IN THE HIGH COURT OF ORISSA AT CUTTACK

W.P.(C) No.1497 of 2024 : (A)
W.P.(C) No.2304 of 2024 : (B)
AND
W.P.(C) No.2307 of 2024 : (C)

In the matter of applications under Articles 226 & 227 of the Constitution of India, 1950.

(A) In W.P.(C) No.1497 of 2024 .... ***Petitioner***

Orissa Manganese & Minerals Limited (Formerly Orissa Manganese & Minerals Private Limited), a company incorporated under the provisions of the Companies Act, 1956 having its registered office at IPICOL House, 3rd Floor, Annex Building, Janapath, Bhubaneswar-751022.

-Versus-

1. State of Odisha, represented through its Principal Secretary, Department of Steel & Mines; .... ***Opp. Parties***

2. Director of Mines, Odisha, Heads of Department Building, Bhubaneswar; and

3. Deputy Director of Mines, Koira Circle, Koira, District-Sundergarh

(B) In W.P.(C) No.2304 of 2024 .... ***Petitioner***

Orissa Manganese & Minerals Limited (Formerly Orissa Manganese & Minerals Private Limited), a company incorporated under the provisions of the Companies Act, 1956 having its

registered office at IPICOL House, 3rd Floor, Annex Building, Janapath, Bhubaneswar-751022.

-Versus-

1. State of Odisha, represented by its Principal Secretary, Department of Steel & Mines; .... ***Opp. Parties***

2. Director of Mines, Odisha, Heads of Department Building, Bhubaneswar;

3. Deputy Director of Mines, Koira Circle, Koira, District-Sundergarh; and

4. Sub-Registrar, Bonai, Sundergarh

(C) <u>In W.P.(C) No.2307 of 2024</u> .... ***Petitioner***
Orissa Manganese & Minerals Limited (Formerly Orissa Manganese & Minerals Private Limited), a company incorporated under the provisions of the Companies Act, 1956 having its registered office at IPICOL House, 3rd Floor, Annex Building, Janapath, Bhubaneswar-751022.

-Versus-

1. State of Odisha, represented by its Principal Secretary, Department of Steel & Mines; .... ***Opp. Parties***

2. Director of Mines, Odisha, Heads of Department Building, Bhubaneswar; and

3. Deputy Director of Mines, Koira Circle, Koira, District-Sundergarh

Appeared in this case by Hybrid Arrangement (Virtual/Physical Mode):

For Petitioner - Mr.Susanta Kumar Dash, S.P. Sarangi, D.K. Das & P.K. Dash (Advocates in W.P.(C) Nos.1497 & 2304 of 2024)

Mr.Susanta Kumar Dash, S.P. Sarangi, S.N. Mallick & D.K. Das

(Advocates in W.P.(C) No.2307 of 2024)

For Opp. Parties- Mr.Gajendranath Rout, (Additional Standing Counsel in three W.Ps)

CORAM
MR. JUSTICE D.DASH
MR. JUSTICE V. NARASINGH
Date of Judgment : 01.10.2024

D.Dash,J. Since the common issue in all these writ petitions (A, B & C) concerns with the validity of the demands raised against the Petitioner-Company, i.e., Orissa Manganese & Minerals Limited (OMML), which is registered under the Companies Act, 1956, having its Registered Office at IPICOL House, Bhuabneswar in the District-Khurda, Odisha in view of the approval of the Resolution Plan by the National Company Law Tribunal (for short, 'the NCLT') under the Insolvency and Bankruptcy Code, 2016 (hereinafter called as the 'I & B Code'), were heard together on

consent of the learned counsels for the parties for their disposal by common judgment.

2. The Petitioner, in all these three writ petitions, challenge the demands, which are subject matter of each of them as would be detailed in the paragraphs to follow; on identical grounds in relying upon the judgment in the case of ***Ghanashyam Mishra & Sons Private Limited -V- Edelweiss Asset Reconstruction Company Limited; (2021) 9 SCC 657***, which has been relied upon in the judgments passed by this Court in cases of ***Ferro Alloys Corporation Limited -V- State of Odisha & others; W.P.(C) No.20286 of 2020 decided on 10.12.2021, M/s.Sree Metaliks Limited -V- State of Odisha; W.P.(C) No.8259 of 2019 decided on 21.06.2021*** order dated 08.12.2022 passed in case of ***Adhunik Metaliks Limited -V- State of Odisha & Others; W.P.(C) No.1553 of 2022 decided on 21.06.2021*** and batch.

It is stated that the demands, which have been impugned in these writ petitions are in clear violation of the provisions contained in I & B Code and the Rules as well as the Regulations made thereunder.

BACKGROUND FACTS:-

3. The State Bank of India (hereinafter referred to as the 'SBI'), being the Financial Creditor, filed an application under Section 7 of I & B Code read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016

against the Corporate Debtor (Orissa Manganese and Minerals Limited-OMML). The said application numbered as CP(IB) No.371/KB/2017, being filed before the Adjudicating Authority, i.e., the National Company Law Tribunal (NCLT), Kolkata Bench, Kolkata, was admitted by order dated 03.08.2017 initiating the Corporate Insolvency Resolution Process (in short, hereinafter referred to as 'the CIRP') in declaring a moratorium and public announcement as stated in section 14 of the I & B Code. That date when the NCLT passed the order is the Insolvency Commencement date.

Mr.Sumit Binani was appointed as the Interim Resolution Professional (IRP) for ascertaining the particulars of the Creditors and convening a Committee of Creditors (CoC) for evolving a Resolution Plan. Said appointment of IRP was confirmed by the CoC in its meeting on 04.09.2017. The IRP as the Resolution Professional (RP) thus continued the process inviting applications by issuing advertisements as per the provisions of I & B Code read with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (hereinafter in short, "the Insolvency Resolution Process Regulations"). The initial period of CIRP, being one hundred and eighty (180) days as provided in sub-section (1) of section 12 of the I & B Code, on 29.01.2018 at the request of the CoC, the RP moved an application for extension of CIRP period and that was allowed

by ninety (90) days more as provided under section sub-section 2 of section 12 of the I & B Code extending the period of CIRP till 29.04.2018.

Responding to the invitation for Expression of Interest (EOI) three Resolution Plans were received from prospective Resolution Applicants by the RP; one from the Edelweiss Asset Reconstruction Company Limited (hereinafter referred to 'EARC'), another from Orissa Mining Private Ltd., (OMPL) and the third one from Ghanshyam Mishra and Sons Private Ltd., (hereinafter referred to as 'GMSPL'). The CoC in its 8th Meeting held on 14.03.2018 declared EARP as the H-1 bidder. But EARP failed to satisfy CoC in the negotiation. Therefore, the Resolution Plan submitted by the EARP was rejected in the 9th Meeting of the CoC held on 31.03.2018. The CoC then sat for negotiation with GMSPL (H-2 bidder). That Resolution Plan of GMSPL was also found to be unacceptable. In such situation, the CoC in its 10th Meeting held on 03.04.2018 took a decision to annul the existing process and initiate the process afresh in inviting Resolution Plans only from the applicants who had earlier expressed their interest. Communication in that regard being made with those Applicants, who had earlier submitted their EOI, three Resolution Plans were received from EARP, GMSPL and SREI Infrastructure Finance Limited (hereinafter referred to as "SIFL"). These three Resolution Plans were taken up for consideration by the CoC in its 11th

Meeting held on 13.04.2018. Undertaking the exercise of evaluation of the Resolution Plans, then the CoC rated the GMSPL as the H-1 bidder. The CoC thereafter held further negotiations with the GMSPL. After several rounds of negotiations, the Resolution Plan of the GMSPL was considered by the CoC for its approval. Finally in the 12th Meeting held on 31.04.2018, the CoC unanimously took a decision to convene a meeting of the CoC on 25.04.2018 at 6 p.m. for voting on the Resolution Plan so proposed by the GMSPL. As the CoC found that the Resolution Plan submitted by the GMSPL meets all the requirements as contained in sub-section-2 of section 30 of the I & B Code, the same was placed for voting before the Members of the CoC.

The Resolution Plan came to be approved on 25.04.2018 by more than 89.23% voting share of Financial Creditors of the Corporate Debtor (OMML).

3.1 In view of the developments as above, a Company Application bearing No.3-A (ID No.402-KB-2018) came to be filed by the RP before the NCLT for approval of the Resolution Plan submitted by the GMSPL, which had been approved by the CoC by more than 89.23% of the voting share of the Financial Creditor of the Corporate Debtor (OMML) as noted above.

3.2. When that matter was thus placed before the NCLT for consideration for approval, the EARC filed two applications; the

first one (CA(IB) NO.398/KB/2018) for rejection of the Resolution Plan approved by the CoC in seeking direction to the CoC to reconsider their Resolution Plan; whereas in the second one (CA(IB) NO.470/KB/2018), challenge was made to the decision of the RP in not admitting their claim on the strength of Corporate Guarantee provided by the Corporate Debtor (OMML) against the take out facility provided to Adhunik Power and Natural Resolutions Limited (APNRL), being a sister concern of the Corporate Debtor (OMML) in violation of Regulation 13 & 14 of the Insolvency Resolution Process Regulations'. The prayer was for rejection of the Resolution Plan and in the alternative, direction to the successful Resolution Applicant, i.e., GMSPL before the CoC to undertake to pay the full amount due and payable under deed of Corporate Guarantee and further direction protecting the rights of the lenders of M/s.APNRL as pledgee.

3.3. The third application (CA (IB) No.509/KB/2018) came to be filed by the District Mining Officer, Department of Mining and Geology, Jharkhand under sub section 5 of section 60 of the I & B Code challenging the non-admission of the claim to the tune of Rs.93,51,91,724/- (Rupees Ninety Three Crore Fifty One Lakh Ninety One Thousand Seven Hundred Twenty Four) & Rs.760,51,00,000/- (Rupees Seven Hundred Sixty Crore Fifty One Lakh) as per Form-B submitted before the RP.

3.4. The NCLT, by a detailed order dated 22.06.2018 dismissed both the applications; first one CA(IB) No.398/KB/2018 and the second one:-CA(IB) No.470/KB/2018) filed by EARC. The third application:- CA(IB) No.509/KB/2018) filed by the District Mining Officer, Department of Mining & Geology, Jharkhand was also dismissed.

The NCLT, by its final order, approved the Resolution Plan, which had been duly approved by the CoC by more than 89.23% voting share in terms of the provision of section 31 (1) of the I & B Code as binding upon the Corporate Debtor, its employees, members, creditors, co-ordinators and other stake holders involved in the Resolution Plan with further order that the Revival Plan of the Company in accordance with the approved Resolution Plan shall come into force with immediate effect and the moratorium order passed under section 14 of the I & B Code shall cease to have the effect. The RP at the same time was directed to forward all the records relating to the conduct of the CIRP and the Resolution Plan to the Insolvency and Bankruptcy Board of India for being recorded on the Data Base.

3.5. On that very date, i.e. 22.06.2018, the application numbered as CA(IB) No.471/KB/2018 filed by the Workers' Union of the Patmunda Manganese Mines of the Corporate Debtor-OMMPL for realization of wages and for issuing certain directions to the RP was also dismissed.

3.6. Another application under sub section 5 of section 60 of the I & B Code numbered as CA(IB) No.391/KB/2018 filed by SREI Equipment Finance Limited, one of the Financial Creditors of the Corporate Debtor-OMMPL challenging the distribution of upfront payment payable under the Resolution Plan to the Financial Creditors of the Corporate Debtor too was dismissed on 22.06.2018.

3.7. The EARC, being aggrieved by the order dated 22.06.2018 passed by the NCLT, carried Company Appeal (AT) (Insolvency) Nos. 437/2018 and 444/2018 before the National Company Law Appellate Tribunal, New Delhi (hereinafter referred to as "NCLAT"). The Company Appeal (AT) (Insolvency) No.437/2018 was against the rejection of claims of EARC as Financial Creditor and thereby its non-inclusion in CoC whereas the Company Appeal (AT) (Insolvency) No.444/2018 related to the grievance against the RP and CoC that they had erroneously held the plan of GMSPL to be better than that of EARC

Another Company Appeal (AT) (Insolvency) No.500/2018 was filed by Sundargarh Mines & Transport Workers Union on behalf of the workmen of the Corporate Debtor. One more Company Appeal (AT) (Insolvency) No.438/2018 had been filed by one Deepak

Singh, an employee of APNRL in claiming the dues towards the salary etc.

3.8. The NCLAT, by its judgment and order dated 23.04.2019, disposed of those Appeals in holding as under:-

> "**(a)** The NCLAT had rightly rejected the Application by EARC; however, the rejection of the claim for the purpose of collating & making it part of the 'Resolution Plan' will not affect the right of the Appellant EARC to invoke the Bank Guarantee against the Corporate Debtor in case the Principal Borrower failed to pay the debt amount, the 'Moratorium' period had come to an end;
>
> **(b)** The Resolution Plan submitted by GMSPL was a better one than the one submitted by the EARC and other Applicant and there was no illegality in accepting the Resolution Plan on GMSPL;
>
> **(c)** As regards the grievance that the RP ignored the rightful wages, statutory dues and other benefit of around 1476 workmen after the period of moratorium, it would be open for the persons to move before a Civil Court or to move an application before the Court of competent jurisdiction against the Corporate Debtor; the Sundergarh Mine and Transport Workers' Union may move before the Civil Court or a Court of competent jurisdiction and may file an application before the Labour Court for appropriate reliefs in favour of the workmen concerned or against the Corporate Debtor, if they have actually worked and had not been

taken care in the Resolution Plan;

(d) No ground as is permissible under sub-section (3) of Section 61 of I & B Code is made out and such relief is thus not grantable and the Appellant therein (Deepak Singh) may move the appropriate forum for appropriate relief." **(Emphasis Supplied)**

3.9. The GMSPL, being aggrieved by said observations, as underlined above, made by the NCLAT as regards the claims advanced by the Appellants before it, which though were not included in the Resolution Plan, but as per the observations could be agitated before other forums, carried the Appeal to the Hon'ble Supreme Court.

3.9.1. It was contended from the side of the GMSPL before the Hon'ble Supreme Court that the commercial wisdom of CoC in accepting and rejecting the Resolution Plan, being the paramount, the interference is only warranted within limited parameters of judicial review as are available under the statute.

It was next contended that once the Adjudicating Authority (NCLT) approves the Resolution Plan, it shall be binding on everyone including Corporate Debtor and its employees, members, creditors including the Central Government, any State Government or any Local Authority, to whom a debt is owed in respect of the payment of dues arising under any law for the time

being in force, as also the guarantors and other stake-holders, involved in the Resolution Plan. Therefore, once a Resolution Plan is accepted, if any additional liability is placed on the shoulder of the successful Resolution applicant, the entire Plan would become unworkable, resulting in frustration of the very purpose of the enactment in serving its avowed objective as to the revival of the Corporate Debtor and the total Resolution Plan, in view of the additional liability, being unworkable.

Reliance therein was placed on the following judgments of the Hon'ble Supreme Court:-

> "(a). K. Sashidhar -V- Indian Overseas Bank; (2019) 12 SCC 150;
>
> (b). Essar Steel (India) Limited (CoC) -V- Satish Kumar Gupta; (2020) 8 SCC 531;
>
> (c). Maharashtra Seamless Limited -V- Padmanabhan Venkatesh; (2020) 11 SCC 467;
>
> (d). Karad Urban Cooperation Bank Limited -V- Swwapnil Bhingardevay; (2020) 9 SCC 729; and
>
> (e). Kalpraj Dharamshi -V- Kotak Investment Advisors Limited."

3.9.2. The above contentions were countered in contending that the order of the NCLAT has only

reserved the right of EARC to invoke the Corporate Guarantee in its favour and on account of the erroneous conduct of the proceedings by RP and CoC, the EARC has been put in a precarious condition; being not recognized as a Financial Creditor and thereby, having no nomination to CoC and participation in finalization of the proceedings as also to encash the Bank Guarantee and as such, the EARC would be left high and dry when any subsequent claim of EARC would be rendered futile, if the order of the NCLAT is not maintained as it is.

4. The Hon'ble Supreme Court, by its judgment dated 13.04.2021, allowed the Appeals (Civil Appeal No.8129 of 2019) filed by the successful Resolution applicant, i.e., GMSPL in finally holding and declaring that the Respondents therein are not entitled to recover any claims or claim any debt owed to them from the Corporate Debtor (OMML) accruing prior to the transfer date, i.e., Plan Effective Date with further observation that the consequence thereof shall follow and this has been reported in (2021) 9 SCC 657.

5.

(A). <u>W.P.(C) No.1497 of 2024</u>

The Petitioner in this writ petition, has prayed for

quashment of the letters dated 02.09.2017 (Annexures-3 & 4) issued by the Deputy Director of Mines, Koira Circle, Koira, the Opposite Party No.3 seeking recovery of Rs.3,08,83,673.24 (Rupees Three Crore Eight Lakhs Eighty Three Thousand Six Hundred Seventy Three and Twenty Four Paise) and Rs.80,65,67,970.62 (Rupees Eighty Crore Sixty Five Lakhs Sixty Seven Thousand Nine Hundred Seventy and Sixty-Two Paise). The raised demands are towards the compensation amount payable under section 21 (5) of the Mines And Minerals (Development And Regulation) Act, 1957 (in short, the 'MMDR Act') in respect of Bhanjikusum Manganese Mine and Orahuri Manganese Mine by the Petitioner-Company.

B. <u>W.P.(C) No.2304 of 2024</u>

In this writ petition, as above, the Petitioner has prayed for quashment of the letters dated 24.09.2019 and 21.07.2020 issued by the Deputy Director of Mines, Koira Circle, Koira Division in respect of Pattamunda mines demanding payment of differential stamp duty and registration fee relating to the document executed on 29.05.2015 amounting to Rs.34,54,363.50 (Rupees Thirty Four Lakh Fifty Four Thousand Three Hundred Sixty Three and Fifty Paise) and Rs.13,81,745.40 (Rupees Thirteen Lakh Eighty One Thousand Seven Hundred Forty Five and Forty Paise) respectively. It is further

prayed that the letter dated 19.12.2023 issued by the Sub-Registrar, Bonai demanding payment of the differential stamp duty and registration fee amounting to Rs.2,18,60,269/- (Rupees Two Crore Eighteen Lakh Sixty Thousand Two Hundred Sixty Nine) in relation to a document executed by 29.05.2015 in respect of Pattamunda mines; letter dated 19.12.2023 issued by the Sub-Registrar, Bonai seeking recovery of Rs.84,03,780/- (Rupees Eighty Four Lakh Three Thousand Seven Hundred Eighty) in relation to the document executed on 29.05.2015 in respect of Orahuri/Nuagaon mines and letter dated 29.12.2023 issued by the Sub-Registrar, Bonai seeking recovery of Rs.43,44,848/- (Rupees Forty Three Lakh Forty Four Lakh Eight Hundred Forty Eight) towards deficit stamp duty and registration free in respect of Kusumdihi Mines to be paid by the Petitioner-Company, be quashed.

The judgment as regards the differential stamp duty and registration fee in view of the enhancement of production level through modification of the mining plan approved by the Indian Bureau of Mines (IBM), is in pursuance of the direction rendered in case of **Common Cause –V- Union of India; (2017) 9 SCC 499** and matters connected thereto.

C. **W.P.(C) No.2307 of 2024**

The Petitioner, in this writ petition, has prayed for quashment of the following letters of demand:-

> "**(I)**
> Letters dated (a) 05.05.2018, (b) 09.07.2018, (c) 16.01.2019, (d) 16.01.2019, (e) 22.01.2019, (f) 07.09.2019, (g) 03.02.2020 and (h) 03.02.2020 issued by the Deputy Director of Mines, Koira Circle, Koira Division in respect of Orahuri Mines;
>
> **II.**
> Letters dated (a-1) 28.11.2018, (b-1) 16.01.2019, (c-1) 16.01.2019, (d-1) 07.09.2019, (e-1) 03.02.2020 and (f-1) 03.02.2020 in respect of Kusumdihi Mines under Annexure-6 series;
>
> **III.**
> Letters dated (a'-I)28.11.2018, (b'-I) 16.01.2019 and (c'-I) 07.09.2019 in respect of Pattamunda Mines under Annexure-7 series; and
>
> **IV.**
> Letters dated (a''-I) 05.05.2018, (b''-I), (c''-I) 28.11.2018, (c''-I) 16.01.2019, (d''-II) 16.01.2019, (e-''I) 22.01.2019, (f''-II) 03.02.2020 and (h''-II) 03.02.2020 in respect of Bhanjikusum Mines under Annexure-8 series."

It is pertinent to indicate at this stage that the demands under all the letters mentioned in (I) relate to 'Dead Rent' and 'Surface Rent' except the one under letter (a'-I) which is towards Royalty as stated therein indicating the period. The demands under letters shown

in (II) also concern with 'Dead Rent' & 'Surface Rent' whereas those demands under III (a'-I) is towards Royalty. Similarly, the demand under letters (IV-b''-I) relates to Royalty when others are for Dead Rent and Surface Rent.

SUBMISSIONS

6. Mr.S.K.Dash, learned Counsel appearing for the Petitioner of all these writ petitions submitted that as held by the Hon'ble Supreme Court in a series of decisions that once the Adjudicating Authority (NCLT) approves the Resolution Plan subject to the orders passed in the Appeals, it shall be binding on everyone including the Corporate Debtor and its employees, members, creditors including the Central Government or State Government or any Local Authority to whom a debt is owed in respect of the payment of dues arising under any law for the time being in force, guarantors and other stake-holders, involved in the Resolution Plan. He further submitted that once the Resolution Plan is finally accepted, if any additional liability is thrust upon the Resolution Plan and the successful Resolution Applicant is asked to bear the said liability, the entire plan would become unworkable, resulting in the frustration of the very purpose of the enactment i.e. revival of the Corporate Debtor and that

would defeat the objective sought to be achieved under the I & B Code.

He next submitted that the Resolution Plan, in the present case, as submitted by the GMSPL, having been approved by the CoC, then by the NCLT and had been confirmed by the NCLAT. And certain observations of the NCLAT while disposing the Appeals as regards realization of few items of debts through other modes, have also been quashed by the Hon'ble Supreme Court, by its judgment dated 13.04.2021 passed in the Appeal filed by the very successful Resolution Applicant, i.e., in case of ***Ghanashyam Mishra & Sons Private Limited through the Authorized Signature -V- Edelweiss Asset Reconstruction Company Limited through the Director and Others; (2021) 9 SCC 567.*** He, therefore, submitted that if any additional liability as demanded under the letters, which have been impugned in these writ petitions are maintained then the total Resolution Plan itself shall be wholly unworkable and everything would suddenly come to a grinding halt, putting the clock back to its original position as it was prior to the date of admission of the Company Petition (I.B.) No. 371/KB/2017 filed by the SBI.

He submitted that amounts, which are presently demanded under the letters as referred to in three writ petitions, in so far as those relate to the period prior to the date of acceptance of the Resolution Plan filed by the GMSPL, i.e., the Plan Effective date, as per the provision of sub-section 1 of section 31 of the I & B Code stood extinguished in perpetuity.

Learned counsel for the Petitioner also drew the attention of this Court to Para-102.2 of the judgment of the Hon'ble Supreme Court in case of ***Ghanashyam Mishra and Sons (Supra),*** wherein the Apex Court has held that 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. He next submitted that the demand raised by the District Mining Officer, Department of Mining and Geology, Jharkhand, which having been so raised was not admitted by the RP and considered by the CoC, has also failed when the NCLT rejected the said application (CA (IB) No.509/KB/2018) filed by the District Mining Officer, Department of Mining and Geology, Jharkhand and that has attained finality.

In support of the aforesaid submissions, learned counsel for the Petitioner very much relied upon the decision in case of the Appeal filed by the present successful Resolution Applicant, i.e, ***Ghanashyam Mishra & Sons***

Private Limited* (Supra),** which have been relied upon by this Court in the judgment passed in the case of ***Ferro Alloys Corporation Limited (Supra), M/s.Sree Metaliks Limited (Supra) and Adhunik Metaliks Limited (Supra).

Stand of The State

6.1. Mr.G.N.Rout, learned Additional Standing Counsel for the Opposite Parties placed reliance on certain observations of the Hon'ble Supreme Court in the case ***Common Cause (Supra)*** and particularly to the directions issued in Para-188 thereof. He submitted that the liability arising out of the said judgment of the Hon'ble Supreme Court was fully binding on the Corporate Debtor and that if the Authorities do not proceed to recover the dues as directed by the Hon'ble Supreme Court therein, they would be acting contrary to the decision of the Hon'ble Supreme Court and as such liable for the legal consequence. He further placed reliance upon the decision of the Hon'ble Supreme Court in case of **Lalit Kumar Jain -V- Union of India and Others; T.C. (Civil) No.245 of 2020 disposed of on 21.05.2021.** It was submitted that the demands, as advanced vide letters, which have been challenged in all these writ petitions, are all on the basis of that decision in case of ***Common Cause (Supra)*** towards compensation under section 21(5) of the MMDR Act and other incidental and ancillary demands flowing therefrom. Therefore, according to him, neither the RP nor the CoC nor the NCLT and NCLAT had the

authority or competency to hold the demand of the above amount raised by the State Authorities in compliance of the directive of the Hon'ble Supreme Court in saying that the same are not enforceable in view of the approval of the Resolution Plan.

He, therefore, contended that the impugned demands can never be said to have been extinguished even by the approval of the Resolution Plan attaining finality by the judgment of the Hon'ble Supreme Court and thus are valid and enforceable.

Referring to the decision in the case of ***Lalit Kumar Jain (Supra);*** he contended that in that case, the Hon'ble Supreme Court has observed that the sanction of the Resolution Plan and finality imparted to it by section 31 does not operate as a discharge of the liability.

7. Bearing in mind the submission, as above, we have carefully gone through the written notes of submission filed by the Petitioner-Company and the Opposite Parties and have given our anxious and thoughtful consideration over the same.

Analysis and Reasons:-

8. The I & B Code is a complete Code in itself which deals with situations on a holistic perspective concerning a Company and all stake holders, irrespective of whether the provisions pertain to the Resolution Plan or the Liquidation Process. It is a self sufficient Code and provides a complete mechanism in respect of Corporate Insolvency Resolution and Liquidation.

The I&B Code is divided into two halves. Firstly, sections 1 to 32 are concerned with reconstruction of the Company by Resolution Process. Secondly, Section 33 onwards deal with the Liquidation, if Resolution plan/s is/are not received or rejected and thus Resolution is not possible.

9. The core issue being the alleged outstanding dues owed by the Petitioner-Company to the Opposite Parties; it is not disputed that majority of the aforementioned demands pertain to the period prior to the approval of the Resolution Plan of the Petitioner by the NCLT by order dated 22.06.2018.

Be it stated at this stage, that the part of the demands as have been made under the letters referred to in prayers as at **I(b), I(c), I(d), I(f) and I(h); II(e-I), (d-I), (e-I), (f-I); and III (b'-I), (c'-I) of W.P.(C) No.2307 of 2024** as indicated in the foregoing paragraph-5(C), are prior to the approval of the Resolution Plan by the NCLT, which has attained finality by the order of the Hon'ble Supreme Court, as aforestated and a part relates to the period thereafter which have been demanded in a composite manner.

Furthermore, when the demands which from the subject matter of the writ petition as at (A) relate to the compensation under section 21(5) of the MMDR Act; those of the writ petition at 'B' concern with the deficit stamp duty and registration fees which have been calculated basing upon the excessive mining of minerals

extracted in violation of the provisions of MMDR Act read with MC Rules and as approved by the IBM for the purpose for which compensation under section 21(5) has been demanded. The dead rent and surface rent are based on the area over which illegal extraction is said to have been done by the Corporate Debtor, which area was beyond the leased area. Thus, all these demands spring from the directions given in case of ***Common Cause (Supra).***

10. At this juncture, it would be pertinent to refer to the relevant Regulations of The Insolvency and Bankruptcy Board of India Insolvency Resolution Process for Corporate Persons for better appreciation.

Regulations 6, 7, 10, 12 and 13 of Insolvency Regulations governing and regulating the Insolvency Resolution Process for Corporate Persons, which bear importance for addressing the issue and those read as under:

> "6. **Public announcement—**
>
> (1) An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional.
>
> Explanation: 'Immediately' means not later than three days from the date of his appointment.
>
> (2) The public announcement in sub-regulation (1) shall: (a) be in Form A of the Schedule; (b) be published-- (i) in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor and

any other location where in the opinion of the interim resolution professional, the corporate debtor conducts material business operations; (ii) on the website, if any, of the corporate debtor; and (iii) on the website, if any, designated by the Board for the purpose, (ba) state where claim forms can be downloaded or obtained from, as the case may be; (bb) offer choice of three insolvency professionals identified under Regulation 4-A to act as the authorised representative of creditors in each class; and (c) provide the last date for submission of proofs of claim, which shall be fourteen days from the date of appointment of the interim resolution professional.

(3) The applicant shall bear the expenses of the public announcement which may be reimbursed by the committee to the extent it ratifies them.

7. **Claims by operational creditors.-**

(1) A person claiming to be an operational creditor, other than workman or employee of the corporate debtor, shall submit claim with proof to the interim resolution professional in person, by post or by electronic means in Form B of the Schedule:

Provided that such person may submit supplementary documents or clarifications in support of the claim before the constitution of the Committee.

(2) The existence of debt due to the operational creditor under this regulation may be proved on the basis of-

(a) the records available with an information utility, if any; or

(b) other relevant documents, including-- (i) a contract for the supply of goods and services with corporate debtor; (ii) an invoice demanding payment for the goods and services supplied to the corporate debtor; (iii) an

order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any; (iv) financial accounts. (v) copies of relevant extracts of Form GSTR-1 and Form GSTR-3B filed under the provisions of the relevant laws relating to Goods and Services Tax and the copy of e-way bill wherever applicable: Provided that provisions of this sub-clause shall not apply to those creditors who do not require registration and to those goods and services which are not covered under any law relating to Goods and Services Tax.

10. **Substantiation of claims.-**

The interim resolution professional or the resolution professional, as the case may be, may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim.

xxx xxx xxx xxx

12. **Submission of proof of claims.-**

(1) Subject to sub- regulation (2), a creditor shall submit claim with proof on or before the last date mentioned in the public announcement.

(2) A creditor, who fails to submit claim with proof within the time stipulated in the public announcement, may submit the claim with proof to the interim resolution professional or the resolution professional, as the case may be, on or before the ninetieth day of the insolvency commencement date.

(3) Where the creditor in sub-regulation (2) is a financial creditor under Regulation 8, it shall be included in the committee from the date of admission of such claim: Provided that such inclusion shall not affect the validity of any decision taken by the committee prior to such inclusion.

12-A. Updation of claim:-A creditor shall update its claim as and when the claim is satisfied, partly or fully, from any source in any manner, after the insolvency commencement date.

13. **Verification of claims:-**

(1) The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the insolvency commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it.

(2) The list of creditors shall be- (a) available for inspection by the persons who submitted proofs of claim; (b) available for inspection by members, partners, directors and guarantors of the corporate debtor or their authorized representatives; (c) displayed on the website, if any, of the corporate debtor; (ca) filed on the electronic platform of the Board for dissemination on its website: Provided that this clause shall apply to every corporate insolvency resolution process ongoing and commencing on or after the date of commencement of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Fifth Amendment) Regulations, 2020; (d) filed with the Adjudicating Authority; and (e) presented at the first meeting of the committee."

11. The scenario that on the basis of aforesaid recapitulation of facts, would indicate that after the public announcement with regard to the initiation of the CIRP after admission of the application under section 7 of the I & B Code read with Rule 4 of

the Insolvency and Bankruptcy (Application of Adjudicating Authority) Rules, 2016 adhering to the provisions contained in section 13 & 15 of the I & B Code read with Regulation 6 of the Insolvency Resolution Process Regulations was made, these demands, which are raised under the letters impugned in the writ petition were not advanced and claimed by the Opposite Parties, being the Operational Creditor.

The Counter filed by the Opposite Parties is conspicuously silent on that score. It is no where stated in the said Counter that the Opposite Parties had made any response after the adjudication of moratorium for the purposes referred to in section 14 of the I & B Code and public announcement of the initiation of CIRP calling for submission of the claims under section 15 of the I & B Code appointing IRP as laid down in section 16 of the I & B Code and other actions undertaken in that regard following the Insolvency Resolution Process Regulations.

12. In the case at hand, the RP, having followed these Regulations having placed the received EOI from the players coming to take over the management and charge of the Corporate Debtor (OMML); the CoC has finally approved that Resolution Plan of the GMSPL.

As regards the demand for the period prior to the Plan Effective Date, we find the Approve Resolution Plan (ARP), in the given case, talks about the Statutory as well as the Government

dues, which fall within the definition of Operational Debt as indicated in sub-section 21 of section 5 of I & B Code.

First of all, it is seen that the basis of the Resolution Plan indicated are the followings:-

> "*Payment of Insolvency Resolution Process cost in priority to the payment of other debts of the Corporate Debtor;
>
> * Repayment/treatment of debts of Operational Creditors (not less than the amount to be paid to the Operational Creditors in the event of liquidation of Corporate Debtor as per provisions of I & B Code;
>
> * Management of affairs of Corporate Debtor after approval of Resolution Plan; and
>
> * Implementaiton and supervision of the Resolution Plan."
>
> The above basis are on the review of the information provided by the RP without verification of the reliability or accuracy of information obtained from the RP."

The Resolution Applicant mentioning the above Key Challenges standing before it, has noted there in Section (A)(III)(1), as under:-

> ''**1. Liabilities under MMDR Act.**
> The Government of Orissa and Government of Jharkhand have raised demands purportedly under MMDR Act for an amount of Rs.930.00 crore."

It would be apposite at this stage to take note of the fact that Government of Jharkhand, having raised the issue before the NCLT, as stated in the aforesaid paragraphs has failed to succeed

in keeping the demand alive in ensuring its payment from the Petitioner-Company, which too has attained finality, being carried uptil the Hon'ble Supreme Court.

In Section-C of the Resolution Plan in sub-clause-'d' of Clause-5 of Para-IV, the followings find mention and those run as under:-

> ''**(b) Statutory Liabilities**
> All other statutory liabilities existing as at the date of approval of the Resolution Plan by NCLT other than workmen dues as above, even if not recorded in books of accounts including any penalties or fines outstanding to my government or regulator (including demands raised under MMDR Act) or under any few for the time being in force would be subject to a 100% write-off on the basic amount with nothing paid towards overdue, penal or compound interest or any other additional charges by whatever named called.
>
> Neither OMML nor the Resolution Applicants shall be required shall be required to bear any other liabilities prior to the date of approval of the resolution plan by the NCLT including but not limited to tax liability (which includes interest tax liability and direct tax liability) and contingent liabilities."

Sub-clause (e) & (f) of Clause 5 of Para-IV are also relevant for the purpose and thus are extracted hereinbelow:-

> "**(e) Operational Creditors (other than workmen and employees) who have submitted claims.**
>
> As per Regulation 38(1) of the CIRP Regulations, Liquidation Value due to Operational Creditors shall be brought in priority 30 days; in the instant case this value

is NIL. However, the Resolution Applicants propose to infuse an amount of Rs.7.40 crore in OMML/relevant SPVs. Operational Creditors shall be paid as and when deemed fit in line with the commercial objectives of the Resolution Applicant;

(f) Payments to Creditors submitting claims after approval of the Resolution Plan:

The IBC and the CIRP Regulations entitle all creditors of a corporate debtor to submit their claims to the IP on or prior to the date on which the Resolution Plan gets approved by the CoC. As a result, in the event any creditors of OMML, who does not submit its claims to the IP prior to the date on which this resolution plan is approved by the CoC, then in such case, the said creditor will not be entitled to receive any payments under this resolution plan. The unclaimed amounts shall stand extinguished and become NIL.

The Resolution Plan of the successful Resolution Applicant (GMSPL) containing all these above has been approved by the NCLT as regards that section when all the Resolution Plan, the NCLT has clearly noted that the reorganization of business dealt with the Resolution Plan under section-c do not violated any of the provision of the I & B code or the Regulation 37 of the Insolvency Regulation Process Resolution and the Corporate Debtor's business is to be as a going concern and that the Corporate Debtor and Special Purpose Vehicle (SPV) shall continue as an on going concern basis and operations of the Company will be continued in the normal course of business upon implementation of the proposed plan."

13. The Resolution Plan of the GMSPL has been approved by the CoC and then the NCLT, which has attained finality after being carried to the Hon'ble Supreme Court in confirming the order of

the NCLT in toto and quashing all those observations made by the NCLAT with regard to recovery of certain dues owed by the Corporate Debtor from the Petitioner-Company through other modes approaching other forms.

14. The Opposite Parties are the State and its Officials, who are squarely bound by the ARP. In the Counter affidavit filed from the side of the Opposite Parties, they do not state anywhere that the claim in respect of the demands raised under the letters, which have been impugned in the writ petitions had ever been raised during the process at any time, i.e., CIRP or even thereafter, before NCLT or NCLAT. Their categorical stand is that since the foundation of later demands is on account of the direction in the judgment of the Hon'ble Supreme Court in case of ***Common Cause (Supra);*** the same has nothing to do with CIRP and it has to be shouldered by the successful Resolution applicant, who chose to manage and run the Corporate Debtor-Company.

15. The position of law in this regard, has been well settled in ***Committee of Creditors of Essar Steel (I) Ltd. v. Satish Kumar Gupta; (2020) 8 SCC 531.*** The Hon'ble Supreme Court has held that under section 31(1) of the I & B code, once the CoC approves the Resolution Plan, it binds all the stake holders. It has been

observed therein referring to section 31 of the I & B Code, which runs thus:-

> It has been observed that:-
>
> "Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were."
>
> It has been further held 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 of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove."

16. The complete answer lies in the case of **Committee of Creditors of Esser Steel (Supra)**. The Hon'ble Supreme Court, considering all the earlier decisions including **Maharasthra Seamless Ltd., Vrs. Padmanavan Venketesh & Others (2020) 11 SCC 467** and **Innovative Industries Vrs. ICICI Bank, (2018) 1 SCC 407** and again referring to the earlier decision in the case of **K. Sashidhar Vrs. Indian Overseas Bank (2019) 12 SCC 150** and discussing all those judgments, has held as under:-

> "57. It could thus be seen, that the legislature has given paramount importance to the commercial wisdom of CoC and the scope of judicial review by Adjudicating

Authority is limited to the extent provided under Section 31 of I&B Code and of the Appellate Authority is limited to the extent provided under subsection (3) of Section 61 of the I&B Code, is no more res integra.

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

59. The resolution plan submitted by successful resolution applicant is required to contain various provisions, viz., provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in 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 I&B Code also casts a duty on RP to examine, that the resolution plan does not contravene any of the provisions of the law for the time being in force.

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

61. All these details are required to be contained in the information memorandum so that the resolution applicant is aware, as to what are the liabilities, that he may have to face and provide for a plan, which apart from satisfying a part of

such liabilities would also ensure, that the Corporate Debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stake-holders 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."

17. Reliance was placed on the decision of the Hon'ble Apex Court in case of this very successful Resolution Plan Applicant in ***Ghanashyam Mishra and Sons Private Limited (supra).***

The Supreme Court in the aforesaid case after an extensive review of the I&B Code and various decisions rendered thereunder, observed that once the Resolution Plan is approved, it becomes binding on the stakeholders including creditors. Relevant paragraphs of the judgement read as under:

"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 subsection (2) of Section 30, it shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is, revival

of the Corporate Debtor and to make it a running concern.

66. The resolution plan submitted by successful resolution applicant is required to contain various provisions, viz., provision for payment of insolvency resolution process costs, provision for payment of debts of operational creditors, which shall not be less than the amount to be paid to such creditors in the event of liquidation of the Corporate Debtor under section 53; or the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in subsection (1) of section 53, whichever is higher. The resolution plan is also required to provide for the payment of debts of financial creditors, who do not vote in favour of 62 the resolution plan, which also shall not be less than the amount to be paid to such creditors in accordance with subsection (1) of section 53 in the event of a liquidation of the Corporate Debtor. Explanation 1 to clause (b) of subsection (2) of Section 30 of the I&B Code clarifies for the removal of doubts, that a distribution in accordance with the provisions of the said clause shall be fair and equitable to such creditors. The resolution plan is also required to provide for the management of the affairs of the Corporate Debtor after approval of the resolution plan and also the implementation and supervision of the resolution plan. Clause (e) of subsection (2) of Section 30 of I&B Code also casts a duty on RP to examine, that the resolution plan does not contravene any of the provisions of the law for the time being in force.

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

assets and liabilities of the Corporate Debtor, including the details about the creditors and the amounts claimed by them. It is also required to contain the details of guarantees that have been given in relation to the debts of the corporate debtor by other persons. The details with regard to all material litigation and an ongoing investigation or proceeding initiated by Government and statutory authorities are also required to be contained in the information memorandum. So also the details regarding the number of workers and employees and liabilities of the Corporate Debtor towards them are required to be contained in the information memorandum.

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 subsection (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 the case of Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra).

"107. For the same reason, the impugned NCLAT judgment [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 65 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 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 the case of Pr. Commissioner of Income Tax vs. Monnet Ispat and Energy Ltd.10 , in view of provisions of Section 238 of 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.

72. However, in Civil Appeal arising out of Special Leave Petition (Civil) No.11232 of 2020, Writ Petition (Civil) No.1177 of 2020 and Civil Appeals arising out of Special Leave Petition (Civil) Nos. 71477150 of 2020, the issue with regard to the statutory claims of the State Government and the Central Government in respect of the period prior to the approval of resolution plan by NCLT, will have to be considered.

73. Vide Section 7 of Act No.26 of 2019 (vide S.O. 2953(E), dated 16.8.2019 w.e.f. 16.8.2019), the following words have been inserted in Section 31 of the I&B Code. "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"

74. As such, with respect to the proceedings, which arise after 16.8.2019, there will be no difficulty. After the 67 amendment, any debt in respect of the payment of dues arising under any law for the time being in force including the ones owed to the Central Government, any State Government or any local authority, which does not form a part of the approved resolution plan, shall stand extinguished....

79. In the Rajya Sabha debates, on 29.7.2019, when the Bill for amending I&B Code came up for discussion, there were certain issues raised by certain Members. While replying to the issues raised by certain Members, the Hon'ble Finance Minister stated thus:

"IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but largely, yes, it is IBC.

There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan. Criminal matters alone would be proceeded against individuals and not company. There will be no criminal proceedings against successful resolution applicant. There will be no criminal proceedings against successful resolution applicant for fraud by previous promoters. So, I hope that is absolutely clear. I would want all the hon. Members to recognize this message and communicate further that this Code, therefore, gives that comfort to all new bidders. So now, they need not be scared that the taxman will come after them for the faults of the earlier promoters. No. Once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company. So, that is very clear. (emphasis supplied)"

80. It could thus be seen, that in the speech the Hon'ble Finance Minister has categorically stated, that Section 238 provides that I&B Code will prevail in case of inconsistency between two laws. She also stated, that there was question about indemnity for successful resolution applicant and that the amendment was clearly making it binding on the Government. She stated, that the

Government will not make any further claim after resolution plan is approved. So, that is going to be a major sense of assurance for the people who are using the resolution plan. She has categorically stated, that she would want all the Hon'ble Members to recognize this message and 73 communicate further that I&B Code gives that comfort to all new bidders. They need not be scared that the taxman will come after them for the faults of the earlier promoters. She further states, that once the resolution plan is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company.

84. It is clear, that the mischief, which was noticed prior to amendment of Section 31 of I&B Code was, that though the legislative intent was to extinguish all such debts owed to the Central Government, any State Government or any local authority, including the tax authorities once an approval was Granted to the resolution plan by NCLT; on account of there being some ambiguity, the State/Central Government authorities continued with the proceedings in respect of the debts owed to them. In order to remedy the said mischief, the legislature thought it appropriate to clarify the position, that once such a resolution plan was approved by the Adjudicating Authority, all such claims/dues owed to the State/Central Government or any local authority including tax authorities, which were not part of the resolution plan shall stand extinguished.

93. As discussed hereinabove, one of the principal objects of I&B Code is, providing for revival of the Corporate Debtor and to make it a going concern. I&B Code is a complete Code in itself. Upon admission of petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He

is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure, that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the Corporate Debtor is revived and is made an on- going concern. After CoC approves the plan, the Adjudicating Authority is required to arrive at a subjective satisfaction, that the plan conforms to the requirements as are provided in subsection (2) of Section 30 of the I&B Code. Only thereafter, the Adjudicating Authority can Grant its approval to the plan. It is at this stage, that the plan becomes binding on Corporate Debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution Plan. The legislative intent behind this is, to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans, would go haywire and the plan would be unworkable.

94. We have no hesitation to say, that the word "other stakeholders" would squarely cover the Central Government, any State Government or any local authorities. The legislature, noticing that on account of obvious omission, certain tax authorities were not abiding by the mandate of I&B Code and continuing with the proceedings, has brought out amendment so as to cure the said mischief. We therefore hold, that the 2019 amendment is declaratory and clarificatory in nature and therefore retrospective in operation.

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 subsection (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 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."

18. In the present case, therefore, once the Resolution Plan was approved by the NCLT, which attained finality as per the order of the Hon'ble Supreme Court, it is no more open for the Opposite Parties to again raise the demands for the very period covered by the Resolution Plan, which in otherwords to say that no

claim for the period prior to 22.06.2018, the date of approval of the Resolution Plan by the NCLT, i.e., the Plan Effective Date, could have been raised by the Opposite Parties and such demands to the extent as they cover the period up to 22.06.2018 stand automatically extinguished in terms of the Resolution Plan.

19. The observations made above in the case of the Appeal filed by the present successful Resolution Applicant in the case of **Ghanashyam Mishra & Sons (Supra)** provide the answer to the submission of the learned Counsel for the State that the dues arising out of the judgment of the Hon'ble Supreme Court in case of **Common Cause (Supra)** were not specifically dealt with in the ARP.

In fact, we find that the NCLT, in its order of approval of the Resolution Plan passed on 22.06.2018, has taken note of the same in paragraphs 58-68. As pointed out, in the Appeal filed by the present successful Resolution Applicant i.e. **Ghanashyam Mishra & Sons (Supra)** before the Hon'ble Supreme Court after confirmation of the approved Resolution Plan by CoC by the order/judgment of the NCLT and NCLAT with certain observations as stated earlier; the Hon'ble Court has held that no surprise claims should be flung on the successful Resolution

Applicant. Further the Resolution Applicant should start with fresh slate on the basis of the Resolution Plan approved. In other-words, upon approval of the Resolution Plan, the Company-OMML no more stands as the Corporate-Debtor and it is only under the legal obligation as being in the management of the Company (OMML) strictly in terms of the Resolution Plan.

20. The decision in the case of **Lalit Kumar Jain (Supra),** was obviously in the peculiar facts and circumstances of the case. A careful reading being given to the said judgment, it reveals that the subject matter therein was the challenge to the vires and validity of a notification dated 15.11.2019 issued by the Central Government along with some reliefs touching the validity of the Insolvency & Bankruptcy (Application to Adjudicating Authority for Insolvency Resolution Process for Personal Guarantors to Corporate Debtors) Rules, 2019 issued on 15.11.2019 & likewise validity of the Regulations made by the Insolvency & Bankruptcy Board of India on 20.11.2019 were also the subject matter of the challenge. However, in course of submission, the learned counsel for the parties therein, confined their challenge to the notification dated 15.11.2019 issued by the Central Government. It was contended that the notification issued by the Central Government was in exercise of excess delegation, having no authority– legislative or statutory and to impose condition on the enforcement of the I & B Code. It was further contended as a

corollary, that the enforcement of sections 78, 79, 94-187 etc. in terms of the said notification under the I & B Code in relation to personal guarantors is ultra vires the power granted to the Central Government.

The conclusion in the said case reads as under:-

> "111. In view of the above discussion, it is held that approval of a resolution plan does not ipso facto discharge a personal guarantor (of a corporate debtor) of her or his liabilities under the contract of guarantee. As held by this court, the release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the surety/guarantor of his or her liability, which arises out of an independent contract.
>
> 112. For the foregoing reasons, it is held that the impugned notification is legal and valid. It is also held that approval of a resolution plan relating to a corporate debtor does not operate so as to discharge the liabilities of personal guarantors (to corporate debtors). The writ petitions, transferred cases and transfer petitions are accordingly dismissed in the above terms, without order on costs."

21. The ratio as above in the aforesaid decision thus does not come to the aid of the Opposite Parties in support of the demands in view of the distinguishable factual settings of the present case before us wherein the Petitioner is challenging the demands made by the Opposite Parties, which pertain to the period prior to the Plan Effective Date.

We, therefore, are of the considered view that said decision in case of ***Lalit Kumar Jain (Supra)*** would not come to the rescue of the Opposite Parties in so far as the demands raised pertaining to the period prior to the Plan Effective Date.

22. As pointed out in **Ghanashyam Mishra & Sons Private Limited (Supra),** the approval of the Resolution Plan, no surprise claim should be flung on the Resolution Plan as the Resolution Plan provides the Corporate Debtor's business on a clean state to the successful Resolution Applicant. Further, the Resolution Applicant "should start with fresh slate on the basis of the Resolution Plan approved shunning its prior status as 'Corporate Debtor'.

23. Thus, in terms of section 31 of the I & B Code, the above ARP is binding on all creditors including Central Government and State Government. All those impugned demands raised against the Petitioner-Company pertaining to the period prior to the Plan Effective Date, i.e. 22.06.2018 stand automatically extinguished in terms of Approved Resolution Plan (ARP). In other words, the demands to the extent, which cover the period up to 22.06.2018 are thus unsustainable in law.

24. For all the aforesaid, while setting aside the impugned letters under which the demands have been raised against the Petitioner-Company, which are the subject matters of all the three

writ petitions, this Court directs the Opposite Parties to revise the demands by limiting it to the period from 22.06.2018 onwards and raise the same afresh as against the Petitioner-Company in accordance with law so as to be satisfactorily discharged.

25. The writ petitions are disposed of in the terms of above and in the facts and circumstances, without cost.

(D. Dash),
Judge.

I agree.

(V. Narasingh),
Judge.

Basu