

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

IA No. 1007 of 2019

IN

Company Appeal (AT) (Insolvency) No.242 of 2019

IN THE MATTER OF:

Standard Chartered Bank

...Appellant

Versus

Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors. ... Respondents

Present:

For Appellant :

**Mr. Kapil Sibal, Senior Advocate &
Mr. R.S. Sanjanwala, Senior Advocate with
Mr. Sandeep Singh, Mr. Gaurav Mathur, Ms. Anushree
Kapadia, Mr. Abhishek Shah and Ms. Kavita Bhardwaj,
Advocates**

For Respondents:

**Mr. Ramji Srinivasan, Senior Advocate with Mr.
Raunak Dhillon, Ms. Ananya Dhar and Ms. Sylona
Mohapatra, Advocates for R.P.**

**Mr. Arun Kathpalia, Senior Advocate with
Ms. Anannya Ghosh, Advocate for Respondent Nos.
2, 3, 4 and 5**

**Mr. Rajeev Mehra, Senior Advocate with
Mr. Dhruv Malik and Mr. Ashish Mukhi, Advocates
for Respondent No. 8**

**Mr. Abhinav Vashisht, Senior Advocate with Ms.
Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Vishal
Gehrana, Mr. Abhishek Swaroop, Mr. Anupm
Prakash, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr.
Naman Bagga, Mr. Amit Bhandari, Advocates.**

With

Company Appeal (AT) (Insolvency) No.243 of 2019

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Prakash, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr.
Naman Bagga, Mr. Amit Bhandari, Advocates.**

With

Company Appeal (AT) (Insolvency) No. 257 of 2019

IN THE MATTER OF:

Prashant Ruia

...Appellant

Versus

State Bank of India & Ors. ... Respondents

Present:

For Appellant :

For Respondents: **Mr. Sapan Gupta, Ms. Misha, Mr. Sidhant Kant and**

Ms. Mrida Lakhmani, Advocates for ‘Committee of Creditors’

Mr. Ramji Srinivasan, Senior Advocate with Mr. Raunak Dhillon, Ms. Ananya Dhar and Ms. Sylona Mohapatra, Advocates for R.P.

Mr. Abhinav Vashisht, Senior Advocate with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Amit Bhandari, Advocates.

With

Company Appeal (AT) (Insolvency) No. 265 of 2019

IN THE MATTER OF:

**Committee of Creditors of Essar Steel India
Through State Bank of India**

...Appellant

Versus

Satish Kumar Gupta & Ors.

...Respondents

Present:

For Appellant :

**Mr. Sapan Gupta, Ms. Misha, Mr. Sidhant Kant and
Ms. Mrida Lakhmani, Advocates for ‘Committee of Creditors’**

For Respondents:

Mr. Ramji Srinivasan, Senior Advocate with Mr. Raunak Dhillon, Ms. Ananya Dhar and Ms. Sylona Mohapatra, Advocates for R.P.

Mr. Abhinav Vashisht, Senior Advocate with Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Vishal Gehrana, Mr. Abhishek Swaroop, Mr. Anupm Prakash, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr. Naman Bagga, Mr. Amit Bhandari, Advocates.

With

Company Appeal (AT) (Insolvency) No. 266 of 2019

IN THE MATTER OF:

State Bank of India & Ors.

...Appellants

Versus

Standard Chartered Bank & Ors.

...Respondents

Present:

For Appellants :

**Mr. Arun Kathpalia, Senior Advocate with
Ms. Anannya Ghosh, Advocate**

For Respondents:

**Mr. Ramji Srinivasan, Senior Advocate with Mr.
Raunak Dhillon, Ms. Ananya Dhar and Ms. Sylona
Mohapatra, Advocates for R.P.**

**Mr. Abhinav Vashisht, Senior Advocate with Ms.
Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Vishal
Gehrana, Mr. Abhishek Swaroop, Mr. Anupm
Prakash, Mr. Utkarsh Maria, Ms. Misha Chandna, Mr.
Naman Bagga, Mr. Amit Bhandari, Advocates.**

O R D E R

20.03.2019 - This application has been filed by Appellant – Standard Chartered Bank, one of the ‘Financial Creditor’ for recall of the interim order dated 18th March, 2019 or to pass an appropriate order.

2) Mr. Kapil Sibbal, Learned Senior Counsel for the Appellant Standard Chartered Bank submitted that the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad conditionally approved the plan having found the distribution of amount amongst the

‘Financial Creditors’ and the ‘Operational Creditors’ discriminatory. Reliance has been placed in para 22 and para 28 of the impugned judgement which reads as follows:-

“22 –Therefore, in the light of the above stated discussion, we are of the view that the present application can be suitably disposed of on the basis of the alternative prayers being made by the applicant seeking for equitable distribution of amount mentioned in the Rs. 42000 Crores among the financial creditors and other stakeholders which will be considered while dealing with and disposing of the IA No. 431 of 2018.

“28- In the light of the above stated discussions, present I.A. No. 431 of 2018 is conditionally allowed. The Resolution Plan submitted by Arcelor Mittal India Pvt. Ltd. being H-1, is approved, as per Section 31(1) of the I&B Code, subject to the aforesaid observations and conditions and with the following statutory directions under Section 31(3) of the I&B Code:-

- (a) That the moratorium order passed by the Adjudicating Authority under Section 14 of the I&B Code shall cease to have effect; and*
- (b) That the Resolution Professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded in its database”.*

3) It is submitted that the order dated 18th March, 2019 passed by this Appellate Tribunal is interpreted in a manner, as if the plan submitted by Arcelor Mittal India Pvt. Limited to be implemented as has been proposed without complying with the direction of the Adjudicating Authority wherein Committee of Creditors have been directed to remove the discrimination.

4) Mr. Arun Kathpalia, learned senior counsel appearing on behalf of Respondents 2 to 5 (some of the ‘Financial Creditors’), opposed the prayer and submitted that if the ‘Resolution Plan’ is not implemented in its totality as ordered on 18th March, 2019 the Financial Creditors will be affected.

5) We have heard the parties and perused the record.

6) The appeals were taken up on 15th March, 2019 when this Appellate Tribunal on hearing the parties ordered to place the appeals on 18th March, 2019. On the said date, it was made clear that this Appellate Tribunal has not passed any interim order; meaning thereby the impugned order dated 18th March, 2019 was not stayed by this Appellate Tribunal.

7) On 18th March, 2019, this Appellate Tribunal while framed the issues also observed that if the Resolution plan is discriminatory, as observed by the Adjudicating Authority this Appellate Tribunal may modify the Resolution plan after hearing the parties, without interfering with the viability, feasibility and financial matrix of the Resolution Plan which includes upfront payment as suggested by the Resolution Applicant.

8) By the said order dated 18th March, 2019, this Appellate Tribunal also made clear that this Appellate Tribunal will mainly consider the question as to whether the amount has been properly distributed between the 'Financial Creditors' and the 'Operational Creditors' or not. The acceptance of the 'Resolution Plan' in effect has not stayed to ensure that except distribution between the 'Financial Creditors' and the 'Operational Creditors' rest of the plan is implemented.

9) The order dated 18th March 2019 if read with order dated 15th March, 2019 and as the impugned judgement particularly the observations as made at para 22 and para 28 having not been stayed, the 'Resolution Plan' is to be implemented in terms with the direction of the Adjudicating Authority which shall be subject to the decision of this Appellate Tribunal. Aforesaid order was passed to ensure that during the pendency of the appeal the 'Successful Resolution Applicant' do not suffer.

10) In this background, the Resolution Professional is required to call for the meeting of the Committee of Creditors for its decision in terms of the

decision of the Adjudicating Authority, which shall be subject to the decision of these appeals.

11) Further, there being typographical error, the office is directed to make necessary corrections in the last line of page 4 of the order dated 18.03.2019 wherein the sentence “*we direct that the Resolution Professional, who is the Chairman of the Monitoring Committee*” to be read as “ *we direct that the Resolution Professional, to be appointed as the Chairman of the Monitoring Committee*” .

12) The order dated 18th March, 2019 stands clarified to the extent above. The IA 1007 of 2019 stands disposed of. Post these appeals for ‘admission’ on **27th March, 2019** at 2.00 p.m. as ordered earlier.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansilal Bhat]
Member (Judicial)

ss/gc

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