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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Date of Decision: 11th September, 2025*

\+ O.M.P. (COMM) 533/2024 & I.As. 47736/2024, 4327/2025, 4328/2025 and 8551/2025

JSW ISPAT SPECIAL PRODUCTS LIMITED .....Petitioner

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Rishi Agrawala, Ms. Aarushi Tiku, Mr. Abhay Aghnihotri, Mr. Vikram Choudhary, Mr. Nilay Gupta, Mr. Shreedhar Kale and Mr. Sanjeevani Seshdari, Advocates.

versus

BHARAT PETRORESOURCES LIMITED .....Respondent

Through: Mr. Jayant Mehta, Senior Advocate with Mr. Divyam Agarwal, Ms. Aditi Deshpande, Ms. Pallavi Kumar, Ms. Priya Chauhan and Ms. Jasleen Virk, Advocates.

\+ OMP (ENF.) (COMM.) 28/2025 & EX.APPL.(OS) 206/2025, 557/2025 and 565/2025

BHARAT PETRORESOURCES LIMITED .....Decree Holder

Through: Mr. Jayant Mehta, Senior Advocate with Mr. Divyam Agarwal, Ms. Aditi Deshpande, Ms. Pallavi Kumar, Ms. Priya Chauhan and Ms. Jasleen Virk, Advocates.

versus

JSW STEEL LIMITED EARLIER JSW ISPAT SPECIAL PRODUCTS LIMITED .....Judgement Debtor

Through: Mr. Dayan Krishnan, Senior Advocate with Mr. Rishi Agrawala, Ms. Aarushi Tiku, Mr. Abhay Aghnihotri, Mr. Vikram

Choudhary, Mr. Nilay Gupta, Mr. Shreedhar Kale and Mr. Sanjeevani Seshdari, Advocates.

CORAM:
HON'BLE MS. JUSTICE JYOTI SINGH

JUDGEMENT

JYOTI SINGH, J.

O.M.P. (COMM) 533/2024

1. This petition is filed by the Petitioner/JSW Ispat Special Products Limited (now known as JSW Steel Limited) under Section 34 of the Arbitration and Conciliation Act, 1996 ('1996 Act') challenging an arbitral award dated 21.08.2024, passed by the three-member Arbitral Tribunal ('Tribunal').

2. Petitioner, earlier known as Monnet Ispat & Energy Limited ('MIEL') was admitted to Corporate Insolvency Resolution Process ('CIRP') under Insolvency and Bankruptcy Code, 2016 ('IBC') on 18.07.2017 by NCLT, Mumbai and Interim Resolution Professional ('IRP') was appointed. On 05.01.2018, Respondent filed its proof of claims under Form-B of Regulation 7 of the Insolvency Resolution and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2017 ('CIRP Regulations') under the head of 'Operational Creditor' as follows:-

i. Rs.9,58,88,886/- payable till 18.07.2017 and;

ii. Rs.9,92,86,982/- towards estimated share of expenditure post 18.07.2017.

3. Case of the Petitioner as per the averments in the petition is:-

(a). On 26.02.2018, Cash Call No. 20 was issued by the Respondent highlighting that the amount payable by Unresolved Petitioner was

NIL and the Participating Interest of the Petitioner was also NIL. After admission of claims and formation of Committee of Creditors ('CoC'), Resolution Professional ('RP') called for Resolution Plans from the public. On 01.03.2018, a Resolution Plan was filed by the Consortium of Aion Investments Pvt. Ltd. and JSW Steel Ltd., the Resolution Applicant. On 26.04.2018, 30.04.2018, 02.05.2018 and 17.05.2018, e-mails were exchanged between the Respondent and RP and finally the RP approved Respondent's claims to the tune of Rs.9,58,88,886/- and rejected the claim for Rs.9,92,86,982/-, arising post the Insolvency Commencement Date ('ICD'). To the extent relevant, the Resolution Plan in respect of the Operational Creditors was as follows:-

> *"1.b ..*
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> *(iii) As set out in section 1(a)(v) of Part I of this Resolution Plan, the Liquidation Value is insufficient for payment to the Operational Creditors of the Company as the Liquidation Value is insufficient to satisfy the claims of even the secured Financial Creditors in full. Therefore, nil payment has been proposed under the Resolution Plan towards claims of Operational Creditors (whether) filed or not, whether admitted or not and whether or not set out in the A/L Statement, the balance sheets of the Company or the profit and loss account statements of the Company or the February 21 Creditor List) and no source has been identified for such payment under this Resolution Plan.*
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> *(iv) Any and all other claims or demands made by, or liabilities or obligations owed or payable to, (including any demand for any losses or damages, principal, interest, compound interest, penal interest, liquidated damages, and other charges already accrued/ accruing or in connection with any third party claims) any actual or potential Operational Creditors of the Company or in connection with any Operational Debt of the Company, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the A/L Statement, the balance sheets of the Company*

or the profit and loss account statements of the Company or the February 21 Creditor List, in relation to any period prior to the Acquisition or arising on account of the Acquisition, will be written off in full and shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan and the Company and/ or the Consortium shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

(v) Any and all rights and entitlements of any actual or potential Operational Creditors of the Company, whether admitted or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Acquisition or arising on account of the Acquisition. shall be deemed to be permanently extinguished by virtue of the order of the NCLT approving this Resolution Plan, and the Company and/ or the Consortium shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto."

[emphasis supplied]"

(b). On 10.04.2018, CoC approved the Resolution Plan by a majority of 98.97%. On 13.04.2018, RP filed an application under Section 30(6) of IBC before NCLT, the Adjudicating Authority, seeking approval of the Resolution Plan and on 24.07.2018, NCLT, while approving the Resolution Plan, directed as follows:-

"9. Although the liquidation value due to the operational creditors as per the Code is NIL, on the suggestion made by this Bench, the Resolution Applicant have come forward by filing an Affidavit agreeing to pay Rs.25 crores within a period of one year from the date the final resolution plan becomes effective, to the operational creditors (other than employees and workmen) in the manner directed by this Bench.

10. As to Rs. 25 crores, since the Resolution Applicant agreed to distribute among the operational creditors other than employees and workmen, debt valuing Rs. 114,81,27,623 (Exhibit A to the Affidavit filed by the Resolution Applicant on 13.7.2018), the Resolution Applicant is hereby directed to pay to the operational creditors on pro rata basis in compliance with principle of pari passu within one year from the date of delivery of this order, i.e. 24.07.2018.

> *11. In respect to treatment of other creditors, this approved resolution plan discloses that all other liabilities and obligations of the Corporate Debtor are being extinguished in full and all litigations and proceedings in respect to debts pending against the Corporate Debtor prior to commencement of CIRP shall stand abated as the liquidation value due to those creditors as per the waterfall mechanism in Section 53 of the Code is NIL, but whereas the Financial creditors and other creditors will continue to be entitled to enforce their rights against the existing promoters of the Corporate Debtor and the existing promoters will continue to be liable in relation to any pending litigation against them. Since the terms in respect to liabilities and obligations of the Corporate Debtor and the right of financial creditors against the promoters of the Corporate Debtor are hereby approved."*

(c). On 02.08.2018, Cash Call No. 22 was issued by Respondent highlighting the amount payable by Unresolved Petitioner as NIL and Participating Interest of the Petitioner also as NIL. Admittedly, after acceptance of Resolution Plan and upon Petitioner depositing the entire dues, Respondent was paid an amount of Rs.2,08,79,405/- on 22.07.2019 under the approved Resolution Plan, which it accepted without any protest or demur and/or reserving its right to raise further claims. On 05.09.2018, Respondent filed an appeal before NCLAT challenging NCLT's order dated 24.07.2018 *inter alia* on the following grounds:-

> *"F. FOR THAT the Adjudicating Authority has erred in not considering the fact that the Appellant was compelled to contribute monies, on failure of the Respondent No. 1 to pay its share under the PSC and JOA, since. default and subsequent withdrawal of any Consortium Partner from the JOA during any Exploration Period, without completion of its Minimum Work obligation thereunder, amounts to a branch of PSC which has huge financial implications on the partner so withdrawing in accordance with Article 12 of the JOA.*
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> *……*
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> *H. FOR THAT the Impugned Judgment provides that after the*

distribution of amounts to the Financial Creditors and Operational Creditors in terms of the Resolution Plan and the liquidation value due to them, all other liabilities and obligations of the Respondent No. 1 stand extinguished in full and all litigations and proceedings in respect to the debts pending against Respondent No. I prior to commencement of CIRP shall stand abated thereby depriving the Appellant of any remedy to pursue the claim not provided for in the Resolution Plan.

I. FOR THAT owing to the failure of the Adjudicating Authority in recognizing and dealing with the peculiar position of the Appellant, the Appellant is left remediless in so far as the Appellants claim, to the extent no provided for in the Resolution Plan, is concerned."

RELIEFS SOUGHT

In view of the facts mentioned hereinabove, the Appellant most respectfully prays that this Hon'ble Appellate Tribunal be please to:

"a) Set aside the Impugned Judgment passed by the Adjudicating Authority pursuant to which it has approved the Resolution Plan in respect of the Respondent No. I, in as much as it seeks to unlawfully deprive the Appellant of its right to claim its outstanding dues from the Respondents.

Alternatively,

b) Direct that the full amount of the claim submitted by the Appellant on January 5, 2018 in Form B with the Interim Resolution Professional be provided for in the Resolution Plan."

(d). On 22.02.2019, Cash Call No. 23 was issued again showing the amount payable by Petitioner as NIL and Participating Interest also as NIL. However, in the said Cash Call, Respondent unilaterally revised Cash Call Nos.19 and 20 to claim Rs.1,54,12,503/- and Rs.69,56,731/-, respectively from the Petitioner, from a back date, despite approval of the Resolution Plan. On 25.04.2019, Respondent sent a letter to MIEL, now the Petitioner, requesting to formally transfer its Participating Interest along with signed copies of the Deed of Assignment etc. Significantly, on 02.08.2019, Cash Call No. 24

also showed amount payable as NIL and Participating Interest of Petitioner also as NIL.

(e). On 19.08.2019, NCLAT dismissed the appeal and confirmed the Resolution Plan, whereafter on 10.12.2019 Respondent issued an Amicable Settlement Letter to the Petitioner, which reads as under:-

> *"4. It is pertinent to note that the since MIEL was not making any contribution towards the Joint Operations under the JOA From Cash Call No. 12 and since GAIL, EIL BFIL and BPRL, being the non-defaulting parties, had agreed to assume MIEL's 10% Participating Interest in proportion to their existing share of Participating Interest vide OCR No. 67 dated April 24, 2017, no direct demand was made from MIEL vide cash calls. However, MIEL was requested periodically to pay their share of dues. The total amount in default including applicable interest as on 30.09.2019 is Rs. 5.39 crores (Rupees. Five Crores thirty nine lakhs), which will be augmented till date of payment and you are liable to pay the same under the terms of the JOA ...."*

(f). On 17.12.2019, Petitioner wrote to the Respondent denying any further liability and agreeing to assign its Participating Interest to the remaining consortium partners, following which on 23.12.2019, a meeting took place between Petitioner, Respondent and other consortium members, wherein Petitioner's position was that all claims were settled and its Participating Interest was forfeited, thereby leaving no outstanding dues. After exchange of correspondence and on failure of settlement talks, Respondent filed a petition on 14.10.2021 under Section 11 of 1996 Act in this Court seeking appointment of Petitioner's nominee Arbitrator, which was allowed and the Court appointed Petitioner's nominee Arbitrator, whereafter the nominee Arbitrators appointed the Presiding Arbitrator. SLP No. 5092/2022 filed by the Petitioner against the said order was dismissed

on 11.11.2022 and since there was no stay during the pendency of the matter before the Supreme Court, the arbitral proceedings continued.

(g). On 12.07.2022, Petitioner filed an application under Section 16 of 1996 Act before the Tribunal, questioning its jurisdiction, followed by an application under Section 12 on 22.07.2022, challenging the mandate of the Presiding Arbitrator. On 07.11.2022, Tribunal dismissed the application under Section 12 of 1996 Act and on 21.12.2022, application under Section 16 was deferred for consideration at the time of final arguments. The arbitral award was passed by the Tribunal on 21.08.2024, which is challenged in the present petition.

SUBMISSIONS ON BEHALF OF THE PETITIONER:

4. Members of the Tribunal failed to give individual disclosures in writing as mandated under Section 12(1) and (2) read with Sixth Schedule of 1996 Act. Contrary to any known procedure or law, Tribunal passed a composite Procedural Order on 25.03.2022, stating therein that none of the members had any interest in any of the parties or in the subject matter of the disputes; there were no circumstances likely to give rise to justifiable doubts as to impartiality or independence of any one; and there existed no circumstance which was likely to affect their ability to devote sufficient time to arbitration and complete the same within the stipulated time. This was contrary to the Sixth Schedule which prescribes a format in which several details have to be furnished by the Arbitrator, by way of disclosure, so that parties are not at a disadvantage. Additionally, the Presiding Arbitrator failed to disclose that on 19.08.2019 he had decided an appeal filed by the Respondent against the order of NCLT being Company Appeal (AT)

Insolvency No. 550/2018 titled *'Bharat Petroresources Ltd v. Monnet Ispat & Energy Ltd.',* in his capacity as Chairperson of NCLAT and was thus 'involved in the case'. The subject matter of the appeal and subject matter of the arbitration were the same and consequently, even the legal issues were common.

5. In ***Ram Kumar and Another v. Shriram Transport Finance Co. Ltd., 2022 SCC OnLine Del 4268,*** Division Bench of this Court held that it is mandatory for a person to make disclosure under Section 12(1) of the 1996 Act of all circumstances that may give rise to justifiable doubts as to his independence or impartiality, when approached in connection with his appointment as an Arbitrator. This is a necessary safeguard for ensuring and preserving the integrity and efficacy of arbitration as an alternate dispute resolution mechanism. In ***Shriram Transport Finance Company Limited v. Narender Singh, 2022 SCC OnLine Del 3412,*** another Division Bench of this Court held that disclosure under Section 12(1) and (2) is mandatory, in the absence of which an award is liable to be set aside. Applying the said observations to the instant case, appointment of the Presiding Arbitrator was untenable in law, in light of Entry 16 of Seventh Schedule read with Section 12(5) of 1996 Act, which read as follows:-

> *"12.* ***Grounds for challenge.***
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> *... [(5) Notwithstanding any prior agreement to the contrary,* ***any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator****: Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.]*
>
> *THE SEVENTH SCHEDULE*
>
> ***…Relationship of the arbitrator to the dispute***

*... 16. **The arbitrator has previous involvement in the case**."*

[emphasis supplied]"

6. Comparison of the observations made in the NCLAT order and the arbitral award reflects a conflict of interest and previous involvement of the Presiding Arbitrator in the case. The issue in Respondent's appeal before NCLAT was whether its claims arising after the ICD were rightly excluded from the Resolution Plan. In other words, Respondent was seeking enforcement of post-ICD claims before NCLAT and thereafter in arbitration and Petitioner was objecting to the arbitrability of these very claims before the Arbitral Tribunal, alleging that being outside the approved Resolution Plan, they were extinguished. It was only natural that having taken a decision as the Chairperson, NCLAT that IRP/RP had rightly only collated the claims arising upto the ICD, meaning thereby that future claims were open for adjudication in another forum, the Presiding Arbitrator would not take a contrary decision in arbitration and this apprehension was proved right when the Tribunal actually entertained and allowed the claims of the Respondent, even though they stood extinguished. In fact, the fulcrum of the award is the observation made in the NCLAT order, which is demonstrated from a comparative analysis as follows:-

NCLAT Order dated 19.08.2019 in Company Appeal (AT) Insolvency No.550 of 2018	**Final Arbitral Award Dated 21.08.2024**
*"**32.** 'Bharat Petro resources Limited' submitted its claim on 5th January, 2018 towards the 'operational debt' amounting to Rs.9,58,88,886/- as on the Insolvency Commencement Date, which has been admitted by the 'Resolution Professional'. Therefore, any claim of the Appellant towards future claim accrued*	***48.** It is not in dispute that the application under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC') was admitted on 18.07.2017. Thus, 18.07.2017 is the insolvency commencement date (ICD). From the discussion in the preceding paragraphs and in view of the*

after the Insolvency Commencement Date, cannot be considered under Section 18(1) (b) by the 'Resolution Professional'. ***33.*** *If any cost incurred during the 'Corporate Insolvency Resolution Process' that cannot be treated to be the claim of an 'Operational Creditor' and therefore, further claim amounting to Rs.9,92,86,892/- towards future claim made by 'Bharat Petroresources Limited' was rightly not collated by the 'Interim Resolution Professional'/'Resolution Professional'.* ***34.*** *For the reason aforesaid merely on the ground that the future claim has not been collated by the 'Resolution Professional', the Appellant- 'Bharat Petroresources Limited' cannot assail the order of approval of plan (dated 25th July, 2018) passed under Section 31 of the 'I&B Code'."*	*provisions referred to hereinabove, it is clear that Resolution Professional (RP)/ Interim Resolution Professional (IRP) had no 'power' to collate the future claims (as may have been accrued after the insolvency commencement date) (ICD). The NCLAT had also arrived at a similar conclusion by its Order dated 19.08.2019 (which is binding on the parties) and held that any plea on behalf of the Claimant towards future claim accrued after the ICD cannot be considered under Section 18(1)(b) by the Resolution Professional and the future claim made by Claimant was rightly not collated by the Interim Resolution professional/Resolution professional. In light of aforesaid discussion, this Arbitral tribunal is of the considered view and holds that in absence of any power to that effect, since the IPR / RP could not have collated future claims presented by the Claimant, it cannot be held that such future claims were decided on and rejected by the IRP /PR or by NCLT or by NCLAT as it stood extinguished."* *[emphasis supplied]*

7. The observations in the NCLAT order leave no doubt that the arbitral award was nothing but an enforcement of the NCLAT decision and in light of this, it needs no gainsaying that even the exercise of considering and deciding the applications under Sections 12 and 16 of 1996 Act, was an empty formality. The Division Bench of this Court in ***Kotak Mahindra Bank Ltd. v. Narender Kumar Prajapat, 2023 SCC OnLine Del 3148,*** has endorsed this position of law and SLP (C) No. 47322/2023 against the said judgment was dismissed. In ***HRD Corporation (Marcus Oil and Chemical***

Division) v. GAIL (India) Limited (formerly Gas Authority of India Limited), (2018) 12 SCC 471, the Supreme Court interpreted and ruled on what amounts to 'previous involvement in the case' in Entry 16 of Seventh Schedule of 1996 Act and held as follows:-

> *"23.* ***Coming to Justice Doabia's appointment, it has been vehemently argued that since Justice Doabia has previously rendered an award between the same parties in an earlier arbitration concerning the same disputes, but for an earlier period, he is hit by Item 16 of the Seventh Schedule, which states that the arbitrator should not have previous involvement "in the case". From the italicised words, it was sought to be argued that "the case" is an ongoing one, and a previous arbitration award delivered by Justice Doabia between the same parties and arising out of the same agreement would incapacitate his appointment in the present case.*** *We are afraid we are unable to agree with this contention. In this context, it is important to refer to the IBA Guidelines, which are the genesis of the items contained in the Seventh Schedule. Under the waivable Red List of the IBA Guidelines, Para 2.1.2 states:*
>
> > *"2.1.2. The arbitrator had a prior involvement in the dispute."*
>
> *24.* ***On reading the aforesaid guideline and reading the heading which appears with Item 16, namely, "Relationship of the arbitrator to the dispute", it is obvious that the arbitrator has to have a previous involvement in the very dispute contained in the present arbitration.*** *Admittedly, Justice Doabia has no such involvement. Further, Item 16 must be read along with Items 22 and 24 of the Fifth Schedule. The disqualification contained in Items 22 and 24 is not absolute, as an arbitrator who has, within the past three years, been appointed as arbitrator on two or more occasions by one of the parties or an affiliate, may yet not be disqualified on his showing that he was independent and impartial on the earlier two occasions. Also, if he currently serves or has served within the past three years as arbitrator in another arbitration on a related issue, he may be disqualified under Item 24, which must then be contrasted with Item 16. Item 16 cannot be read as including previous involvements in another arbitration on a related issue involving one of the parties as otherwise Item 24 will be rendered largely ineffective. It must not be forgotten that Item 16 also appears in the Fifth Schedule and has, therefore, to be harmoniously read with Item 24.* ***It has also been argued by the learned counsel appearing on behalf of the respondent that the expression "the arbitrator" in Item 16 cannot possibly mean "the arbitrator" acting as an arbitrator, but must mean that the proposed arbitrator is a person who has had previous involvement in the case in some other avatar. According to us, this is a sound argument as "the***

> ***arbitrator" refers to the proposed arbitrator***. *This becomes clear, when contrasted with Items 22 and 24, where the arbitrator must have served "as arbitrator" before he can be disqualified. Obviously, Item 16 refers to previous involvement in an advisory or other capacity in the very dispute, but not as arbitrator. It was also faintly argued that Justice Doabia was ineligible under Items 1 and 15. Appointment as an arbitrator is not a "business relationship" with the respondent under Item 1. Nor is the delivery of an award providing an expert "opinion" i.e. advice to a party covered by Item 15."*
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> *[emphasis supplied]"*

8. In ***JRE Infra Private Limited v. Deendayal Port Authority (formerly known as Kandla Port Trust) & Anr., SLP (C) No. 27360/2023***, decided on 08.04.2024, the Supreme Court set aside the judgment of the High Court, wherein it was held that there was no legal infirmity in the judge, who decided an appeal from an interim order passed by the Tribunal, becoming an Arbitrator of that very Tribunal, post his retirement. In ***My Palace Mutually Aided Co-operative Society v. B. Mahesh and Others, (2022) 19 SCC 806,*** the question was whether a Judge of the Division Bench hearing a recall application by a third party, could participate in such proceedings, when admittedly, he was part of another previous Division Bench who had heard and dismissed the appeal. The Supreme Court set aside the judgment and one of the grounds was clear conflict of interest. In ***Narinder Singh Arora v. State (Government of NCT of Delhi) and Others, (2012) 1 SCC 561,*** the Supreme Court set aside a judgment of the High Court owing to conflict of interest, where the High Court Judge did not recuse from hearing an appeal from the original proceedings, when the same Judge had earlier recused in the same matter as an Additional District Judge.

9. Even on merits, the claims of the Respondent, which were referred to arbitration, were wrongly entertained and decided by the Tribunal. After the approval of the Resolution Plan, all claims, which were not a part thereof,

stood extinguished in view of Section 31 read with Section 238 of IBC and were thus non-arbitrable. Resolution Plan clearly stated that all claims and demands, whether present or future, accrued or unaccrued, known or unknown, would stand extinguished, once the Plan was approved. The Resolution Plan was approved by CoC with a 98.97% majority and thereafter by NCLT under Section 31 IBC, which order was upheld by NCLAT, on appeals by the Respondent and others aggrieved by the NCLT order. It is trite that once the Resolution Plan receives stamp of approval by the Adjudicating Authority, it becomes final and binding on all stakeholders and successful Resolution Applicant cannot be mulct with undecided claims as the same would amount to hydra heads popping up. It is no longer *res integra* that Claims which do not form part of the Resolution Plan stand extinguished, ensuring that the successful Resolution Applicant starts on a 'clean slate'.

10. The Supreme Court in ***Ghanashyam Mishra and Sons Private Limited through the Authorised Signatory v. Edelweiss Asset Reconstruction Company Limited through the Director and Others, (2021) 9 SCC 657,*** has ruled that once the Resolution Plan is duly approved under Section 31(1) by the Adjudicating Authority, claims as provided in the Resolution Plan shall stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including Central/State Government or any local authority and/or guarantors and/or other stakeholders. On the date of approval, all such claims, which are not part of Resolution Plan, stand extinguished and no person is entitled to initiate or continue any proceedings in respect of a claim, which is not part of the Resolution Plan.

11. Under Section 2(3) of the 1996 Act, jurisdiction of the Tribunal is barred if the same is expressly barred by law. The Division Bench of this Court in ***Dr. Bina Modi v. Lalit Kumar Modi and Others, 2020 SCC OnLine Del 1678,*** held as follows:-

> *"80. The impugned judgement then erroneously proceeded to hold that "it is also not as if there is a contrary view of the Supreme Court qua Suits for declaration of invalidity of the arbitration agreement/proceedings and for injuncting arbitration", by relying on authorities, none of which dealt with the question of the exceptions to arbitrability. In our considered view, disputes relating to Trusts fall squarely within the ambit of the provisions of Section 2(3) of the Arbitration Act. In Emaar MGF Land Limited (supra) the Hon'ble Supreme Court inter alia held that apart from proceedings under the Consumer Protection Act, 1986, which are required to be continued under the said Act despite an arbitration agreement, there are large number of other fields, where an arbitration agreement can neither stop nor stultify the proceedings;.....Similarly, there are several issues which are non-arbitrable. It was further observed that there can be prohibition, both express or implied, for not deciding a dispute on the basis of an arbitration agreement. The above observation clearly and unequivocally provides for judicial intervention within the meaning of Section 2(3) of the Arbitration Act, notwithstanding the fetters imposed by the provisions of Section 5 of the Arbitration Act. It is also relevant to observe that Section 2(3) of the Arbitration Act remains on the Statute Book, even after the amendments, since the same is a standalone provision and that the amendments to the Arbitration Act have nothing to do with the issue of non-arbitrability of certain disputes, specified jurisprudentially. The Hon'ble Supreme Court has further proceeded to enunciate the various disputes which are non-arbitrable by citing with approval the judgment of the Apex Court in Booz Allen and Hamilton INC. (supra)."*

12. By virtue of Section 238 of IBC, provisions of IBC override all other laws and Section 31 provides that if the Adjudicating Authority is satisfied that the Resolution Plan as approved by CoC meets the requirement of Section 30(2), it shall by order approve the Plan, which would then bind all stakeholders. Resolution Plan, which was approved by NCLT, in no uncertain terms provided that any and all rights and entitlements of any actual or potential Operational Creditors of the Company, whether admitted

or not, due or contingent, asserted or unasserted, crystallized or uncrystallized, known or unknown, disputed or undisputed, present or future, in relation to any period prior to the Acquisition or arising on account of the Acquisition, shall be deemed to be permanently extinguished by virtue of order of NCLT approving the same and the Company and/or the Consortium shall at no point of time, directly or indirectly, have any obligation, liability or duty in relation thereto. Hence, the very initiation of arbitration on non-arbitrable and extinguished claims was unlawful and the arbitral award is void and unenforceable.

13. In ***Adani Power Limited v. Shapoorji Pallonji and Co. Pvt. Ltd. and Others, 2023 SCC OnLine SC 2377,*** the Supreme Court held that the Resolution Plan, as approved, is binding on all and cannot be made subject matter of arbitration or any other proceedings and Resolution Applicant cannot be saddled with any liability, except what is mentioned in the Resolution Plan. In a recent judgment in ***Electrosteel Steel Limited (Now M/s ESL Steel Limited) v. Ispat Carrier Private Limited, 2025 SCC OnLine SC 829,*** the Supreme Court has re-affirmed the legal position that once approved, Resolution Plan binds all stakeholders. Accordingly, Tribunal had no jurisdiction to ignore the overriding effect of the approved Resolution Plan which extinguished all future claims, demands and liabilities. The arbitral award has virtually re-written the Resolution Plan approved upto NCLAT and falls foul of Section 2(3) of 1996 Act.

SUBMISSIONS ON BEHALF OF RESPONDENT:

14. A Product Sharing Contract ('PSC') was executed between Petitioner, Respondent, GAIL, Engineers India Limited ('EIL'), BF Infrastructure

Limited ('BFIL') and Government of India on 30.08.2012. A Joint Operating Agreement ('JOA') was executed on 05.04.2013 between consortium partners to establish *inter se* rights and obligations with respect to petroleum operations under the PSC and joint operations, such as: (a) prospecting, exploring and drilling for petroleum; (b) developing, operating, producing and abandoning the oil and gas fields in the contract area; and (c) treating, field processing and transporting petroleum produced, to delivery point and supporting activities. Respondent, as the operator under JOA raised Cash Call No.12 on 07.03.2016 to consortium partners for remitting their shares as per Participating Interest, failing which Article 7.6 of JOA would be attracted. The amount and due date of Cash Call were Rs.1,21,16,289/- and 06.04.2016, respectively. Till 22.06.2017, Respondent had raised further Cash Calls and under Cash Call No. 19, the amount due was Rs. 1,54,12,504/- with due date being 27.07.2017.

15. On 18.07.2017, NCLT, Mumbai admitted the petition filed by State Bank of India under Section 7 of IBC and CIRP was initiated against MIEL. By a public announcement made on 26/27.07.2017, IRP called upon MIEL's Creditors to file their Claims. On 05.01.2018, Respondent, who was an Operational Creditor, filed its Proof of Claims for Rs. 19,51,75,868/-. On 30.04.2018, IRP admitted the claims arising upto 18.07.2017 i.e. the ICD in the sum of Rs. 9,58,88,886/- but rejected the claim for Rs. 9,92,86,982/-, falling beyond the ICD. Respondent raised further Cash Call Nos. 20 to 25 between 26.02.2018 and 18.08.2021.

16. The final Resolution Plan was approved by CoC on 09.04.2018 and on 24.07.2018, the same was approved by NCLT, Mumbai. As per the settlement under Resolution Plan, Respondent received Rs. 2,08,79,405/- out

of the claimed amount of Rs.9,58,88,886/-, outstanding as on 18.07.2017. Respondent challenged the order of NCLT before NCLAT on the ground that the Resolution Plan wrongfully excluded the future claims and NCLT erred in approving the same, overlooking that Respondent had raised genuine claims towards outstanding cash calls, plugging and abandonment, default interest etc., which could not be treated as extinguished, since the cause of action, giving rise to these claims, arose later. The appeal was dismissed on 19.08.2019 observing that under Section 18(1)(b) of IBC, RP had rightly not collated the claims falling after the ICD. Apparently, settlement talks initiated been the parties failed and Respondent sent a notice to the Petitioner invoking Article 19.3 in the JOA i.e. the arbitration clause.

17. On 25.03.2022, Arbitral Tribunal passed an order in the nature of a disclosure under Section 12 of 1996 Act and Petitioner informed the Tribunal of the pendency of the case before the Supreme Court. Statement of Claim was taken on record on 16.05.2022 and Tribunal directed the Petitioner to file its Statement of Defence. On 07.11.2022, Tribunal rightly rejected Petitioner's application under Section 12 of 1996 Act, challenging the appointment of the Presiding Arbitrator on the ground that he was involved in the case having decided an appeal relating to the same disputes, as a Chairperson of NCLAT.

18. The order dismissing the application under Section 12 does not suffer from any legal infirmity since the Presiding Arbitrator had no previous involvement in the case. The appeal before NCLAT was on a pure legal question whether the RP had the power to collate claims arising post ICD and consequently, whether the exclusion of these future claims from the Resolution Plan was justified in law. NCLAT held that the RP rightly

admitted only those claims, which were prior to ICD as he had no power to consider future claims accruing post-ICD, under Section 18(1)(b) of IBC. Therefore, merely on the ground that future claims had not been collated by the RP, order of approval of Resolution Plan dated 25.07.2018 passed under Section 31 of IBC could not be assailed. It cannot be said that by deciding the appeal, Chairperson, NCLAT was involved in the case. It was rightly held by the Tribunal in the order dated 07.11.2022, dismissing the Section 12 application, that the issues involved before NCLAT were distinguishable in content and substance with no bearing on the adjudication of disputes by the Tribunal in the arbitration case. There was no adjudication by NCLAT on the future claims of the Respondent, which were the subject matter of the arbitral proceedings. Moreover, the NCLAT judgment was in favour of the Petitioner and thus there was no reason for entertaining any doubt on impartiality or independence of the Presiding Arbitrator.

19. It is trite that the mere fact that Arbitrator has adjudicated some disputes between the parties on previous occasion(s), is not by itself enough to lead to a conclusion of bias in subsequent proceedings between the same parties. The objecting party will have to show that the Arbitrator will not decide with an open mind and objectively. In ***HRD Corporation (supra)***, the Supreme Court held that the appointment of the Arbitrator was not hit by Entry 16 of Seventh Schedule merely because he had previously rendered an award between the same parties in an earlier arbitration, concerning the same disputes *albeit* for an earlier period. Further, by merely being an independent adjudicator for disputes between the parties, a person cannot fall foul of Entry 16. An independent adjudicator or a Judge has no involvement in the disputes as he is adjudicating and this role is different

from the role of an advisor or a representative of a party. In ***Mudhit Madanlal Gupta v. Emgee Enclave LLP and Ors., Comm. Arbitration Application No. 155/2024***, decided on 23.01.2025, the Bombay High Court held that it can never be countenanced that an individual's involvement as an independent Arbitrator in prior proceedings would result in that individual becoming a non-independent candidate to be an Arbitrator in subsequent proceedings. In ***Shyamlal Mukherjee v. Pricewaterhousecoopers Services LLP, 2024 SCC OnLine Kar 12477,*** the Karnataka High Court observed that if a person had decided a dispute earlier or had been appointed as an Arbitrator on two or more occasions by one of the parties or an affiliate of one of the parties, that by itself will not be a bar for his appointment as an Arbitrator subsequently, if it is shown that the Arbitrator was independent and impartial on the earlier occasion. Therefore, the challenge to the Presiding Arbitrator was baseless and the application under Section 12 was rightly dismissed.

20. Challenge to the impugned award on merits also has no legal foundation. Petitioner has not shown any 'patent illegality' in the award which would entail interference by this Court in a petition filed under Section 34 of 1996 Act. The sole contention of the Petitioner that the claims pertaining to Outstanding Cash Call Notices or towards plugging and abandonment costs/interests/cost stood extinguished because of approval of the Resolution Plan is misplaced. The Resolution Plan only included the claims prior to 18.07.2017, whereas the claims awarded by the Tribunal arose much later. Plain reading of NCLT order shows that the liabilities and obligations of the Petitioner pertaining to the period prior to ICD and being part of Resolution Plan alone, stood extinguished and thus the Respondent

cannot be left remediless to pursue future claims, which were not entertained by the RP. None of the clauses of approved Resolution Plan even remotely suggest that claims made after ICD stood extinguished. In ***Andhra Bank v. F.M. Hammerle Textile Ltd., 2018 SCC OnLine NCLAT 883,*** NCLAT held that a debt, which a Corporate Debtor owes in future and is not taken into consideration in a Resolution Plan, will not automatically extinguish and Creditors will have a right to raise the same in subsequent proceedings. The 'clean slate' principle is applicable only to claims raised upto ICD and not for future claims.

ANALYSIS AND FINDINGS:-

21. Present petition is filed by the Petitioner laying challenge to impugned arbitral award dated 21.08.2024, whereby the Tribunal has awarded the following claims totalling to Rs. 12,90,83,199/-, calculated till 10.01.2025 and including 18% GST on interest as applicable:-

a. An amount of Rs. 4,84,61,358/- in respect of the outstanding cash calls under the JOA;

b. An amount of Rs. 40,14,126.45/- towards plugging and abandonment costs;

c. An amount of Rs. 1,75,94,973.04/- towards default interest;

d. An amount of Rs. 1,99,95,206/- for interest under the JOA;

e. An amount of Rs. 3,18,59,787/- towards cost of arbitration; and

f. An amount of Rs. 3,31,794/- towards additional interest.

22. The facts are largely not in dispute. On 30.08.2012, Government of India executed a PSC with GAIL, EIL, BFIL, MIEL and the Respondent to discover and exploit Contract Area Block CB-ONN-2010/8 for exploration, development and production of petroleum. Consortium members entered

into a JOA on 05.04.2013 for carrying out joint operations under the PSC and BPRL and GAIL were designated as operators, with BPRL being the lead operator. Respondent issued a Default Notice to MIEL on 13.04.2016 for default in making payment under Cash Call No. 12 dated 07.03.2016, whereafter Cash Call No. 13 was issued.

23. In October/November, 2016, small quantity of petroleum was discovered, as per the Respondent. On 24.04.2017, Consortium members forfeited the Participating Interest of Unresolved Petitioner, which was NIL. On 22.06.2017, Cash Call No. 19 was issued by the Respondent, where again the amount payable was NIL and Participating Interest of the Petitioner was also NIL. On 18.07.2017, NCLT, Mumbai admitted a petition filed by SBI under Section 7 of IBC. Consequently, CIRP commenced against MIEL and IRP was appointed.

24. Respondent filed its proof of claims on 05.01.2018 with IRP raising two sets of claims: (a) Rs.9,58,88,886/- payable till 18.07.2017; and (b) Rs.9,92,86,982/- towards estimated share of expenditure, post 18.07.2017. Cash Call No. 20 was issued by the Respondent on 26.02.2018, again showing both the amount payable as well as the Participating Interest as NIL. Resolution Plan was filed by the Consortium of Aion Investments Pvt. Ltd. and JSW Steel Ltd., the Resolution Applicant, on 01.03.2018. CoC approved the final Resolution Plan on 09/10.04.2018 with 98.97% majority voting share in accordance with Regulation 39(3) of CIRP Regulations.

25. By an e-mail dated 17.05.2018, Respondent was informed that upon verification of the proof of claim, RP had admitted only pre-ICD claims and post-ICD claims were rejected. Relevant part of the communication is as follows:-

> *"After the verification of your claim submitted on 5th January 2018 in which the total amount of claim was INR 195,175,868.00 (comprising of Rs.95,888,886 pertaining to period till 18 July 2018 [sic] and remaining amount as claimed to be due for the period after the commencement of the CIRP). Resolution Professional had admitted only INR 95,888,886.00. It is stated that the Interim Resolution Professional or Resolution Professional shall verify the claim as on the insolvency commencement date. Therefore, the total amount of claims has not been admitted by the Resolution Professional, and only the amount due as per the books and records of the corporate Debtor as of the commencement of the CIRP i.e. 18 July 2017, has been admitted."*

26. On 24.07.2018, NCLT approved the Resolution Plan submitted by the successful Resolution Applicant and the pre-ICD claims of the Respondent, as Lead Operator, were settled for an amount of Rs. 2,08,79,405/-. Cash Call No. 22 was issued by the Respondent on 02.08.2018 showing amount payable and Participating Interest by Unresolved Petitioner as NIL. On 05.09.2018, Respondent filed an appeal before NCLAT being Company Appeal (AT) Insolvency No. 550/2018. Several other aggrieved parties also filed appeals, aggrieved by the NCLT order.

27. Cash Call No. 23 was issued by Respondent on 22.02.2019 showing the amount payable by Unresolved Petitioner as NIL as also the Participating Interest as NIL. However, in the Cash Call, Respondent retrospectively and unilaterally revised Cash Call Nos. 19 and 20 to claim amount of Rs.1,54,12,503/- and Rs.69,56,731/- respectively, from the Petitioner. On 22.07.2019, Petitioner paid Rs.2,08,79,405/- to the Respondent as per order of NCLT, Mumbai against the claimed amount of Rs.9,58,88,886/-. Cash Call No. 24 was issued on 02.08.2019 showing amount payable and Participating Interest as NIL, once again.

28. On 19.08.2019 NCLAT dismissed the appeal holding that by virtue of Section 18(1)(b), RP could admit only pre-ICD claims and he was thus right

in not collating post-ICD claims of the Respondent in the sum of Rs.9,92,86,982/- and in this backdrop, the order of NCLT was unassailable. Settlement talks between the parties having failed, Respondent invoked arbitration and in a petition filed under Section 11 of 1996 Act, this Court appointed the nominee Arbitrator of the Petitioner on 11.02.2022, whereafter the two nominee Arbitrators appointed the Presiding Arbitrator and Tribunal was constituted. This order was assailed by the Petitioner before the Supreme Court but SLP No. 5092/2022 was dismissed on 11.11.2022.

29. During the arbitral proceedings, Petitioner filed an application under Section 16 of 1996 Act challenging the jurisdiction of the Tribunal on 12.07.2022 followed by an application on 22.07.2022 under Section 12 challenging the mandate of the Presiding Arbitrator. Section 12 application was dismissed on 07.11.2022, while Section 16 application was directed to be heard at the time of final arguments on the main matter. On 21.08.2024, the Tribunal pronounced the award and dismissed the application under Section 16 of 1996 Act.

30. The first issue that needs consideration is whether the impugned award is vitiated on the ground that the learned Presiding Arbitrator failed to make the necessary disclosure as required under Section 12(1) of 1996 Act and whether he was *de jure* ineligible to be appointed as an Arbitrator and in that light the question whether Tribunal was right in dismissing the application filed by the Petitioner under Section 12 of 1996 Act, laying a challenge to the appointment of the Presiding Arbitrator.

31. Petitioner has predicated its case on Entry 16 of Seventh Schedule, which reads *'The arbitrator has previous involvement in the case'*. Similar

Entry appears in the Fifth Schedule also and the purpose is to ensure a disclosure, since this kind of information is often within the personal knowledge of the Arbitrator. It is clear as day that when a person is approached in connection with his possible appointment as an Arbitrator, Section 12 mandates that he gives a disclosure in writing in the format specified in the Sixth Schedule, grounds in the Fifth Schedule being a guide in determining whether such circumstances exist. ***[Ref.: HRD Corporation (supra)]***. It is equally settled that language of Section 12(1) is not directory but mandatory and it is not a matter of discretion of the person approached in connection with his appointment as an Arbitrator to make the disclosure. Instead, the onus lies on such person, who is approached for possible appointment to disclose all circumstances that may give rise to doubts as to independence and impartiality and/or render him *de jure* ineligible for appointment. Clearly, an award rendered by a person, who is ineligible to act as an Arbitrator, cannot be considered as an award in the eyes of law and will be unenforceable.

32. Petitioner contends that the Presiding Arbitrator had 'previous involvement in the case' since he had decided an appeal pertaining to disputes in question as Chairperson of NCLAT while Respondent contends otherwise and argues that the two forums are completely distinct and NCLAT was not concerned with the merits of the claims referred for adjudication before the Arbitral Tribunal. NCLAT was considering whether the RP/IRP had erred in admitting only claims which were pre-ICD and did not deal with either maintainability or merits of the future claims arising post-ICD, which were the subject matter of arbitration. Having given a thoughtful consideration to the issue, I am of the view that there is merit in

this contention of the Respondent.

33. A somewhat similar issue arose before the Supreme Court in ***HRD Corporation (supra),*** wherein challenge was laid to the appointment of two Arbitrators, who were Members of the Tribunal. Against one, it was alleged that he had been an advisor to one of the parties in an unconnected matter, whereas the other had previously rendered an award between the same parties in an earlier arbitration concerning the same dispute *albeit* for an earlier period. Entries 15 and 16 of Seventh Schedule were invoked to contend that both the Arbitrators were ineligible. The Supreme Court observed that the grounds in Fifth and Seventh Schedules have been taken from IBA Guidelines, particularly from the Red and Orange Lists thereof. The Red List consists of non-waivable and waivable guidelines, which cover situations, which are 'more serious' and 'serious', the 'more serious' objections being non-waivable. The Orange List, on the other hand, is a list of situations that may give rise to doubts as to Arbitrator's impartiality or independence, as a consequence of which, Arbitrator has a duty to disclose such situations. A plain reading of Entry 16 shows that to be ineligible, proposed Arbitrator must have previous involvement in the case and the entry refers to 'involvement' in an advisory or other capacity in the very dispute but not in the avatar of and Arbitrator. The takeaway from this judgement is that the bare fact that an Arbitrator has rendered an award in a previous arbitration between the same parties, *per se* will not be a ground of ineligibility, in the absence of something more which makes the person inherently ineligible to be an Arbitrator, in the subsequent arbitration. Relevant paragraphs from the judgment are as follows:-

> *"23. Coming to Justice Doabia's appointment, it has been vehemently*

argued that since Justice Doabia has previously rendered an award between the same parties in an earlier arbitration concerning the same disputes, but for an earlier period, he is hit by Item 16 of the Seventh Schedule, which states that the arbitrator should not have previous involvement "in the case". From the italicised words, it was sought to be argued that "the case" is an ongoing one, and a previous arbitration award delivered by Justice Doabia between the same parties and arising out of the same agreement would incapacitate his appointment in the present case. We are afraid we are unable to agree with this contention. In this context, it is important to refer to the IBA Guidelines, which are the genesis of the items contained in the Seventh Schedule. Under the waivable Red List of the IBA Guidelines, Para 2.1.2 states:

> *"2.1.2. The arbitrator had a prior involvement in the dispute."*
>
> *(emphasis supplied)*

24. On reading the aforesaid guideline and reading the heading which appears with Item 16, namely, "Relationship of the arbitrator to the dispute", it is obvious that the arbitrator has to have a previous involvement in the very dispute contained in the present arbitration. Admittedly, Justice Doabia has no such involvement. Further, Item 16 must be read along with Items 22 and 24 of the Fifth Schedule. The disqualification contained in Items 22 and 24 is not absolute, as an arbitrator who has, within the past three years, been appointed as arbitrator on two or more occasions by one of the parties or an affiliate, may yet not be disqualified on his showing that he was independent and impartial on the earlier two occasions. Also, if he currently serves or has served within the past three years as arbitrator in another arbitration on a related issue, he may be disqualified under Item 24, which must then be contrasted with Item 16. Item 16 cannot be read as including previous involvements in another arbitration on a related issue involving one of the parties as otherwise Item 24 will be rendered largely ineffective. It must not be forgotten that Item 16 also appears in the Fifth Schedule and has, therefore, to be harmoniously read with Item 24. It has also been argued by the learned counsel appearing on behalf of the respondent that the expression "the arbitrator" in Item 16 cannot possibly mean "the arbitrator" acting as an arbitrator, but must mean that the proposed arbitrator is a person who has had previous involvement in the case in some other avatar. According to us, this is a sound argument as "the arbitrator" refers to the proposed arbitrator. This becomes clear, when contrasted with Items 22 and 24, where the arbitrator must have served "as arbitrator" before he can be disqualified. Obviously, Item 16 refers to previous involvement in an advisory or other capacity in the very dispute, but not as arbitrator. It was also faintly argued that Justice Doabia was ineligible under Items 1 and 15. Appointment as an arbitrator is not a "business relationship" with the respondent under Item 1. Nor is the

delivery of an award providing an expert "opinion" i.e. advice to a party covered by Item 15.

25. The fact that Justice Doabia has already rendered an award in a previous arbitration between the parties would not, by itself, on the ground of reasonable likelihood of bias, render him ineligible to be an arbitrator in a subsequent arbitration. As has been stated in H. v. L. [H. v. L., (2017) 1 WLR 2280 : 2017 EWHC 137] : (WLR pp. 2288-89, paras 26-28)

> *"26. If authority were needed it is to be found in Amec Capital Projects Ltd. v. Whitefriars City Estates Ltd. [Amec Capital Projects Ltd. v. Whitefriars City Estates Ltd., (2005) 1 All ER 723 (CA)] An adjudicator had decided a case without jurisdiction as a result of defects in the procedural mechanism for his appointment. His adjudication was set aside and he was then reappointed to decide the same dispute, between the same parties, and decided it in the same way. At first instance it was held that his second adjudication should be set aside for apparent bias because, amongst other things, he had already decided the same issue. The Court of Appeal reversed the decision. Dyson, L.J. said: (All ER p. 732, paras 20-21)*
>
> > *'20. In my judgment, the mere fact that the tribunal has previously decided the issue is not of itself sufficient to justify a conclusion of apparent bias. Something more is required. Judges are assumed to be trustworthy and to understand that they should approach every case with an open mind. The same applies to adjudicators, who are almost always professional persons. That is not to say that, if it is asked to redetermine an issue and the evidence and arguments are merely a repeat of what went before, the tribunal will not be likely to reach the same conclusion as before. It would be unrealistic, indeed absurd, to expect the tribunal in such circumstances to ignore its earlier decision and not to be inclined to come to the same conclusion as before, particularly if the previous decision was carefully reasoned. The vice which the law must guard against is that the tribunal may approach the rehearing with a closed mind. If a Judge has considered an issue carefully before reaching a decision on the first occasion, it cannot sensibly be said that he has a closed mind if, the evidence and arguments being the same as before, he does not give as careful a consideration on the second occasion as on the first. He will, however, be expected to give such reconsideration of the matter as is reasonably necessary for him to be satisfied that his first decision was correct. As I have said, it will be a most unusual case where the second hearing is for practical purposes an exact rerun of the first.*
>
> > *21. The mere fact that the tribunal has decided the issue before is*

therefore not enough for apparent bias. There needs to be something of substance to lead the fair-minded and informed observer to conclude that there is a real possibility that the tribunal will not bring an open mind and objective judgment to bear.'

27. Those comments apply with as much force to arbitrators in international reinsurance arbitration as they do to adjudicators in building disputes. Just as an arbitrator or adjudicator can be expected to bring an open mind and objective judgment to bear when redetermining the same question on the same evidence between the same parties, it is all the more so where the evidence is different and heard in a reference between different parties.

28. The position in Bermuda Form arbitrations is accurately summarised in a leading textbook, Liability Insurance in International Arbitration, 2nd Edn. (2011), at para 14.32 in these terms:

'14.32. Commencing a Bermuda Form Arbitration

The decision in Locabail (U.K.) Ltd. v. Bayfield Properties Ltd. [Locabail (U.K.) Ltd. v. Bayfield Properties Ltd., 2000 QB 451 : (2000) 2 WLR 870 : (2000) 1 All ER 65 (CA)] and the foregoing discussion, is also relevant in the fairly common situation where a loss, whether from boom or batch, gives rise to a number of arbitrations against different insurers who have subscribed to the same programme. A number of arbitrations may be commenced at around the same time, and the same arbitrator may be appointed at the outset in respect of all these arbitrations. Another possibility is that there are successive arbitrations, for example, because the policyholder wishes to see the outcome of an arbitration on the first layer before embarking on further proceedings. A policyholder, who has been successful before one tribunal, may then be tempted to appoint one of its members (not necessarily its original appointee, but possibly the chairman or even the insurer's original appointee) as arbitrator in a subsequent arbitration. Similarly, if insurer A has been successful in the first arbitration, insurer B may in practice learn of this success and the identity of the arbitrators who have upheld insurer A's arguments. It follows from Locabail [Locabail (U.K.) Ltd. v. Bayfield Properties Ltd., 2000 QB 451 : (2000) 2 WLR 870 : (2000) 1 All ER 65 (CA)] and Amec Capital Projects Ltd. v. Whitefriars City Estates Ltd. [Amec Capital Projects Ltd. v. Whitefriars City Estates Ltd., (2005) 1 All ER 723 (CA)] that an objection to the appointment of a member of a previous panel would not be sustained simply on the basis that the arbitrator had previously decided a particular issue in favour of one or other party. It equally follows that an arbitrator can properly be appointed at the outset in respect of a number of layers

of coverage, even though he may then decide the dispute under one layer before hearing the case on another layer.'"

xxx *xxx* *xxx*

28. We have not been shown anything to indicate that Justice Doabia would be a person holding a pronounced anti-claimant view as in Locabail [Locabail (U.K.) Ltd. v. Bayfield Properties Ltd., 2000 QB 451 : (2000) 2 WLR 870 : (2000) 1 All ER 65 (CA)] . Therefore, we are satisfied that there is no real possibility that Justice Doabia will not bring an open mind and objective judgment to bear on arguments made by the parties in the fourth arbitration, which may or may not differ from arguments made in the third arbitration."

34. In ***Supreme Court Advocates-on-Record Association and Another v. Union of India (Recusal Matter), (2016) 5 SCC 808***, notice was taken of the observation of Grant Hammond, a former Judge of the Court of Appeal of New Zealand in his Book Judicial Recusal that a Judge could only be disqualified for a direct pecuniary interest or consanguinity, affinity, friendship or enmity with a party or because he was or had been a party's advocate. In the present case, the Presiding Arbitrator had dismissed an appeal filed by the Respondent against the order of NCLT on the ground that the RP was not legally empowered to include and admit future claims of the Respondent, by virtue of Section 18(1)(b) of IBC. It is clear from the order of NCLAT that it did not rule on the question as to whether the future claims could be enforced against the Petitioner. In any event, by deciding this legal issue it cannot be said that the Chairperson was '*involved'* in the case so as to make him *de jure* ineligible in light of the judgement in ***HRD Corporation (supra)***. Previous involvement as per the Supreme Court must be an involvement in some other avatar such as advisor or consultant to a party to arbitration and merely acting as an adjudicator or a judge is not enough, something more is required.

35. Learned Senior counsel for the Petitioner laboured hard to compare the observations in the NCLAT order and the award to bring home the point that the fulcrum of the award is the observation of NCLAT. To my mind, this comparison is misplaced. The Arbitral Tribunal came to an independent finding that under the insolvency regime, it was not open to the IRP to collate claims of creditors post the ICD. Having rendered this conclusion, the Tribunal made an oblique reference to a similar observation in the NCLAT order. Carefully read, I am unable to reach a conclusion that the finding in the arbitral award on this aspect was, in any manner, influenced by the NCLAT order or based on it and moreover, this is a legal finding applying the provisions in IBC, 2016. The judgments relied on by the Petitioner are distinguishable on facts. In those cases, the Supreme Court found as a matter of fact that there were conflicts of interest and the concerned Judges ought to have recused, which is not the case here. The grounds in the appeal before NCLAT were different from the issues in arbitration. While NCLAT was called upon to decide whether IRP was empowered under IBC to include claims of an Operational Creditor arising post ICD, in arbitration the issue was whether the claims were arbitrable as also adjudication on merits.

36. The second and the only other contentious issue arising for consideration in this petition is whether the claims which were not part of the approved Resolution Plan were arbitrable. Both sides canvassed extensive arguments on this issue. The claims raised by the Respondent before the Tribunal were: Outstanding Cash Call under JOA; plugging and abandonment costs; default interest; interest; additional interest; and cost of arbitration. Indisputably, since all the claims related to the period post-ICD,

they were not collated by the RP. In fact as per the Respondent, the claim relating to abandonment costs arose after the Resolution Plan was approved by NCLT. Before proceeding to determine this question, it would be pertinent to closely look at the law on the subject. In ***Ghanashyam Mishra (supra)***, the Supreme Court held that once a Resolution Plan is duly approved by the adjudicating authority under Section 31(1) of IBC, the claims as provided in the Resolution Plan stand frozen and will be binding on the Corporate Debtor and its employees, members, creditors, including the Central Government, State Government or any local body, guarantors and other stakeholders. It was further held that claims, which are not a part of Resolution Plan on the date of its approval, shall also stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to such claims, which are not part of the Resolution Plan. In fact, even in respect of statutory dues owed to the Central or State Government or any local authority, it was held that if these dues were not part of the Resolution Plan, they shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued. Relevant paragraphs from the judgment are as follows:-

> *"61. It could thus be seen that one of the dominant objects of the I&B Code is to see to it that an attempt has to be made to revive the corporate debtor and make it a running concern. For that, a resolution applicant has to prepare a resolution plan on the basis of the information memorandum. The information memorandum, which is required to be prepared in accordance with Section 29 of the I&B Code along with Regulation 36 of the Regulations, is required to contain various details, which have been gathered by RP after receipt of various claims in response to the statutorily mandated public notice. The resolution plan is required to provide for the payment of insolvency resolution process costs, management of the affairs of the corporate debtor after approval of the resolution plan; the implementation and supervision of the resolution plan.*

It is only after the adjudicating authority satisfies itself that the plan as approved by CoC with the requisite voting share of financial creditors meets the requirement as referred to in sub-section (2) of Section 30, grants its approval to it. It is only thereafter that the said plan is binding on the corporate debtor as well as its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The moratorium order passed by the adjudicating authority under Section 14 shall cease to operate once the adjudicating authority approves the resolution plan. The scheme of the I&B Code therefore is, to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency to continue the business of the corporate debtor as a going concern until a resolution plan is drawn up. Once the resolution plan is approved, the management is handed over under the plan to the successful applicant so that the corporate debtor is able to pay back its debts and get back on its feet.

xxx *xxx* *xxx*

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

66. The resolution plan submitted by the successful resolution applicant is required to contain various provisions viz. provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the corporate debtor under Section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of Section 53, whichever is higher. The resolution plan is also required to provide for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, which also shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of Section 53 in the event of a liquidation of the corporate debtor. Explanation 1 to clause (b) of sub-section (2) of Section 30 of the I&B Code clarifies for the removal of doubts that a distribution in accordance with the provisions of the said clause shall be fair and equitable to such creditors. The resolution plan is also required to provide for the management of the affairs of the corporate debtor after approval of the resolution plan and also the implementation and supervision of the resolution plan. Clause (e) of sub-section (2) of Section 30 of the I&B Code also casts a duty on RP to

examine that the resolution plan does not contravene any of the provisions of the law for the time being in force.

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

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

69. This aspect has been aptly explained by this Court in Essar Steel (India) Ltd. (CoC) [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] : (SCC p. 616, para 107)

> *"107. For the same reason, the impugned NCLAT judgment in Standard Chartered Bank v. Satish Kumar Gupta [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the adjudicating authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant*

who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] must also be set aside on this count."

70. In view of this legal position, we could have very well stopped here and held that the observation made by NCLAT in the appeal filed by EARC to the effect that EARC was entitled to take recourse to such remedies as are available to it in law, is impermissible in law.

71. As held by this Court in CIT v. Monnet Ispat & Energy Ltd. [CIT v. Monnet Ispat & Energy Ltd., (2018) 18 SCC 786 : (2019) 3 SCC (Civ) 252] , in view of the provisions of Section 238 of the I&B Code, the provisions thereof will have an overriding effect, if there is any inconsistency with any of the provisions of the law for the time being in force or any instrument having effect by virtue of any such law. As such, the observations made by NCLAT to the aforesaid effect, if permitted to remain, would frustrate the very purpose for which the I&B Code is enacted.

xxx *xxx* *xxx*

Conclusion

102. In the result, we answer the questions framed by us as under:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.2. The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.

102.3. Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in

respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.

xxx *xxx* *xxx*

123. It is thus clear that according to the resolution plan submitted by EARC itself, had it been a successful applicant, then in that event, the claims made by it would have been irrevocably waived and permanently extinguished and written off in full with effect from the effective date. Had the resolution plan of EARC been approved, then all such debts would have stood extinguished without any further act or deed and approval of the said plan by NCLT would have been a sufficient notice required to be given to any person for such matter. Undisputedly, the resolution plan submitted by EARC was on the basis of the information memorandum submitted by RP wherein, it was specifically clarified that the claims of EARC were not admitted by RP. It is thus clear that EARC is trying to blow hot and cold at the same time. According to it, had its resolution plan been approved by CoC and NCLT, then the claims, which are now insisted by EARC would have stood extinguished. However, on its failure to become a successful resolution applicant and approval of other applicant as a successful resolution applicant, its claim would survive. A party cannot be permitted to apply two different yardsticks.

124. Shri Bhushan, learned counsel appearing on behalf of EARC, strongly relying on the judgment of NCLAT dated 14-8-2018 passed in Export Import Bank of India v. JEKPL (P) Ltd. Resolution Professional [Export Import Bank of India v. JEKPL (P) Ltd. Resolution Professional, 2018 SCC OnLine NCLAT 465] , submits that NCLAT itself in the said case had held that invocation of corporate guarantee has no nexus with filing of the claim pursuant to public announcement made under Section 13(1)(b) read with Section 15(1)(c) of the I&B Code and also for collating the claim under Section 18(1)(b) or for updating claim under Section 25(2)(e). He submits that civil appeal challenging the said judgment and order has been dismissed by this Court vide order dated 23-1-2019.

125. He submits that NCLAT itself in the said Export Import Bank of India case [Export Import Bank of India v. JEKPL (P) Ltd. Resolution Professional, 2018 SCC OnLine NCLAT 465] had directed EXIM Bank and Axis Bank to be treated as "financial creditors" and had further directed them to be given representation on CoC. He submits that, however, in the present case, NCLAT has taken a contrary view. He therefore submits that in the alternative this Court should direct RP/CoC to treat EARC as a "financial creditor" and give it representation on CoC and take a decision in accordance with law.

126. We find that the said case, on facts, would not be applicable to the case at hand. No doubt that the appeal filed against the judgment and

order of NCLAT dated 14-8-2018 [Export Import Bank of India v. JEKPL (P) Ltd. Resolution Professional, 2018 SCC OnLine NCLAT 465] has been dismissed by this Court on 23-1-2019 [Atyant Capital (India) Fund I v. JEKPL (P) Ltd. Resolution Professional, 2019 SCC OnLine SC 2005] . However, it is a settled law that dismissal of a special leave petition/appeal does not amount to affirmation of the view taken in the judgment impugned in the special leave petition/appeal. It will also be relevant to refer to the order passed by this Court dated 23-1-2019 [Atyant Capital (India) Fund I v. JEKPL (P) Ltd. Resolution Professional, 2019 SCC OnLine SC 2005] while dismissing the appeal, which reads thus : (Atyant Capital India Fund I case [Atyant Capital (India) Fund I v. JEKPL (P) Ltd. Resolution Professional, 2019 SCC OnLine SC 2005] , SCC OnLine SC paras 3-5)

> *"Civil Appeal No. 10134 of 2018*
>
> *3. We have heard the learned counsel for the parties and perused the relevant material on record.*
>
> *4. The civil appeal is dismissed.*
>
> *5. It will be open for the appellant to urge all points as may be available to it in law before the appropriate forum, if so advised."*

It will thus be clearly seen that this Court in Atyant Capital India Fund I case [Atyant Capital (India) Fund I v. JEKPL (P) Ltd. Resolution Professional, 2019 SCC OnLine SC 2005] while dismissing the appeal has reserved the liberty to the appellant to urge all points as may be available to it in law before the appropriate forum.

127. It is to be noted that in the appeal before NCLAT, EXIM Bank as well as Axis Bank had taken steps immediately after the claim of the said Banks on the basis of corporate guarantee came to be rejected by RP/CoC. After rejection of the claim, the said Banks had filed an application under Section 60(5) before NCLT. On NCLT rejecting the said claim, those Banks had approached NCLAT in appeals which were allowed and the order, as stated hereinabove, was passed.

128. In the present case the claim of EARC was rejected on 22-1-2018. Instead of challenging the said rejection, EARC participated in the proceedings and was one of the resolution applicants. Not only that, in the first round, it was a successful bidder being ranked H1 bidder. However, since in the negotiations it failed to satisfy CoC, fresh bids were invited from the resolution applicants, which had submitted their EoI. In the 12th meeting of CoC held on 25-4-2018, the resolution plan of GMSPL was approved by 89.23% of the voting shares. Only thereafter EARC filed two applications; one challenging the approval of resolution plan of GMSPL by CoC and another challenging rejection of its claims by RP/CoC.

129. It could thus be clearly seen that EARC was taking chances. After rejection of its claim, it did not choose to challenge the same by an application under Section 60(5) but waited till the decision of CoC. During this period, it was actually pursuing its resolution plan. Only after its resolution plan was not approved and the resolution plan of GMSPL was approved, it filed the aforesaid two applications. Apart from that, as already observed hereinabove, in the resolution plan of EARC itself, it has provided for extinguishment of all claims not forming part of resolution plan.

130. Even otherwise, if for the sake of argument, it is held that EARC was entitled to be treated as a "financial creditor" and entitled for a participation in CoC, still its share was about 9% and as such, the resolution plan of GMSPL would have been passed by a majority of 80%, which is much above the statutory requirement.

131. We are therefore of the considered view that the observation made by NCLAT giving liberty to EARC to take recourse to such proceedings as available in law for raising its claims is totally unsustainable.

132. Insofar as the observation made with regard to claim of the Jharkhand Government is concerned, it is to be noted that the State of Jharkhand has not even appealed against the order passed by NCLT. Insofar as the claims of labour and workmen are concerned, RP has specifically stated before NCLAT, that whatever claims were received from the workmen were duly considered in the resolution plan. Despite that, observing that a liberty is available to the workmen to raise their claims before a civil court or Labour Court, in our view, is totally in conflict with the provisions of the I&B Code. The same would equally apply to the observation made in the appeal of Mr Deepak Singh claiming to be "operational creditor".

37. In ***Committee of Creditors of Essar Steel India Limited through Authorised Signatory v. Satish Kumar Gupta and Others, (2020) 8 SCC 531***, the Supreme Court observed that the impugned judgment of the NCLT, wherein it was held that claims that may exist apart from those decided on merits by the RP and the adjudicating authority/Appellate Tribunal can be decided by an appropriate forum under Section 60(6) of IBC, militates against the rationale of Section 31 IBC. A successful Resolution Applicant cannot suddenly be faced with 'undecided' claims after the Resolution Plan

submitted by him has been accepted as this would amount to hydra heads popping up, which would throw into 'uncertainty' amounts payable by a prospective Resolution Applicant, who successfully takes over the business of the Corporate Debtor. It was observed that all claims must be submitted to and decided by the Resolution Professional so that a prospective Resolution Applicant knows exactly what has to be paid in order that it may then take over and run the business on a 'fresh slate'.

38. This view was reiterated by the Supreme Court in ***Ruchi Soya Industries Limited and Others v. Union of India and Others, (2022) 6 SCC 343***; ***Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Limited, (2023) 10 SCC 545;*** and ***RPS Infrastructure Limited v. Mukul Kumar and Another, (2023) 10 SCC 718***. In a recent decision in ***Electrosteel (supra)***, the Supreme Court has reaffirmed that once the Resolution Plan is approved, it binds all stakeholders and all claims, which do not form part of the approved Plan, will stand extinguished. Relevant passages from the judgment are as follows:-

> *"30. An important question arose for consideration in Ghanashyam Mishra [Ghanashyam Mishra and Sons P. Ltd. v. Edelweiss Asset Reconstruction Co. Ltd., (2021) 227 Comp Cas 251 (SC); (2021) 91 GSTR 28 (SC); (2021) 9 SCC 657; (2021) 4 SCC (Civ) 638; 2021 SCC OnLine SC 313.] . Again a three-judge Bench of this court examined a question as to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by the Adjudicating Authority under sub-section (1) of section 31 of the Insolvency and Bankruptcy Code ? A corollary to the above question was the issue as to whether after approval of the resolution plan by the Adjudicating Authority, a creditor including the Central Government, State Government or any local authority is entitled to initiate any proceeding for recovery of any of the dues from the corporate debtor which are not a part of the resolution plan approved by the Adjudicating Authority. In that case, the Bench concluded by holding that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan*

shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of the resolution plan by the Adjudicating Authority, all such claims which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. The Bench declared that all dues including statutory dues owed to the Central Government, any State Government or any local authority if not part of the resolution plan shall stand extinguished and no proceeding in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued. Paragraph 102 of the aforesaid decision reads thus

> *"In the result, we answer the questions framed by us as under:*
>
> > *(i) That once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the Adjudicating Authority, all such claims, which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan…*
> >
> > *(iii) Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the Adjudicating Authority grants its approval under section 31 could be continued."*

31. In Ruchi Soya Industries Ltd., a two-judge Bench of this court referred to the decision in Ghanashyam Mishra and thereafter declared that on the date on which the resolution plan was approved by the National Company Law Tribunal, all claims stood frozen and no claim, which is not a part of the resolution plan, would survive.

xxx *xxx* *xxx*

33. In a recent decision, a two-judge Bench of this court decided a contempt application in JSW Steel Ltd. v. Pratishtha Thakur Haritwal. Contention of the petitioner was that the respondents had wilfully disobeyed the judgment of this court in Ghanashyam Mishra by issuing

demand notices pertaining to the period covered by the corporate insolvency resolution process. In the above context, the Bench reiterated what was held in Ghanashyam Mishra which has been followed in subsequent decisions and thereafter declared that all claims which are not part of the resolution plan shall stand extinguished. No person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. Though the Bench did not take any action for contempt in view of the unconditional apology made by the respondents nonetheless the Bench reiterated the proposition laid down in Ghanashyam Mishra clarifying that even if any stakeholder is not a party to the proceedings before the National Company Law Tribunal and if such stakeholder does not raise its claim before the interim resolution professional/resolution professional, the resolution plan as approved by the National Company Law Tribunal would still be binding on him.

xxx xxx xxx

50. In so far the second and third issues are concerned, it is by now well settled that once a resolution plan is duly approved by the Adjudicating Authority under sub-section (1) of section 31, all claims which are not part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. In fact, this court in Committee of Creditors of Essar Steel India Ltd. [Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta, (2020) 219 Comp Cas 97 (SC); (2020) 8 SCC 531; 2019 SCC OnLine SC 1478.] had categorically declared that a successful resolution applicant cannot be faced with undecided claims after the resolution plan is accepted. Otherwise, this would amount to a hydra head popping up which would throw into uncertainty the amount payable by the resolution applicant. In so far the resolution plan is concerned, the resolution professional, the committee of creditors and the Adjudicating Authority noted about the claim lodged by the respondent in the arbitration proceeding. However, the respondent was not included in the top 30 operational creditors whose claims were settled at nil. This can only mean that the three authorities conducting the corporate insolvency resolution process did not deem it appropriate to include the respondent in the top 30 operational creditors. If the claims of the top 30 operational creditors were settled at nil, it goes without saying that the claim of the respondent could not be placed higher than the said top 30 operational creditors. Moreover, the resolution plan itself provides that all claims covered by any suit, cause of action, arbitration, etc., shall be settled at nil. Therefore, it is crystal clear that in so far claim of the respondent is concerned, the same would be treated as nil at par with the claims of the top 30 operational creditors.

50.1. Lifting of the moratorium does not mean that the claim of the respondent would stand revived notwithstanding approval of the

resolution plan by the Adjudicating Authority. The moratorium is intended to ensure that no further demands are raised or adjudicated upon during the corporate insolvency resolution process so that the process can be proceeded with and concluded without further complications. The view taken by the High Court cannot be accepted in the light of the clear cut provisions of the Insolvency and Bankruptcy Code as well as the law laid down by this court. In view of the resolution plan, as approved, the claim of the respondent stood extinguished. Therefore, the Facilitation Council did not have the jurisdiction to arbitrate on the said claim. Since the award was passed without jurisdiction, the same could be assailed in a proceeding under section 47 of the Code of Civil Procedure. The view taken by the High Court that because the appellant did not challenge the award under section 34 of the 1996 Act, therefore, it was precluded from objecting to execution of the award at the stage of section 47 of the Code of Civil Procedure is wholly unsustainable.

51. Consequently, the view taken by the High Court that notwithstanding approval of the resolution plan by the National Company Law Tribunal, the Facilitation Council did not lose jurisdiction to proceed and pronounce the arbitral award, is erroneous and contrary to the law laid down by this court.

52. In that view of the matter, we have no hesitation to hold that upon approval of the resolution plan by the National Company Law Tribunal, the claim of the respondent being outside the purview of the resolution plan stood extinguished. Therefore, the award dated July 6, 2018 is incapable of being executed. Consequently, the order dated March 3, 2023 passed by the Presiding Officer, Commercial Court/District Judge-1, Bokaro in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018) is hereby set aside. Execution proceedings in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018) pending in the Court of Presiding Officer, Commercial Court/District Judge-1, Bokaro, are hereby quashed. Resultantly, impugned order of the High Court dated July 17, 2023 is also set aside."

39. It is thus clear from a conspectus of the aforementioned judgments that all such claims, which are not a part of the Resolution Plan on the date of approval, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of claims, which are not part of the Resolution Plan and so much so this would apply to the statutory dues owed to Central/State Governments, local bodies etc. In the instant case, the

claims which were referred to arbitration were not part of the approved Resolution Plan and stood extinguished and were thus not arbitrable.

40. In ***Electrosteel (supra)***, the Supreme Court was examining the validity of the arbitral award in respect of claims of the Creditor, which were outside the approved Resolution Plan. After a detailed and extensive discussion on the provisions of IBC and referring to all the earlier judgements of the Supreme Court on this aspect, it was held that the Facilitation Council under the MSME Act, did not have the jurisdiction to arbitrate on the claims which stood extinguished on approval of the Resolution Plan and therefore, the arbitral award was without jurisdiction. Pertinently, in this case it was mentioned in the Resolution Plan that any and all claims or demands, admitted or not, due or contingent, asserted or unasserted, known or unknown, present or future etc., would be written off in full and deemed to be permanently extinguished by virtue of order of NCLT approving the Resolution Plan with a special emphasis that the Consortium or Company, will not be held responsible or liable, at any point of time, directly or indirectly.

41. For all the aforesaid reasons, the impugned arbitral award dated 21.08.2024 is quashed and set aside and this petition is allowed and disposed of.

42. All pending applications stand disposed of.

OMP (ENF.) (COMM.) 28/2025 & EX.APPL.(OS) 206/2025, 557/2025 and 565/2025

43. List on 26.11.2025 for consideration.

JYOTI SINGH, J

SEPTEMBER 11 , 2025*/S.Sharma/Shivam*