CGHC010173152014 2026:CGHC:31056

NAFR

HIGH COURT OF CHHATTISGARH AT BILASPUR

WPC No. 1074 of 2014

- Jsw Steel Limited, Having Its Registered Office At Jsw Centre, Bandra Kurla Complex, Bandra East, Mumbai -51 And Work Office At Village Naharpali, Tehsil Kharsiya, District Raigarh Chhattisgarh.

--- Petitioner

versus

1. State Of Chhattisgarh Through The Secretary, Department Of Energy, Mantralaya, Mahanadi Bhawan, New Raipur Distt. Raipur C.G., Chhattisgarh
2. The Chief Electrical Inspector Government Of Chhattisgarh, Department Of Energy, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur Raipur C.G. , District : Raipur, Chhattisgarh
3. The Special Secretary, Government Of Chhattisgarh, Department Of Energy, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur Raipur C.G., District : Raipur, Chhattisgarh
4. Directorate Of Industries Udyog Bhawan, Ravigram Telibandha, Ring Road No. 1, Raipur C.G. , District : Raipur, Chhattisgarh
5. The Chief General Manager District Industry And Trade Centre Raigarh C.G. , District : Raigarh, Chhattisgarh
6. Chhattisgarh State Power Distribution Company Ltd. Through Suprintending Engineer Raigarh C.G. , District : Raigarh, Chhattisgarh
7. The Collector Raigarh Distt. Raigarh C.G., District : Raigarh, Chhattisgarh

--- Respondent(s)

WPC No. 1005 of 2014

- M/s Mivaan Steel Limited, Having Its Registered Office At Jsw Centre, Bandra Kurla Complex, Bandra East, Mumbai -51 And Work, Office At Village Kururd, Chandkhuri Marg, Mandir Hasaud, Raipur, Chhattisgarh. 4920101

---Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Energy, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, Dist Raipur, Cg, Chhattisgarh
2. The Chief Electrical Inspector, Govt. Of C.G., 36/437, Ist Floor, Near Phawara Chowk, Byron Bazar, Raipur, Dist Raipur, Cg, District : Raipur, Chhattisgarh
3. Special Secretary Energy Governemnt Of Chhattisgarh, Dks Bhawan, Mantralaya, Raipur, Distt Raipur, Cg, District : Raipur, Chhattisgarh
4. The Collector, Raipur, Distt Raipur, Cg, District : Raipur, Chhattisgarh

--- Respondent(s)

WPC No. 1007 of 2014

- M/s Mivaan Steel Limited Having Its Registered Office At Jsw Centre, Bandra Kurla Complex, Bandra East, Mumbai-51 And Work Office At Village Kurud, Chandkhuri Marg, Mandir Hasaud, Raipur, Chhattisgarh 492101.

---Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Energy, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, Dist Raipur, Cg, Chhattisgarh
2. The Chief Electrical Inspector, Govt. Of C.G., 36/437, Ist Floor, Near Phawara Chowk, Byron Bazar, Raipur, Dist Raipur, Cg, District : Raipur, Chhattisgarh
3. Special Secretary Energy Governemnt Of Chhattisgarh, Dks Bhawan, Mantralaya, Raipur, Distt Raipur, Cg, District : Raipur, Chhattisgarh
4. The Collector, Raipur, Distt Raipur, Cg, District : Raipur, Chhattisgarh

--- Respondent(s)

WPC No. 1008 of 2014

- M/s Mivaan Steel Limited, Having Its Registered Office At Jsw Centre, Bandra Kurla Complex, Bandra East, Mumbai-51 And Work Office At Village- Kurud, Chandkhuri Marg, Mandir Hasaud, Raipur, Chhattisgarh, 492101.

---Petitioner

Versus

1. State Of Chhattisgarh Through Secretary, Department Of Energy, Mahanadi Bhawan, Naya Mantralaya, Naya Raipur, Dist Raipur, Cg, Chhattisgarh

2. The Chief Electrical Inspector, Govt. Of C.G., 36/437, Ist Floor, Near Phawara Chowk, Byron Bazar, Raipur, Dist Raipur, Cg, District : Raipur, Chhattisgarh

3. Special Secretary Energy Governemnt Of Chhattisgarh, Dks Bhawan, Mantralaya, Raipur, Distt Raipur, Cg, District : Raipur, Chhattisgarh

4. The Collector, Raipur, Distt Raipur, Cg, District : Raipur, Chhattisgarh

--- Respondent

<u>WPC No. 620 of 2015</u>

- M/s Mivaan Steel Limited Having Its Registered Office Of Jsw Centre, Bandra Kurla Complex, Bandra East, Mumbai-51 And Work Office At Village Kurud, Chandkhuri Marg, Mandir Hasaud, Raipur, Chhattisgarh 492001.

---Petitioner

Versus

1. State Of Chhattisgarh Through The Secretary, Department Of Energy, Mantralaya, Mahanadi Bhawan, Naya Raipur, Chhattisgarh
2. The Collector District Raipur, Chhattisgarh
3. The Chief Electrical Inspector Government Of Chhattisgarh, 36/437, 1st Floor, Near Phawara Chowk, Byron Bazar, Raipur, 492101 Chhattisgarh
4. Directgorate Of Industries Udyog Bhawan, Ravigram, Telibandha, Ring Road No.1, Raipur, Chhattisgarh
5. The Chief General Manager District Industries And Trade Centre, Raigarh, Chhattisgarh
6. Chhattisgarh State Power Distribution Company Limited, Through Superintending Engineer, Raipur, Chhattisgarh

--- Respondent(s)

<u>WPC No. 1103 of 2015</u>

- Jsw Steel Ltd. Formerly Know As Monnet Ispat Limited A Company Incorporated Under The Companies Act 1956, Having Its Registered Office Monnet Marg Mandir Hasaud Raipur 49200101 Chhatisgarh Corporatie Office At 11, Masjid Moth, Greater Kailash Part - Ii New Delhi, Delhi

---Petitioner

Versus

1. Union Of India Through The Secretary Ministry Of Coal, Government Of India Shastri Bhawan, New Delhi 1100001 India , Delhi

2. State Of Chhattisgarh Through Secretary Of Revenue Ministry Of Finance Government Of Chhattisgarh Mantralaya Mahanadi Bhawan Naya Raipur Chhattisgarh , District : Raipur, Chhattisgarh
3. State Of Chhattisgarh Secretary Department Of Geology And Mining Ministry Of Commerce And Industries Government Of Chhattisgarh Mantralaya Mahanadi Bhawan Naya Raipur Chhattisgarh , District : Raipur, Chhattisgarh
4. The Collector Mining Division Collectorate Premises, Chakradhar Nagar Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh
5. District Mining Officer Collectorate Premises Ost Chakradhar Nagar Raigarh Chhattisgarh , District : Raigarh, Chhattisgarh

--- Respondent(s)

(WPC No. 1103/2015, WPC No. 620/2015)

For Petitioners : Mr. Ashish Shrivastva, Senior Advocate assisted by Mr. Rahul Ambast, and Mr. Ashutosh Shrivastava, Advocates
For Union of India : Mr. Abhishek Banjare, C.G.C.
For State : Mr. Vinay Pandey, Deputy Advocate General

(WPC No. 1074/2014, WPC No. 1005/2014, WPC No. 1007/2014, WPC No. 1008/2014)

For Petitioners : Mr. Ankit Singhal, Advocate along with Mr. Ashish Mittal, Advocate
For State : Mr. Vinay Pandey, Deputy Advocate General
For Respondent No. 6 (WPC No. 1074/2014) : Mr. Anumeh Shrivatava, Advocate

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Hon'ble Shri Justice Rakesh Mohan Pandey

Order on Board

21.07.2026

1. Since common question of law and facts are involved in these batch of writ petitions, therefore, they are heard together and being disposed of by common order.

2. In **WPC No. 1074 of 2014**, the petitioner has challenged demand of electricity duty dated 28.05.2014 to the tune of Rs. 41 crores. The facts are like that on 01.02.1990, the promoters of the petitioners had floated and incorporated a Public Limited Company under the provisions of the Companies Act, 1956 for setting up in phases Integrated Steel Plant in

Raipur District as well as in Naharpalli, Raigarh. On 21.05.2001, a MOU was executed between the petitioner and the State of Chhattisgarh, wherein, the petitioner proposed to invest a sum of Rs. 1160 crores, which included setting-up of sponge iron plant at Raigarh with investment of 590 crore. On 31.12.2001, the State of Chhattisgarh published the Industrial Policy 2001-2006 and assured the companies to provide incentives/benefits and exemptions. On 25.06.2002, the State of Chhattisgarh through Department of Energy issued a notification regarding total exemptions to all new Mega Projects established with a capital investment in a fixed assets exceeding 100 crores from payment of electricity duty for a period of 15 years. A notification was issued on 03.11.2005 with regard to Industrial Policy 2004-2009, it also provided exemption from electricity duty to large industry and very large industry for 15 years from date of commencement of commercial production. The petitioner commenced commercial production on 28.03.2006. The Chhattisgarh State Eelctricity Board sanctioned 8500 KVA for the petitioner's Sponge Iron Plant at Naharpalli, District Raigarh. Vide notification dated 09.07.2008 earlier notification dated 03.11.2005 was superseded. Subsequently, the petitioner approached the respondent authorities claiming therein exemption. On 20.05.2013, the Chief General Manager of District Industry and Trade Center Raigarh forwarded the petitioner's application along with documents to the Directorate of Industries. Vide order dated 02.09.2013 and 06.09.2013 respondent No. 4/Directorate of Industries recommended grant of exemption certificate to the petitioner. Prior to said date, an order of recovery of Rs. 2.6 crores towards electricity duty was issued by the Collector, Raigarh on 02.07.2013. On 09.01.2014, electricity demand of Rs. 41.03 cores was issued against the petitioner. Representations were made, and thereafter, on 29.05.2014 petitioner received notice dated 28.05.2014 issued by Chhattisgarh State Power Distribution Company Limited demanding electricity duty, thereafter, this petition was filed.

3. In **WPC No. 1005/2014, WPC No. 1007/2014, WPC No. 1008/2014**, the petitioners establishes Turbine Generator/ Power Plant thermal power plant at Mandir Hasoud, Raipur and agreements were entered in alike manner, and subsequently, demand notices were issued to the petitioner to make payment of electricity duties and those demand notices have been challenged by filing these petitions.

4. In **WPC No. 620 of 2015**, the petitioner establishes Diesel Generator Set and agreements were entered in alike manner, and subsequently, demand notices were issued to the petitioner to make payment of electricity duties and those demand notices have been challenged by filing this petition.

5. The facts of **WPC No. 1103 of 2015** are that Government of Chhattsigarh leased out lands for extraction of Coal at Gare Palma and Milupara, District Raigarh in favour of the petitioner for period of 30 years vide order dated 07.06.2002. A notification was published in the official gazette on 10.05.2012. On 24.09.2014, lease-deed was cancelled. In the year 2015, Coal Block was again allocated to the petitioner, and subsequently, on 06.04.2015 demand of cess and taxes from the petitioner for sum of Rs. 2.13 cores were made. The petitioner made a representation before the respondent authorities on 01.05.2015. An interim order was passed by Writ Court on 27.01.2016 in favour of the petitioner as under :-

> "In the meanwhile, it is directed that the respondents

> shall only recover that amount of cess or royalty which is payable by the petitioner after adjusting the entire amount of royalty or cess, which is payable by the petitioner in accordance with law and in terms of notification dated 10.05.2012."

6. Learned Senior Advocate, during course of argument, would submit that during pendency of these petitions, National Company Law Tribunal (NCLT), Mumbai Bench passed an order to initiate Corporate Insolvency Resolution Process(CIRP) under the Insolvency and Bankruptcy Code, 2016 (for short "Code, 2016") vide order dated 18.07.2017 by admitting Company Petition No. 1139/I&BP/NCLT/Mah/2017 filed by the State Bank of India under the provisions of Section 7 of the Code, 2016. On 01.03.2018, a Resolution Plan was submitted by resolution applicants and as per Resolution Plan various matters pending pan-India were extinguished. Objection were invited by the learned NCLT with regard to Resolution Plan. Notice inviting claim was published in the newspapers, namely, Business Standard(Both English and Hindi) Delhi Edition, the Pioneer (English, Raipur Edition), Business Standard (Hindi, Raipur Edition). The public announcement was also published on the website of the Corporate Debtor, copies was published in the month of July, 2017 and last date for submission of proof of claims was 7th August, 2017. It is an admitted fact the objections were not raised with regard to Resolution Plan and the learned NCLT passed order dated 24.07.2018, which attained finality as per Code, 2016. The learned NCLT vide its order dated 24.07.2018 described the petitioners' litigations have been extinguished in the manner as provided under 1 (e) (iv) of part I of the Resolution Plan as no claim was made by the respondent authorities.

7. Perusal of Annexure 4 part A of the Resolution Plan approved by the learned NCLT would make it clear that the writ petitions pending in the High Court of Chhattisgarh were duly considered and numbers of the writ petitions find place in the said document.

8. Mr. Ashish Shrivastava, Senior Advocate would contend that as no objection or claim was raised by the respondent authorities before the NCLT afterward and their claims have already been held to be extinguished by learned NCLT vide Annexure 4 part A, the demands made by respondent authorities are not sustainable in the eyes of law. It is also argued that thereafter the respondents failed to assail the order passed by the learned NCLT by filing an appeal before the Appellate Tribunal, and thus, the order passed by the NCLT attained finality. He would submit that the issue involved in the present case is no more *res-integra*, even case of one of the petitioners, namely, Monnet Ispat & Energy Ltd. was considered by the Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra and Sons Private Limited through the Authorised Signatory vs. Edelweiss Asset Reconstruction Company Limited through the Director and Others*** reported in ***(2021) 9 SCC 657.***

9. On the other hand, Mr. Vinay Pandey, Dy. Advocate General, Mr. Abhishek Banjare, Central Government Counsel and Mr. Anumeh Shrivastava, Advocate appearing for respective respondents would oppose the submissions. They would contend that the Industrial Policy 2001-2006 was not applicable in the cases of the petitioners as they started commercial production after 2006 and the relevant provision for policy of 2004-2009 was in existence at that point of time. Therefore, the petitioners are not entitled to

claim exemption. He would submit that these petitions deserve to be dismissed.

10. I have heard learned counsel for the parties and perused the documents placed on record.

11. Admittedly, learned NCLT, Mumbai Bench initiated Corporate Insolvency Resolution Process(CIRP) vide order dated 18.07.2017, thereafter, Resolution Plan was submitted. Objections were invited and Notice inviting claim was widely published in various newspapers in the month of July, 2017. The respondents herein failed to submit their claims before the learned NCLT within prescribed period though writ petitions were pending before the High Court of Chhattisgarh. As the claims were not submitted by the respondent authorities before the learned NCLT, therefore, those claims were held to be extinguished by the learned NCLT in its Resolution Plan. The final order was passed by the NCLT on 24th July, 2018. The respondents herein further failed to assail said order or Resolution Plan by filing an appeal before the Appellate Tribunal, and thus, the order attained finality.

12. The Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra*** (supra) considered the facts of M/s Monnet Ispat & Energy Ltd. at para 26, which is one of the petitioners herein and discussed the procedure of I&B Code in paragraphs 61, 62, 64 & 66 and recorded its conclusion in paragraph No. 102. The Hon'ble Supreme Court held that once a resolution plan is duly approved by the Adjudicating Authority under sub section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and binding upon the Corporate Debtor and its employees, members, creditors, including

the Central Government, any State Government or any local authority, guarantors and other stakeholders. It is further held that 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. Relevant paragraphs are reproduced herein-below :-

> "**61.** It could thus be seen, that one of the dominant objects of I&B Code is to see to it, that an attempt has to be made to revive the Corporate Debtor and make it a running concern. For that, a resolution applicant has to prepare a resolution plan on the basis of the Information Memorandum. The Information Memorandum, which is required to be prepared in accordance with Section 29 of I&B Code along with Regulation 36 of the Regulations, is required to contain various details, which have been gathered by RP after receipt of various claims in response to the statutorily mandated public notice. The resolution plan is required to provide for the payment of insolvency resolution process costs, management of the affairs of the Corporate Debtor after approval of the resolution plan; the implementation and supervision of the resolution plan. It is only after the Adjudicating Authority satisfies itself, that the plan as approved by CoC with the requisite voting share of financial creditors meets the requirement as referred to in subsection (2) of Section 30, grants its approval to it. It is only thereafter, that the said plan is binding on the Corporate Debtor as well as its employees, members, creditors, guarantors and other stakeholders

involved in the resolution Plan. The moratorium order passed by the Adjudicating Authority under Section 14 shall cease to operate, once the Adjudicating Authority approves the resolution plan. The scheme of I&B Code therefore is, to make an attempt, by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the Corporate Debtor as a going concern until a resolution plan is drawn up. Once the resolu tion plan is approved, the management is handed over under the plan to the successful applicant so that the Corporate Debtor is able to pay back its debts and get back on its feet.

62. This Court recently in the case of Kalpraj Dharamshi and another vs. Kotak Investment Advisors Ltd. and another (2021 10 SCC 401) has, in detail, considered the provisions of Sections 30 and 31 of I&B Code, the Bankruptcy Law Reforms Committee (BLRC) Report of 2015 and the judgments of this Court in the case K. Sashidhar (2019 12 SCC 150), Committee of Creditors of Essar Steel India Limited through Authorised Signatory vs. Satish Kumar Gupta & Ors. (2020 8 SCC 531) and Maharashtra Seamless Limited vs. Padmanabhan Venkatesh and others (2020 11 SCC 467) and observed thus: (Kalpraj Dharamshi case (supra))

“153. It is thus clear, that the Committee was of the view, that for deciding key economic question in the bankruptcy process, the only one correct forum for evaluating such possibilities, and making a decision was, a creditors committee, wherein all financial creditors have votes in proportion to the magnitude of debt that they hold. The BLRC has observed, that laws in India in the past have brought arms of the Government (legislature, executive or judiciary) into the question of bankruptcy process. This has been strictly avoided by the Committee and it has been provided, that the decision with regard to appropriate disposition of a defaulting firm, which is a business decision, should only be made by the creditors. It has been observed, that the evaluation of proposals to keep the entity as a going concern, including decisions about the sale of business or units, restructuring of debt, etc., are required to be taken by the Committee of the Financial Creditors. It has been provided, that the choice of the solution to keep the entity as a going concern will be voted upon by CoC and there are no constraints on the proposals that the resolution professional can present to CoC.

154. The requirements, that the resolution professional needs to confirm to the Adjudicator, are:

154.1 that the solution must explicitly require the repayment of any interim finance and costs of the insolvency resolution process will be paid in priority to other payments;

154.2 that the plan must explicitly include payment to all creditors not on the creditors committee, within a reasonable period after the solution is implemented; and lastly

154.3 the plan should comply with existing laws governing the actions of the entity while implementing the solutions.

155. The Committee also expressed the opinion, that there should be freedom permitted to the overall market, to propose solutions on keeping the entity as a going concern. The Committee opined, that the details as to how the insolvency is to be resolved or as to how the entity is to be revived, or the debt is to be restructured will not be provided in the I&B Code but such a decision will come from the deliberations of CoC in response to the solutions proposed by the market.

156 This Court in the case of K. Sashidhar (supra) observed thus:

"32. Having heard the learned counsel for the parties, the moot question is about the sequel of the approval of the resolution plan by CoC of the respective corporate debtor, namely, KS&PIPL and IIL, by a vote of less than seventy-five per cent of voting share of the financial creditors; and about the correctness of the view taken by NCLAT that the percentage of voting share of the financial creditors specified in Section 30(4) of the I&B Code is mandatory. Further, is it open to the adjudicating authority/appellate authority to reckon any other factor other than specified in Sections 30(2) or 61(3) of the I&B Code as the case may be which, according to the resolution applicant and the stakeholders supporting the resolution plan, may be relevant?" (emphasis supplied)

157. After considering the judgment of this Court in the case of Arcelormittal India Private Limited v. Satish Kumar Gupta (supra) and the relevant provisions of the I&B Code, this court further

observed in K. Sashidhar (supra) thus:

"52. As aforesaid, upon receipt of a "rejected" resolution plan the adjudicating authority (NCLT) is not expected to do anything more; but is obligated to initiate liquidation process under Section 33(1) of the I&B Code. The legislature has not endowed the adjudicating authority (NCLT) with the jurisdiction or authority to analyse or evaluate the commercial decision of CoC much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors. From the legislative history and the background in which the I&B Code has been enacted, it is noticed that a completely new approach has been adopted for speeding up the recovery of the debt due from the defaulting companies. In the new approach, there is a calm period followed by a swift resolution process to be completed within 270 days (outer limit) failing which, initiation of liquidation process has been made inevitable and mandatory. In the earlier regime, the corporate debtor could indefinitely continue to enjoy the protection given under Section 22 of the Sick Industrial Companies Act, 1985 or under other such enactments which has now been forsaken. Besides, the commercial wisdom of CoC has been given paramount status without any judicial intervention, for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. There is an intrinsic assumption that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. The opinion on the subject matter expressed by them after due deliberations in CoC meetings through voting, as per voting shares, is a collective business decision. The legislature, consciously, has not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the adjudicating authority. That is made non-justiciable." (emphasis supplied)

158. This Court has held, that it is not open to the Adjudicating Authority or Appellate Authority to reckon any other factor other than specified in Sections 30(2) or 61(3) of the I&B Code. It has further been held, that the commercial wisdom of CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the I&B Code. This Court thus, in unequivocal terms, held, that there is an intrinsic assumption, that financial creditors are fully informed about the viability of the corporate debtor and feasibility of the proposed resolution plan. They act on the basis of thorough examination of the proposed resolution plan and assessment made by their team of experts. It has been held, that the opinion expressed by CoC after due deliberations in the meetings through voting, as per voting shares, is a collective business decision. It has been held, that the legislature has consciously not provided any ground to challenge the "commercial wisdom" of the individual financial creditors or their collective decision before the Adjudicating Authority and that the decision of CoC's 'commercial wisdom' is made non justiciable.

159. This Court in Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra) after referring to the judgment of this Court in the case of K. Sashidhar (supra) observed thus:

"64. Thus, what is left to the majority decision of the Committee of Creditors is the "feasibility and viability" of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. As an example, take the case of a resolution plan which does not provide for payment of electricity dues. It is certainly open to the Committee of Creditors to suggest a modification to the prospective resolution applicant to the effect that such dues ought to be paid in full, so that the carrying on of the business of the corporate debtor does not become impossible for want of a most basic and essential element for the carrying on of such business, namely, electricity. This may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, payment being provided to a certain type of operational creditor, namely, the electricity distribution company, out of upfront payment offered by the proposed resolution applicant which may also result in a consequent reduction of amounts payable to other financial and operational creditors. What is important is that it is the commercial wisdom of this majority of creditors which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place." (emphasis supplied)

160. This Court held, that what is left to the majority decision of CoC is the “feasibility and viability” of a resolution plan, which is required to take into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. It has further been held, that CoC is entitled to suggest a modification to the prospective resolution applicant, so that carrying on the business of the Corporate Debtor does not become impossible, which suggestion may, in turn, be accepted by the resolution applicant with a consequent modification as to distribution of funds, etc. It has been held, that what is important is, the commercial wisdom of the majority of creditors, which is to determine, through negotiation with the prospective resolution applicant, as to how and in what manner the corporate resolution process is to take place.

161. The view taken in the case of K. Sashidhar (supra) and Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra) has been reiterated by another three Judges Bench of this Court in the case of Maharashtra Seamless Limited (supra).

162. In all the aforesaid three judgments of this Court, the scope of jurisdiction of the Adjudicating Authority (NCLT) and the Appellate Authority (NCLAT) has also been elaborately considered. It will be relevant to refer to paragraph 55 of the judgment in the case of K. Sashidhar (supra), which reads thus:

“55. Whereas, the discretion of the adjudicating authority (NCLT) is circumscribed by Section 31 limited to scrutiny of the resolution plan "as approved" by the requisite per cent of voting share of financial creditors. Even in that enquiry, the grounds on which the adjudicating authority can reject the resolution plan is in reference to matters specified in Section 30(2), when the resolution plan does not conform to the stated requirements. Reverting to Section 30(2), the enquiry to be done is in respect of whether the resolution plan provides : (i) the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor, (ii) the repayment of the debts of operational creditors in prescribed manner, (iii) the management of the affairs of the corporate debtor, (iv) the implementation and supervision of the resolution plan, (v) does not contravene any of the provisions of the law for the time being in force, (vi) conforms to such other requirements as may be specified by the Board. The Board referred to is established under Section 188 of the I&B Code. The powers and functions of the Board have been delineated in Section 196 of the I&B Code. None of the specified functions of the Board, directly or indirectly, pertain to regulating the manner in which the financial creditors ought to or ought not to exercise their commercial wisdom during the voting on the resolution plan under Section 30(4) of the I&B Code. The subjective satisfaction of the financial creditors at the time of voting is bound to be a mixed baggage of variety of factors. To wit, the feasibility and viability of the proposed resolution plan and including their perceptions about the general capability of the resolution applicant to translate the projected plan into a reality. The resolution applicant may have given projections backed by normative data but still in the opinion of the dissenting financial creditors, it would not be free from being speculative. These aspects are completely within the domain of the financial creditors who are called upon to vote on the resolution plan under Section 30(4) of the I&B Code."

163. It has been held, that in an enquiry under Section 31, the limited enquiry that the Adjudicating Authority is permitted is, as to whether the resolution plan provides:

163.1 the payment of insolvency resolution process costs in a specified manner in priority to the repayment of other debts of the corporate debtor,

163.2 the repayment of the debts of operational creditors in prescribed manner,

163.3 the management of the affairs of the corporate debtor,

163.4 the implementation and supervision of the resolution plan,

163.5 the plan does not contravene any of the provisions of the law for the time being in force,

163.6 conforms to such other requirements as may be specified by the Board.

164. It will be further relevant to refer to the following observations of this Court in K. Sashidhar (supra):

57. …Indubitably, the remedy of appeal including the width of jurisdiction of the appellate authority and the grounds of appeal, is a creature of statute. The provisions investing jurisdiction and authority in NCLT or NCLAT as noticed earlier, have not made the commercial decision exercised by CoC of not approving the resolution plan or rejecting the same, justiciable. This position is reinforced from the limited grounds specified for instituting an appeal that too against an order “approving a resolution plan” under Section 31. First, that the approved resolution plan is in contravention of the provisions of any law for the time being in force. Second, there has been material irregularity in exercise of powers “by the resolution professional” during the corporate insolvency resolution period. Third, the debts owed to operational creditors have not been provided for in the resolution plan in the prescribed manner. Fourth, the insolvency resolution plan costs have not been provided for repayment in priority to all other debts. Fifth, the resolution plan does not comply with any other criteria specified by the Board. Significantly, the matters or grounds— be it under Section 30(2) or under Section 61(3) of the I&B Code —are regarding testing the validity of the “approved” resolution plan by CoC; and not for approving the resolution plan which has been disapproved or deemed to have been rejected by CoC in exercise of its business decision.” [emphasis supplied]

165. It will therefore be clear, that this Court, in unequivocal terms, held, that the appeal is a creature of statute and that the statute has not invested jurisdiction and authority either with NCLT or

NCLAT, to review the commercial decision exercised by CoC of approving the resolution plan or rejecting the same.

166.. The position is clarified by the following observations in paragraph 59 of the judgment in the case of K. Sashidhar (supra), which reads thus:

"59. In our view, neither the adjudicating authority (NCLT) nor the appellate authority (NCLAT) has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors….."

167. This Court in Committee of Creditors of Essar Steel India Limited through Authorised Signatory (supra) after reproducing certain paragraphs in K. Sashidhar (supra) observed thus:

"67…….Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the Committee of Creditors, has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned, the parameters of such review having been clearly laid down in K. Sashidhar"

168. It can thus be seen, that this Court has clarified, that the limited judicial review, which is available, can in no circumstance trespass upon a business

decision arrived at by the majority of CoC.

169. In the case of Maharashtra Seamless Limited (supra), NCLT had approved the plan of appellant therein with regard to CIRP of United Seamless Tubulaar (P) Ltd. In appeal, NCLAT directed, that the appellant therein should increase upfront payment to Rs. 597.54 crore to the “financial creditors”, “operational creditors” and other creditors by paying an additional amount of Rs. 120.54 crore. NCLAT further directed, that in the event the “resolution applicant” failed to undertake the payment of additional amount of Rs. 120.54 crore in addition to Rs. 477 crore and deposit the said amount in escrow account within 30 days, the order of approval of the ‘resolution plan’ was to be treated to be set aside. While allowing the appeal and setting aside the directions of NCLAT, this Court observed thus:

“30. The appellate authority has, in our opinion, proceeded on equitable perception rather than commercial wisdom. On the face of it, release of assets at a value 20% below its liquidation value arrived at by the valuers seems inequitable. Here, we feel the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. Such is the scheme of the Code. Section 31(1) of the Code lays down in clear terms that for final approval of a resolution plan, the adjudicating authority has to be satisfied that the requirement of subsection (2) of Section 30 of the Code has been complied with. The proviso to Section 31(1) of the Code stipulates the other point on which an adjudicating authority has to be satisfied. That factor is that the resolution plan has provisions for its implementation. The scope of interference by the adjudicating authority in limited judicial review has been laid down in Essar Steel [Essar Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta, (2020) 8 SCC 531], the relevant passage (para 54) of which we have reproduced in earlier part of this judgment. The case of MSL in their appeal is that they want to run the company and infuse more funds. In such circumstances, we do not think the appellate authority ought to have interfered with the order of the adjudicating authority in directing the successful resolution applicant to enhance their fund inflow upfront."

170. This Court observed, that the Court ought to cede ground to the commercial wisdom of the creditors rather than assess the resolution plan on the basis of quantitative analysis. This Court clearly held, that the appellate authority ought not to have interfered with the order of the adjudicating authority by directing the successful resolution applicant to enhance their fund inflow upfront.

171 It would thus be clear, that the legislative scheme, as interpreted by various decisions of this Court, is unambiguous. The commercial wisdom of CoC is not to be interfered with, excepting the limited scope as provided under Sections 30 and 31 of the I&B Code."

64. 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.

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 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.

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

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

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

13. In these batch of cases, respondents failed to submit their claims before the learned NCLT within given time. The learned NCLT adjudicated the matter and approved resolution plan vide order dated 24.07.2018, and therefore, in light of the observations made by the Hon'ble Supreme Court in the matter of ***Ghanshyam Mishra*** (supra), the claims of the respondents stood extinguished. Accordingly, all the demand notices issued against the petitioners are hereby quashed.

14. Accordingly, these petitions are hereby **allowed.** Pending Interlocutory Applications stand **disposed of.**

15. Interim relief granted earlier in these petitions are hereby vacated.

Sd/-
(Rakesh Mohan Pandey)
JUDGE

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