NATIONAL COMPANY LAW TRIBUNAL
CHANDIGARH BENCH (COURT-II), CHANDIGARH

C.A. No. 271 of 2022
IN
CP NO.50 of 2010 (In CLB)

And CA NO.118 OF 2025 IN CA NO.271 OF 2022

C.A. No. 271 of 2022

(Application under Order XXI sub-rule (2) of Rule 11 of the Civil Procedure Code, 1908, read with sub-section 3 of section 424 of the Companies Act, 2013, and Rules 56 and 57 of the National Company Law Tribunal Rules, 2016)

Maschinen Umwelttechnik Transportanlagen Gesellschaft Gmbh
Having Office at:
Schieszstattgasse 49, POB - 118,
A-2000 Stockerau,
Austria.
Through Ishvinder Maddh s/o Rajinder Maddh, aged about 44 years, r/o W65, Greater Kailash, New Delhi-48, presently at Chandigarh, being the authorized representative of the Decree Holder/Applicant.

...Petitioner/Applicant

VERSUS

Vardhman Polytex Limited,
371K-1, Mundian Khurd,
P.O. Sahabana,
Chandigarh Road,
Ludhiana, 141123- Punjab
Now having its Registered Office as per the Master Data with the Ministry of Corporate Affairs
Vardhman Park Chandigarh Road,
Ludhiana, Punjab- 141123,
India secretarial@vpl.in

...Respondent No.1

F.M. Haemmerle Textiles Limited
(Formerly known as Oswal F.M. Haemmerle Textiles Limited)
371K-1, Mundian Khurd,
P.O. Sahabana,
Chandigarh Road,

Ludhiana, 141123- Punjab
Now having its Registered Office as per the Master Data with the Ministry of Corporate Affairs at:
Office No. 4, 2nd Floor, Guru Har Rai Complex, Industries Estate Road, Near Manju Cinema, Dholewal, Ludhiana, Punjab, India- 141003
legal@fmhammerle.co.in

...Respondent No. 2

CA No.118 of 2025

(Application under Rule 11 of NCLT Rules for placing on record additional affidavit of Mr. Sanjay Dansalia, the Authorized Representative of Petitioner/Applicant, containing their Board Resolution dated 30.03.2010)

Maschinen Umwelttechnik Transportanlagen Gesellschaft Gmbh
Having Office at:
Schieszstattgasse 49, POB - 118,
A-2000 Stockerau, Austria.

....Petitioner/Applicant

Vs.

Vardhman Polytex Limited
371K-1, Mundian Khurd,
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...Respondent No. 2

In the matter of
CP No.50 of 2010 (In CLB)

Maschinen Umwelttechnik Transportanlagen Gesellschaft Gmbh

....Petitioner/Applicant

Vs.

Vardhman Polytex Ltd. and Anr.

..... Respondents

Order delivered on: 20.08.2026

CORAM: HON'BLE KAUSHALENDRA KUMAR SINGH, MEMBER (TECHNICAL)
HON'BLE KHETRABASI BISWAL, MEMBER (JUDICIAL)

Present:

For the Applicant	:	Mr. Rohit Sud, Mr. Sameesh Bassi, Advocates
For the Respondent	:	Dr. UK Chaudhary, Senior Advocate with Ms. Manisha Chaudhary, Ms. Manisha Sharma, Mr. Mansumyer Singh, Mr. Gurpreet Singh, Advocates

ORDER

The Company Application **CA 271of 2022** has been filed under Order XXI Rule 11 (2) of Civil Procedure Code 1908 read with Section 424(3) of Companies Act, 2013 and Rules 56 and 57 of the National Company Law Tribunal Rules, 2016 by MASCHINEN UMWELTTECHNIK TRANSPORTANLAGEN GESELLSCHAFT GMBH **(in-short MUT),** a minority shareholder in the Company named Oswal F.M. Haemmerle Textiles Limited **(in-short OFMHT)** now known as F.M. Haemmerle Textiles Limited **(in-short FMHT)** for execution of the judgment dated 13.08.2015 passed by the Erstwhile Company Law Board, New Delhi (**in-short CLB**). The main prayer in instant Application is as regards directing the Judgment Debtor-Respondent No.1 namely Vardhman Polytex Limited **(in-short VPL)** to pay for its 1,19,15,920 equity shares as per the valuation made as on 31.03.2010 along with interest @15% per annum thereof till the date of realization, in terms of the judgment dated 13.08.2015 of Company Law Board and as upheld by the Hon'ble Punjab and Haryana High Court vide judgment dated 04.07.2022. There are also other connected prayers in the Application, which include civil imprisonment of the judgment debtor, disclosure of the properties as a means of satisfying the decree and attachment of those properties and restraining them from transferring, alienating or creating third party rights thereon.

2. We have heard the Ld. Counsel Mr. Rohit Sud, appearing for the Applicant, as well as Ld. Senior Counsel Dr. UK Chaudhary, appearing for the Respondent No.1.

3. As submitted by both the sides, the Company-**Oswal F.M. Haemmerle Textiles Limited** (OFMHT) was later admitted under CIRP under the provisions of the IBC and a Resolution Plan has also been approved by the Adjudicating Authority *vide* Order dated 13.03.2020. Upon approval of the Resolution Plan, the said Company has gone under the control & management of third parties and the name of the Company is now **F.M. Haemmerle Textiles Limited** (FMHT)**.**

4. Dr. UK Chaudhary, Ld. Senior Counsel appearing for the Respondent No.1 submits that following the CIRP, the equity shares being extinguished, the said order dated 13.08.2015 of the CLB has become non-executable and as such the Application deserves to be dismissed.

5. Before considering the submissions so made by the Learned Counsel from both sides, we consider it appropriate to put forth hereunder the relevant facts detailing the background and the litigations that were taken up between the parties.

(i) The Company namely Oswal F.M. Haemmerle Textiles Limited **(OFMHT)** was incorporated pursuant to a joint venture agreement entered into between the **Oswal Group** (based in India) through its group company VPL, and the **Hahnl Group** (based in Austria) through its group company IRIS Textiles Gmbh **(in sort-IRIS)**, for the manufacture of shirting fabric, whereby the Hahnl Group was to provide the technical know-how of its company namely F.M. Haemmerle Textilwerke GmbH & Co**. (in short -FMH)**. The trademark 'FMH' is a renowned brand in the textile fabric industry across the world.

(ii) The applicant company MUT, which is the holding company of FMH, had licensed its technical know-how while authorising IRIS to provide technical information and assistance to OFMHT. Pursuant thereto, IRIS and VPL had entered into a joint venture. A technical collaboration and marketing assistance agreement (TCMA) was also entered into between the companies on 1st March, 2006. As per the agreement, the equity shares of OFMHT equivalent to 33,60,000 Euro were to be allotted in two instalments to IRIS.

(iii) Following that, OFMHT started its production, but by then FMH went into bankruptcy in Austria. Oswal Group had then set up two Austrian Companies namely FM Haemmerle NFG, GmbH (in short-FMH Nfg) and FM Haemmerle Verwattings GmbH (in short-FMHV). Both these companies were set up by Oswal Group, which purchased the assets and intellectual property of the FMH company. The plant and machinery of FMH were lying on the land of Hahnl Group, which entered into a lease agreement with the companies floated by Oswal Group. Subsequently, IRIS, on 5th December, 2008, entered into an assignment assumption agreement with FMH Nfg with the consent of OFMHT, whereby IRIS assigned all its rights, title and interests in the technical service agreement dated 1st March, 2006 to FMH Nfg. A mutual release agreement was also entered into on 5th December 2008 between IRIS, MUT and Josef Hahnl on the one side and OFMHT, FMH Nfg, FMHV, VPL and Ashok Oswal on the other side. But then FMH Nfg went into bankruptcy, and Josef Hahnl purchased FMH Nfg.

(iv) In the process, VPL from the side of Oswal group had held 81.88% shareholding whereas IRIS, from the side of Hahnl group, held 18.11% shareholding in OFMHT. IRIS had then assigned its shareholding to the applicant company MUT, the holding company of FMH.

(v) **However, in the year 2010, disputes arose between Oswal Group and Hahnl Group.**

(vi) The Oswal Group filed two Company Petitions bearing CP No. 12/2010 and CP No. 40/2010 before CLB. Likewise, the Hahnl Group also filed two Company Petitions bearing CP No. 50/2010 and CP No. 118/2010.

(vii) CP No.12/2010 was filed by Oswal Group through OFMHT against MUT and Josef Hahnl for rectification of the share register by cancelling 1,19,15,920 (18.11% equity shares) allotted initially to IRIS (and later transferred to MUT) owned by the Hahnl Group.

(viii) CP No. 40/2010 was filed by the Oswal Group through its company VPL having 81.88% shareholding in OFMHT, against IRIS, Josef Hanhl, MUT and Ishvinder Maddh under Sections 397/398 read with Section 402 of the erstwhile Companies Act, 1956, alleging that the Hahnl Group had failed to provide the requisite technical know-how and was instead attempting to extract confidential information of the Company for use in running a competing business. Accordingly, the Petitioners sought the removal of Josef Hahnl from the Directorship of OFMHT.

(ix) CP No. 50/2010 was filed by the Hahnl Group through MUT against VPL and Mr. Ashok Oswal, Managing Director of OFMHT, under Sections 397/398 of the erstwhile Companies Act, 1956, alleging therein that the Oswal Group was convening meetings without issuing notice to the Hahnl Group and was acting prejudicially to the interests of the Hahnl Group and the Company. It was further alleged that the Oswal Group was siphoning off the funds of the Company and was not providing access to the records, despite OFMHT being under a mandate to provide all information to Hahnl Group. The non-extension of the term of Mr. Ishvinder Maddh, alternate director nominated by Hahnl Group, was also challenged.

(x) CP No. 118/2010 was filed by the Hahnl Group seeking investigation into the accounts of OFMHT under Sections 235 and 237(b) of the erstwhile Companies Act, 1956, alleging that the Oswal Group had committed massive fraud in the affairs of OFMHT by siphoning off the funds of it.

(xi) The CLB vide its common order dated 13.08.2015 had disposed of all aforesaid Company Petitions considering the following issues:-

(a) Whether the allotment made to IRIS at the time of incorporation of OFMHT deserved to be declared null and void or not;

(b) Whether the acts of the Hahnl Group were oppressive and prejudicial to the interests of the Oswal Group and its Companies;

(c) Whether the acts of the Oswal Group and its Companies against the Hahnl Group and its Companies were prejudicial to the interests of the Hahnl Group; and

(d) Whether any investigation into the affairs/accounts of OFMHT was required to be ordered, as prayed for by the Hahnl Group, and if so, to what reliefs the parties were entitled.

(xii) Having considered the rival contentions, counter-contentions and the facts and circumstances of the matter, the CLB arrived at the following findings:-

(a) Allotment of shares to IRIS is not invalid [thus the CLB had dismissed CP No. 12 of 2010].

(b) Being denied access to the information, the alternate Director, **Mr. Ishvinder Maddh** of Hahnl Group, tried to get information by other means; and that could not be called as an act of oppression against the Oswal. Further, rejection of a relief sought by Hahnl Group in a civil suit in Austria Court cannot be considered as an entitlement to Oswal Group to say that Hahnl Group is not permitted to continue with the name **F.M. Haemmerle**. Further, with regard to the plea raised by the Oswal Group that a Director is precluded from carrying on a similar or competing business to the detriment of the concerned Company, the CLB observed that such restriction would apply only in relation to the business operations of the Company being run in India. The CLB further observed that the trademarks and intellectual property rights were merely permitted to be used by OFMHT and there was no stipulation restraining FMH or the Hahnl Group from themselves using the trade name or trademark of FMH. The CLB did not find any merit in the contentions raised by the Oswal Group in CP No. 40/2010.

(c) There is no merit in the allegation of siphoning of funds by Oswal Group. But the removal of Mr. Ishvinder Maddh as an alternate director from the Board is an act of oppression against the minority; hence his removal as alternate director is invalid. Accordingly, CP No. 50 of 2010 was disposed of.

(d) There is no merit in the petition seeking investigation into the affairs of the Company-OFMHT on the allegation that the

Oswal Group had siphoned off the funds of OFMHT. Accordingly, CP No.118/2010 has been dismissed.

(e) Since **Hahnl and Oswal Group** have not been trusting each other, the CLB directed the Oswal's to provide **hon'ble exit to Hahnl Group on fair valuation;** and to get a fair valuation of the shares of MUT, the CLB further directed that OFMHT shares shall be valued having 31.03.2010 as cut-off date and to provide exit within 60 days from receipt of the Valuation Report. The CLB also appointed **M/s Ernst & Young** as a Valuer and also directed that on valuation of those shares, **OFMHT shall pay the value of shares to MUT** along with interest @15% from 31.03.2010 till date of realisation. The CLB had also ordered that the valuation report shall be provided to OFMHT and Hahnl Group within a period of 60 days from the date of receipt of the order. Accordingly, CP No.40/2010 and CP No.50/2010 were disposed of.

(xiii) Against the order dated 13.08.2015, as many as four appeals were preferred in the Punjab and Haryana High Court. CAPP No. 45 and 47 of 2015 were filed by OFMHT whereas CAPP No. 7 and 8 of 2017 were filed by the VPL following the decision of Hon'ble Supreme Court dated 13.10.2017 whereby the name of VPL was also added in Para No. 104 & 105 of the CLB's order as being responsible for payment of share value to MUT and the liberty granted to file an appeal before the High Court.

(xiv) After the issuance of the CLB's order dated 13.08.2015, the decree-holder MUT had filed an application on 02.02.2016 in CA 11 of 2016 before the CLB for execution of the order dated 13.08.2015. The said application was later transferred to NCLT. Vide order dated 01.03.2017, NCLT had directed both the parties to appear before the valuer on 05.04.2017 and extend cooperation to the valuer for preparing the report. With that, the matter was disposed of with liberty to approach the Tribunal, if needed.

Another application CA 34 of 2016 was also filed on 26.02.2016 by the MUT before the CLB for seeking correction in para 104 of its order dated 13.08.2015 wherein instead of requiring Oswal Group or VPL to pay the value of share to MUT, the order stated that OFMHT shall pay the value of shares to MUT. This application was also transferred to the NCLT and got dismissed vide order dated 09.01.2017 by holding that there was no clerical error in the order which could have been rectified. Against that order, the MUT filed an appeal [Company Appeal (AT) No. 55 of 2017] in NCLAT. However, the same was also dismissed vide order dated 31.03.2017. The MUT then approached the Hon'ble Supreme Court [Civil Appeal No. 11136 of 2017] and the Hon'ble Supreme Court, vide its order dated 13.10.2017, had modified the CLB's order dated 13.08.2015 by adding the name of VPL also with OFMHT to pay the value of Shares to MUT, giving VPL liberty to file an appeal before the High Court against the CLB's order. OFMHT had already challenged the CLB's order dated 13.08.2015 by filing appeals CAPP 45 of 2015 and CA 47 of 2015 before the High Court. After the inclusion of the name of VPL along with OFMHT in para 104/105 of the CLB's order as per the Supreme Court's Order and on getting the liberty thereon, the VPL also filed appeals in CA No. 7 of 2017 and CA No. 8 of 2017 before the Hon'ble Punjab & Haryana High Court.

(xv) OFMHT filed an Application CMA 14 of 2017 in CAPP 45 of 2015 for staying the execution of CLB's order. The stay was granted till the next date of hearing of the main matter, which was listed on 16.05.2017.

(xvi) Meanwhile, OFMHT filed an Application under Section 10 of the IBC in CP(IB)-30/CHD/PB/2017 in NCLT for initiating CIRP proceedings against it and the Application was admitted vide order 27.06.2017. As a result of the IBC proceedings**, the Resolution Plan submitted by New Ram Traders was approved by the NCLT on 13.03.2020.**

(xvii) The Resolution Professional appointed under the IBC proceedings also made his appearance before the Hon'ble Punjab & Haryana High Court in CMA No.8 of 2018 in CAPP No.45 of 2015. The Hon'ble High Court vide its order dated 04.12.2019, in pursuance of the judgment dated 13.08.2015 passed by the erstwhile Company Law Board, directed that M/s Ernst & Young be appointed to determine the market value of the shares held by minority shareholders of OFMHT as on 31.03.2010 at the expense of MUT. Further, the parties were directed to cooperate with M/s Ernst & Young as and when they are required to submit the information and documents to assist the valuer in the task. The Hon'ble High Court also directed that the

Insolvency Resolution Professional will be associated, in case he wishes or is requested by the valuer for any assistance in the process.

(xviii) Matter was also taken to the Supreme Court by the lender Bank State Bank of India in SLP (C) No.2179 of 2020 and vide order dated 19.03.2021, the SLP was disposed of by directing the valuer M/s Ernst & Young to place the Valuation Report before the Single Judge Bench of the Punjab & Haryana High Court within a period of four weeks from the request letters made by the parties. The relevant part of the Supreme Court's order dated 19.02.2021 is reproduced hereunder:-

> *"It appears that much water has flowed down the bridge since the time we have been passing orders in these cases. Mr Tushar Mehta, Ld. Solicitor General, informs us that a Resolution Professional has been appointed qua the Corporate Debtor and a new management has taken over. The inter se disputes between Respondent No.3 & Respondent No.2 are pending before the Single Judge Bench of Punjab & Haryana High Court. We direct Respondent No.3 and Respondent No.2 to share the expenses of a Valuation Report to be furnished by M/s Ernst & Young Merchant Banking Services LLP 50: 50. Both Respondent no.3 and Respondent No.2 are directed to issue letters pursuance to this order to M/s Ernst & Young Merchant Banking Services LLP telling the valuer that they will share the valuers fee 50:50 and formally appointing the valuer to value the property. The Valuation Report to be then placed before the Single Judge Bench of the Punjab & Haryana High Court within a period of four weeks from the request letters made by Respondent No.3 and Respondent No.2."*

(xix) Following the CIRP, the name of OFMHT got changed to FMHT. The FMHT filed a review Application bearing RA No.1 of 2022 in CAPP No.45 of 2015 seeking review of the Order dated 04.12.2019 passed by the Hon'ble Punjab & Haryana High Court. In this review petition, it was stated that after approval of the Resolution Plan on 13.03.2020, the share held by them (MUT & VPL) stood extinguished and therefore, valuation of shares has become impossible. In that Application, the Ld. Counsel appearing for the MUT had pointed out that the fact that the order dated 04.12.2019 stood modified vide order dated 19.03.2021 passed by the Hon'ble Supreme Court and thus attained finality, was not disclosed in the said review application. The High Court vide order dated 07.04.2022 had dismissed the said review application as being withdrawn.

(xx) The valuer M/s Ernst & Young placed the Valuation Report before the Hon'ble Punjab & Haryana High Court on 16.06.2022. As per the Valuation Report, the valuation was carried out, and the market value of the 1,90,15,920 equity shares was valued at Rs.10.19 crores (@ Rs.5.40 per share) as on 31.03.2010.

(xxi) CAPP No.45 of 2015 and CAPP No.47 of 2015 were withdrawn on 22.04.2022. The CAPP No.7 of 2017 & CAPP No.8 of 2017 were disposed of vide order dated 04.07.2022. **It was held therein that even after passing of the Resolution Plan, the implementation of the CLB's order dated 13.08.2015 is neither rendered impossible nor the maxim *lex non cogit ad impossiblia* is applicable on the facts of the case and accordingly both the appeals were dismissed.**

6. During the course of arguments, the Ld. Counsel appearing for the Applicant has referred to the order dated 04.07.2022 passed by the Hon'ble Punjab & Haryana High Court in CAPP No.7 of 2017 and CAPP No.8 of 2017 filed by VPL (Oswal Group) against the CLB's order. The relevant part of the said order is reproduced hereunder:-

"(15) The valuation report was submitted by Ernst & Young Merchant Banking Services LLP, Gurgaon, on 16.06.2022 with regard to the share of OFMHT as held by Hnhnl Group.

(16) In substance, the learned counsel representing the appellants has submitted that in view of sanctioning of the Corporate Insolvency Resolution Process (hereinafter referred to as 'CIRP'), which provides for extinguishment of the entire paid up share capital of FMHTL (previously, OFMHT), the appeals are rendered infructuous. It is claimed that the impugned order is impossible to be complied with as the maxim lex non cogit ad impossibilia which means that law does not compel a man to do something which is impossible is fairly and squarely attracted in the present case. It is claimed that the sanctioned/approved CIRP of FMHTL (previously OFMHT) is binding on all the stake holders in the Company, including its members/ shareholders. It is asserted that the entire equity and preference share capital of FMHTL, as it stood prior to the CIRP, and set out hereafter, including the shares held by its shareholders/promoters, shall extinguish as having nil value. Learned counsel relies upon the relevant portion of the resolution plan, which is extracted as under:-

> ***"10.2 On account of the continuous losses incurred by the CD since inception, the aggregate of losses over the years has exceeded the paid up share capital of CD. The Equity and Preference shares belong to the promoters of CD. 10.3 The estimate of valuation of assets and enterprise of CD as assessed by RA does not cover the full claim of FC bank (SBI) and there is therefore, no amount available for Equity and Preference Share Capital holders of CD. Also, the holders of issued share capital (equity shareholders and preference shareholders) of CD have no amount available to them liquidation of CD. In view of the above circumstances, RA proposes to reduce the issued Equity and Preference Share Capital of the CD, as held by the Promoters of the CD (as per table A in para 10.4) to Zero, Le., NIL value. It is therefore proposed that there will be complete extinguishment of 11,16,00.000 issued fully paid up Equity Shares of the CD and fully paid up 12,20,750 Preference Shares of CD (as per table B of para 10.4) which will have the effect of making the issued share capital of CD to Zero, i.e., NIL valué."***

(17) It is claimed that post the order dated 13th March, 2020, passed by the adjudicating authority, while approving CIRP, a new situation has arisen where the appellant is no longer a major shareholder while MUT is not a shareholder at all. The said resolution plan, in terms of the section 31(1) of the Insolvency and Bankruptcy

Code, is binding on all its shareholders. Learned counsel representing the appellant relies upon the following judgments passed by the Supreme Court:-

a) Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others (2020) 8 SCC 531

b) Ghanshyam Mishra and Sons Private Limited us. Edelweiss Asset Reconstruction Company Limited (2021) 9 SCC 657.

(18) While relying upon the definition of 'nullity' in-the-'Blacks Law Dictionary' and judgment passed by the Supreme Court in Satya Prada Ghosh vs. Mugni Ram and Company AIR 1954 SC 44, the learned counsel contends that the doctrine of impossibility is equally applicable to the Court's order. It may be noted here that on the merits of the appeal, the learned counsel representing the appellant has chosen not to question the correctness of the order passed.

(19) Per contra, the learned counsel representing the respondent, while drawing the attention of the Court to the resolution plan, submits that 1 the VPL was held liable to pay the claim of MUT, being holding Company of the corporate debtor. The attention of the Court has been drawn to the following part of the resolution plan, which has been approved:-

"The claim of MUT has not been admitted by RP, and therefore, there is no liability to be paid by CD on this account. VPL is held liable to pay, which being the holding Company of CD, is obliged as of now and continues to remain obliged at all times."

(20) Learned counsel representing the appellant does not dispute the correctness of the CIRP which provides for a provision for VPL's liability to pay. The resolution plan has already been approved by the adjudicating authority that is the National Company Law Tribunal (NCLT). In these circumstances, it is evident that CIRP of FMHTL would have no bearing on the decision of these appeals. VPL has not challenged the sanctioned resolution plan. This matter can be examined from yet another perspective. As per the order passed by the CLB, the liability to pay the amount is with the Oswal Group. Moreover, the valuation of the OFMHT's shares is to be taken as was on 31st March, 2010. The valuation of the shares of the Company was required to be carried out by M/s Ernst and Young. It is not in dispute that the VPL was the majority shareholder of FMHTL (previously OFMHT).

(21) This Court has carefully read the judgment passed by the Supreme Court in Committee of Creditors of Essar Steel India Limited (supra). In the aforesaid case, the Supreme Court decided the question noticed in para 2 of the judgment, which is extracted as under:-

"This group of appeals and writ petitions raises important questions as to the role of resolution applicants, resolution professionals, the Committee of Creditors that are constituted under the Insolvency and Bankruptcy Code,

2016 (hereinafter referred to as "the Code") and last, but by no means the least, the jurisdiction of the National Company Law Tribunal (hereinafter referred to CS "NCLT"/"Adjudicating Authority") and the National Company Law Appellate Tribunal (hereinafter referred to as "NCLAT/Appellate Tribunal") qua resolution plans that have been approved by the Committee of Creditors. The constitutional validity of Sections 4 and 6 of the Insolvency and Bankruptcy Code (Amendment) Act, 2019 (hereinafter referred to as "the Amending Act of 2019") have also been challenged. These appeals and writ petitions are an aftermath of this Court's judgment dated 4-10-2018, reported as Arcelor Mittal (India) (P) Ltd. v. Satish Kumar Gupta"

(22) It was held that the adjudicating authority or the appellate authority cannot interfere with the commercial wisdom of the resolution plan approved by the committee of creditors. The Court also examined the constitutional validity of the outer time limit prescribed for the completion of Corporate Insolvency Resolution Plan (CIRP) and held that in exceptional cases, the extension of time can be granted.

(23) The next judgment relied upon by the learned counsel representing the appellant is in Ghanshyam Mishra & Sons Private Limited (2021) 9 SCC 657. In this case, the Supreme Court, after examining the provisions of Insolvency and Bankruptcy Code, 2016, held that the approved resolution plan is binding on the Central Government, State Government and the local authorities, including the tax authorities. The Supreme Court has discussed the following issues:-

"(i) As to whether any creditor including the Central Government, State Government or any local authority is bound by the resolution plan once it is approved by an adjudicating authority under Section 31 (1) of the Insolvency and Bankruptcy Code, 2016 ("IBC")?

(ii) As to whether the amendment to Section 31 by Section 7 of Act 26 of 2019 is clarificatory/ declaratory or substantive in nature?

(iii) As to whether after approval of resolution plan by the adjudicating authority a creditor including the Central Government, the State Government or any local authority is entitled to initiate any proceedings for recovery of any of the dues from the corporate debtor, which are not a part of the resolution plan approved by the adjudicating authority?"

(24) It is evident that the aforesaid judgments do not apply to the facts of the present case. Here the question to be adjudicated is entirely different from the question arising in the cases relied upon by the learned counsel. In any case, the judgment passed by the Supreme Court in Ghanshyam Mishra (supra) lays down that the approved resolution plan is binding on all the concerned parties. In fact, in view of the settled law expounded that the approved CIRP is binding on all, the argument of the

learned counsel representing the appellant cannot be accepted and is proved to be counter productive.

(25) From the aforesaid discussion, it is evident that the implementation of the impugned order is neither rendered impossible nor the aforesaid maxim ie lex non cogit ad impossibilia is applicable on the facts of the present case. As already noticed, in the written arguments, learned counsel representing the appellant has not disclosed any reason for interference in the order passed by the CLB on 13th August, 2015.

(26) With all these observations, both the appeals are dismissed.

(27) All the pending miscellaneous applications, if any, are also disposed of."

7. Before us, the Ld. Counsel for the Applicant has argued that the Hon'ble Supreme Court in its order dated 19.03.2021 had taken note that the Company OFMHT had undergone CIRP under the IBC and following that a new management has taken over the company. A plea is taken that owing to dispute between the Oswal and Hahnl groups, the CLB had ordered for exit of the Hahnl group and as such the liability to pay for the equity shares held in the name of MUT lies onto VPL; and that the Adjudicating Authority while approving the Resolution Plan had categorically observed that "***the claim of MUT has not been admitted by RP, and therefore, there is no liability paid by CD on this account. VPL is liable to pay, which being the holding company of the CD is obliged as of now and continues to remain obliged at all times***".

8. The Ld. Senior Counsel for the Respondent No 1 (VPL) however has argued that prior to the initiation of the CIRP, the equity shares of the company OFMHT were held as such, in the name of MUT and VPL but on approval of the Resolution Plan, the entire equity shares held in the name of MUT and VPL have been extinguished and the company has gone under control of a new management. The Respondent No.2 in the Application is the Company (FMHT) under the new management, and they too have appeared

before us and confirmed that the equity shares held in the name of MUT and VPL remained on record as per the share register till the initiation of the CIRP and got extinguished after the company was taken over by the new management following the IBC process. The Ld. Senior Counsel for the Respondent No 1 (VPL) have also submitted that the CLB's order is as regards allowing exit of the Hahnl Group by paying them the fair market value as per valuation made by M/s Ernst & Young and that due to the litigation in between the period, the valuation has been finally done in the year of 2022 but by then the shareholdings in the name of the MUT together with that of VPL had extinguished in the process of CIRP and therefore, the CLB's order cannot be executed at this stage as the Applicant is not in a position to transfer their (extinguished) shareholding in the favour of the Respondent even if the Respondent agrees to pay.

9. The issue for our consideration is as to whether the Respondent VPL is still under an obligation to pay to the Applicant for the equity shares that it had held in the company OFMHT (now FMHT) in accordance with the CLB's order dated 13.08.2015 irrespective of the outcome of the CIRP, whereupon the shareholdings of both the Applicant MUT and Respondent VPL have been extinguished. We note that the CLB had heard the company petitions filed under Sections 397 and 398 of the Companies Act, and considering the fact that both the Hahnl Group and Oswal groups were not trusting each other, it had ordered the exit of Hahnl Group. As per the said order dated 13.08.2015, the valuation process was to be completed within 60 days, and thereafter, within the next 60 days, the required exit to the Hahnl Group was

to be provided by paying the value of shares, as on 31.03.2010, to the MUT along with interest thereof at 15% from 31.03.2010 till the date of realization.

10. We note that all those four Company Petitions were filed in the year 2010. The Oswal Group, through their Company Petition CP No.12 of 2010 filed by OFMHT, had sought rectification of the share register by cancelling the equity shares allotted initially to IRIS (and later transferred to MUT) and through CP no.40 of 2010 had alleged oppression against the Hahnl Group seeking removal of Josef Hahnl from the directorship of the OFMHT. The Hahnl Group had also filed CP No.50 of 2010 for oppression and mismanagement against the Oswal Group and had challenged the non-extension of the term of its nominee alternate Director Mr. Ishvinder Maddh; and through company petition CP No.118 of 2010 had alleged massive fraud in the OFMHT by siphoning off funds. The CLB vide its common order dated 13.08.2015 had disposed of all those four Company Petitions and had held that allotment of shares to IRIS (which were later transferred to MUT) was not invalid; that removal of Mr. Ishvinder Maddh as an alternate Director from the Board is an act of oppression against the minority and hence was invalid.

While deciding those Company Petitions, the CLB also noted the distrust amongst both the groups and, in view thereof, had ordered the exit of the Hahnl Group. We note that the order of the CLB, which was to be effected within a time frame, was not complied with due to the continued litigation, and meanwhile, the company OFMHT underwent CIRP on its own application under Section 10 of the IBC. We also note that following the CLB's order dated 13.08.2015, the effective management of the OFMHT was then in the hands of Oswal Group only. The equity shares in the name of MUT remained reflected in the company records merely for completion of the transactions requiring Oswal Group to pay for the equity shares held by the Hahnl Group as a result of the exit order made by the CLB. We also note that nothing has been placed before us to demonstrate if there remained effective representation of the Hahnl Group in the company OFMHT even after the exit order was passed by the CLB in the year 2015 and that notices for holding regular Board Meetings as well as AGM/EGM were being sent to the Hahnl Group even thereafter. We also note that one of the grievances of the Hahnl Group in their Company Petition was that Oswal Group was convening the meetings without issuing notices to them. In this background of the fact, if the company has undergone CIRP, then the Hahnl Group could not be considered responsible for it unless the Hahnl Group was involved in the management and/or associated in taking the Board's decision for going for insolvency proceedings by filing an Application under Section 10 of the IBC. We find that after the exit order, their interest was limited to the receipt of payment towards the equity shares they held in the company as per the exit order made by the CLB.

11. The equity shares in the name of MUT were to be transferred in the name of VPL upon payment of the share value as on 31.03.2010 together with the interest @ 15%. Had Respondent No. 1 (VPL) paid the amount within the timeline as ordered by the CLB, the equity shares in the name of the Applicant MUT would have been transferred in the name of VPL then

itself. As such, it is to be concluded that the name of MUT in the shareholder register continued simply because the formalities for exit, as was ordered by the CLB not performed within the timeline. The valuation was not carried out in a timely and the Respondent had challenged the CLB's order. We also note that NCLT's order dated 01.03.2017 passed in CA No.11 of 2016 (on transfer from CLB) as regards execution of the CLB's order dated 13.08.2015 was also not complied with by the Respondent. We also note that the Respondent VPL had also taken a plea before the Hon'ble Punjab & Haryana High Court that following the CIRP resulting in the extinguishment of the equity shares of the MUT, the CLB's order could not be implemented. However, the Hon'ble High Court vide its order dated 04.07.2022 had held that the implementation of the CLB's order is neither rendered impossible nor is the maxim, i.e., lex non cogit ad impossibilia, applicable on the facts of the case. We also note that the Adjudicating Authority, while approving the Resolution Plan, has also made it clear that the claim of the MUT was not admitted by the RP and therefore, there was no liability to be paid by the CD; and VPL was liable to pay, which being the holding company of the CD, is obliged and continues to remain obliged at all times. The said Resolution Plan attained finality and has not been challenged by any of the parties.

12. Thus considering aforesaid facts as well as the observation/decision of the Hon'ble High Court as contained in its order dated 04.07.2022, we are of considered view that irrespective of the outcome of the CIRP, whereby the control over the company OFMHT has gone to the new management and the equity shares of the MUT had extinguished as per the provisions of the IBC,

the Respondent VPL is still liable to make payment to the Applicant MUT in accordance with the valuation made by M/s Ernst & Young.

13. During the course of the arguments, the Ld. Senior Counsel appearing for the Respondent No.1 VPL had raised an objection to the maintainability of the present Application CA No.271 of 2022 stating that the Board Resolution in favour of Mr. Ishvinder Maddh, as being authorized representative of the Petitioner/Applicant for filing the said execution application, was not placed/attached in the application and thereby took a plea that the application CA No.217 of 2022 is defective and liable to be dismissed, as the same is not instituted by a person validly authorized to institute the present proceedings. The Ld. Senior Counsel accordingly pleaded that it is settled principle of law that the authority to undertake or pursue legal proceedings or specific actions on behalf of a company must be specifically granted through a Board Resolution and has to be specific in nature; that in the absence of any specific direction given to Mr. Ishvinder Maddh for filing the execution application before the NCLT Chandigarh, the same is not maintainable. In this context, as recorded in our order dated 30.05.2025, the Applicant's Counsel Mr. Rohit Sood had sought time for identifying the relevant document from the record. Following that, an application **CA No.118 of 2025** has been filed on behalf of the Applicant MUT for placing on record an additional affidavit of Mr. Sanjay Dhansalia, the authorized representative of the petitioner/applicant, containing therewith Board Resolution dated 30.03.2010. In the context, it has been submitted that the said Board Resolution in favour of Mr. Ishvinder Maddh

is available in the original records of **CP No.50 of 2025** (in **CLB**). The Ld. Senior Counsel appearing for Respondent No.1 VPL, however, objected to it saying that as per the order dated 30.05.2025, the Ld. Counsel for Applicant had sought time for identifying the relevant document from the records only. He emphasized that the Ld. Counsel for Applicant was expected to refer to the records in the present application in CA No.271 of 2022 only. The Ld. Senior Counsel also raised an objection as regards maintainability of the application CA No.118 of 2025 also saying that Mr. Sanjay Dhansalia who had filed the said application for the Petitioner/Applicant is resident in Jammu & Kashmir but the affidavit in support of that application as well as the additional affidavit sought to be placed on record are notarised in Chandigarh by an Oath Commissioner on 06.06.2025, and the affidavit nowhere states that the said Mr. Dansalia was present at Chandigarh at the time of signing of the said affidavit. The Ld. Senior Counsel accordingly also took the plea that the application in CA No.118 of 2025 itself is not maintainable and is liable to be rejected and thereby pleaded that such defective affidavits ought not to be taken on record. The Ld. Counsel of the Applicant MUT refuted such submissions made by the Senior Counsel of the Respondent VPL, saying that Mr. Dansalia, though a permanent resident in Jammu & Kashmir, had travelled to Chandigarh and the affidavit was signed by him before the Oath Commissioner in Chandigarh itself. We also note that the "place" as mentioned in the affidavit is shown as "Chandigarh" only and the identity of Mr. Dansalia as the deponent has also been certified by a witness before the Oath Commissioner. Therefore, we do not find any merit in the contention so made by the Ld. Senior Counsel as regards maintainability of the application CA No.118 of 2025. We accordingly take the additional documents, particularly Affidavit of Mr Dansalia and the copy of Board Resolution dated 30.03.2010, as placed through that application on record in the present proceedings in CA No.271 of 2022.

14. We note that through the additional affidavit of Mr. Dansalia filed on behalf of the applicant MUT, it has been submitted that the Board Resolution in favour of Mr. Ishvinder Maddh was duly passed by the petitioner/applicant on 30.03.2010 and the same is available on the original record in Company Petition bearing number CP 50 of 2010 (in **CLB**). It is further submitted that the present execution application is in the original proceedings bearing CP No.50 of 2010 and therefore, no fresh resolution was to be passed. It is also submitted that since there was a change in the counsel at the time of filing of the execution application bearing number CA No.271 of 2022, the Vakalatnama/Power of Attorney was executed by Mr. Ishvinder Maddh and the same is on record at page No.258 of the execution application. It is further submitted that the copy of the service contract dated 12.08.2021 (which is placed on record in CA No.271/2022) between BCM Business Consultants Management Services GmbH and Mr. Ishvinder Maddh authorizes him to represent the interest of BCM Business Consultants Management Services GmbH and its affiliated companies in India. In this regard, it is further submitted that the Petitioner/Applicant company being an affiliated company of BCM Business Consultants Management Services GmbH, the said service contract authorized Mr. Ishvinder Maddh to represent the applicant/petitioner company. It is also

submitted that the objections with regard to the maintainability of Mr. Ishvinder Maddh not being the authorized representative was also raised by the respondents vide CA No.481 of 2010 in CP No.50 of 2010 before the CLB; and that the Petitioner/Applicant vide CA No.12 of 2010 in CP No.50 of 2010 had then placed on record the said Board's Resolution of authorization of Mr. Ishvinder Maddh and the same was taken on record accordingly in the said original petition CP No.50 of 2010. It is also submitted that the said Board's Resolution is also part of the record of the appeal filed by the respondent in CAPP No.8 of 2017 before the Hon'ble Punjab & Haryana High Court.

15. During the course of hearing, this Tribunal vide order dated 10.06.2025, while permitting Respondent No.1/ VPL to file its reply to the CA No.118 of 2025, also directed the Respondent No.1 to state on affidavit as to whether the said Board Resolution dated 30.03.2010 was indeed placed by the Applicant in CP no.50 of 2010 before the erstwhile Company Law Board. We note that a separate affidavit in this regard has been annexed by Respondent No.1 VPL in their reply wherein it is stated that they do not have the record of the proceedings in CP No.50 of 2010, and therefore, are not in a position to verify whether the said Board Resolution was part of the record in CP No.50 of 2010. Thus, we note that no categorical denial is made by the Respondent. On the other side, the Ld. Counsel for the Petitioner/Applicant submitted that the CP No.50 of 2010 was filed by the Petitioner through its authorized representative, Mr. Ishvinder Maddh, as per the Board Resolution dated 30.03.2010. In the context, we have also referred to the content of the said Board Resolution and the same is reproduced hereunder:

TRUE COPY OF THE RESOLUTION PASSED BY THE BOARD OF DIRECTORS OF MASCHINEN UMWELTTECHNIK TRANSPORTANLAGEN GESELLSCHAFT GMBH IN ITS MEETING DATED 30th March 2010

The matter regarding the disputes between Maschinen Umwelttechnik Transportanlagen GmbH (M.U.T) and Oswal F M Hammerle Textiles Ltd., Ludhiana, India was taken up for discussion. It was proposed that M.U.T' shall file appropriate cases against Oswal FM Hammerle Textiles Ltd., Vardhaman Polytex Ltd. , Mr. Ashok Oswal and others before the competent Courts/Judicial Authorities in India under the relevant Indian Laws.

The matter regarding authorizing Mr. Ishvinder Maddh to file cases against Oswal F M Hemmerle Textiles Ltd., Vardhaman Polytex Ltd., Mr. Ashok Oswal and others was also discussed.

The Draft of the Petition under Section 397, 398, 402 and 403 of the Indian Companies Act, 1956, to be filed before the Hon'ble Company Law Board, New Delhi, India, was placed before the Board and the Board ratified and verified the correctness of the same.

PURSUANT to the discussion, the following resolution was passed.

Resolved that the Board of Directors shall and have hereby given their consent for Mr. Ishvinder Maddh to file and pursue cases on behalf of M.U.T in respect of Petitions filed by or against Oswal F M Hammerle Textiles Lid., Vardhaman Polytex Ltd., Mr. Ashok Oswal and others under Section 397, 398, 402 and 403 of the Indian Companies Act, ***1956 before the Hon'ble Company Law Board, New Delhi, India or any other appropriate Forum/Authority/Court,*** *for and on behalf of M.U.T.*

Resolved Further that Mr. Ishvinder Maddh shall and is hereby authorised to sign Petitions, execute vakalathnama, to appoint Counsels, sworn affidavits, ***file, conduct and pursue Petition, Suit/s, Complaint/s, Appeal/s, Revision/s, Review/s, Reply, Counter/s, Replication/s, Rejoinder/s, Execution Petition/s*** *and take all necessary steps which may be deemed necessary and efficacious to give complete effect to and /or in furtherance of the above resolution, for and on behalf of M.U.T."*

16. From the said Board Resolution, we note that Mr. Ishvinder Maddh has been authorized to sign petitions, execute Vakalanama to appoint counsels, sworn affidavits, file, conduct and pursue petitions, suits, complaints, appeals, revisions, review, replies, counter, rejoinders, **execution petition** and take all necessary steps which may be deemed necessary in the matter of disputes between the Applicant MUT and Respondent VPL before the competent courts judicial authorities in India

under the relevant Indian laws. As such, this Resolution empowers Mr. Ishvinder Maddh to file the petitions/applications in respect of the disputes between the MUT and VPL before the CLB or any other Courts. We note that NCLT was established in the year 2016 and the pending matters of the CLB's as regards companies' disputes were transferred to and taken up in NCLT in continuity thereof. We also note that the execution petition was initially filed by the Applicant in CA No.11 of 2010 before the CLB itself, which was later transferred to NCLT; and vide order dated 01.03.2017, NCLT had directed both the parties to appear before the valuer on 05.04.2017 and extend cooperation to the valuer for preparing the report. With that, the matter was disposed of with a liberty to approach the Tribunal, if needed. The present application in CA No.271 of 2022 has been filed before this Tribunal in view of that liberty given to it vide Order dated 01.03.2017. Thus, these proceedings are to be considered as in continuation of the main Petition in CP No.50 of 2010. As such, we are of the considered view that the Board Resolution dated 30.03.2010 authorizing Mr Ishvinder Maddh is valid in respect of the present proceedings in CA No.271 of 2022 also. In any case, the applicant has placed the copy of the said Board Resolution on record in the present proceeding also through an additional affidavit filed in CA No.118 of 2025 and as such, the defects, if any, are treated to be cured. Accordingly, the objection as regards maintainability raised by Ld. Senior Counsel for the Respondent No.1 deserves no merit and ought to be rejected.

17. **Accordingly, on consideration of the facts and findings as made herein above, we direct the Respondent No.1 VPL to pay the Applicant**

the value of equity shares at Rs.10.19 crores towards its 19015920 equity shares @ Rs.5.40 per share as arrived at by the valuer as on 31.03.2010 together with the interest @ 15% thereon within 30 days from the date of pronouncement of this Order. As regards other prayers regarding imprisonment and/or attachment of the properties of the Respondent No.1 VPL, we do not intend to pass any direction at this stage. The Applicant is at liberty to file an appropriate application in that regard, in case of non-compliance of this order by the Respondent.

18. In the result, the Company Application **CA No.118 of 2025** stands disposed of. The Company Application **CA No.271 of 2022 is allowed to the extent as ordered hereinabove and is disposed of accordingly**.

Sd/-	**Sd/-**
(K. BISWAL)	**(K.K. SINGH)**
MEMBER (JUDICIAL)	**MEMBER (TECHNICAL)**

Priyanka/Anjana