

**IN THE DEBTS RECOVERY TRIBUNAL-I AT AHMEDABAD**

**Present: LaxmanMadnani, I/c. Presiding Officer**

**INTERLOCUTORY APPLICATION No.92 OF 2022**

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**ORIGINAL APPLICATION No.650 OF 2018**

**Date of Order :11/03/2022**

ArcelorMittal India Pvt. Ltd.

..... Applicant

Versus

State Bank of India  
and others

....Respondents

**Present:**

Ld. Sr. Counsel Mr. R. S. Sanjanwala with Ld. Counsel Mr. Nirag Pathak for the Applicant

Ld. Sr. Counsel Mr. Navin Pahwa with Ld. Counsel Mr. Shalin Jani along with Mr. K. N. Shah for Respondent-Banks

Ld. Sr. Counsel Mr. Mihir Thakore, Ld. Sr. Counsel Mr. Vikram Nankani with Ld. Counsel Mr. Keyur Gandhi for Respondent Nos. 12 & 13

**ORDER**

1. The Third Party – ArcelorMittal India Pvt. Ltd. (hereinafter referred to as “AMIPL” or “APPLICANT” or “RESOLUTION APPLICANT”) has preferred the present application seeking impleadment as party defendant to protect its interest in the present Original Application filed by the consortium of various financial creditors.
2. It is averred by the Applicant herein that Defendant Nos.2 & 3 had executed the Personal Guarantees in favour of financial creditors and guaranteed the amount due and payable by Essar Steel India Limited (now known as ArcelorMittal Nippon Steel India Limited) [“**Principal Borrower**” and/or “**ESIL**”] under various credit/financial facilities.



3. On 08/03/2019, the National Company Law Tribunal, Ahmedabad Bench, has vide a common Judgment approved the resolution plan of AMIPL under Section 31 of the Insolvency and Bankruptcy Code, 2016 [**“the Code”**]. The Hon’ble NCLT has approved the Resolution Plan on various conditions as stipulated in its Judgment dated 08/03/2019. The Hon’ble Supreme Court vide its Judgment dated 15/11/2019, as reported in (2020) 8 SCC 531, has held that the Resolution Plan is binding on the Guarantors and the Resolution Plan of ArcelorMittal stood finally approved.
4. It is further averred by the Applicant that the Applicant has the right to call upon the financial creditors to enter into discussions for assignment of the personal and corporate guarantees of Respondent Nos.2 & 3 in favour of the Applicant herein. To that effect, the Resolution Plan contains a non-obstante clause which entitles and expressly recognizes the Applicant’s right to negotiate with the financial creditors for assignment of the said corporate and personal guarantees. The Applicant has also stated that since the issue is directly affecting the rights and interests of the Applicant herein, to work out an assignment of the said personal guarantees under the Resolution Plan and further steps, the Applicant herein had preferred a Writ Petition being Civil Application (For Joining Party) No.1 of 2021 before the Hon’ble High Court of Gujarat. The Petition of the Applicant herein was declined vide a Judgment dated 16/12/2021 and permitted the Applicant herein to approach this Tribunal with appropriate application for being impleaded as party in the main proceedings.
5. The Applicant herein further averred that the Applicant is a necessary and proper party to the present proceedings, whose rights and interests are materially likely to be affected while it is being adjudicated by this Tribunal. In view of the provisions of the Resolution Plan, the Applicant herein has already approached the financial creditors to initiate discussions for assignment of the Personal Guarantees. The Applicant and the financial creditors have also had some oral discussion / exchanges on the matter. However, it has not resulted in



any meaningful conclusion and the Applicant is yet to receive any formal offer from the financial creditors.

6. The Applicant herein has also stated that as per the Resolution Plan, the Applicant is willing to acquire the Personal Guarantees of Respondent Nos.2 & 3 at an appropriate valuation. The claims of the financial creditors with respect to the Personal Guarantees issued by Respondent Nos.2 & 3 survive and therefore the financial creditors are entitled to proceed against them as per applicable law. The issue with regard to the invocation and enforcement of the Personal Guarantees in question cannot be adjudicated or decided by this Tribunal in absence of the Applicant herein. Hence, the Applicant herein has filed the present application for being impleaded as party defendant in the present proceedings.
7. The Original Applicants have filed reply to the present application. The Original Applicants as well as the Defendants have also made their oral submissions at the time of hearing of this application. The Third Party Applicant – AMIPL has submitted its written submissions. Similarly, the Original Applicants have also filed their written submissions and relied on the judgment of **the Hon'ble Apex Court** in the case of **Ramesh Hirachand Kundanmal Vs. Municipal Corporation of Greater Bombay and Ors., (1992) 2 SCC 524.**
8. Ld. Senior Counsel for the Third Party Applicant referred to the following relevant Clauses of the Resolution Plan in support of his submissions:-

***"X. Implementation Schedule (Acquisition Structure),  
Supervision of Implementation Plan and Management***

***B. Acquisition Structure***

***4. Acquisition Structure***

*The Resolution Applicant shall acquire the entire debt owned by the Corporate Debtor to the Financial Creditors along with all the underlying securities (but excluding the corporate guarantees and personal guarantees issued for and on behalf of the Corporate Debtor by the Existing Promoter Group or their respective affiliates); and the Financial Creditors shall, simultaneously with the payment of Upfront Cash Recovery amount, assign, and all the obligors shall be deemed to*



acknowledge and accept such assignment or rights under the loan and security documents in favour of the Resolution Applicant and/or its Connected Persons, and/or banks or financial institutions designated by the Resolution Applicant.

The external commercial borrowings of the Corporate Debtor shall be acquired, along with the underlying securities but excluding the corporate guarantees and personal guarantees issued for and on behalf of the Corporate Debtor by the Existing Promoter Group or their respective affiliates, by an offshore complaint entity nominated in this regard by the Resolution Applicant.

#### XII. Terms of Settlement

Financial Creditors:

Pursuant to the approval of this Resolution Plan by the Adjudicating Authority, each of the Financial Creditors shall be deemed to have agreed and acknowledged the following terms:

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- In relation to the loans and financial assistance provided to the Corporate Debtor; each of the Financial Creditors, as the case may be, shall:

Notwithstanding anything contained in this Resolution Plan, the relevant Financial Creditors and the Resolution Applicant may mutually discuss, at a later date, the assignment by the relevant Financial Creditors of such corporate guarantees and personal guarantees issued for and on behalf of the Corporate Debtor by the Existing Promoter Group or their respective affiliates.

#### XIII. Other Terms of Resolution Plan

Extinguished of Claims:

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- a. Upon approval of the Resolution Plan by the Adjudicating Authority, except for payments/settlements under this resolution Plan, no other payments or settlements (of any kind) will have to be made to any other Person in respect of Claims filed under the resolution Process and all Claims (including, for the avoidance of doubt, Rejected Claims Amount and Verification Pending Amounts) against the Corporate Debtor till or as of the Insolvency Commencement Date along with any related Proceedings, including Proceedings for enforcement of any security interest, to the extent approved by the Adjudicating Authority, (other than in respect of invocation of corporate guarantees and personal guarantees issued for and on behalf of the Corporate Debtor by the Existing Promoter Group or their respective affiliates), shall stand irrevocably and unconditionally abated, discharged, settled and extinguished in perpetuity and if required, the Resolution Applicant, Corporate Debtor and its Stakeholders shall make necessary filings and take all necessary steps for the same."



9. Relying on the aforesaid Clauses of the Resolution Plan, Ld. Counsel for the Third Party Applicant submitted that the Resolution Plan envisages assignment, subject to mutual discussions at a later stage which is prospective in nature. He further submitted that in furtherance of the provisions of the Resolution Plan, the Third Party Applicant is attempting to enter into discussions with the Financial Creditors. In case, the Third Party Applicant is not impleaded or if this Tribunal determines the rights and liabilities of the parties before it, without giving an opportunity to the Third Party Applicant to put forward its case, the rights of the Third Party Applicant would be prejudicially affected. He further submitted that the Third Party Applicant is an interested party as far as the assignment of guarantees is concerned and any decision which may be taken by this Tribunal with regard to enforcement of such guarantees will have direct effect on the rights of the Third Party Applicant.
10. Ld. Senior Counsel for the Third Party Applicant fairly admitted that no relief against the Third Party Applicant is claimed by the Financial Creditors in the present Original Application and therefore the Third Party Applicant may not be a necessary party to be impleaded, but the issue with regard to assignment of guarantee is relevant for the adjudication of the present subject matter for which the Third Party Applicant is a proper party.
11. Per contra, Ld. Counsel for the Original Applicants submitted that AMIPL has no role to play in the present *lis* between the parties of the present proceedings since the recovery by the Original Applicants is sought from the guarantors. He further submitted that AMIPL being a complete stranger to the present dispute, cannot claim any interest whatsoever in the present litigation instituted by the Original Applicants for enforcement of its right of recovery against the guarantors. He also denied that the issue with regard to invocation and enforcement of the personal guarantees given by the Defendants cannot be adjudicated / decided in absence of AMIPL. He further submitted that allowing the impleadement of AMIPL, would only lead to a further



delay in adjudication of the present Original Application, which would be fatal to the object and intent of the RDB Act itself. Therefore, he requested to reject the present application.

12. Considering the rival submissions of the parties and the provisions of Resolution Plan of ESIL, it appears that AMIPL acquired the entire debt owed by ESIL to the Financial Creditors along with all the underlying securities, but excluding the Corporate Guarantees and Personal Guarantees issued for and on behalf of Corporate Debtor by the Existing Promoter Group or their respective affiliates. It is not in dispute that the Original Applicants-Financial Creditors have not assigned Personal Guarantees of the Defendants in favour of the Third Party Applicant till date. The Third Party Applicant-AMIPL has also in categorical terms averred in the present application for impleadment that discussions with regard to assignment of Corporate Guarantees and Personal Guarantees are being attempted with the Financial Creditors in terms of the provisions of the Resolution Plan. It would mean that the Personal Guarantees in question are still held by the Financial Creditors of the Corporate Debtor and they have yet not been assigned to AMIPL. As a result, no right or interest can be said to have accrued in favour of AMIPL qua the Personal Guarantees in question. Therefore, AMIPL can be said to be a complete stranger for the present litigation and its presence in the present litigation is not necessary though it may have some commercial interest in the subject matter of the litigation. In this context, it would be pertinent to rely on the following observations of the Hon'ble Supreme Court of India in **Ramesh Hirachand's Case (Supra):-**

*"14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objectives. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some questions involved and has thought or relevant arguments to advance. The only reason which makes it necessary to make a person a party*



*to an action is that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party.*

*18..... The courts below, therefore, failed to note that the second respondent has no direct interest in the subject-matter of the litigation and the addition of the respondent would result in causing serious prejudice to the appellant and the substitution or the addition of a new cause of action would only widen the issue which is required to be adjudicated and settled. By the joining of the party would embarrass the plaintiff and issues not germane to the suit would be required to be raised. The mere fact that a fresh litigation can be avoided is no ground to invoke the power under the Rule in such cases."*

13. In view of the facts and circumstances of the present case, I am of the opinion that AMIPL is neither a necessary nor a proper party for the present litigation as the decision of this Tribunal in the present Original Application is not likely to prejudice the rights of AMIPL for acquisition of Personal Guarantees in question under the provisions of the Resolution Plan. It appears that the only object of AMIPL behind the present application for impleadment is to prosecute its own cause of action. As held by the Hon'ble Supreme Court of India in **Ramesh Hirachand's Case (Supra)**, the mere fact that a fresh litigation can be avoided is no ground to join AMIPL as a party in the present proceedings.
14. In view of the aforesaid discussion, the present Interlocutory Application filed by ArcelorMittal India Pvt. Ltd. is hereby dismissed with no order as to cost.

Pronounced in open Court on this 11<sup>th</sup> day of March 2022.

(Laxman Madnani)  
I/c. Presiding Officer  
DRT-I, Ahmedabad