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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ O.M.P. (COMM) 294/2020 & I.A. 7610/2024
TATA STEEL LTD

.....Petitioner

Through: Mr. Rajiv Nayar, Sr. Advocate
with Mr. Vivek Sibal, Sr. Advocate
with Mr. Arvind Thapliyal, Mr.
Siddharth Pandey, Ms. Saravna
Vasanta, Mr. Rajesh Banati, Mr.
Ankit Banati, Mr. Siddhant
Grover, Advocates.

versus

SIMPLEX INRASTRUCTURE LTD

.....Respondent

Through: Mr. S.D. Singh, Ms. Meenu Singh,
Mr. Siddharth Singh, Advocates.

CORAM:
HON'BLE MR. JUSTICE PRATEEK JALAN

ORDER

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31.07.2024

1. By way of this petition under Section 34 of the Arbitration and Conciliation Act, 1996 ["the Act"], the petitioner challenges an arbitral award dated 27.05.2014 and amended award dated 21.07.2014.
2. During the pendency of the petition, the original petitioner - Bhushan Steel & Strips Ltd., underwent Corporate Insolvency Resolution Process ["CIRP"] proceedings, which culminated in the sanction of a Resolution Plan by the National Company Law Tribunal, New Delhi, Principal Bench ["NCLT"] on 15.05.2018.
3. It is the admitted position that the respondent herein did not lodge



any claim against the company, on the basis of impugned award or otherwise, in the resolution proceedings. The respondent's claims have, therefore, not been provided for in the Resolution Plan.

4. It is the contention of Mr. Rajiv Nayar, learned Senior Counsel for the petitioner, that the claims of the respondent under the award, therefore, stand extinguished. In support of this argument, he draws my attention to Section 3(6), Section 31(1) and Section 238 of the Insolvency and Bankruptcy Code, 2016 ["IBC"], which read as follows:

"3. Definitions.- In this Code, unless the context otherwise requires,—

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(6) "claim" means—

(a) a right to payment, whether or not such right is reduced to judgment, fixed, disputed, undisputed, legal, equitable, secured or unsecured;

(b) right to remedy for breach of contract under any law for the time being in force, if such breach gives rise to a right to payment, whether or not such right is reduced to judgment, fixed, matured, unmatured, disputed, undisputed, secured or unsecured;

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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.

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238. Provisions of this Code to override other laws.- The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

5. Mr. Nayar also cites the judgments of the Supreme Court in *Essar*



Steel India Ltd. Committee of Creditors v. Satish Kumar Gupta [(2020) 8 SCC 531, paragraph 107] and *Ghanashyam Mishra & Sons (P) Ltd. v. Edelweiss Asset Reconstruction Co. Ltd.* [(2021) 9 SCC 657, paragraph 102].

6. Mr. Nayar submits that the Resolution Plan, in Clause 8.6.11, specifically provides that any claims not submitted in the CIRP proceedings would stand extinguished and the company would have no liability in respect of such claims. The contention of Mr. Nayar is that, in these circumstances, the award is effectively rendered a nullity.

7. The aforesaid submission is disputed by Mr. S.D. Singh, learned counsel for the respondent, on the basis that the pendency of proceedings before the NCLT was not brought to the attention of this Court until after the approval of the Resolution Plan. He submits that the respondent was unaware of the CIRP proceedings until 23.05.2018, when a statement was made before this Court by the petitioner.

8. According to Mr. Nayar, these contentions are irrelevant and the IBC provides a complete code which extinguishes all claims against the corporate debtor. He contends that, in this sense, the proceedings under the IBC are *in rem* and bind all creditors. He also points out that the Resolution Plan has also not been challenged by the respondent on this ground.

9. In view of the aforesaid contention on behalf of the petitioner, the Court recorded as follows in its order dated 26.02.2024:

“Mr. Banati submits that upon conclusion of the Corporate Insolvency Resolution Process against the original petitioner/Bhushan Steel Ltd., the company has been taken-over by Tata Steel Ltd. Counsel submits, that since the respondent did not file any claim before the Resolution Professional, the present petition has in fact been rendered infructuous,



and the arbitral award has attained finality.”

10. The petitioner has filed I.A. 7610/2024 for modification of the said order to the extent of deletion of the words “*the arbitral award has attained finality*”. At Mr. Nayar’s request, it is clarified that the submission of the petitioner is to the effect recorded in this order i.e., that the petition has been rendered infructuous as the arbitral award is, in any event, unenforceable and a nullity and the claims thereunder have been extinguished.

11. The petition, alongwith pending applications, is disposed of as infructuous, without prejudice to the rights and the contentions of the parties, in the event of any further proceedings under the award. The petitioner may also apply for revival of this petition, if necessary, at a subsequent stage.

PRATEEK JALAN, J

JULY 31, 2024
“*Bhupi*”/