IN THE HIGH COURT AT CALCUTTA

CIVIL APPELLATE JURISDICTION

(APPELLATE SIDE)

MAT 944 of 2024
With
CAN 1 of 2024
With
CAN 2 of 2024

Ramsarup Industries Ltd.
-Vs.-
Orissa Metaliks Pvt. Ltd. & Ors.

Before: **The Hon'ble Justice Arijit Banerjee**
&
The Hon'ble Justice Om Narayan Rai

For the Appellant : Mr. S. N. Mookherjee, Sr. Adv.,
Mr. Ratnanko Banerji, Sr. Adv.
Mr. Soumya Majumdar, Sr. Adv.
Mr. N.G. Khaitan, Adv.
Mr. Shounak Mitra, Adv.
Mr. Zulfiqar Ali Alquaderi, Adv.
Mr. Yash Singhi, Adv.
Ms. Akshita Bohra, Adv.

For the Respondent no. 1 : Mr. Ranjan Bachhawat, Sr. Adv.,
Mr. Jishnu Chowdhury, Sr. Adv.
Mr. Raghunath Ghosh, Adv.
Mr. S. Mukherjee, Adv.
Mr. Debrup Bhattacharya, Adv.
Mr. B. Kumar, Adv.
Mr. Aayush Lakhotia, Adv.

For the Union of India : Mr. Ashok Bhowmik, Adv.,
Mr. Sourav Sengupta, Adv.

For Judgment on : 09.09.2026

Arijit Banerjee, J. :-

1. This appeal is directed against a judgment and order dated May 10, 2024, passed by a learned Judge of our Court disposing of a writ petition of the respondent no. 1 herein, being WP No. 10441 of 2024. In the writ petition, under challenge were letters dated April 3, 2024 and April 4, 2024, whereby, the Railway Authorities had sanctioned revival of a Way Leave Permission in favour of the respondent no. 6 in the writ petition being the appellant herein, for constructing and running a water-pipeline under railway property.

Appellant's submission: -

2. Appearing for the appellant, Mr. S. N. Mookherjee, learned Senior Advocate, submitted as follows: -

(i) On July 10, 2007, Ramsarup Lohh Udyog Ltd. was granted a Way Leave Permission by the Railways, for construction of a water-pipeline for usage at its plant in Kharagpur, West Bengal, for 10 years.

(ii) On June 30, 2008, Ramsarup Lohh Udyog Ltd. stood amalgamated with the appellant. All licenses, permissions etc. stood transferred in the name of the appellant.

(iii) In June 2010, the appellant was shut down and all its plants became non-operational.

(iv) On November 7, 2012, the appellant's management made a reference to the Board for Industrial and Financial Reconstruction (in short, 'BIFR') under the Sick Industrial Companies Act, 1985 (in short, 'SICA'), based on the company's audited balance sheet for the year 2011-2012. The reference was registered as Case No. 67/2012.

(v) On February 19, 2014, upon hearing the appellant and its secured financial creditors, the BIFR ordered abatement of the reference in terms of the 3rd proviso to Section 15(1) of SICA.

(vi) The appellant challenged the order of BIFR before the Appellate Authority for Industrial & Financial Reconstruction (in short, 'AAIFR') which set aside the order of BIFR and remanded the matter back to BIFR for reconsideration.

(vii) On November 25, 2016, SICA was repealed and all proceedings before the BIFR/AAIFR stood abated with effect from December 1, 2016. However, any company whose reference was pending before the BIFR/AAIFR at the time of repeal, was permitted to file an application before the National Company Law Tribunal (in short, 'NCLT') within a period of 180 days from the commencement of the Insolvency and Bankruptcy Code, 2016 (in short, 'IBC').

(viii) On December 1, 2016, the IBC came into force.

(ix) On May 2, 2017, an application was made by the respondent no. 1/ writ petitioner, Orissa Metaliks Private Limited (in short, 'OMPL') to the Railways for Road Under Bridge permission.

(x) On May 18, 2017, a resolution was passed by the appellant's Board of Directors for filing an application under Section 10 of the IBC before the NCLT. Such application was filed on May 25, 2017.

(xi) On June 8, 2018, the appellant was admitted to the Corporate Insolvency Resolution Process (in short, 'CIRP') by NCLT.

(xii) On February 1,2019, OMPL obtained a Way Leave Permission for construction of a Road Under Bridge (in short, 'RUB') under the railway track between the stations Girimaidan and Gokulpur on Kharagpur-Medinipur Section of Kharagpur Division, for transportation of vehicles (Route 1).

(xiii) On February 27, 2019, an agreement in respect of Route 1 was executed between the Railway Authorities and OMPL.

(xiv) On September 4, 2019, a resolution plan submitted by a consortium for revival of the appellant herein, was approved by NCLT. Clause 15.13 of the plan provided that all statutory rights, licenses, agreements, registrations or other similar approvals will be valid and in complete force. Clause 15.14 (ii) (b) provided that all consents, licenses, approvals, rights, entitlements, benefits, privileges etc. granted in favour of the appellant, which were in place on the shutdown date shall be deemed to continue without disruption for the benefit of the appellant for a period of 12 months from the completion date or until renewal by the relevant authorities, whichever is later. Therefore, the Way Leave Permission dated July 10, 2007, was still valid and subsisting.

(xv) OMPL had also submitted a resolution plan. While approving the resolution plan of the consortium, NCLT recorded that OMPL's plan stood rejected. OMPL was declared as the H-2 bidder/unsuccessful Resolution Applicant.

(xvi) OMPL had tried to derail the implementation of the consortium's resolution plan by filing applications for liquidation of the appellant company, which had been noted by the NCLAT. Such conduct of the OMPL would show that it has not approached this Court with clean hands.

(xvii) In or around July, 2020, the construction of the RUB in respect of Route 1 was completed by OMPL and the same was made operational. The RUB was constructed by cutting through the appellant's existing water pipeline. It is pertinent to note that Clause 22 of the agreement dated February 27, 2019, executed by and between OMPL and the Railways, obliges OMPL to make good any damage to or loss of Railway/Third-Party property due to the presence of its facility. Hence, OMPL cannot object to the restoration/revival of the appellant's water pipeline.

(xviii) By an order dated April 19, 2022, while dismissing all the appeals filed against rejection of OMPL's application for liquidation of the appellant, the NCLAT observed the conduct of OMPL in trying to acquire the appellant company, through ulterior modes, since it was declared as an unsuccessful Resolution Applicant in the CIRP.

(xix) On June 1, 2022, OMPL obtained a Way Leave Permission for construction of a RUB under the railway track between station

Gokulpur Outer Cabin and Gokulpur on KGP Division for transportation of vehicles ("Route 2").

(xx) On June 2, 2022, an agreement in respect of Route 2 was executed between the Railway Authorities and OMPL.

(xxi) In August, 2022, the RUB in respect of Route 2 was constructed and made operational by OMPL. Again, the said RUB was constructed by cutting through the appellant's existing water pipeline.

(xxii) On October 4, 2022, the Ministry of Railways (Railway Board) issued a Master Circular on 'Policy for Management of Railway Land'. OMPL relies on Clauses 7.4 and 7.5.2 of the said Circular. However, Clause 7.4 does not bar application for renewal of Way Leave Permission which expired prior to issuance of the said circular. Similarly, Clause 7.5.2 does not say that it would only apply to Way Leave Permission subsisting as on the date of issuance.

(xxiii) OMPL relies on Clause 1033 (12) of the Indian Railway Code for Engineering Department, alleging that overhead pipelines are not permitted. However Clause 1033 (4) of that Code permits Way Leave Permissions in genuine cases. Clause 1033 (12) permits overheads as well as overhead pipelines so long as the Railway Authorities give express permission for the same.

(xxiv) Further, more than 98% of the concerned pipeline of the appellant is underground. The overhead structure has been necessitated by reason of OMPL cutting through the appellant's pipeline which the appellant is now trying to restore.

(xxv) After approval of the resolution plan by NCLT, on March 27, 2023, the appellant applied for grant/revival of the Way Leave Permission for a further period of 10 years or more to meet its water requirements.

(xxvi) On April 27, 2023, the appellant submitted approved drawing to the Railways.

(xxvii) On June 16, 2023, the Railways instructed ADE to visit the site for joint inspection and to verify the drawings. On June 22, 2023, ADE, Railways, wrote to four departments of the Railways for conducting a joint inspection towards revival of Way Leave Permission to lay down the pipeline. On June 24, 2023, joint inspection was conducted and drawings were approved.

(xxviii) On July 11, 2023, further request was made by the appellant, forwarding drawings and other technical details, to restore the Way Leave Permission.

(xxix) On August 8, 2023, drawing was submitted for checking technical viability. Between August 10 and August 22, 2023, technical evaluation of the drawings was made by officers from five different departments of the Railways.

(xxx) On December 11, 2023, technical viability check was forwarded to various departments of the Railways for final signatures. On December 21, 2023, technical viability check was made by all departments. On December 22, 2023, DRM Engineering signed the technical viability check.

(xxxi) Therefore, between August 10, 2023 and December 22, 2023, a plan dated July 21, 2023, was prepared and approved by 7 Railways officers/engineers over a period of four months after detailed scrutiny.

(xxxii) By a letter dated January 11, 2024, OMPL informed the Railway Authorities that it had reasons to believe that the appellant's pipeline will compromise the safety of OMPLs RUBs and the boundary wall of its industrial unit.

(xxxiii) On February 9, 2024, the appellant entered into an agreement with Kharagpur Municipality, *inter alia*, for supply of a specified quantity of water per day to its factory at Kharagpur.

(xxxiv) On March 18, 2024, the appellant, under protest, deposited a sum of Rs 2,16,62,573/- towards Way Leave Permission fee for revival of its water pipeline. On March 27, 2024, the appellant submitted a Bank Guarantee for Rs 5,00,000/- valid for a period of one year as required by the Railways.

(xxxv) On April 3, 2024, pursuant to Way Leave Permission, an agreement was executed by and between the Railway Authorities and the appellant for laying down a water pipeline at Section Kharagpur-Medinipur through Railway land for a length of 2250 meters. The agreement was to be valid for 10 years from the date of signing of the agreement. On the same day, a letter was issued by DRM Engineering to the appellant intimating Way Leave Permission for 10 years with effect from 2017-18. Such permission stipulated that the work will have to be undertaken as per drawing and design after completing all formalities with the Railway departments and in the presence of

Railway Engineers. It further provided that the structural drawing and design with respect to the construction at the subway location (OMPL's RUBs) should be approved by reputed organisations/engineers.

(xxxvi) On April 4, 2024, the Railway Authorities issued a communication informing the concerned officers that an agency has found some damage in the concerned pipeline from the Jharia pumphouse to the appellant's plant which needs repair work. On the same date, the appellant informed the concerned Railway department that the repair work on the damaged portions of the water pipeline shall be undertaken in the presence of the Railway Engineers on April 9, 2024.

(xxxvii) By a letter dated April 5, 2024, the appellant sought the co-operation and help of the District Magistrate, Paschim Medinipur, for undertaking the repair work of its existing water pipeline.

(xxxviii) By a letter dated April 8, 2024, addressed to the Railway Authorities, OMPL alleged that due to low quality of the pipeline material used by the appellant and the sub-standard installation/operational process, there may be accidental damage to the RUBs of OMPL. On that ground, OMPL called for re-examination of the alignment of the proposed water pipeline.

(xxxix) On April 9, 2024, a joint survey report was prepared and issued by the concerned Railway Authorities/ Engineers. The appellant was granted permission to execute only repair work on the said pipeline except the subway part. OMPL filed the present writ petition on April

10, 2024, *inter alia*, seeking cancellation of the appellant's Way Leave Permission dated April 3/4, 2024.

(xl) On April 17, 2024, the appellant submitted drawing through a reputed consultant. On April 18, 2024, the drawing was re-submitted with modification. On April 23, 2024, structural drawings with certification by qualified engineers were submitted by the appellant. On the same day i.e., April 23, 2024, final permission was granted by the Railways to the appellant to carry out repair works in respect of its pipeline.

(xli) The writ petition was disposed of by a judgement and order dated May 10, 2024 setting aside the appellant's Way Leave Permission dated April 3/4, 2024 and quashing all consequent steps taken in pursuance thereof.

(xlii) On May 13, 2024, the present appeal was filed. By an interim order, a Division Bench called for a report from the Railways. On August 19, 2024, the Railways filed a report. OMPL filed its Exception to that report on September 2, 2024. On September 24, 2024, the Railways filed an affidavit in response to the Exception of OMPL. OMPL filed its rejoinder on November 12, 2024.

3. Learned Senior Counsel for the appellant relied on the following decisions: -

(i) Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta & Ors., reported at (2021) 7 SCC 209. Paragraph 74.

(ii) Municipal Corporation of Greater Mumbai & Ors. v. Rafiqunnisa M. Khalifa (Deceased) Through His Legal Heir Mohd. Muqueen Qureshi & Anr. reported at (2019) 5 SCC 119. Para 26.

(iii) Union of India v. M/S. Chaturbhai M. Patel & Co., reported at (1976) 1 SCC 747. Para 7.

Submission on behalf of the respondent no. 1:-

4. On the factual score, apart from what has been noted above, learned Senior Counsel for the respondent no. 1 added the following: -

(i) On July 9, 2017, the Way Leave Permission granted to the appellant expired since the license expired and no money was paid for renewal thereof. The pipeline had not been in use for 7 years.

(ii) On February 1, 2019, OMPL was granted permission for construction of the first RUB. At this stage, the Railways obviously treated the appellant's license as non-existent and, therefore, gave permission to OMPL. Accordingly the agreement dated February 27, 2019 was entered into an agreement between OMPL and the Railways in respect of the first RUB.

(iii) The Resolution Plan of the appellant that was approved by the NCLT on September 4, 2019, could not and did not create any right in the appellant's pipeline. The permission of the appellant had already expired/lapsed pre-CIRP. A Resolution Plan cannot create a new right. Such right could only have been granted by the Railways or by the Civil Court in an appropriate proceeding.

(iv) An agreement dated June 2, 2022, was executed between the Railways and OMPL with respect to the second RUB. At that stage also, evidently the Railways treated the appellant's license as being non-existent.

(v) The agreement dated April 3, 2024, that was entered into by and between the appellant and the Railways purporting to renew Way Leave Permission with retrospective effect, was executed behind the back of OMPL, in an extremely hurried manner and without giving an opportunity of hearing to OMPL, despite valuable rights having accrued in favour of OMPL in the meantime.

(vi) It is clear from the Report filed by the Railways that the safety aspects relating to the RUBs of OMPL were never considered at all.

(vii) No technical assessment was made pre-revival. Post-revival, only drawings were approved. It will appear from the drawings disclosed that pillars of the appellant's pipeline are dangerously close to OMPL's RUB (less than 1 meter) and the entire area up to OMPLs RUB was excavated despite OMPL's objection.

(viii) Fresh permission for over ground pipeline was granted to the appellant despite the prohibition in Clause 14 (b) under para 1033 of the Indian Railways Engineering Code, which reads as follows: -

> **"**14. (b) Way leave permission in respect of open drainage and surface/overhead pipelines should be allowed only in unavoidable cases. In any case, fresh permission for this in favour of private parties should not be given. All efforts may also be made to have the existing open drainage and surface/overhead pipelines replaced by underground installations at the earliest.

(ix) It was submitted that no unavoidable case has been made out by the appellant justifying grant of permission in respect of overhead pipelines.

Other organizations like Tata Steel, etc., were denied such permission. Such organizations have arranged water supply from river Kangsabati.

5. Learned Senior Counsel for OMPL relied on the following decisions: -

(i) Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta & Ors. (Supra)

(ii) Hardesh Ores (P) Ltd. v. Hede & Company, reported at (2007) 5 SCC 614.

(iii) Corporation of Kochi v. Elamkulam Village Cooperative Society Ltd. & Anr., reported at (2006) 7 SCC 708.

(iv) General Manager, Electrical Rengali Hydro Electric Project, Orissa & Ors. v. Giridhari Sahu & Ors., reported at (2019) 10 SCC 695.

(v) B. Subramanyam & Anr. v. B.M. Chandra Gowda & Anr., reported at (2017) SCC OnLine Kar 6985.

Judgement and Order of Learned Single Judge:-

6. Learned Single Judge framed the issue as to whether the grant of renewal of the Way Leave Permission to respondent no. 6 (present appellant) which had expired in the year 2017, is valid in the eye of law and/or interdicts the rights conferred in the meantime on the petitioner (present respondent no.1) in any manner.

7. Learned Judge held that when the petitioner was granted such permission there was no existing Way Leave Permission operating in favour of OMPL. Such permission having expired almost two years prior thereto, was in no manner subsisting at the juncture when the petitioner's rights were created.

8. In so far as the document dated April 3, 2024, is concerned, learned Judge held that the description of a fresh Way Leave Permission as 'renewal' was a fraud practiced upon the writ petitioner in collusion between the Railway Authorities and the present appellant as well as fraud on the applicable Laws and Regulations. A license that stood expired by efflux of time long time back, could not be renewed. Only a fresh license could be granted. Learned Judge then held that in the communications emanating from the Railways including the letter dated April 4, 2024, as well as in the agreement dated April 3, 2024, entered into by and between the present appellant and Railways, an impression has been sought to be given that permission was being given for reviving an underground water pipeline. The said attempt is evidently to bypass the effect of sub-clause (12) of clause 1033 of the Railway Engineering Code, which provides that in all cases of Way Leave facilities (except ROBs/RUBs and underground pipelines), no construction (whether permanent, quasi-permanent or temporary) other than a Kuchcha or Pucca road in cases the facility is expressly given for the same, is to be permitted on Railway land. If any such construction comes up subsequently, the same should be immediately removed as soon as noticed and the Way Leave facility discontinued with.

9. Learned Judge also observed that the efforts on the part of the Railway Authority and the present appellant reeks of surreptitious and mala fide effort to bypass the Railway Engineering Code as well as the Master Circular operating in respect of Railway lands, which comprise a policy decision taken by the Railway Authorities and have the status of statutory guidelines.

10. Learned Judge further held that the structure shown in the map submitted by the appellant contemplates an overhead construction over the Railway property. Such attempt is barred firstly, because Clause 1033, sub-clause (12) of the Railway Engineering Code debars any such overhead construction; secondly, the Way Leave Permission sought to be given is a fresh Way Leave Permission in the garb of a 'renewal', which cannot now be given in view of the intervening underpass of the writ petitioner, regarding which two sets of Way Leaves and agreements subsist between the writ petitioner and the Railways; and thirdly, the effect of the impugned grant of permission cannot be 'renewal' as described in the permission since the tenure of the previous Way Leave Permission expired long seven years back in 2017 and there was never any application for renewal filed or pending at any point of time.

11. The learned Judge negated the argument advanced on behalf of the present appellant that the writ petitioner was trying to frustrate the Resolution Plan which has been approved in connection with the CIRP initiated by the present appellant. His Lordship held that the Resolution Process commenced on January 8, 2018, whereas the Way Leave Permission of the present appellant for its previous pipeline had expired in July, 2017. Hence, even at the inception of the CIRP, there was no 'subsisting' permission or license in favour of the present appellant. The Resolution Plan was approved much later and as such, the already expired Way Leave Permission of the present appellant could not come within the purview of such 'subsisting' approvals/licenses/permissions. Further, it was held that no new rights could be created in favour of the present appellant merely by

virtue of approval of the Resolution Plan. In this connection, learned Judge referred to the Supreme Court decision in the case of ***Embassy Property Developments Pvt Ltd. v. State of Karnataka and Ors, reported at (2020) 13 SCC 308.***

12. It was observed that the failure of the writ petitioner in the Resolution Process has no bearing on the present dispute and as such, mala fides cannot be read into the resistance of the writ petitioner to an illegal attempt by the respondent no.6 (present appellant) to create rights where there do not exist any. The very attempt to package the unlawful grant of new Way Leave Permission directly in derogation of the rights already conferred on the writ petitioner by the Railways, as a 'renewal', is itself mala fide and fraudulent, being contrary to the Engineering Code of the Railway itself and the Master Circular.

13. Regarding the argument of the present appellant that the structure of the appellant would not in any manner affect the rights of the writ petitioner, the learned Judge came to the conclusion that the Railways did not conduct a proper safety audit prior to granting the impugned permission to the present appellant. It was not considered as to whether or not the new construction which the Railways were permitting the appellant to make would adversely affect the underpass constructed by OMPL pursuant to permission granted by the Railways. Learned Judge finally observed that the action of public authorities of the stature of the Railways has to be transparent and above board and cannot be actuated by petty profit-motives, giving a go-bye to safety standards and violating existing valid agreements with third parties. Accordingly, the learned Judge set aside the

Way Leave Permission granted to the present appellant by the letters dated April 3, 2024 and April 4, 2024. All consequential steps taken in terms of such permission, were also quashed. The respondents in the writ petition were directed to take immediate steps to reverse any action taken pursuant to the quashed Way Leave and 'revival' permission. The present appellant was directed to restore, at its own cost, the property adjoining the location underneath which the writ petitioner's underpass runs, which has been dug up and/or on which full or partial construction has been made by the present appellant. It was directed that the site shall be restored to its original position as it stood before the commencement of construction and allied work by the present appellant and its agents.

14. Being aggrieved, the respondent no.6 in the writ petition is before us by way of this appeal.

Court's view

15. The material facts of the case, as noted above, are not in dispute. To avoid undue prolixity, I do not reiterate the same.

16. The main points urged by the appellant are as follows: -

(i) OMPL has no locus standi to challenge the permission granted by the Railways to the appellant since no legal right of OMPL has been infringed thereby.

(ii) The permission was granted by the Railways after carrying out necessary groundwork, scrupulously examining the construction plans submitted by the appellant and after complying with all procedural formalities as were necessary. The permission has

not been granted in violation of any law or in derogation of any clause of the Railway Engineering Code.

(iii) As on the date of filing of the application under Section 10 of the IBC before the NCLT, i.e., May 18, 2017, the Way Leave Permission dated July 10, 2007, was still subsisting. On January 8, 2018, the appellant was admitted to CIRP by NCLT. Such order of admission related back to the date of filling of the application under Section 10 of the IBC thereby, preserving the Way Leave Permission. Hence, there was no irregularity in the Railways renewing such permission on a later date.

(iv) The writ petition filed by OMPL is a mala fide effort on its part to render nugatory the Resolution Plan passed by NCLT for revival of the appellant company. Such mala fide act has been prompted by the fact that OMPL's Resolution Plan was not accepted by NCLT.

(v) No case of fraud was pleaded or argued by the OMPL. Therefore, the finding of collusion and fraud on the part of the appellant's officers and the concerned Railway officials is completely unwarranted.

17. Insofar as the point of locus standi is concerned, I find no merit therein. At a point of time when the Way Leave Permission that had been granted to the appellant stood expired by efflux of time, the Railways granted permission to OMPL to construct two underpasses at the concerned location. Pursuant to such permission, OMPL constructed such underpasses and made the same operational. The contention of the OMPL is

that the permission that has been granted by the Railways to the appellant, ostensibly for revival of the water pipeline entails new construction which would have serious adverse impact on the underpasses constructed by OMPL. Two agreements were entered into between OMPL and the Railways on February 27, 2019 and June 2, 2022 respectively, regarding construction of two Railway RUBs by OMPL. The apprehension of OMPL that revival of the water pipeline passing over the RUBs constructed by OMPL will compromise the safety of that area in many ways and have immediate adverse effect on the RUBS and the industrial boundary wall of OMPL's industry unit, was communicated by OMPL by its letter dated January 11, 2024 to the Divisional Railway Manager (Engineering), South Eastern Railway, Kharagpur. The reasons for such apprehension would appear from the said letter which is extracted hereunder: -

> **"**Dear Sir,
>
> Apropos to the above subject matter it may be noted that M/s Ramswarup Loha Udhyog Limited (RLUL) is trying to revive an old underground water pipe which is running parallel to the track and also alongside the boundary wall of OMPL plant, and it is cutting across the RUB constructed by the Company. We have reasons to believe that this pipeline will compromise the safety of this area in many ways including immediate adverse effect on the RUB and the boundary wall of our industrial unit. Moreover, the Railway Main line may also get impacted by the waterline passing parallel to the track. The reasons for the objection can be summarized as under:

a) Potential risk of boundary wall collapsing as the pipeline installation is being carried out just adjacent to the boundary wall of our plant unit, under at an estimated depth of 6-7 Meters.

b) If an eventuality of pipeline burst occurs and leakage of water towards the adjacent Railway track, it would endanger the Railway Safety, due to subsidence, and slips of embankment.

c) Orissa Metaliks Private Limited is built up in the year 2016 when the existence of such pipe line was ineffective since RLUL was locked down, since declared bankrupt and whereabouts were not known. Subsequently, we have our plant alongside this concealed pipeline of RLUL. Now, we strongly appeal against the work of pipeline restoration, as it will cause grave impact on OMPL's infrastructure. Our sophisticated electrical equipment is susceptible and prone to the dangers of water logging. In such case, factory operations will collapse and production gets impacted. This is a cause of concern foreseeing the pecuniary losses to the company and also adverse impact on Railway traffic.

d) Had we known the existence of such big pipe line in the vicinity of the Railway track, we would have taken necessary safety precautions in the past with proper planning and design of our steel factory. Therefore, we express our deep concern, with dismay that due to lack of prior knowledge of the

underground water filled pipeline which is now unearthed by Railway administration, now we are at the risk for an imminent Industrial disaster.

e) It is needless to emphasize that such pipe parallel to track of long length laid under the policy of 'way leave permission' adjacent to track is not in accordance with the Railways policy. We would like to bring it to your knowledge the contents the KGP division's letter (Copy enclosed), where in the proposal laying of water pipeline along the track beside railway boundary from Kansaboti river was not accepted on the grounds as there is no existing policy.

f) We cite the reference of the letter (Copy enclosed) given by our company, on the objection raised when an attempt is made to carry out the work on the said pipeline, without any 'authority to work' duly issued by the Division. We would like to state that had if not be for our timely intervention, the JCB employed by of RLUL working at the vicinity, would have damaged the RUB.

g) The water pipeline is stated to be originating from water source of Kharagpur Municipality, and we find that there is an attempt to revive the water supply by M/s RLUL from same source. We came to know, through a copy of RTI letter addressed to Shri Rajkumar Das by Kharagpur Municipality (Copy enclosed), where in it is mentioned that they have no agreement at present with M/s RLUL for supply of water due to

scarcity. In the prevailing situation, the revival of the said pipeline doesn't have proper sanctity and justification.

We therefore request you good self to look into the matter and order immediate action, so that it doesn't become problematic to our company as well as to the Railways.

Enclosed: As above

Your Faithfully,

(RN Yadav)
Director (Projects)
For Orissa Metallks Private Limited**"**

18. By another letter dated April 8, 2024, OMPL requested the Divisional Railway Manager (Engineering), South Eastern Railway, Kharagpur to re-examine the permission granted to the appellant herein for renewal of Way Leave Permission for revival of water pipeline. The reasons prompting OMPL to write that letter would appear from the letter itself which is extracted hereunder: -

"Sir,

Sub: Re-examination of the permission granted to M/s. Ramsarup Industries Limited for renewal of way leave permission for revival of water pipe line

1.0 Came to know through a reliable source that permission is being granted to M/s. Ramsarup Industries Limited for renewal of way leave permission for revival of water pipe line of 500 mm dia beside the railway track line connecting Gokulpur and Kharagpur.

2.0 It is found and observed that the pipeline is passing above the underpass constructed by M/s. Orissa Metaliks Private Limited (hereinafter referred as 'company' or 'us' or 'we') for movement of materials between one plant to another plant of the company. However, the pipeline above the underpass will have the following implications on the company:

- Since the said pipeline will be in close vicinity of the company's boundary wall. there will be safety hazards for our plant & machinery and other equipments due to low quality of pipeline material, substandard installation and operation process and hydraulic pressure from unsteady flow of water etc.
- Any accidental damage to the pipeline of M/s. Ramsarup Industries Limited will cause flood inside the underpass as well as the plant area and hence will compromise with the security of the lives of various workers and assets of the company.
- This will also impact future expansion plan of the company as the pipeline will become a major bottleneck for us.
- This will cause hindrance at the time of laying pipeline to bring water from Kansai River to the plant which will be constructed keeping in mind all the safety and future implications.

3.0 In view of the above, Railways may please re-examine the alignment of proposed waterline for M/s. Ramsarup Inudustries Limited. It is also pertinent to mention that neither M/s. Ramsarup Industries Limited

nor Railways discussed the revival of the captioned pipeline with the representatives of the company before granting such approval.

4.0 We shall be ever grateful for your kind indulgence and due consideration of our prayer in this regard in the interest of justice.

Yours faithfully,
for M/s. Orissa Metaliks Private Limited

(Authorised Signatory)
Copy to:

1) The Division Railway Manager, South Eastern Railway, Kharagpur
2) The Chief Transport Planning Manager, South Eastern Railway (GRC)
3) The Principal Chief Operating Manager, South Eastern Railway (GRC)
4) The Principal Chief Engineer, South Eastern Railway (GRC)**"**

19. From the above, it appears that OMPL expressed apprehension of its interests being adversely affected by the renewal of the Way Leave Permission granted in favour of the appellant herein. It does not appear from the records that the Railway Authorities responded to the aforesaid two letters of OMPL. The Authorities did not deem it necessary to discuss the matter even once with OMPL. No opportunity of hearing was afforded to OMPL. Whether or not renewal of the Way Leave Permission in favour of the appellant and permitting the appellant to carry out necessary construction/re-construction/repairing work would have adverse impact on OMPL's RUBs, was not at all considered by the Railway Authorities.

20. Prima facie, it appears that the apprehension of the OMPL is not completely baseless or fanciful. When an order or an act of an Authority is

likely to or has the possibility of affecting a person by way of adverse civil consequences, however remote such possibility be, the person likely to be affected would surely have the standing to challenge such act or order of the Authority before a competent court of law. The rule of locus standi has been developed by the courts to weed out frivolous litigations at the instance of busybodies who have no real interest in such litigations. However, in the present case, it does not appear to us that OMPL can be said to be such a busybody having absolutely no stake in the matter. Hence, I reject the appellant's argument that OMPL did not have the locus standi to maintain the writ petition.

21. In this connection the appellant relied on the decision of the Hon'ble Supreme Court in ***Municipal Corporation of Greater Mumbai & Ors. v. Rafiqunnisa M. Khalifa (Deceased) Through His Legal Heir Mohd. Muqueen Qureshi & Anr., (Supra)*** in support of the contention that a writ of mandamus under Article 226 of the Constitution of India is issued only when there is a right, contractual or otherwise, in favour of the writ petitioner and correspondently there is a legal duty to perform. The argument was that there is no legal or contractual right in favour of OMPL and therefore the writ petition was not maintainable at its instance.

We are unable to accept the above argument. OMPL having constructed the RUBs pursuant to agreements entered into with the Railway Authorities, it is the duty of the Railway Authorities to ensure that any permission granted to anybody for any fresh construction or making an old construction operational, does not have any adverse impact on the RUBs constructed by

OMPL. OMPL is surely entitled to approach the Writ Court praying for appropriate writs of mandamus, certiorari or prohibition.

22. When the appeal was admitted by a Co-ordinate Bench by its order dated May 21, 2024, while staying the operation of the impugned order to the extent the same directed demolition of constructions made by the appellant, the Bench had called for a report from the Railways. Paragraphs 4 and 5 of the said order read as follows: -

> **"**4. It appears that the writ petition was disposed of without calling for affidavits, more particularly, the stand taken by the railway administration was not put in writing. The question would be whether a permission, which stood lapsed in 2017 could have been revived by the railway administration retrospectively and if so, what would be the position of the persons, who had acquired certain rights in the interregnum. Apart from that, the Court should be informed as to whether there was any technical assessment done by the railway administration before revival of permission to take the pipeline above the railway underpass, which has been permitted to be constructed by the writ petitioner when the permission for the pipeline was not in vogue.
>
> 5. Let a report be filed in the form of an affidavit by the highest competent authority of the railway administration duly supported with documents.**"**

23. Such a report by way of affidavit affirmed on July 5, 2024, by the Divisional Engineer (West), South Eastern Railway, Kharagpur, who was

also the Divisional Railway Manager (Engineering), was filed. Various documents have been annexed to such report. Such report along with its annexures have been brought on record by OMPL by filing an exception to the report in the form of an application registered as CAN 2 of 2024.

24. From the documents annexed to the said report, it does not appear that due safety audit was undertaken by the Railway Authorities prior to granting the impugned permission to the appellant. The safety I have in mind is not only as regards any adverse impact on the RUBs constructed by OMPL but in general, safety of the entire industrial area. If the apprehensions expressed by OMPL in its two letters dated January 11, 2024 and April 8, 2024, addressed to the Railway Authorities, are correct even if to some extent, the possibility of accidents involving loss of life and limbs apart from property, would loom large. In our view, a comprehensive and exhaustive safety audit was absolutely essential prior to granting the impugned permission to the appellant, especially, in view of the contents of OMPL's aforesaid two letters.

25. Further, the overhead structure that the Railways have permitted the appellant to construct in aid of revival of the concerned pipeline appears to be contrary to Clause 1033 (12) of the Railway Engineering Code as has been rightly noted by the learned Single Judge.

26. As regards the third contention of the appellant, we do not find any merit in that also. The Way Leave Permission was granted on July 10, 2007. It expired by efflux of time on July 9, 2017. On May 25, 2017, the appellant filed an application for CIRP under Section 10 of the IBC before the NCLT. On January 8, 2018, the appellant was admitted to the CIRP by the NCLT.

As on that date there was no subsisting Way Leave Permission in favour of the appellant, the same having expired on July 9, 2017. Hence, the question of the Way Leave Permission continuing to be in force by operation of law, cannot and does not arise.

27. In any event, it is beyond the jurisdiction of NCLT to revive or renew the Way Leave Permission that was granted by the Railways in 2007. While approving the Resolution Plan on September 4, 2019, NCLT could not have renewed a Way Leave Permission which stood expired on July 9, 2017. A permission which has expired cannot be renewed as has been extensively discussed by the learned Single Judge. Only a fresh permission can be granted. It was not within the NCLT's power to grant such permission nor did it do so.

28. The decision of the Hon'ble Supreme Court in ***Gujarat Urja Vikas Nigam Ltd. v. Amit Gupta & Ors., (Supra)*** relied upon by the appellant does not advance its case to any extent. The appellant relied on paragraph 74 of the reported judgement which reads as follows: -

> **"**74. Therefore, we hold that the RP can approach NCLT for adjudication of disputes that are related to the insolvency resolution process. However, for adjudication of disputes that arise dehors the insolvency of the corporate debtor, the RP must approach the relevant competent authority. For instance, if the dispute in the present matter related to the non-supply of electricity, the RP would not have been entitled to invoke the jurisdiction of NCLT under IBC. However, since the dispute in the present case has arisen solely on the ground of the insolvency of

the corporate debtor, NCLT is empowered to adjudicate this dispute under Section 60(5)(c) of IBC.**"**

29. As I read the said observations, the same go against the appellant's contention. The issue of Way Leave Permission in connection with Railway land cannot be said to be a dispute related to the Insolvency Resolution Process. It is a dispute dehors such process just like non-supply of electricity as observed by the Hon'ble Supreme Court. Therefore, NCLT would have no jurisdiction to renew or revive or preserve the Way Leave Permission granted by the Railways in 2007 which stood expired on July 9, 2017.

30. As regards the fourth point urged before us by the appellant, we are not impressed that any case of the writ petition being a mala fide, has been made out by the appellant. The learned Single Judge has observed that renewal of the Way Leave Permission in 2024, with retrospective effect from 2017 was illegal. Mala fides cannot be read into the writ petitioner's resistance to an illegal attempt by the present appellant to create rights where none exists. The mere fact that OMPL failed to take over the appellant company in the CIRP cannot be the ground or reason to presume or infer that the instant writ petition is mala fide.

31. As regards the fifth point of the learned Judge having come to a finding of fraud and collusion between the officers of Railways and the appellant, the appellant relied upon a decision of the Hon'ble Supreme Court in the case of ***Union of India v. M/S. Chaturbhai M. Patel & Co., (Supra)***, in support of the contention that fraud like any other charge of a criminal offence, whether made in civil or criminal proceedings, must be

established beyond reasonable doubt. However suspicious may be the circumstances, however strange the coincidence is and however grave the doubt, suspicion alone can never take the place of proof.

32. We agree with the learned Senior Counsel for the appellant that it may not have been necessary for the learned Single Judge to hold that renewal of the concerned Way Leave Permission was a result of collusion between the appellant and the Railways or amounts to fraud on the statute or on Court or on the relevant Rules or Regulations of the Railways. A verdict of fraud having been practised cannot be returned lightly. Fraud is a criminal charge and so is fraudulent collusion. Such charges must be established on proper material and beyond reasonable doubt in contradistinction to balance of probabilities which is the standard applicable in civil cases. The observations of the learned Single Judge regarding fraud on the part of the appellant and the Railways and collusion between them, stand expunged from the judgment and order of the learned Single Judge.

33. We, therefore, substantially agree with the learned Single Judge that 'renewal' of the concerned Way Leave Permission 7 years after expiry of such permission, without conducting due safety audit and completely oblivious of the adverse civil consequences that the same may have for OMPL, was not only irregular but also illegal. The least that the Railways could have done was to carry out due safety audit and give opportunity of hearing to OMPL, prior to granting the impugned permission to the appellant. The Railway Authorities completely ignored the two letters dated January 11, 2024 and April 8, 2024, addressed by OMPL to them ventilating their apprehension regarding revival of the concerned Way Leave Permission in favour of the

appellant. This does raise a doubt in my mind as to whether the Railway Authorities acted fairly, honestly and impartially, but I stop at that.

34. In the result, we affirm the judgment and order under appeal except to the extent of expunging certain observations therefrom, as indicated above. The judgment is a well-reasoned one and we do not find any such error therein as would persuade us to interfere. The view of the learned Single Judge is an eminently plausible one. It is settled law that if a learned Single Judge's view is a possible view, then, in an intra-court appeal, the Division Bench will not interfere only because it may have a different view. Interference is warranted only when the order of the learned Single Judge, in the opinion of the Appeal Court, is 'clearly wrong' or palpably perverse.

35. The appeal is accordingly disposed of along with the connected applications. The interim order that is subsisting, stands vacated.

36. Urgent Photostat certified copies of this judgement and order, if applied for, be supplied to the parties on compliance of all necessary formalities.

I agree.

(Om Narayan Rai, J.) **(Arijit Banerjee, J.)**