



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

**Reserved on: 18<sup>th</sup> July, 2024**

**Pronounced on: 26<sup>th</sup> July, 2024**

+ **W.P.(C) 8316/2024 & CM APPLS. 34076/2024, 38159/2024**

OCL IRON AND STEEL LIMITED

.....Petitioner

Through: Mr. Sandeep Sethi, Senior Advocate  
with Mr. Divyakant Lahoti, Mr.  
Kartik Lahoti, Ms. Vindhya Mehra,  
Ms. Praveena Bisht, Ms. Riya Kumar  
and Mr. Adith Menon, Advocates.

versus

UNION OF INDIA

.....Respondent

Through: Mr. Kirtiman Singh, CGSC with Mr.  
Waize Ali Noor, Mr. Ranjeev  
Khatana, Mr. Varun Pratap Singh,  
Mr. Varun Rajawat, Advocates with  
Mr. Prince Kumar and Mr. Jaibant  
Kishore Dev Varma, Ministry of  
Coal.

**CORAM:**

**HON'BLE MR. JUSTICE SANJEEV NARULA**

**JUDGMENT**

**SANJEEV NARULA, J.:**

1. Petitioner, OCL Iron and Steel Ltd., now under the management of HI A MMT Pvt. Ltd. following a corporate insolvency resolution process,<sup>1</sup> has been disqualified from participating in coal mine auctions by the Respondent, Nominated Authority of the Ministry of Coal, Government of India. This debarment is premised on certain outstanding unsettled dues

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<sup>1</sup> "CIRP."



attributable to the Petitioner's erstwhile management. Through the present writ petition, the Petitioner seeks to invalidate Respondent's decision, arguing that the corporate debtor, having undergone the CIRP, must not be held liable for past dues, which stand addressed in the resolution plan. The Respondent, on the other hand, maintains that their claims have survived the insolvency proceedings, as noted in the resolution plan. Thus, they argue that the Petitioner's disqualification is consistent with their established policy and tender conditions requiring the bidders to clear all past dues.

2. This judgment shall resolve the parties' conflicting positions to determine whether the Petitioner is liable for the alleged dues, thereby ascertaining their eligibility to participate in the coal mine auctions.

#### **THE FACTUAL BACKDROP**

3. The Petitioner was established in 2006 as a coal based direct reduced iron production unit in Orissa. On 02<sup>nd</sup> March, 2015, they executed a Coal Mine Development and Production Agreement with the Respondent in respect of allocation and development of Ardhagram coal mine for production and utilization of coal.<sup>2</sup> Clause 6.1. of this Agreement mandated submission of a bank guarantee for an amount of Rs. 92,25,20,000/- as performance security by the Petitioner, which was to remain in force till such time the coal mine in question achieved the annual peak rated capacity.<sup>3</sup> Clause 24.3.3 of the Coal Mine Agreement provided for forfeiture of the PBG in the event of termination of the Agreement by Respondent.

4. On an application under Section 7 of the Insolvency and Bankruptcy

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<sup>2</sup> "Coal Mine Agreement."

<sup>3</sup> "PBG."



Code, 2016,<sup>4</sup> National Company Law Tribunal,<sup>5</sup> Cuttack Bench initiated CIRP against OCL Iron and Steel Limited at the behest of Indian Bank (formerly, Allahabad Bank) on 20<sup>th</sup> September, 2021, triggering a moratorium under Section 14 of the IBC [bearing CP(IB) No. 111/CTB/2020]. During this period, on 31<sup>st</sup> December, 2021, Respondent issued a communication terminating the Coal Mine Agreement for breach of its terms, specifically the non-renewal of the PBG, which had lapsed on 20<sup>th</sup> March, 2021, as per Clause 6.15.<sup>6</sup> The Termination Order also required the Petitioner's erstwhile management to deposit an amount of Rs. 92,25,20,000/- with the Respondent within 15 days from the date of the said order.

5. The Resolution Professional challenged the Respondent's decision to terminate the Coal Mine Agreement before the NCLT [IA (IB) No. 15/CB/2022], arguing that the PBG could not be kept alive due to the global pandemic COVID-19. As an ad-interim measure, the NCLT issued *ex-parte* directions to the Respondent on 24<sup>th</sup> January, 2022, restraining them from proceeding with the Termination Order. On a subsequent date (07<sup>th</sup> February, 2023), the interim order was vacated and the NCLT dismissed IA (IB) No. 15/CB/2022 filed by the Resolution Professional. The Resolution Professional as well as the Successful Resolution Applicant (M/s Indrani Patnaik) thereafter preferred appeals against the NCLT's order dated 07<sup>th</sup> February, 2023 before the National Company Law Appellate Tribunal.<sup>7</sup> In the said appeal, on 08<sup>th</sup> May, 2023, the NCLAT restored the interim order

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<sup>4</sup> "IBC."

<sup>5</sup> "NCLT."

<sup>6</sup> "Termination Order."

<sup>7</sup> "NCLAT."



dated 24<sup>th</sup> January, 2022, thereby staying the operation of the Termination Order.

6. The Resolution Professional notified the onset of CIRP and invited claims from the public through publication in the Business Standard on 23<sup>rd</sup> September, 2021. The Respondent submitted two claims to the Resolution Professional: (a) Form C dated 04<sup>th</sup> October, 2021 as a financial creditor in respect of the claim of Rs. 92,25,20,000/- towards the PBG, and (b) the incremental fixed cost of Rs. 9,21,44,029/-, which was due towards the prior allottee of the Ardhagram coal mine.

7. On 06<sup>th</sup> January, 2022, the Authorized Representative of Resolution Professional issued a communication to the Respondent, informing them that the claim pertaining to the PBG in Form C and other supporting documents did not disclose a “financial debt” as per proviso to Section 3(31) of the IBC and thus, the Respondent was not found eligible to be a financial creditor by the Resolution Professional. Following the said communication, on 07<sup>th</sup> January, 2022, another e-mail communication was addressed to the Respondent, permitting them to file their claim in an appropriate form with supporting documents, if so advised, for the consideration of the Resolution Professional. No subsequent claim/ form was submitted by the Respondent to the Resolution Professional.

8. The resolution plan dated 27<sup>th</sup> May, 2022 formulated by the Successful Resolution Applicant was approved by the NCLT under Section 31(1) of the IBC on 20<sup>th</sup> March, 2023. Clause 13 of the plan presented to the NCLT, titled “*Concessions, Reliefs and Dispensation Sought,*” *inter alia* sought waiver of the two claims raised by the Respondent, as detailed above. The observations of the NCLT in respect of this request are as follows:



**“34. Relinquishment/Waiver of liabilities and Approvals**

<i>Sl. No.</i>	<i>Relief and/or Concessions and Approvals Sought</i>	<i>Orders Thereon</i>
	<i>...xx..      ..xx..      ..xx..</i>	<i>...xx..      ..xx..</i>
29.	<p><i>Waiver of compensation of INR 9.21 Crore which is due towards the prior allottee of the Ardhagram Coal Mine. Waiver of the entire contingent claim of INR 92.25 Crore in relation to the Nominated Authority, Ministry of Coal in terms of the Coal Mine Development &amp; Production Agreement dated 28.02.2015 (CMDPA). Further, the approval of the Resolution Plan by the AA to absolve the Corporate Debtor from any other past dues in relation to the allotment of the Ardhagram Coal Mine.</i></p>	<p><i>As per the applicable provisions of law. Concerned parties/authorities, as the case be, may consider keeping in view the letter and spirit of the Insolvency and Bankruptcy Code, 2016, which is to enable fresh start to the Corporate Debtor.”</i></p>

9. The new board of management of the corporate debtor was constituted in March-April 2023. The reconstituted management of the Petitioner applied for participation in the bidding process for the Lalgarth South coal mine on 15<sup>th</sup> February, 2024 (titled the 9<sup>th</sup> Tranche of Mine Auctions). Their participation was acknowledged by the Respondent through inclusion in the list of bidders created on 20<sup>th</sup> February, 2024. However, in the list of technically qualified bidders notified on 11<sup>th</sup> March, 2024, Petitioner’s name was omitted. The Petitioner submitted several representations to Respondent seeking permission to participate in the approaching coal mine auctions. They also challenged their elimination from the bidding process through a writ petition [bearing WP(C) No. 1407/2024] before the High Court of Jharkhand. However, given that the auction process for the Lalgarth South coal mine was concluded in favour of another bidder,



rendering the Petitioner's relief for participation in the process infructuous, the petition was withdrawn on 10<sup>th</sup> July, 2023.

10. In response, the Respondent addressed a communication dated 22<sup>nd</sup> May, 2024 to the Petitioner, prohibiting them from participating in prospective coal mine auctions.<sup>8</sup> According to the Respondent, the dues of Rs. 92,25,20,000/- arising from the failure to renew the PBG and the incremental fixed cost of Rs. 9,21,44,029/-, remain unsettled by the Petitioner. Therefore, referring to the clauses of the Coal Mine Agreement and the Standard Tender Document, the Respondent debarred the Petitioner from participation in future auctions till the repayment of outstanding dues.

11. The instant petition seeks setting aside of the impugned decision.

#### **CONTENTIONS OF THE PARTIES**

##### *On behalf of the Petitioner*

12. Mr. Sandeep Sethi, Senior Counsel for Petitioner, presented the following arguments to assail the impugned decision:

12.1. The obligation concerning the PBG stems from Clause 6.1 of the Coal Mine Agreement executed between the parties, mandating the Petitioner to deliver a performance security in the form of an irrevocable and unconditional bank guarantee. This PBG was required to be kept alive till the coal mine achieved annual peak rated capacity. However, the Petitioner was unable to renew the PBG in view of the effect of COVID-19 pandemic, which severely affected their operations leading to shut down in March 2020, whilst the company was under the management and control of erstwhile Dham Group. In such circumstances, CIRP was initiated. The

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<sup>8</sup> "impugned decision."



Termination Order directing the Petitioner to furnish an amount of Rs. 92,25,20,000/- in lieu of the non-renewed PBG, was wrongly issued by the Respondent after the commencement of a moratorium under Section 14 of the IBC. A challenge to the Termination Order is pending before the NCLAT.

12.2. In the above context, the Respondent asserted that Rs. 92,25,20,000/- the PBG amount was owed to them by the Petitioner. This claim, filed by the Respondent in the capacity of “financial creditor,” was rejected by the Resolution Professional through intimation dated 06<sup>th</sup> January, 2022. The communication of 07<sup>th</sup> January, 2022, advised the Respondent to submit their claim as an operational creditor, however they neither filed the relevant form, nor did they challenge the Resolution Professional’s decision. In the final list of creditors assembled by the Resolution Professional dated 31<sup>st</sup> May, 2022, the Respondent’s claim pertaining to the PBG was not accepted. An additional claim of Rs. 9,21,44,029/- was presented by the Respondent as an operational creditor, which stood admitted in CIRP. Accordingly, in terms of payment scheme outlined in the Resolution Plan, an amount of Rs. 49,262/- was disbursed in Respondent’s favour, thereby settling all outstanding obligations of the corporate debtor.

12.3. Clause 4.1.3.4 of the approved resolution plan explicitly limits the liability regarding operational creditors and statutory dues of the corporate debtor and the Successful Resolution Applicant to the claims notified and accepted by the Resolution Professional, as included in the Information Memorandum; all other claims are extinguished. Similarly, Clause 4.1.3.6 stipulates that upon approval of the plan by the NCLT, all claims, liabilities, and obligations payable to governmental authorities by the corporate debtor



will be written off in full and deemed permanently discharged, and will not be recoverable from the corporate debtor or the Resolution Applicant at any time. The business operations of the Petitioner-company were revived during the CIRP as per the strategy detailed in the resolution plan. All claims received by the Resolution Professional have been considered in the resolution plan, and any residuary claims not raised during the CIRP are now extinguished.

12.4. In the impugned decision, the Respondent has erroneously asserted that the NCLT has disallowed the Petitioner's request for waiver of claims, thereby implying that their claims still subsist. Irrespective, if the Respondent's contention that there is no waiver of the amount in question is accepted, it would not entitle them to deny the Petitioner participation in the tender, as the same would contradict the "letter and spirit" of the IBC. The mention of "applicable law" by the NCLT while determining the request for waiver suggests that all decided claims must not be resuscitated to preclude the new management from restarting their commercial activity with a 'fresh slate.'

12.5. In support, reliance is placed on the judgments of the Supreme Court in *Ghanashyam Mishra and Sons Private Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.*<sup>9</sup> *Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Limited*,<sup>10</sup> and order dated 28<sup>th</sup> October, 2021 in *Daiichi Sankyo Company Limited v. Malvinder Mohan Singh and Ors.*<sup>11</sup>

12.6. The impugned decision breaches Articles 14, 19 and 21 of the

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<sup>9</sup> (2021) 9 SCC 657.

<sup>10</sup> (2023) 10 SCC 545.





Constitution of India, 1950, and contravenes the intent of Mines and Minerals (Development and Regulation) Act, 1957, which is to ensure a fair competition and a level-playing field in the market.

*On behalf of the Respondent*

13. Mr. Kirtiman Singh, CGSC, strongly contested the Petitioner's case, arguing as follows:

13.1. Under the framework for allocation of work provided under the Mines and Minerals (Development and Regulation) Act, 1957, the Respondent issued the Standard Tender Document for the 9<sup>th</sup> Tranche of Mine Auctions. Clause 1.1.62 of the tender document defines a technical bid as “*a confirmation of compliance with the Eligibility Conditions along with necessary supporting documents and information.*” Clause 4, which specifies the eligibility criteria, stipulates that any entity that has failed to pay dues to the Respondent for previously allocated mines is ineligible to participate. Before moving to the financial bidding stage, the Respondent evaluates each technical bid for compliance with the tender documents. Clause 5.12.3 grants the Respondent the authority to reject any bid that does not meet the criteria specified in the tender document. These stipulations are grounded in the established norms concerning participation in coal auction processes, operative since before the Petitioner's CIRP.

13.2. Clause 13 of the resolution plan explicitly records that the plan would not be contingent upon the grant of waivers by the NCLT, and shall remain unaffected by their refusal. While reviewing the resolution plan, the NCLT declined to grant a concession for the debts owed to the Respondent.

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<sup>11</sup> O.M.P.(EFA)(COMM.) 6/2016.



Instead, it allowed the concerned party/ authority to explore other arrangements, as is evident from the language used by the NCLT when rejecting the request for waiver. This indicates that debts are owed to the Respondent by the Petitioner. The Petitioner did not challenge the rejection of their request, and cannot now contend that the debts do not subsist. Through the present petition, the Petitioner cannot seek a declaration or determination which is contrary to the approved resolution plan.

13.3. A perusal of the observations against each request for waiver/ concession contained in paragraph No. 34 of the NCLT's approval order dated 20<sup>th</sup> March, 2023 reflects that the NCLT purposefully used the phrase *“as per the applicable provisions of law. Concerned parties/authorities, as the case be, may consider keeping in view the letter and spirit of the Insolvency and Bankruptcy Code, 2016, which is to enable fresh start to the Corporate Debtor”* in respect of the amounts due to the Respondent. NCLT's sanction to the plan is restricted by the observations made in its order dated 20<sup>th</sup> March, 2023, and does not substantiate the Petitioner's assertions in this petition.

13.4. The principle of 'fresh start' of an entity that has undergone CIRP does not absolve them from pending dues acknowledged by the Resolution Professional. The Petitioner's interpretation of the communications dated 06<sup>th</sup> and 07<sup>th</sup> January, 2022 as a rejection of the Respondent's claim is misconceived. The Resolution Professional recognized the existence of Respondent's claim, but opined that it does not qualify as a financial debt. The consequence of such determination, as per the scheme of the IBC, is the exclusion of the Petitioner from the Committee of Creditors, and not the denial of claims. Therefore, the approved resolution plan entitles the



Respondent to recover their acknowledged claims. Consequently, until the satisfaction of the pending dues, the Petitioner remains ineligible to participate in the auction process.

13.5. In support, Mr. Singh referred to the judgments in *Swiss Ribbons Private Limited and Anr. v. Union of India and Ors.*,<sup>12</sup> and *Ghanashyam Mishra (Supra)*.

#### **THE IMPUGNED DECISION**

14. For context and reference, the Respondent's communication intimating the preclusion of the Petitioner from participating in the coal mine auctions is reproduced below:

*“Subject: Eligibility of M/s OCL Iron and Steel Limited for participation in coal mine auctions.*

*Sir,*

*Reference is made to letter dated 26.04.2024 received from M/s OCL Iron and Steel Limited (OCL ISL) requesting to consider their eligibility to participate in coal mine auctions.*

2. *Ardhagram coal mine was allocated to M/s OCL ISL through Vesting Order dated 14.07.2016. A show cause notice dated 26.02.2021 was issued to M/s OCL ISL for deviations from scheduled production as given in mine Plan. PBG lapsed on 20.03.2021 and not renewed subsequently by allottee. Further, the 15th Scrutiny Committee directed to furnish the Performance Bank Guarantee to the Nominated Authority for the final decision in this matter.*

3. *It was learnt through the public notice published in Business Standard on 23.09.2021 that NCLT has ordered commencement of corporate insolvency resolution process for OCL Iron and Steel Limited (successful bidder) on 20.09.2021. Further, allocation of Ardhagram coal mine was terminated on 31.12.2021. It is important to highlight that the final decision on the show cause notice could not be taken due to the unavailability of PBG.*

4. *Hon'ble NCLT, vide order dated 20.03.2023 (approval of Resolution Plan) dealt with Relinquishment/ waiver of liabilities and approvals. With respect to the waiver sought relating to Ardhagram coal*

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<sup>12</sup> (2019) 4 SCC 17.



mine, the NCLT has given following order:-

*“As per the applicable provisions of law. Concerned parties/authorities as the case be, may consider keeping in view the letter and spirit of the Insolvency and Bankruptcy code, 2016, which is to enable fresh start to the Corporate Debtor.”*

5. *Hon’ble NCLT, vide order dated 20.03.2023 did not considered for waiver of past dues of M/s OCL Iron & Steel Ltd with reference to Ardhagram coal mine. Therefore, the liability of M/s OCL Iron & Steel Ltd towards non-renewal of bank guarantee amounting to INR 92.25 Cr exist as per Termination Order dated 31.12.2021 and payment of incremental fixed cost of INR 9.21 Cr also exist as per Order dated 17.02.2021 in respect of Ardhagram mine.*

6. *Attentions is invited to the following Clauses of CMDPA & Tender Document:*

*As per Clause 3.1.d of CMDPA “any upwards revision in the fixed amount on a subsequent date by the government or the Nominated Authority consequent to any process or on the orders of any competent court of law, shall also be payable by the Successful bidder.”*

*As per Clause 24.3.3 of CMDPA “In case the Nominated Authority elects to terminate this Agreement, then the Performance Security and all other payments made by the Successful Bidder shall be forfeited and the Successful Bidder shall not be entitled to any benefits under this Agreement but would continue to be liable towards any antecedent liability, all obligation accrued before the effective date of the surrender/ termination and also for the obligations that must be fulfilled after termination”.*

7. *As per Clause 4.1.3 of the Standard Tender Document: “If any company or corporation has failed to pay the Fixed Amount, upward revision in Fixed Amount or any other dues payable to the Nominated Authority in respect of any mine allocated to it then such company or corporation, its affiliates, subsidiaries, group companies or joint venture companies comprising such company or corporation **shall not be eligible to participate in the auction unless such Fixed Amount, upward revision in Fixed Amount and such other dues have been paid for with interest, if any**”.*

*In view of the above, M/s OCL Iron and Steel Limited is not eligible for participation in coal mine auctions until the outstanding dues owed to the Ministry of Coal are settled.”*

#### **ANALYSIS AND FINDINGS**

15. Under Regulation 13 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations,



2016,<sup>13</sup> upon submission of a claim with proof, the Interim Resolution Professional or the Resolution Professional, as the case may be, is required to verify the claim and prepare a list of creditors. This list must include the names of creditors, the amounts claimed by them, and any security interest, if applicable. In the present context, against the corporate debtor, the Respondent asserted two charges: (a) a claim of Rs. 92,25,20,000/- towards the PBG, and (b) the incremental fixed cost of Rs. 9,21,44,029/-, which was due towards the prior allottee of the Ardhagram coal mine.

16. It is uncontroverted that the Respondent claimed the incremental fixed cost of Rs. 9,21,44,029/- as an operational creditor. However, the claim of the PBG of Rs. 92,25,20,000/- was filed under Form C as a financial debt. After scrutinizing the documents presented, the Resolution Professional held that this claim was not admissible as a ‘financial debt’, as there was no disbursement of amount in favour of the Petitioner. This decision was communicated to the Respondent on 06<sup>th</sup> January, 2022, and they were permitted to file an appropriate form for the satisfaction of their dues, if advised, on 07<sup>th</sup> January, 2022. The e-mail communication dated 07<sup>th</sup> January, 2022 reads as under:

*“Dear Sir,*

*In furtherance to our trailing mail wherein it has been informed that the claim submitted by the Nominated Authority, Ministry of Coal (“Claimant”) vide Form C cannot be admitted as the financial creditor as Claimant does not qualify as the Financial Creditor of the Corporate Debtor.*

**However, please note that the Claimant may file its claim in appropriate form along with supporting documents based on their independent legal advice which shall be considered by the Resolution Professional in accordance with the provisions of the Insolvency and**

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<sup>13</sup> “CIRP Regulations, 2016.”



**Bankruptcy Code, 2016 and the rules and regulations thereunder.”**

[Emphasis Supplied]

17. Concededly, thereafter, no claim was presented under any appropriate form. Nonetheless, the Respondent argues that the Resolution Professional has not extinguished their claim for the PBG, but merely advised them to file it under the appropriate form. According to the Respondent, the rejection of Form C cannot be construed as a ‘decision on the claim.’ Thus, they contend that since their dues remain outstanding, they are entitled to debar the Petitioner from the auction process as per the tender eligibility conditions, unless their debts are resolved.

**Determination of Respondent’s claim under the resolution plan**

18. To properly appraise the merits of the Respondent’s position, it is crucial to examine the resolution plan, as approved, particularly focusing on how the Respondent’s claims have been considered and dealt within the plan. This scrutiny will clarify the consideration given to the Respondent’s claims and determine their current status in the CIRP. For this purpose, the pertinent segments of the Resolution Plan are reproduced below:

**“3.4.2. List of Financial Creditors with voting share in CoC**

Name of Creditor	Amount claimed	Amount of claim admitted	% of voting share in CoC
UCO Bank	2,20,93,44,213	2,20,93,44,213	9.82
State Bank of India	2,33,81,57,869	2,33,81,57,869	10.39
Indian Bank	2,32,17,17,304	2,32,17,17,304	10.32
ICICI Bank Limited	2,87,90,77,363	2,85,33,22,698	12.68
Union Bank	2,52,20,69,280	1,59,95,69,280	7.11
Bank of Baroda	1,77,07,65,463	1,77,07,65,463	7.87
Punjab National Bank	14,24,94,374	14,16,77,200	0.63
Asian Opportunities III (Mauritius Limited)	8,22,35,40,217	8,15,15,65,160	36.22
Ganesh Ores Private Limited	1,42,00,12,966	1,12,14,77,927	4.98
Ministry of Coal	92,25,20,000	-	
<b>TOTAL</b>	<b>24,74,96,99,049</b>	<b>22,50,75,97,114</b>	<b>100</b>

**xx --- xx --- xx**



#### 4.1.9. Proposal for each share of the stakeholders

<i>Head</i>	<i>Claim Admitted Rs. in Cr.</i>	<i>Resolution Amount Propose Rs. in Cr.</i>	<i>%</i>	<i>Payment Terms</i>
<b>xx</b>	<b>xx</b>	<b>xx</b>	<b>xx</b>	<b>xx</b>
<i>Operational Creditors (other than workmen and employee)</i>	972.56	0.50	0.051	<i>Operational Creditors including Government due shall be paid on priority over other debt within 45 days from the Effective Date</i>
<b>xx</b>	<b>xx</b>	<b>xx</b>	<b>xx</b>	<b>xx</b>

**xx --- xx --- xx**

#### 13. Concessions, Reliefs and Dispensation Sought

*The Resolution Applicant requests for the reliefs, concessions and dispensations set out below to be included in the Adjudicating Authority order approving the Resolution Plan. For the avoidance of doubt, the Resolution Applicant unconditionally confirms and undertakes that this Resolution Plan will not be conditional upon any conditions or any reliefs, waivers and concessions sought from the NCLT/relevant government, statutory, regulatory or judicial authorities and the Implementation of the Resolution Plan shall remain unaffected even if any relief, waivers or concession is not granted by the NCLT or any relevant judicial) statutory, regulatory or governmental authority.*

**xx --- xx --- xx**

*30. Waiver of compensation of INR 9.21 Crore which is due towards the prior allottee of the Ardhagram Coal Mine. Waiver of the entire contingent claim of INR 92.25 Crore in relation to the Nominated Authority, Ministry of Coal in terms of the Coal Mine Development & Production Agreement dated 28.02.2015 (CMDPA). Further, the approval of the Resolution Plan by the AA to absolve the Corporate Debtor from any other past dues in relation to the allotment of the Ardhagram Coal Mine.”*

19. As per Regulation 13 of the CIRP Regulations, 2016, on 31<sup>st</sup> May, 2022, after considering all the claims submitted by various stakeholders, the



Resolution Professional prepared a list of creditors of the Petitioner/ corporate debtor. The claim of Rs. 9,21,44,029/-, shown in Annexure 7 to the list, was admitted in full as a government due. However, the claim of Rs. 92,25,20,000/- of the Respondent, received on 05<sup>th</sup> October, 2021, was not admitted in its entirety as noted in Annexure 4 to the list.

20. The Resolution Plan specifically deals with the dues of government and operational creditors. A total sum of Rs. 52,00,000/- has been earmarked for distribution among the admitted claims of these creditors, reflecting a structured and proportionate allocation method. Within this framework, the specific apportionment for the Respondent's admitted operational debt of Rs. 9,21,44,029/- was calculated at Rs. 49,262/-, which represents 0.051% of the admitted amount. This payment was disbursed by the Successful Resolution Applicant on 03<sup>rd</sup> May, 2023, into the designated account specified in the resolution plan. Consequently, with this payment, any residual claim related to the debt of Rs. 9,21,44,029/- is considered fully settled.

21. Insofar as the claim against PBG is concerned, as noted above, it was set up by the Respondent as a financial creditor and this designation was rejected by the Resolution Professional. It is crucial to note that, following this rejection, the Respondent did not file any appropriate form as specified under the CIRP Regulations, 2016, to reclassify the claim as an operational debt. Consequently, this led to the claim being deemed extinguished. Significantly, the Respondent also did not challenge the approved Resolution Plan, nor did they contest the Resolution Professional's categorization. This inaction has crucial legal implications. It exhibits tacit acceptance of the final outcomes, effectively precluding the Respondent





from resurrecting this claim at a later stage. Moreover, even if the claim were to be reconsidered and reclassified as an operational credit arising from a government due, such a reclassified claim would have been subjected to the same proportional payment structure as other operational debts. The Respondent would have then received only 0.051% of the admitted amount, which would have been approximately Rs. 4,70,485.20/-, mirroring the treatment accorded to other operational creditors.

22. The upshot of the above discussion is that with the approval of the resolution plan by the NCLT on 20<sup>th</sup> March, 2023, the claims that were not submitted in the required manner or were rejected by the Resolution Professional, are deemed extinguished. This extinguishment includes all dues, including statutory dues owed to the Central Government that were not incorporated in the resolution plan. The Respondent's inaction in contesting the categorization of their claims by the Resolution Professional, or challenging the resolution plan signifies their acceptance of the resolution process. Moreover, even if we were to hypothetically consider the financial impact of the PBG claim, had it been recognized as valid operational debt, the actual financial benefit to the Respondent would have been minimal. The proportional payment under the resolution plan would have amounted to merely Rs. 4,70,485.20 (0.051% of the PBG claim amount). This nominal sum underscores the futility of any attempts by the Respondent to assert the full value of PBG against the Successful Resolution Applicant. In light of these facts, there exists no legal basis for the Respondent to obstruct the Successful Resolution Applicant's participation in the auction process.

23. The finality and decisiveness of an approved resolution plan is recognized under the IBC's framework. The resolution process, as endorsed



by the NCLT, aims to free the corporate debtor from past liabilities and enable a fresh operational start, unhampered by unresolved and extinguished debts. This ensures legal backing to the new management to proceed without the overhang of previous liabilities, conforming to the stipulations of the resolution plan and Section 31(1) of the IBC, which reads as under:

*“31. **Approval of resolution plan.** – (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.”*

[Emphasis Supplied]

24. The mandate of Section 31(1) of the IBC underscores that once a resolution plan is approved by the Adjudicating Authority, it is binding not only on the corporate debtor, but also on all stakeholders, including Central and State Governments, as well as any local authorities to whom debts are due under any current laws. This binding nature extends to all statutory dues owed to these authorities. This provision provides certainty and finality to the outcome of the resolution process, ensuring that once a resolution plan is approved, it is universally applicable and enforceable against all parties involved.

25. In *Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta and Ors.*,<sup>14</sup> the Supreme Court has elaborated on the treatment of claims post-approval of a resolution plan. The Apex Court emphasized that a Resolution Applicant should not be encumbered by sudden and unforeseen



claims. Such occurrences would not only disrupt the financial calculations and expectations that underpinned the resolution plan, but also undermine the very purpose of the IBC, which aims to streamline and stabilize the process of corporate revival. The Supreme Court's observations emphasise the critical need for all claims related to the corporate debtor to be presented, assessed, and resolved during the CIRP. This ensures that the Resolution Applicant enters the post-CIRP phase with clarity and confidence regarding the financial responsibilities inherited. The requirement that all claims be decided by the Resolution Professional before the approval of the plan ensures that the Resolution Applicant is fully aware of the financial commitments required to revitalize and operate the business. Therefore, introducing claims that were not part of the list of assessed and finalized claims in CIRP post the approval of resolution plan, contravenes the established legal framework and the Supreme Court's holding. This ruling importantly guards against the 'hydra head phenomenon,' where unexpected financial liabilities emerge post the CIRP, potentially destabilizing the newly revived corporate debtor and deterring future investment and participation in the insolvency resolution processes.<sup>15</sup>

**The purport of NCLT's observations on debt waiver and concessions**

26. The Respondent has clearly misinterpreted the NCLT's decision and the terms of resolution plan. The NCLT, while approving Clause 13 of the resolution plan – which deals with concessions, reliefs, and dispensations sought by the Resolution Applicant – specifically directed the concerned parties (the Respondent, in this instance) to interpret and apply the

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<sup>14</sup> (2020) 8 SCC 531.

<sup>15</sup> Refer: *Ajay Kumar Radheyshyam (Supra)*.



provisions of law within the IBC framework, both in letter and spirit. This directive underscores the intent of the IBC to facilitate a fresh start for the corporate debtor. The order mandates that waivers under Clause 13 be interpreted and applied to support the overarching goal of enabling a fresh start for the restructured entity. The tenor of the NCLT's observations, relegating the parties to adopt a course that conforms to the "letter and spirit" of the IBC, is to foster the fundamental goal of the IBC – facilitating the efficient resolution of insolvency cases to maximize asset value and promote entrepreneurship and credit availability. The NCLT reinforced the foundational objectives of the IBC, which is designed to clear the slate of past encumbrances that might hinder the economic recovery of distressed entities. This is to ensure that the corporate debtor emerges from insolvency resolution unburdened by unsustainable debts, equipped to embark on a sustainable operational path. The order reflects the rehabilitative intentions of the IBC, affirming that the economic revitalization of the corporate debtor takes precedence over the pursuit of outstanding liabilities, particularly, those that have been considered and extinguished within the approved resolution plan.

27. The Supreme Court has also articulated the legislative intent behind IBC through various judgments,<sup>16</sup> emphasizing its purpose in the reorganization and insolvency resolution of corporate debtors. The core objective is the maximization of asset value, ensuring the debtor operates as a going concern, which in turn promotes entrepreneurship by replacing inefficient management with capable stewards.

28. The spirit of IBC can also be gleaned from the Statement of Objects



and Reasons of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, *inter alia* aimed at binding the governmental authorities to an approved resolution plan. The pertinent sections thereof read as under:

*“The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted with a view to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order or priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India.*

*2. The Preamble to the Code lays down the objects of the Code to include "the insolvency resolution" in a time bound manner for maximisation of value of assets in order to balance the interests of all the stakeholders. Concerns have been raised that in some cases extensive litigation is causing undue delays, which may hamper the value maximisation. There is a need to ensure that all creditors are treated fairly, without unduly burdening the adjudicating authority whose role is to ensure that the resolution plan complies with the provisions of the Code. Various stakeholders have suggested that if the creditors were treated on an equal footing, when they have different pre-insolvency entitlements, it would adversely impact the cost and availability of credit. Further, views have also been obtained so as to bring clarity on the voting pattern of financial creditors represented by the authorised representative.*

*3. In view of the aforesaid difficulties and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code. The Insolvency and Bankruptcy Code (Amendment) Bill, 2019, inter alia , provides for the following, namely-*

**xx --- xx --- xx**

*(f) to amend sub-section (1) of Section 31 of the Code to clarify that the resolution plan approved by the adjudicating authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities;”*

29. The IBC facilitates economic rehabilitation of the corporate debtor,

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<sup>16</sup> See: *Ghanashyam Mishra (Supra)* and *Swiss Ribbons (Supra)*.



enabling it to service its debts, thereby enhancing the reliability of the credit market. Importantly, the Code prioritizes the interests of all stakeholders, including the corporate debtor, by shielding it from its past management and potential liquidation threats. This focus on revitalization over mere credit recovery segregates the debtor's interests from those of its previous promoters or managers, underscoring the IBC's object as a protective, not adversarial, mechanism in the resolution process. This legislative framework is designed to return the corporate debtor to viability, benefiting the broader economic ecosystem. The objective of IBC is to streamline and expedite the insolvency resolution process, safeguard the value of assets, promote entrepreneurship, and ensure the equitable treatment of all stakeholders. This is achieved by prioritizing the quick resolution of insolvency cases to prevent erosion of asset value due to protracted litigation. The 2019 amendment explicitly makes the approved resolution plan binding on governmental entities, affirming that all creditors, including government bodies with statutory dues, are to adhere to the terms set forth in the resolution plan. This reinforces the principle that the resolution plan, once approved, supersedes all previous claims and entitlements, thereby facilitating a fresh start for the debtor under new management, free from past liabilities and encumbrances. Therefore, the Court remains unconvinced with the Respondent's construal of the observations of the NCLT in deciding concessions to the corporate debtor in respect of their obligations to the Respondent.

**Standing of the impugned decision in the context of the resolution plan**

30. An approved resolution plan is a critical document. It encapsulates all



pertinent details in the information memorandum prepared by Resolution Professional, equipping the Resolution Applicant with a clear understanding of potential liabilities. This facilitates the formulation of a plan that not only addresses these liabilities, but also revitalizes the corporate debtor, ensuring its operational continuity. The legislative framework mandates that once the resolution plan receives approval from the Adjudicating Authority, signifying its compliance with the criteria set forth in Section 30(2) of the IBC, it becomes binding on all stakeholders. This approval is designed to pre-empt any unforeseen claims against the Successful Resolution Applicant, thereby allowing them to commence operations afresh, unaffected by past encumbrances. The overarching intent is to ensure that the Applicant starts on a clean slate, guided solely by the terms of the resolution plan.<sup>17</sup>

31. Under the framework of the IBC, all claims against the corporate debtor must be clearly delineated and adjudicated by the Resolution Professional during the CIRP. It is beyond dispute that the resolution plan, once approved by the Adjudicating Authority, carries binding legal force on all stakeholders. This binding nature of the resolution plan is designed to establish finality and certainty to the insolvency process, thereby preventing any further disputes or claims that could undermine the successful revival of the corporate debtor as a going concern.

32. Therefore, the observations contained in the impugned decision dated 22<sup>nd</sup> May, 2024 are required to be analysed in the context of the resolution plan approved on 20<sup>th</sup> March, 2023 and Section 31(1) of the IBC. Section 31(1), as discussed above, underscores that a resolution plan, once ratified

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<sup>17</sup> Refer: *Ghanashyam Mishra (Supra)*.



by the Adjudicating Authority, must absolve the corporate debtor of past liabilities, enabling the Successful Resolution Applicant to commence operations unencumbered by previous debts. Thus, excluding the Petitioner from participating in tenders on the basis of prior dues attributable to the corporate debtor, contradicts the fundamental tenets of the IBC. This decision overlooks the fact that primary goal of the IBC is the rejuvenation of the corporate debtor, enabling a revival free from the encumbrances of past liabilities, thereby allowing the entity to operate as a competitive entity in the marketplace. By requiring the settlement of these past dues as a precondition for tender participation, the Respondent not only undermines the statutory framework and purpose of the IBC, but also imposes an unreasonable restriction that potentially stifles competition and innovation in the sector. Such demands for pre-resolution liabilities, post the approval and implementation of a resolution plan, are inconsistent with the doctrine of ‘fresh start’ under the IBC.

33. As a result, the claims of Rs. 92,25,20,000/- and Rs. 9,21,44,029/- cannot be considered as pending or active against the new management of the Petitioner. Hence, the Respondent does not have the standing to impose penalties or claim dues from the Petitioner’s new management based on past liabilities arising against the erstwhile management. Imposing such claims or restricting the Petitioner’s participation in tenders based on these extinguished or unapproved claims would contradict the principles of the IBC, which aims to provide a fresh start to the corporate debtor. Such actions would be deemed unreasonable, arbitrary, and in violation of the spirit of the IBC, thus, infringing Article 14 of the Constitution of India, which ensures equality before the law.





### **CONCLUSION AND DIRECTIONS**

34. The resolution framework, as noted above, intends to balance the interests of all stakeholders, including creditors, by ensuring that they are bound by the finalized resolution plan. As such, the Respondent, who is a creditor within its context, is obligated to adhere to the stipulations of the resolution plan as approved on 20<sup>th</sup> March, 2023, which mandates an interpretation and application of the IBC as per its intent and statutory mandate. By holding the Petitioner accountable for liabilities that have been legally extinguished, the Respondent has failed to adhere to the statutory mandate of the IBC and the broader objectives of insolvency resolutions. The insistence on clearing past dues contradicts the rehabilitative intent and purpose of the IBC, calls for judicial intervention.

35. In light of the above, the impugned decision dated 22<sup>nd</sup> May, 2024, issued by the Respondent, stipulating that the Petitioner remains ineligible to participate in coal mine auctions until outstanding dues to the Petitioner are cleared, cannot sustain.

36. Accordingly, the present writ petition is allowed and the impugned decision dated 22<sup>nd</sup> May, 2024 is set aside. The Petitioner shall be eligible to participate in the coal mine auctions.

37. With the above directions, the present petition is disposed of along with the pending applications.

**SANJEEV NARULA, J**

**JULY 26, 2024***as/nk*