

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD**CIVIL APPLICATION (FOR DIRECTION) NO. 1 of 2021
With
R/SPECIAL CIVIL APPLICATION NO. 8741 of 2006**

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ESSAR STEEL LIMITED & 1 other(s)

Versus

STATE OF GUJARAT & 1 other(s)

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Appearance:

MR NAVIN PAHWA, SENIOR ADVOCATE for GANDHI LAW

ASSOCIATES(12275) for the Petitioner(s) No. 1

DS AFF.NOT FILED (N) for the Respondent(s) No. 2

MR ISHAN JOSHI, AGP for the Respondent(s) No. 1

NOTICE SERVED BY DS for the Respondent(s) No. 1

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CORAM: HONOURABLE MS. JUSTICE VAIBHAVI D. NANAVATI**Date : 06/05/2022****ORAL ORDER**

1. The present civil application is filed seeking the following reliefs :-

[A] That this Hon'ble Court may be pleased to pass appropriate Orders and/or Directions to declare that the claims raised by the Original Respondents and under challenge in Special Civil Application No.8741 of 2006, stand abated, extinguished, discharged and settled in view of Section 31(1) of the Insolvency & Bankruptcy Code, 2016 read with the Resolution Plan and the Judgement dated 15.11.2019 passed by the Supreme Court of India in Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors;

[B] Such other and further reliefs that this Hon'ble Court may

deem fit and proper in the interest of justice be granted.

2. The applicant herein ArcelorMittal Nippon Steel India Ltd., formerly known as Essar Steel India Ltd., (ESIL) is the writ-applicant in the Special Civil Application No.8741 of 2006. The name of the applicant was changed from Essar Steel India Ltd., to ArcelorMittal Nippon Steel India Ltd., with effect from 8.1.2020. The said certificate of information dated 8.1.2020 is duly produced at Annexure-A.

3. Pursuant to an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 the State Bank of India vs. Essar Steel India Ltd., (C. P. No.(IB) 40/7/NCLT/AHM/2017 the NCLT by order dated 2.8.2017 admitted the application and thereby initiated CIRP in respect of ESIL as per the provision of the Insolvency and Bankruptcy Code, 2016. Mr. Satish Kumar Gupta was appointed as Interim Resolution Professional of ESIL under the provision of the Code and was subsequently confirmed as the Resolution Professional (RP) by ESIL's Committee of Creditors.

4. Following the commencement of the CIRP, the management of ESIL was vested in the Interim Resolution Professional under Section 17 of the Code, and thereafter in the RP, who was to manage the operations of the ESIL as a going concern, under the directions of the CoC. Accordingly,

claims were invited in terms with the provisions of the Code, and thereafter collated by the RP.

5. In accordance with the provisions of the Code, ArcelorMittal Nippon Steel India Ltd., (AMNS) submitted resolution plan which came to be approved by the CoC on 25.10.2018 (Resolution Plan) and thereafter by the Hon'ble Supreme Court on 15.11.2019 in Committee of Creditors of Essar Steel Ltd., vs. Satish Kumar Gupta & Ors., reported in 2019 SCC OnLine SC 1478. Upon approval of the Resolution Plan, all the claims filed before the RP by the Creditors were settled and/or discharged by the appropriate assignment of value. The original respondents have claimed various amounts, prior to 16.12.2019 which are under challenge in the present Special Civil Application before this Court.

6. The Resolution Plan provides that claims and liabilities of ESIL whether contingent or crystallized, known or unknown, filed or not filed shall stand irrevocably and unconditionally abated, discharged, settled and extinguished in perpetuity upon approval of the Resolution Plan. In view of Section 31 of the Code, the Resolution Plan is binding to all stakeholders, including the original respondents. Further, the dues/claims in question against the present applicant, whether claimed or unclaimed have been duly dealt with under the Resolution Plan finally approved by the Hon'ble Supreme Court. Accordingly, in terms of the Resolution Plan, the Hon'ble

Supreme Court Judgment and Section 31 of the Code, all the past dues, claims and liabilities against ESIL stands extinguished and hence, no outstanding liability of ESIL/AMNS now remains. In view of above, the liabilities raised vide the impugned Notices, which are the subject matter of the present proceedings, stands extinguished insofar as ESIL/AMNS is concerned.

7. The applicant herein therefore approached this Court by filing the present civil application seeking appropriate direction for extinguishment and discharge of claims towards water charges vide the notice dated 21.7.2005 against the applicant and consequent liabilities of applicant prior to 16.12.2019, which is subject matter of proceedings before this Court in the present Special Civil Application i.e. Special Civil Application No.8741 of 2006. सत्यमेव जयते

8. Heard Mr. Navin Pahwa, the learned Senior Advocate appearing for Gandhi Law Associates and Mr. Ishan Joshi, the learned AGP appearing for the respondents – opponents No.1 and 2. The opponent No.3 though served has not appeared.

9. Mr. Navin Pahwa, the learned Senior Advocate submitted that the water charges as claimed by the opponents No.1 and 2 stand extinguished pursuant to the successful conclusion of the corporate insolvency resolution process and

the approval of the Resolution Plan by the Hon'ble Supreme Court of India in Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta & Ors., reported in SCC 2019 OnLine SC 1478.

9.1 Mr. Navin Pahwa, the learned Senior Advocate submitted that admittedly, the respondent No.2 had filed its claim of Rs.60,65,56,812/- (Rupees Sixty Crore Sixty Five Lakh Fifty six thousand eight hundred and twelve only) in its capacity as an operational creditor ("Claim Amount") including its alleged claim of Rs. 2.29 Cr (Rupees Two Crore Twenty Nine Lakh only) under dispute in the present Special Civil Application at Annexure- B/1 at page no.87.

9.2 Mr. Navin Pahwa, the learned Senior Advocate further submitted that pursuant to the approval and in terms of the Resolution Plan, an amount of Rs. 10,65,02,083/- was paid to the respondent No.2 and same was accepted (page 213 Annexure- B/3).

9.3 In view of above, Mr. Navin Pahwa, the learned Senior Advocate submitted that upon approval of the Resolution Plan in accordance with the judgment of the Hon'ble Supreme Court reported in 2019 SCC OnLine 1478 all claims including any existing claim such as the claims made with respect to the water charges which are subject matter of present writ-

application stands extinguished. The Resolution Plan operates in realm and disentitle anyone from agitating any claim that exists prior to the Resolution Plan. Mr. Pahwa submitted that now there is no scope for the respondent to agitate its water charges claim.

10. Mr. Ishan Joshi, the learned AGP appearing for the respondent – State was unable to contradict the fact that an amount of Rs.10,65,02,083/- as referred to at page 213 of the present civil application has been duly paid by the applicant herein in terms of the Resolution Plan and the Hon'ble Supreme Court order and that the said payment has been treated as full and final payment of all the outstanding claims/ dues (including any undisputed claim of ESIL) and all such claims stand full extinguished.

11. Heard Mr. Navin Pahwa, the learned Senior Advocate appearing for the applicant herein and Mr. Ishan Joshi, the learned AGP for the respondent State.

11.1 Undisputedly the applicant herein i.e. ArcelorMittal Nippon Steel India Ltd., formerly known as Essar Steel India Ltd., (ESIL) submitted a Resolution Plan which came to be approved by the CoC on 25.10.2018 and, thereafter, by the Hon'ble Supreme Court on 15.11.2019 in Committee of Creditors of Essar Steel India Ltd., vs. Satish Kumar Gupta and others, reported in 2019 SCC OnLine 1478. Upon

approval of the said Resolution Plan all the claims RP by the creditors were settled or discharged by appropriate assignment of value. The Resolution Plan provides that all the claims of ESIL whether contingent or crystallized, known or unknown, filed or not filed shall stand irrevocably and unconditionally abated, discharged, settled and extinguished in perpetuity upon approval of the Resolution Plan. In view of Section 31 of the Code, the Resolution Plan is binding to all stakeholders, including the respondents herein. Section 31 of the IBC, 2016 reads thus :-

"31. Approval of resolution plan .- (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of Section 30 meets the requirements as referred to in sub-section (2) of Section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders involved in the resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation."

11.2 Further the Resolution Plan came to be finally approved by the Hon'ble Supreme Court in the aforesaid judgment, wherein in view of the aforesaid judgment and Section 31 of the Code all the past dues, claims and liabilities against ESIL stands extinguished and hence no outstanding liability of ESIL/AMNS now remains. In view thereof, the liability raised by the impugned notices which are subject matter of present writ-application stands extinguished so far as ESIL is concerned. By way of judgment dated 15.11.2019 in committee of creditors of ESIL vs. Satishkumar Gupta, the Hon'ble Supreme Court dismissed the various appeals and finally approved the Resolution Plan of ArcelorMittal Nippon Steel India Ltd., in the judgment as reported in 2020 (8) SCC 531. The Hon'ble Supreme Court held in para-105 which reads thus :-

"105. Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In SBI v. V. Ramakrishnan [SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458], this Court relying upon Section 31 of the Code has held: (SCC p. 411, para 25)

"25. Section 31 of the Act was also strongly relied upon by

the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him."

107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/ Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to

a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count."

11.3 Further the Resolution Plan provides that all the claims alongwith related proceedings shall stand irrevocably and unconditionally stand abated, discharged, settled and extinguished in perpetuative upon approval of the Resolution Plan. Further no person shall be entitled to initiate any proceeding to enforce any claims or continue any proceeding in relation to any claim so far as such claim relate to period prior to plan approval date. The relevant provisions of the Resolution Plan as approved by the Hon'ble Supreme Court are reproduced herein which reproduced herein which reads thus :-

Proceedings in relation to the Water Charges Claim stand abated:

The Resolution Plan provides that all the claims along with the related proceedings shall stand irrevocably and

unconditionally abated, discharged, settled and extinguished in perpetuity upon approval of the Resolution Plan. Further, no person shall be entitled to initiate any proceedings to enforce any claims or continue any proceedings in relation to any claims in so far as such claims relate to the period prior to the Plan Approval Date. Certain relevant provisions of the Resolution Plan, as approved vide the SC Judgment, are extracted hereunder for ready reference:

"Operational Creditors:

Trade Creditors and Government Creditors - Pursuant to the approval of the Resolution Plan by the Adjudicating Authority, each, of the Trade Creditors and Government Creditors shall be deemed to be bound by the following terms :-

The payments proposed to be made to the Trade Creditors and Government Creditors in accordance with this Resolution Plan, shall be treated as full and final payment of all outstanding dues of the Corporate Debtor to each of such Trade Creditors and Government Creditors. Except as stated above, the Government Creditors and Trade Creditors shall be deemed to have no outstanding claims against the Corporate Debtor; and

As on the Plan Approval Date, the Government Creditors and Trade Creditors shall be deemed to have waived, until the Plan Approval Date, all termination rights on account of payment defaults and rights to payment of penalty, default

payment or any payment of like nature under any agreement or arrangement against the Corporate Debtor."

"XIII. Other Terms of the Resolution Plan

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Extinguishment of Claims:

1. Notwithstanding anything contained under Applicable Law or otherwise, the Claims pertaining to the Corporate Debtor shall stand extinguished, settled, abated and satisfied in the manner set out hereinafter:

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 the 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.

b. Upon approval of the Resolution Plan by the Adjudicating Authority, the payments contemplated in this Resolution Plan shall be the Corporate Debtor's full and final performance, and satisfaction, of all Claims (including Rejected Claims Amounts and Verification Pending Amounts) against the Corporate Debtor till or as of the Insolvency Commencement Date, shall stand irrevocably and unconditionally settled and extinguished in perpetuity.

Xxx xxx xxx

e. Other than as set out in this Resolution Plan, the Resolution Applicant and the Corporate Debtor shall have no responsibility or liability in respect of any Claims (whether contingent or crystallized, known or unknown, filed or not filed) against the Corporate Debtor attributable to the period prior to the Insolvency Commencement Date, including those relating to any corporate guarantees, indemnities and all other forms of credit support provided by the Corporate Debtor till or as of the Insolvency Commencement Date shall stand irrevocably and unconditionally abated, settled and extinguished in perpetuity.

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1. No Person shall be entitled to initiate any Proceedings to enforce any Claims or continue any proceedings in relation to any Claims in so far as the Claims relate to the period prior to the Plan Approval Date.

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2. With respect to the matters stated in paragraph 1 above, any liabilities and/ or Claims that arise till the Effective Date shall stand waived, extinguished, abated, discharged in perpetuity and provisions of paragraph 1 above shall mutatis mutandis apply."

11.4 The above referred portion of the aforesaid judgment make it exceedingly clear that upon approval of the Resolution Plan all claims including any existing claim such as claim made with respect to water charges which form the subject matter of present Special Civil Application stand extinguished. The Resolution Plan operates "in rem" and it disentitles anyone from agitating any claims that existed prior to Resolution period.

11.5 Pursuant to the approval of the terms of the resolution plan an amount of Rs.10,65,02,083 was paid by ESIL to the writ-applicant by way of demand draft which was submitted by letter dated 6.12.2019 and the same was accepted by the respondent No.2 on 17.12.2019 without any demurer or protest. The said letter dated 6.12.2019 is produced thus ;-

“December 16, 2019

*To: Executive Engineer, Kakarapar
Right Bank Canal Division , 2nd Floor,
City Mamlatdar Office , Athwalines , Surat.*

Dear Sir/Madam:

Subject: Payment under the resolution plan for Essar Steel India Limited

The Hon'ble Supreme Court of India, through its judgment dated November 15, 2019 (“Supreme Court Order”), has approved the resolution plan submitted by ArcelorMittal India Private Limited (AMPIL”) in respect of the corporate insolvency resolution process of ESIL, after considering the order of the Hon'ble National Company Law Tribunal, Ahmedabad bench dated March 8, 2019 and the order of the Hon'ble National Company Law Appellate Tribunal dated July 4, 2019 (the resolution plan, as modified, amended and approved by the Supreme Court Order, the "Resolution Plan").

In accordance with the terms of the Resolution Plan, below are the details of the payment to you as an operational creditor of ESIL:

<i>1</i>	<i>Name of the Operation Creditor</i>	<i>EXECUTIVE ENGINEERS, KRBC SURAT, GOVERNMENT OF GUJARAT.</i>
<i>2</i>	<i>Amount of distribution under the Resolution Plan</i>	<i>Rs.1,06,502,083/- In words : Rs Ten Crores Sixty Five lacs two thousand and eighty three only.</i>
<i>3</i>	<i>Details of Demand Draft (DD) issued for the eligible amount under the Resolution Plan</i>	<i>DD No.: 626895 DD Date : December 16,2019 DD Issuing Bank : State Bank of India Issued in favour of : Executive Engineer KRBC Division Payable at : Surat</i>

The Demand Draft mentioned above is enclosed with this letter.

In accordance with the terms of the Resolution Plan and the Supreme Court Order, please note that the payment of the above amount shall be treated as full and final payment of all outstanding

claims/dues (including any undecided claims) of ESIL to you, and all such claims shall be fully extinguished. Neither ESIL nor AMIPL shall be liable to pay any additional amounts to you. Note that any outstanding advances made by ESIL to you, if any, should not be offset against any past unpaid claims or dues, and such outstanding advances should be adjusted only against future supply of goods and services,
as applicable.

This letter is for your information. Handed over to Mr. Mayank Kumar Desai - DL No. GJ05-19940099755

For and on behalf of Essar Steel India Limited

Name: M. Balajee

Designation: Vice President Finance

DD Received

17.12.2019

For, Executive Engineer

K. R. B. C. Division

Surat”

11.6 In view of above, in view of this Court the present special civil application arose prior to the commencement of CIRP and the same stands extinguished by virtue of the judgment delivered by the Hon'ble Supreme Court in 2020 (8) SCC 531. The proceedings under the Insolvency and Bankruptcy Code 2016 has acquired finality with the aforesaid judgment passed by the Hon'ble Supreme Court in 2020 (8) SCC 531 which clearly shows discussion in detail of the entire scheme of the provisions of the Code and vide the aforesaid quoted paragraphs it clearly shows that “undecided claim” of the operational creditors i.e. stand extinguished by the said scheme of rehabilitation/revival approved by the committee of the creditors which came to be approved by the Hon'ble

Supreme Court.

12. Thus, in view of this Court the civil application in the Special Civil Application No.8741 of 2008 ArcelorMittal Nippon Steel India Ltd., formerly known as Essar Steel India Ltd., (ESIL) deserves to be allowed and the Special Civil Application No.8741 of 2008 filed by the Essar Steel India Ltd., (ESIL) against the respondent No.2 stands allowed to the aforesaid extent.

K.K. SAIYED

(VAIBHAVI D. NANAVATI,J)

