporate debtor after approval of the resolution plan;

(d) the implementation and supervision of the resolution plan;

(e) does not contravene any of the provisions of the law for the time being in force;

(f) conforms to such other requirements as may be specified by the Board.

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(6) The resolution professional shall submit the resolution plan as approved by the committee of creditors to the Adjudicating Authority."

7. A plain reading of the above stated provision of the I&B Code gives such impression that the Adjudicating Authority is expected to approve a Resolution Plan provided it is satisfied that such Resolution Plan as approved by the Committee of Creditors (under sub-section (4) of Section 30) meets the requirements as referred to in sub-section (2) of Section 30 of the Code because, if such order for approval of Resolution Plan is passed by this Adjudicating Authority, then such Resolution Plan shall be binding on the Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan. The I&B Code further stipulates that in case

the Adjudicating Authority is of such opinion that the Resolution Plan is not confirming the requirements referred to in sub-section (1) of Section 31 read with Section 30(2) of the I&B Code, then it can very well reject such plan, which means, in such position, the company shall have to go into liquidation.

8. It is well settled legal position in the present matter that aims and objects of the enactment of the I&B Code are to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons in a time bound manner for maximisation of value of assets of such persons to promote entrepreneurship, availability of credit and balance the interests of all stakeholders including alteration in the order of priority of payment of Government dues, etc. Thus, approval of a Resolution Plan is a normal rule and deviation therefrom or to reject the Plan would lead to the Corporate Debtor to go into liquidation. Hence, it can only be an exception provided such Resolution Plan is not law compliant or not in conformity with the criteria laid down in Section 30(2) of the I&B Code. Therefore, it is the prime duty of the Resolution Professional to examine and ascertain that each Resolution Plan should be in conformity with the relevant provisions of Section 30(2) of the I&B Code. Thereafter only such Resolution Plan needs to be put up before the CoC for its approval with requisite majority.

9. It is a matter of record that the Resolution Professional, after making necessary scrutiny of and by satisfying himself with the present Resolution Plan that it is in conformity with the provisions of Section 30(2) of the I&B Code, has placed it before the Committee of Creditors for deliberation and necessary consideration for approval of the Plan with necessary voting.

10. In the preceding paragraph of this order, we have already described and discussed the salient features/key contents of the Resolution Plan. That apart, the Resolution Professional, through a chart, as given in paragraph 3, duly submitted that the approved Resolution Plan seems to meet with all the requirements of Section 30 (2) of the Code and Regulation 38 of the CIRP Regulations. Further, the CoC in its subsequent meeting, i.e. 19th Meeting, has duly considered and deliberated upon the key findings of the Honourable Supreme Court's judgment and also considered the eligibility of the present Resolution Application in the light of Section 29A(c) of the I&B Code and confirmed that the present Resolution Applicant has made payment of the overdue amounts in respect of UGS and KSS as on 18th October, 2018 and also furnished proof of such payment. Therefore, the Resolution Professional, having satisfied with such legal compliances made by the Resolution Applicant, duly submitted a report to the CoC on the eligibility of the Resolution Applicant to submit its Resolution Plan. It is also

stated that the CoC in its subsequent meeting, i.e. 20th Meeting, duly invited both potential Resolution Applicants, i.e. **ArcelorMittal India** and **Vedanta**, to make presentation of their respective Plans for consideration of the CoC. The members of the CoC deliberated in detail the key features of both the Resolution Plans and sought for necessary clarification from the Resolution Applicants and, thereafter, the present Resolution Applicant was declared as successful as **H-1 Resolution Applicant**. Apart from that, the CoC, through a sub-committee, further negotiated with the Resolution Applicant about the Plan on 20th and 22nd October, 2018. The members of the CoC deliberated in detail about the commercial terms of the resolution plan and the manner of distribution of the upfront cash recovery as well as its feasibility and viability of the Resolution Plan, which were *inter alia* based on: **(a) detailed evaluation report of GT regarding expertise and experience of AM India; (b) sound tech nical expertise of AM India including in light of their proposed partnership with Nippon, (c) ability to turnaround distressed assets and the previous mergers and acquisitions experience of the ArcelorMittal ground globally, (d) research and development and technological abilities, (e) reasonableness of the projections, (f) sufficient net worth and adequate source of funding, (g) interest of all stakeholders being addressed suitable, and (h) capital infusion demonstrating the focus for reviving the business of the Corporate Debtor**. Subsequent to such detailed

deliberations and on instructions of members of the CoC, it was decided to put the resolution plan for voting for the purpose of seeking approval. Therefore, the Resolution Plan was put for e-voting, which commenced on October 24, 2018 and lasted till October 25, 2018 and, in the result, the CoC approved the Plan with its requisite majority of 92.24% voting. In support of this statement, the Resolution Professional has produced a copy of e-voting results (Exhibit-18). Subsequent thereto, the present Resolution Applicant also submitted an addendum to the Resolution Plan on October 25, 2018, as proposed by the sub-committee, which also has formed part of the present Resolution Plan. By going through the above stated contents, it seems that all procedural formalities were completed and relevant provisions of the I&B Code are duly complied with hence, such Plan deserves approval.

11. Our attention was also drawn by the learned counsel for the parties to the latest Supreme Court judgments in the matter of ***Chitra Sharma v. Union of India, 2018 SCC Online SC 874***, ***Swiss Ribbons Pvt. Ltd. & Another v. Union of India and Others [2019] CLA 453(SC), Vijaykumar Jain v. Standard Chartered Bank [2019] 148 CLA 542 (SC) and K. Sashidhar v. Indian Overseas Bank & Others, [2019] CLA 497(SC)*** and also to the decision of the Honourable NCLAT in the matter of ***Binani Industries Limited v. Bank of Baroda.***

11.1 In Swiss Ribbons, Their Lordships of the Honourable Supreme Court have been pleased to observe as under :-

> *"43 Under the Code, the committee of creditors is entrusted with the primary responsibility of* ***financial restructuring.*** *They are required to assess the viability of a corporate debtor by taking into account all available information as well as to evaluate all alternative investment opportunities that are available. The committee of creditors is required to evaluate the resolution plan on the basis of feasibility and viability of it.*
>
> *xxxxxxxxx*
>
> *It is important to bear in mind that once the resolution plan is approved by the committee of creditors and thereafter by the Adjudicating Authority, the aforesaid plan is binding on all stakeholders.....*
>
> *44.* ***Since the financial creditors are in the business of money lending, banks and financial institutions are best equipped to assess viability and feasibility of the business of the corporate debtor. Even at the time of granting loans, these banks and financial institutions undertake a detailed market study which includes a techno-economic valuation report, evaluation of business, financial projection, etc. Since this detailed study has already been undertaken before sanctioning a loan, and since financial creditors have trained employees to assess viability and feasibility, they are in a good position to evaluate the contents of a resolution plan. On the other hand, operational creditors, who provide goods and services, are involved only in recovering amounts that are paid for such goods and services, and are typically unable to assess viability***

and feasibility of business. The BLRC Report, already quoted above, makes this abundantly clear.

45. Quite apart from this, the United Nations Commission on International Trade Law, in its Legislative Guide on Insolvency Law ["UNCITRAL Guidelines"] recognizes the importance of ensuring equitable treatment to similarly placed creditors and states as follows :

> ***"Ensuring equitable treatment of similarly situated creditors***
>
> *3. The objective of equitable treatment is based on the notion that, in collective proceedings, creditors with similar legal rights should be treated fairly, receiving a distribution of their claim in accordance with their relative ranking and interests. This key objective recognizes that all creditors do not need to be treated identically, but in a manner that reflects the different bargains they have struck with the debtor. This is less relevant as defining factor where there is no specific debt contract with the debtor, such as in the case of damage claimants (e.g. for environmental damage) and tax authorities. Even though the principle of equitable treatment may be modified by social policy on priorities and give way to the prerogatives pertaining to holders of claims or interests that arise, for example, by operation of law, it retains its significance by 12 UNCITRAL Legislative Guide on Insolvency Law ensuring that the priority accorded to the claims of a similar class affects all members of the class in the same manner. The policy of equitable treatment permeates many aspects of an insolvency law, including the application of the stay or suspension, provisions to set aside acts and transactions and recapture value for the insolvency estate, classification of claims, voting procedures in reorganization and distribution mechanisms.* ***An insolvency law should address problems of fraud and favouritism that may arise in cases of financial distress by providing, for example, that acts and transactions detrimental to equitable treatment of creditors can be avoided."***

46. The NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the committee of creditors, gone into whether operational creditors are given roughly same treatment as financial creditors, and if they are not, such plans are either to be rejected or modified so that the operational creditors' rights are adequately safeguarded. Thus, by following the above stated preposition, it can be understood that a Resolution Plan cannot pass the muster under Section 30(2)(b) read with Section 31 unless a minimum payment is made to operational creditors, being not less than liquidation value. Further, on 05.10.2018, Regulation 38 has been amended. Prior to the amendment Regulation 38 read as follows:

*"**38. Mandatory contents of the resolution plan** –*

(1) A resolution plan shall identify specific sources of funds that will be used to pay the –

(a) Insolvency resolution process costs and provide that the [insolvency resolution process costs, to the extent unpaid, will be paid] in priority to any other creditor.

(b) Liquidation value due to operational creditors and provide for such payment in priority to any financial creditor which shall in any event be made before the expiry of thirty days after the approval of a resolution plan by the Adjudicating Authority; and

(c) Liquidation value due to dissenting financial creditors and provide that such payment is made before any recoveries are made by the financial creditors who voted in favour of the resolution plan."

Post amendment, Regulation 38 reads as follows :

*"**38. Mandatory contents of the resolution plan** –*

(1) The amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.

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

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47. The aforesaid Regulation further strengthens the rights of operational creditors by statutorily incorporating the principle of fair and equitable dealing of operational creditors' rights, together with priority in payment over financial creditors.

48. For all the aforesaid reasons, we do not find that operational creditors are discriminated against or that Article 14 has been infracted either on the ground of equals being treated unequally or on the ground of manifest arbitrariness."

11.2 In addition to the above, the Honourable NCLAT, in the matter of ***Benani Industries Limited v. Bank of Baroda (Company Appeal (AT)(Insolvency) No.82 of 2018***, has observed and held that :-

> *"17. To decide the issue, it will be desirable to notice the object of the 'I&B Code', object of 'Resolution' and what is expected from the 'Committee of Creditors', as summarized below: -*
>
> ***1. The objective of the 'I&B Code'***
>
> *As evident from the long title of the 'I&B Code', it is for reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons to promote entrepreneurship, availability of credit, and balance the interests of all stakeholders. The recent Ordinance explicitly aims to promote resolution over liquidation.*
>
> ***2.*** *The objective of the 'I&B Code' is* ***Resolution****.*
>
> *The Purpose of Resolution is for* ***maximisation of value of assets of the 'Corporate Debtor'*** *and thereby for all*

creditors. It is not maximisation of value for a 'stakeholder' or 'a set of stakeholders' such as Creditors and ***to promote entrepreneurship, availability of credit and balance the interests.*** *The first order objective is "resolution". The second order objective is "maximisation of value of assets of the 'Corporate Debtor" and the third order objective is "promoting entrepreneurship, availability of credit and balancing the interests". This order of objective is sacrosanct.*

In the matter of ***"Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta and Ors."****, the Hon'ble Supreme Court observed that "the 'Corporate Debtor' consists of several employees and workmen whose daily bread is dependent on the outcome of the CIRP. If there is a resolution applicant who can continue to run the corporate debtor as a going concern, every effort must be made to try and see that this is made possible".*

3. *'Financial Creditors' as members of the 'Committee of Creditors' and their Role.*

a. *The Bankruptcy Law Reforms Committee (BLRC), which conceptualised the 'I&B Code', reasoned as under:*

i. *Under Para 5.3.1, sub-para 4, the BLRC provided rationale for 'Financial Creditors' as under:*

"4. Creation of the creditors committee

...

The Committee deliberated on who should be on the creditors committee, given the power of the creditors committee to ultimately keep the entity as a going concern or liquidate it. The Committee reasoned that ***members of the creditors committee have to be creditors both with the capability to assess viability, as well as to be willing to modify terms of existing liabilities in negotiations.*** *Typically, 'Operational Creditors' are neither able to decide on matters regarding the insolvency of the entity, nor willing to take the risk of postponing payments for better future prospects for the entity. The Committee*

concluded that for the process to be rapid and efficient, the 'I&B Code' will provide that the creditors committee should be restricted to only the 'Financial Creditors'.

ii. *In Para 3.4.2 dealing with 'Principles driving design', the principle IV reads as under:*

> *"IV. The 'I&B Code' will ensure a collective process.*
>
> *9. The law must ensure that all key stakeholders will participate to collectively assess viability. The law must ensure that all creditors who have the capability and the willingness to restructure their liabilities must be part of the negotiation process.* ***The liabilities of all creditors who are not part of the negotiation process must also be met in any negotiated solution."***

b. ***The 'I&B Code' aims at promoting availability of credit.*** *Credit comes from the 'Financial Creditors' and the 'Operational Creditors'. Either creditor is not enough for business. Both kinds of credits need to be on a level playing field. 'Operational Creditors' need to provide goods and services. If they are not treated well or discriminated, they will not provide goods and services on credit. The objective of promoting availability of credit will be defeated.*

c. *The 'I&B Code' is for reorganisation and insolvency resolution of corporate persons, ...for* ***maximisation of value of assets of such persons to.... balance interests of all stakeholders.*** *It is possible to balance interests of all stakeholders if the resolution maximises the value of assets of the 'Corporate Debtor'. One cannot balance interest of all stakeholders, if resolution maximises the value for a or a set of stakeholder such as 'Financial Creditors'. One or a set of stakeholders cannot benefit unduly stakeholder at the cost of another.*

d. *The 'I&B Code' prohibits any action to foreclose, recover or enforce any security interest during resolution period and thereby prevents a creditor from maximising his interests.*

e. It follows from the above:

i) ***The liabilities of all creditors who are not part of 'Committee of Creditors' must also be met in the resolution.***

ii) The 'Financial Creditors can modify the terms of existing liabilities, while other creditors cannot take risk of postponing payment for better future prospectus. That is, 'Financial Creditors' can take haircut and can take their dues in future, while 'Operational Creditors' need to be paid immediately.

iii) A creditor cannot maximise his own interests in view of moratorium.'

iv) If one type of credit is given preferential treatment, the other type of credit will disappear from market. This will be against the objective of promoting availability of credit.

v) The 'I&B Code' aims to balance the interests of all stakeholders and does not maximise value for 'Financial Creditors'.

vi) Therefore, the dues of creditors of 'Operational Creditors' must get at least similar treatment as compared to the due of 'Financial Creditors'.

3. 'Resolution Plan'

The 'I&B Code' defines 'Resolution Plan' as a plan for insolvency resolution of the 'Corporate Debtor' as a going concern. It does not spell out the shape, colour and texture of 'Resolution Plan', which is left to imagination of stakeholders. Read with long title of the 'I&B Code', functionally, the 'Resolution Plan' must resolve insolvency (rescue a failing, but viable business); should maximise the value of assets of the 'Corporate Debtor', and should promote entrepreneurship, availability of credit, and balance the interests of all the stakeholders.

It is not a sale. *No one is selling or buying the 'Corporate Debtor' through a 'Resolution Plan'. It is resolution of the 'Corporate Debtor' as a going concern. One does not need a 'Resolution Plan' for selling the 'Corporate Debtor'. If it were a sale, one can put it on a trading platform. Whosoever pays the highest price would get it. There is no need for voting or application of mind for approving a 'Resolution Plan', as it will*

be sold at the highest price. One would not need 'Corporate Insolvency Resolution Process', 'Interim Resolution Professional', 'Resolution Professional', interim finance, calm period, essential services, Committee of Creditors or 'Resolution Applicant' and detailed, regulated process for the purpose of sale. It is possible that under a 'Resolution Plan', certain rights in the 'Corporate Debtor', or assets and liabilities of the 'Corporate Debtor' are exchanged, but that is incidental

It is not an auction. *Depending on the facts and circumstances of the 'Corporate Debtor', 'Resolution Applicant' may propose a 'Resolution Plan' that entails change of management, technology, product portfolio or marketing strategy; acquisition or disposal of assets, undertaking or business; modification of capital structure or leverage; infusion of additional resources in cash or kind over time; etc. Each plan has a different likelihood of turnaround depending on credibility and track record of 'Resolution Applicant' and feasibility and viability of a 'Resolution Plan' are not amenable to bidding or auction. It requires application of mind by the 'Financial Creditors' who understand the business well.*

It is not recovery: *Recovery is an individual effort by a creditor to recover its dues through a process that has debtor and creditor on opposite sides. When creditors recover their dues – one after another or simultaneously- from the available assets of the firm, nothing may be left in due course. Thus, while recovery bleeds the 'Corporate Debtor' to death, resolution endeavors to keep the 'Corporate Debtor' alive. In fact, the 'I&B Code' prohibits and discourages recovery in several ways.*

It is not liquidation: *Liquidation brings the life of a corporate to an end. It destroys organisational capital and renders resources idle till reallocation to alternate uses. Further, it is inequitable as it considers the claims of a set of stakeholders only if there is any surplus after satisfying the claims of a prior set of stakeholders fully. The 'I&B Code', therefore, does not allow liquidation of a 'Corporate Debtor' directly. It allows liquidation only on failure of 'Corporate Insolvency Resolution Process'. It rather facilitates and encourages resolution in several ways"*

12. On the basis of the above stated discussion, Their Lordships of the Honourable NCLAT were pleased to hold that liabilities of all creditors who are not part of CoC must also be met in the resolution. Further, the aim of the Code is for maximisation of value of assets of such persons and to balance interests of all stakeholders. One cannot balance interest of all stakeholders, if resolution maximises the value for a stakeholder or a set of stakeholders such as Financial Creditors. One or a set of stakeholders cannot benefit unduly at the cost of another. It is also observed that, if one type of credit is given preferential treatment, the other type of credit will disappear from the market and this will be against the objective of promoting availability of credit. The I&B Code aims to balance the interests of all stakeholders and does not maximise value for Financial Creditor. Therefore, Their Lordships have held that **the dues of Operational Creditors must get at least similar treatment as compared to the dues of Financial Creditors**.

13. By perusal of the material available on record in the present case, we are constrained to observe that although there are certain provisions made in the resolution plan for making payment to the financial creditors, workmen and employees, yet the operational creditors having debt value of Rs.1 crore and above are getting nil amount (token amount of Rs.1/-). While the total dues of the operational creditors come to around Rs.4700

crore, the Resolution Applicant has made additional provision of Rs.196 crore towards payment of dues of those operational creditors having debt less than Rs.1 crore. On the other hand, the comparative chart prepared for making payments of financial creditors and other class of creditors, which has been annexed by the Applicant-Standard Chartered Bank in I.A. No.439 of 2018 (at Annexure-A page 65), goes to show that the CoC has decided to make repayment of claims as per the chart and thus, all financial creditors except Standard Chartered Bank would receive 92% of their admitted claim amount, but Standard Chartered Bank, although a financial creditor, is provided payment as per a ratio of only 1.7% of its total claim, which, prima facie, not only seems to be unequitable but also discriminatory. Had the CoC adopted some other reasonable and fair formula for apportionment of the amount among all the stakeholders, including financial and operational creditors as well as other stakeholders by reducing their percentage of apportionment on pro rata basis, then maximum debt of almost all creditors would have been fully paid and stand satisfied. This would not only be reasonable and more transparent but also would be sound and prudent. For making such observation, we find support from a catena of decisions of the Honourable Apex Court while dealing with the *Wednesbury principle of Unreasonableness* and the *Doctrine of Proportionality*. The Honourable Supreme Court in its decision in ***Chairman, All India Railway Rec. Board & Another v. K. Shyam Kumar &***

Others, has held that *"the decision maker must understand correctly the law that regulates the decision making powers and must give effect to it failing which such decision or action may not only be treated arbitrary but also may suffer from irregularity"*. For the sake of convenience, the relevant portion of the aforesaid judgment of the Honourable Supreme Court can be reproduced hereinbelow:-

> *"16. Judicial review conventionally is concerned with the question of jurisdiction and natural justice and the Court is not much concerned with the merits of the decision but how the decision was reached. In Council of Civil Service Unions Vs. Minister of State for Civil Service (1984) 3 All ER 935 the (GCHQ Case) the House of Lords rationalized the grounds of judicial review and ruled that the basis of judicial review could be highlighted under three principal heads, namely, illegality, procedural impropriety and irrationality. Illegality as a ground of judicial review means that the decision maker must understand correctly the law that regulates his decision making powers and must give effect to it. Grounds such as acting ultra vires, errors of law and/or fact, onerous conditions, improper purpose, relevant and irrelevant factors, acting in bad faith, fettering discretion, unauthorized delegation, failure to act etc., fall under the heading "illegality". Procedural impropriety may be due to the failure to comply with the mandatory procedures such as breach of natural justice, such as audi alteram partem, absence of bias, the duty to act fairly, legitimate expectations, failure to give reasons etc.*
>
> *17. Ground of irrationality takes in* ***Wednesbury unreasonableness propounded in Associated Provincial Picture Houses Limited v. Wednesbury Corporation (1947)2 All ER 680, Lord Greene MR alluded to the grounds of attack which could be made against the decision, citing unreasonableness as an `umbrella concept' which covers the major heads of review and pointed out that the court can interfere with a decision if it is so absurd that no reasonable decision maker would in law come to it.*** *In GCHQ Case (supra) Lord Diplock*

fashioned the principle of unreasonableness and preferred to use the term irrationality as follows:

"By `irrationality' I mean what can now be succinctly referred to as "Wednesbury's unreasonableness", ... It applies to a decision which is so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it."

18. In R. v. Secretary of State for the Home Department ex parte Brind (1991) 1 All ER 720, the House of Lords re-examined the reasonableness of the exercise of the Home Secretary's discretion to issue a notice banning the transmission of speech by representatives of the Irish Republican Army and its political party, Sinn Fein. Court ruled that the exercise of the Home Secretary's power did not amount to an unreasonable exercise of discretion despite the issue involving a denial of freedom of expression. House of Lords however, stressed that in all cases raising a human rights issue proportionality is the appropriate standard of review. The House of Lords in R (Daly) v. Secretary of State for the Home Department (2001) 2 AC 532 demonstrated how the traditional test of Wednesbury unreasonableness has moved towards the doctrine of necessity and proportionality. Lord Steyn noted that the criteria of proportionality are more precise and more sophisticated than traditional grounds of review and went on to outline three concrete differences between the two:-

(1) Proportionality may require the reviewing Court to assess the balance which the decision maker has struck, not merely whether it is within the range of rational or reasonable decisions.

(2) Proportionality test may go further than the traditional grounds of review in as much as it may require attention to be directed to the relative weight accorded to interests and considerations.

(3) Even the heightened scrutiny test is not necessarily appropriate to the protection of human rights.

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"22. Position in English Administrative Law is that both the tests that is. Wednesbury and proportionality continue to co-exist and the proportionality test is more and more applied, when there is violation of

human rights, and fundamental freedom and the Wednesbury finds its presence more on the domestic law when there is violations of citizens ordinary rights. Proportionality principle has not so far replaced the Wednesbury principle and the time has not reached to say good bye to Wednesbury much less its burial."

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"25. Justice S.B. Sinha, as His Lordship then was, speaking for the Bench in State of U.P. v. Sheo Shanker Lal Srivastava and Others (2006) 3 SCC 276 after referring to the judgment of the Court of appeal in Huang v. Secretary of State for the Home Department (2005) 3 All ER 435, R. v. Secretary of State of the Home Department, ex parte Daly (2001) 3 All ER 433 (HL) opined that Wednesbury principle may not now be held to be applicable in view of the development in constitutional law and held as follows:-

> *"24. While saying so, we are not oblivious of the fact that the doctrine of unreasonableness is giving way to the doctrine of proportionality.*
>
> *25. It is interesting to note that the Wednesbury principles may not now be held to be applicable in view of the development in constitutional law in this behalf. See, for example, Huang v. Secy. of State for the Home Deptt. wherein referring to R. v. Secy. of State of the Home Deptt., ex p Daly, it was held that in certain cases, the adjudicator may require to conduct a judicial exercise which is not merely more intrusive than Wednesbury, but involves a full-blown merit judgment, which is yet more than ex p. Daly, requires on a judicial review where the court has to decide a proportionality issue."*

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"30. Wednesbury and Proportionality - Wednesbury applies to a decision which is so reprehensible in its defiance of logic or of accepted moral or ethical standards that no sensible person who had applied his mind to the issue to be decided could have arrived at it. Proportionality as a legal test is capable of being more precise and fastidious than a reasonableness test as well as requiring a more intrusive review of a decision made by a public authority which requires the courts to `assess the balance or equation' struck by the decision maker. Proportionality

test in some jurisdictions is also described as the "least injurious means" or "minimal impairment" test so as to safeguard fundamental rights of citizens and to ensure a fair balance between individual rights and public interest. Suffice to say that there has been an overlapping of all these tests in its content and structure, it is difficult to compartmentalize or lay down a straight jacket formula and to say that Wednesbury has met with its death knell is too tall a statement. Let us, however, recognize the fact that the current trend seems to favour proportionality test but Wednesbury has not met with its judicial burial and a state burial, with full honours is surely not to happen in the near future.

31. Proportionality, requires the Court to judge whether action taken was really needed as well as whether it was within the range of courses of action which could reasonably be followed. Proportionality is more concerned with the aims and intention of the decision-maker and whether the decision- maker has achieved more or less the correct balance or equilibrium. Courts entrusted with the task of judicial review has to examine whether decision taken by the authority is proportionate, i.e. well balanced and harmonious, to this extent court may indulge in a merit review and if the court finds that the decision is proportionate, it seldom interferes with the decision taken and if it finds that the decision is disproportionate i.e. if the court feels that it is not well balanced or harmonious and does not stand to reason it may tend to interfere.""

14. By following of the above referred decision of the Honourable Supreme Court, we feel appropriate to observe by making suitable suggestions to the CoC that the method for apportionment of the amount receivable from the Resolution Applicant to be relooked into and reconsidered and, if a reasonable formula for equitable distribution or apportionment of the amount is adopted, then basic requirements of almost all of the creditors, which include secured financial creditors, unsecured financial creditors, operational creditors and other

stakeholders, can also be taken care of. Hence, we propose and advise to the CoC that it should make apportionment of 85% of the amount of Rs.42,000 crore received from the Resolution Applicant as upfront payment for pro rata basis distribution among all the financial creditors and, if such formula is worked out and decision is taken, substantial interests of Standard Chartered Bank can also adequately be protected as it would get considerable amount rather than 1.7% as offered by the CoC.

15. We further suggest that rest of the amount, i.e., 15% of the amount of Rs.42,000 crore, which comes to Rs.6300 crore, may be distributed among other operational creditors and other stakeholders, who are going to receive nil amount, because the Resolution Applicant has made additional provision of Rs.196 crore meant only for those operational creditors whose debt value is less than Rs.1 crore. Hence, such amount of 15% can be paid to other operational creditors who are having debt value of Rs.1 crore and above on the basis of their verified/admitted/undisputed claim, so that they could be able to receive minimum 50% of their principal dues.

16. If such suggestion is accepted and followed, then we find no infirmity in the Resolution Plan as it will achieve the true spirit of law compliant under Section 30(2) of the I&B Code. Our such view finds support from the decision of the Honourable Supreme Court in the matter of ***Chitra Sharma v. Union of India, 2018***

SCC Online page 874, wherein the Honourable Supreme Court, by exercising its extraordinary jurisdiction under Article 142 of the Constitution of India, has taken care of the interest of unrepresented class like home buyers, who, at that time, were not conferred the status of a financial creditor. In the light of the above stated decision, the CoC is advised to consider such aspect of apportionment of the amount.

17. While making such observation and suggestion, we are conscious enough about the decision of the Honourable Supreme Court in the matter of ***K. Sashidhar v. Indian Overseas Bank and Others [2019] 148 CLA 497(SC)*** that we, being Adjudicating Authority, are having limited scope to suggest or recommend but cannot make judicial review of the commercial decision taken by the CoC. In the said decision, The Honourable Supreme Court, in the abovesaid decision, held as such:-

> *"39. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors. The fact that substantial or majority percent of financial creditors have accorded approval to the resolution plan would be of no avail, unless the approval is by a vote of not less than 75% (after amendment of 2018 w.e.f. 06.06.2018, 66%) of voting share of the financial creditors. To put it differently, the action of liquidation process postulated in ChapterIII of the I&B Code, is avoidable, only if approval of the resolution plan is by a vote of not less than 75% (as in October, 2017) of voting share of the financial creditors. Conversely, the legislative intent is to uphold the opinion or hypothesis of the minority dissenting financial creditors. That must prevail, if it is not less than the*

specified percent (25% in October, 2017; and now after the amendment w.e.f. 06.06.2018, 44%). The inevitable outcome of voting by not less than requisite percent of voting share of financial creditors to disapprove the proposed resolution plan, de jure, entails in its deemed rejection.

40. Notably, the threshold of voting share of the dissenting financial creditors for rejecting the resolution plan is way below the simple majority mark, namely not less than 25% (and even after amendment w.e.f. 06.06.2018, 44%). Thus, the scrutiny of the resolution plan is required to pass through the litmus test of not less than requisite (75% or 66% as may be applicable) of voting share a strict regime. That means the resolution plan must appear, to not less than requisite voting share of the financial creditors, to be an overall credible plan, capable of achieving timelines specified in the Code generally, assuring successful revival of the corporate debtor and disavowing endless speculation."

18. Further, while approving the resolution plan, we also considered certain additional reliefs and statutory concessions being sought for by the Resolution Applicant from this Authority as pre-requisite for successful implementation of the Plan, which we have already referred in the preceding paragraphs of this judgment, whereby the Resolution Applicant has sought exemption from payment of stamp duty, taxes, fees, transfer charges, transfer premium, etc. But in our humble view, such aspect falls within the domain of the appropriate Government and competent statutory authority. Therefore, the Resolution Applicant, after approval of this plan, is always can always approach to the statutory authorities by making proper submission/application before it seeking such concession and

reliefs in the light of approval of this Plan by this Adjudicating Authority. Hence, it would be for the authority concerned or appropriate Government to consider the same in accordance with law in the light of this approved Plan for its effective implementation. Therefore, such request cannot be acceded. Further, there is severability clause in the Resolution itself that such relief/sanction cannot be treated as a part of the sanctioned Plan. Hence, issues of claiming such reliefs/concessions by the Resolution Applicant are left open for consideration of the competent authority. In our view the interest of operational creditors and other stakeholders have also been adequately taken care of and protected.

19. Thus, it is a matter of record that such resolution plan submitted by the H-1 Resolution Applicant was duly approved with the requisite majority of the CoC, i.e. 92.24% voting. It is also a matter of record that prior to or soon after the filing of the present I.A. No.431 of 2018 seeking approval of this Resolution Plan, certain IAs were filed by various parties claiming themselves either to be financial creditors /operational creditors or stakeholders, which include Government Departments also for claiming their statutory dues like GST, etc. Thus, they opposed the approval of the present resolution plan to the extent their dues are not fully paid up either by the Corporate Debtor itself or by making adequate provisions in the proposed resolution

plan. In these I.As., some of the applicants have made alternative plea seeking such direction from this Adjudicating Authority to be issued to the CoC and to the RP to consider a settlement proposal made by M/s. Essar Steel Asia Holdings Ltd. for redeeming their entire dues by offering payment of Rs.54,000/- crore and, thus, they made an effort for staying of the proceedings of I.A. No.431 of 2018.

20. As per the material available on record, M/s. Essar Steel Asia Holdings Limited, by claiming to be shareholders of the Corporate Debtor company, had filed an IA No. 430 of 2018 seeking similar prayer for a direction to be issued to the RP and to the CoC to consider its proposal for settlement by way of redemption of entire debts owed by the Corporate Debtor by making payment of Rs.54,389/- crore. The said IA was disposed of by our order dated 29.01.2019, with such observation that such application, under Section 60(5) of the I&B Code, was not maintainable before this Adjudicating Authority, keeping in view of the direction given/mandate issued by the Honourable Supreme Court, under Article 142 of Constitution of India in ***ArecelorMittal India Pvt. Limited vs. Satish Kumar Gupta & Ors.*** In our earlier order dated 29.01.2019 (passed in IA No. 430 of 2018) we held that such settlement plan could be considered by the RP & CoC after having a specific permission from the Honourable Supreme Court or from the Honourable

NCLAT. Further such application could be moved only under Section 12 of the I & B Code by a Financial Creditor as per the procedures stipulated therein. Therefore, by disposal of the above stated I.A. No. 430 of 2018, some common alternative prayers made in most of the pending I.As. became infructuous. Notwithstanding the above, in the interest of justice, we were required to deal with these pending I.As. in accordance with law along with I.A. No. 431 of 2018 in a time bound manner, by following the directions given by the Honourable NCLAT. Hence, common arguments in respect of all I.As. were heard together along with hearing in the main I.A. bearing No. 431 of 2018, which were concluded. Thereafter, some of the parties preferred to file written submissions in support of their contentions/case, which were also taken on record and duly considered while disposing of these I.As. by this common order.

21. As we are disposing of present I.A. No.431 of 2018 filed by the RP by conditionally approving the Resolution Plan under Section 31(2) of the I&B Code by this common order, our discussions held in dealing with and disposing of the above referred IAs may be stated as under :-

I) While the main application, being IA No.431 of 2018, deserves to be allowed for the reasons given and discussions held in the preceding paragraphs of this order, it is a matter of record that the Resolution Applicant, viz., M/s. ArcellorMittal India Pvt.

Ltd., submitted the Resolution Plan, under Section 30 of the I&B Code, by offering Rs.42,000 crores and proposing a resolution of the Corporate Debtor company. In addition to this, it has also made a proposal for infusion of additional fund by way of capital to the extent of **Rs.8,000 crores** in the Corporate Debtor company. Thus, it can be understood that the Resolution Applicant has totally offered Rs.50,000 crore through the present Resolution Plan, which has been approved with requisite majority of the CoC and placed before us for consideration under the provisions of the I & B Code.

II) It is also a matter of record that the Honourable Supreme Court in the present matter, i.e., ***ArecelorMittal India Pvt. Ltd. vs. Satish Kumar Gupta***, has been pleased to issue certain mandate in exercise of its extraordinary jurisdiction under Article 142 of the Constitution of India. For the sake of convenience, the relevant portion of the aforesaid judgment is reproduced hereinbelow:-

> "123. *Since it is clear that both sets of resolution plans that were submitted to the Resolution Professional, even on 2.4.2018, are hit by Section 29A(c), and since the proviso to Section 29A(c) will not apply as the corporate debtors related to AMIPL and Numetal have not paid off their respective NPAs, ordinarily, these appeals would have been disposed of by merely declaring both resolution applicants to be ineligible under Section 29A(c). Shri Subramanium, on behalf of the Committee of Creditors, requested us to give one more opportunity to the parties before us to pay off their corporate debtors' respective debts in accordance with Section 29A, as the best resolution plan can then be selected by the requisite majority of the Committee of Creditors, so that all dues could be*

cleared as soon as possible. Acceding to this request, in order to do complete justice under Article 142 of the Constitution of India, and also for the reason that the law on Section 29A has been laid down for the first time by this judgment, we give one more opportunity to both resolution applicants to pay off the NPAs of their related corporate debtors within a period of two weeks from the date of receipt of this judgment, in accordance with the proviso to Section 29A(c). If such payments are made within the aforesaid period, both resolution applicants can resubmit their resolution plans dated 2.4.2018 to the Committee of Creditors, who are then given a period of 8 weeks from this date, to accept, by the requisite majority, the best amongst the plans submitted, including the resolution plan submitted by Vedanta. We make it clear that in the event that no plan is found worthy of acceptance by the requisite majority of the Committee of Creditors, the corporate debtor, i.e. ESIL, shall go into liquidation. The appeals are disposed of, accordingly".

22. We also considered the salient features of the Resolution Plan in the light of the relevant provisions of Section 31 read with sub-sections (2) and (6) of Section 30 of the I & B Code. Therefore, it is undisputed legal position in the I & B Code that the Adjudicating Authority is expected to approve a Resolution Plan provided it has been approved by the CoC with requisite majority and further it meets the requirements as referred to in Sub-Section 2 of Section 30 of the I & B Code and, if an order for approval of the resolution plan is passed by this Adjudicating Authority, such resolution plan shall be binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. Further, in case the adjudicating authority is not satisfied with the resolution plan being not in conformity with the requirements referred to in Sub-section (1) of Section 31 read with Section 30 (2) of the I&B Code, it can very well reject the same, which means that then the

company shall have to go into liquidation. It is well settled legal position that aims and objects of the enactment of the I&B Code are to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons in a time bound manner for maximisation of value of assets of such persons to promote entrepreneurship, availability of credit and balance the interests of all stakeholders including alteration in the order of priority of payment of Government dues, etc. Thus, approval of a Resolution Plan is a normal rule and deviation therefrom to reject such plan can be an exception only in case such Resolution Plan is not law compliant and not in conformity with the criteria laid down in Section 30(2) of the I&B Code. Therefore, it is a prime duty of the Resolution Professional to examine and ascertain that each Resolution Plan is in conformity with the relevant provisions of Section 30(2) of the I&B Code. Thereafter only such Resolution Plan can be put up before the CoC for its consideration and approval with requisite majority. Therefore, the present IA No.431 of 2018 deserves to be allowed. Hence, it is allowed subject to certain observations and suggestions for consideration of the COC in the light of the subsequent judgment of the Honorable Supreme Court in the matter of ***Chitra Sharma v. Union of India (supra), Vijay Kumar Jain v. Standard Chartered Bank (supra), Swiss Ribbons Pvt. Ltd. v. Union of India (supra) and K. Sashidar v. Indian Overseas Bank & Ors. (supra)*** read with the decision of the Hon'ble NCLAT in ***Benani Industries Ltd. v. Bank of Baroda***

(supra), which stands confirmed by the Hon'ble Supreme Court by dismissing the SLP preferred against such decision.

23. While making our such observations/suggestions, we are conscious enough about the jurisdiction of this adjudicating authority not to substitute its view with the commercial wisdom of the CoC nor it is made open to this Adjudicating Authority in the light of decision of the Honorable Supreme Court in the matter of ***K. Sashidhar (supra)*** to make judicial review of decision of the CoC on a resolution plan, which is beyond the scope and purview of Section 31 read with Section 30(4) of the I&B Code. Our such suggestion is aimed to supplement the view of the CoC and not to supplant it for better and effective implementation of the resolution plan in a more workable and effective manner, so as to avoid multiple proceedings in the present CIRP. Hence, our such observations and suggestions are not to be construed to be not approving the resolution plan.

24. Section 30(2)(e) of I & B Code stipulates that the resolution plan should not contravene any provisions of law for the time being in force. Therefore, the law of the land must be given due respect and weightage while implementing such resolution plan which include the constitutional law as declared by the Honorable Supreme Court, which has binding effect under Article 141 of the Constitution of India and all the

authorities – civil and judicial – shall act in aid of the decision of the Honorable Supreme Court under Article 144 of the Constitution of India.

25. Therefore, keeping in mind such scenario, we are of the view that the resolution applicant cannot demand reliefs and concessions as a matter of right for successful implementation of a resolution plan so far as it relates to completing the statutory formalities and to make payment of stamp duty or cannot seek issuance of certain directions to the Ministry of Corporate Affairs, Government of India or other appropriate State Government for claiming any waiver from payable tax dues of the corporate debtor company or seeking exemption from all tax levies, fees, transfer charges, transfer premium, etc. However, it is always open to the resolution applicant to approach the competent statutory authority of the appropriate Government for seeking such reliefs and concessions in accordance with law, which we leave it to the wisdom and domain of the statutory Authority concerned. In fact, a careful perusal of the resolution plan submitted by H-1 Resolution Applicant also speaks about the severability clause stating that if such concession/exemption, which are not approved or confirmed by this Adjudicating Authority, are not be treated to make redundant the plan and the plan can be enforced and implemented. Moreover, the provisions of Section 31(4) provide that a **resolution applicant shall, pursuant to the resolution**

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

26. In view of the above statutory provisions, we find that the statute has already taken care of all the interests of the resolution applicant by providing on year's time for seeking necessary approval required under any law for the time being in force for implementation the resolution plan. Therefore, our this order for approving the resolution plan cannot purport nor can be construed to have given any exemption in law or statutory concession, because, in our humble view, it lies in the domain of an appropriate Government and competent Authority. The applicant is at liberty to approach them on the strength of this resolution plan approved by this Adjudicating Authority, which seems to be sound and law compliant. We hope this will suffice the purpose of the resolution applicant for seeking necessary exemption from appropriate Government and other competent/ statutory authorities.

27. Since we dealt with many interim I.As filed by various applicants, claiming to be either financial creditors or secured creditors or operational creditors or stakeholders, requesting

for apportionment of the amount of Rs.42,000 crore proposed in the resolution plan fairly and reasonably, so that their interest can also be adequately taken care of while dealing with these I.As, although we are of the view that this Adjudicating Authority has limited jurisdiction to make scrutiny of the resolution plan and cannot impose its views on the commercial wisdom of the members of the CoC, yet by following the decision of the Hon'ble NCLAT in the matter of ***Benani Industries (supra),*** wherein Their Lordships have held that the aim and object of the I&B Code are for reorganization and insolvency resolution of corporate person for maximization of value of assets of such person and also to balance the interests of all the stakeholders and that the liabilities of all creditors who are not part of negotiation process must also be met in a negotiated solution, we are of the view that the dues of the operational creditors must get at least similar treatment as compared to the dues of the financial creditors on the principle of equity and fair play as well as the *Wednesbury Principle* of *Unreasonableness* and the *Doctrine of Proportionality,* so as to avoid disparity in making payments to the operational creditors having debt value of Rs.1 crore and above (a token of Re.1) and the allegation of discriminatory practice could be ruled out. We feel appropriate to suggest to the CoC to relook and reconsider the method of apportionment of the amount received from the resolution applicant by offering more hair-cut by the financial creditors in favour of other left out financial secured/

unsecured creditors, including the Standard Chartered Bank and other Operational Creditors, which include Public Sector undertakings and Government Authorities. Hence, in our view, if a reasonable formula for apportionment is worked out so that 85% of the amount offered by the resolution applicant is distributed among the financial creditors and the remaining 15% of the amount is distributed amongst the rest of the operational creditors, then the entire claim of the operational creditors, which comes to around Rs.4700 crore can be substantially paid off or at least the operational creditors can get 50% of their admitted and undisputed claim in the light of the judgment of the Hon'ble Supreme Court in ***Chitra Sharma v. Union of India (supra)***. Such object can be achieved, if the financial creditor and the members of the CoC are willing to sacrifice the interest component on their principal loan, because it is established position in the record that the principal loan liability of the corporate debtor company comes to around Rs.35,000 crore in the year 2017 when these IB Petitions were admitted, which includes the interest component also and by giving such hair-cut to the interest component to the extent possible by providing provision for 15% amount for the other operational creditors and stakeholders, we are of the view that debts of the entire operational creditors can be satisfied in a reasonable and fair manner and then such I.As. preferred by the operational creditors would also become infructuous and this Adjudicating

Authority would not be required to deal with the merits of each and every I.A. Thus, this would be beneficial to avoid multiplicity of legal proceedings and to remove any impediment for effective implementation of the resolution plan and to achieve the main theme and object of the present I & B Code.

28. In the light of the above stated discussions, present I.A. No.431 of 2018 is conditionally allowed. The Resolution Plan submitted by ArcelorMittal India Pvt. Ltd, being H-1, is approved, as per Section 31(1) of the I&B Code, subject to the aforesaid observations and conditions and with the following statutory directions under Section 31(3) of the I&B Code :-

(a) that the moratorium order passed by the Adjudicating Authority under Section 14 of the I&B Code shall cease to have effect; and

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

29. In view of the disposal of this main IA, i.e. I.A. No.431 of 2018, all the above mentioned I.As. and any other I.A. filed and pending in this CIRP have now become infructuous and stand

accordingly disposed of and interim orders, if any, in these applications stand merged with this order.

(Ms. Manorama Kumari)
Adjudicating Authority

(Harihar Prakash Chaturvedi)
Adjudicating Authority