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# THE FATE OF UN-DECIDED CLAIMS AFTER APPROVAL OF THE RESOLUTION PLAN

## INTRODUCTION

The Hon'ble High Court at Delhi in *Indian Oil Corporation Limited vs. Arcelor Mittal Nippon Steel India Limited (2023 SCC OnLine Del 6318)*, considered the fate of claims of creditors against a debtor after the debtor is admitted into Corporate Insolvency Resolution Process (for short 'CIRP') and the Resolution Plan in favour of such debtor is approved and confirmed

## BRIEF FACTS

1. Indian Oil Corporation Limited ('Petitioner') entered into a Gas Supply Agreement (GSA) with Essar Oil Limited ('Essar Oil'). Disputes arose between the parties in terms of the "Take or Pay" obligation under the GSA. The Petitioner invoked arbitration in terms of the provisions of the GSA.
2. In response to the invocation letter, Essar Oil informed the Petitioner that a CIRP proceeding had commenced and been admitted against Essar Oil
3. The Petitioner submitted its claim before the Resolution Professional in the said resolution process which was however admitted only to the extent of Re. 1.
4. The Resolution Plan of Arcelor Mittal ('Respondent') was approved by the Committee of Creditors (for short 'CoC') and confirmed by the Hon'ble National Company Law Tribunal (NCLT).
5. The Resolution Plan provided for extinguishment of all claims upon approval of the Resolution Plan except payments and settlements made thereunder. The provisions of the Resolution Plan were challenged up to the Supreme Court where it was affirmed which effectively meant that the admission of claim of the Petitioner only to the extent Re. 1 was finalised.
6. The Respondent, being the successful Resolution Applicant acquired Essar Oil and took-

over its management

7. The petitioner once again invoked arbitration, this time against the Respondent, claiming the amount due in terms of the GSA which was originally entered into between the Petitioner and Essar Oil. The Respondent denied all liabilities under the GSA and did not nominate an arbitrator for constitution of the Arbitral Tribunal.
8. Hence, the Petitioner filed an Application under Section 11 of the Arbitration and Conciliation Act, 1996 ('A&C Act') for appointment of arbitrator by the Court which led to the instant judgment.

## ISSUES

1. The Petitioner stated that the approval of Resolution Plan and the decision of the Supreme Court cannot be viewed as depriving the right of the Petitioner to raise claims in terms of the GSA. It was also argued that the GSA was a continuing contract and hence the non-payment of dues could be raised as a claim by the Petitioner even at a subsequent stage.
2. The Respondent on the other hand dealt with principles of extinguishment of claims under the Insolvency and Bankruptcy Code, 2016 ('IBC') after the approval of Resolution Plan in terms of Sections 30 and 31 thereof. It was argued that allowing the reference to arbitration would mean reopening of the Resolution Plan which is impermissible under the IBC and would lead to overriding the judicial imprimatur of the Supreme Court decision.
3. The parties also argued on whether the Court can go into the merits of the dispute at a Section 11 stage under the A&C Act which only requires the Court to assess the existence of a valid arbitration agreement and the arbitrability of the dispute between the parties.
4. The issues which were adjudicated by the Court were:



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- (i) Whether approval of Resolution Plan would result in extinguishment of all claims of the Petitioner against the Respondent; and
- (ii) Whether approval of Resolution Plan would render the disputes between the parties non-arbitrable

## STATUTORY PROVISIONS

1. Sections 30 and 31 of the IBC deal with submission of Resolution Plan and approval of Resolution Plan, respectively.
2. Under Section 30, the Resolution Professional, after examining the confirmation of the Resolution Plan with the conditions provided under Section 30(2), presents the plans filed by the Resolution Applicants before the CoC. The CoC approves the Resolution Plan.
3. The Resolution Plan of the successful Resolution Applicant is thereafter considered by the NCLT under Section 31. The NCLT has the final power to either approve or reject the Resolution Plan after considering its terms, conditions and viability.
4. The import of Sections 30 and 31 is that once the Resolution Plan is approved, the management of the corporate debtor is handed over to the successful Resolution Applicant who then takes over the affairs of the corporate debtor on such terms as provided under the Resolution Plan.

## OBSERVATIONS

1. The Court relied on *Ghanshyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd. (2021) 9 SCC 657*, which has confirmed the right of the Resolution Applicant to take over the corporate debtor on a clean and fresh slate thus, providing a closure upon all other claims not covered under the Resolution Plan.
2. The legislative intent of Sections 30 and 31 of the IBC also lays importance on the CIRP proceeding where the NCLT undertakes detailed exercise in consideration of claims and liabilities against the corporate debtor.
3. Thus, the object is that once the CIRP has been completed, no fresh claims arising out of disputes with corporate debtor can be enforced against the Resolution Applicant.
4. On the issue of arbitrability, it was found that at the referral stage, the Court can refer disputes to the arbitral tribunal where debatable issues have been raised by the parties. Both the Section 11 of the A&C Act as well as the Supreme Court decisions bar the Court from conducting a mini trial at the referral stage.

5. However, the Court can refuse reference where the arbitration agreement is found to be non-existent, where the claim is unenforceable by law or where the claim falls in the genre of non-arbitrable disputes.
6. The Court applied such rules to the facts of the present dispute to observe that once it has been established that the approval of Resolution Plan results in extinguishment of claims, the claims cannot be urged again before the Arbitral Tribunal.

## DECISION

1. The Court held that that the approval of Resolution Plan amounts to extinguishment of all claims except those admitted in the Resolution Plan. The IBC thus attaches a sense of finality to the Resolution Plan
2. The Court further held that empowering the arbitral tribunal to adjudicate upon the dispute and claims raised by the Petitioner would be contrary to the principle of finality of the Resolution Plan and would lead to constant uncertainties for the Resolution Applicant even after taking over the corporate debtor in terms of the said Resolution Plan.
3. The Petitioner, hence was not in a position to re-open such claims by placing reliance on the terms of the GSA specifically when such arguments had been made before and rejected by the Supreme Court during approval of the Resolution Plan.
4. The application for reference of disputes to arbitration and appointment of arbitral tribunal was thus dismissed.

## CONCLUSION

1. The decision in *IOCL vs. Arcelor Mittal* by the Delhi High Court confirms the law laid down by the Supreme Court as to accordance of the status of finality to the Resolution Plan approved under Sections 30 and 31 of the IBC.
2. It further settled the position as to nonarbitrability of a claim raised after approval of the Resolution Plan and the Resolution Applicant taking over the corporate debtor. This means that a section 11 application under the A&C Act for referring such claims to arbitration cannot be allowed by courts. Such claims are deemed to have extinguished as held by various decisions.