2025 LiveLaw (SC) 491

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
ABHAY S. OKA; J., UJJAL BHUYAN; J.
APRIL 21, 2025
CIVIL APPEAL NO. 2896 OF 2024 (arising out of SLP (C) No. 15823 of 2023)

ELECTROSTEEL STEEL LIMITED (NOW M/S ESL STEEL LIMITED)
versus
ISPAT CARRIER PRIVATE LIMITED

Arbitration and Conciliation Act, 1996; Section 34 - An arbitral award for claims not included in an approved IBC resolution plan is unenforceable, as such claims are extinguished upon approval under Section 31 of the Insolvency and Bankruptcy Code, 2016. The Court allowed Electrosteel Steels Ltd.'s appeal against the enforcement of an Micro and Small Enterprises Facilitation Council (MSEFC) arbitral award, ruling it non-executable due to the approved resolution plan settling operational creditors' claims at nil. The Court clarified that objections to an award's execution under Section 47 CPC are permissible if the award is a nullity, independent of a challenge under Section 34 of the Arbitration Act, and that the MSEFC lacked jurisdiction to pass the award post-approval. (Para 50 - 52)

For Appellant(s): Mr. Gopal Jain, Sr. Adv. Ms. Anusuya Sadhu Sinha, Adv. Ms. Priyanka Goswami, Adv. Mr. Siddharth Naidu, Adv. For M/S. Ksn & Co., AOR

For Respondent(s): Mr. Sameer Kumar, AOR Mr. Rajnish Kalawatia, Adv. Mr. Mandeep Baisala, Adv. Ms. Somi Sharma, Adv.

J U D G M E N T

UJJAL BHUYAN, J.

This appeal by special leave is directed against the judgment and order dated 17.07.2023 passed by the High Court of Jharkhand at Ranchi in CMP No. 376 of 2023 filed by the appellant.

2. Appellant had filed CMP No. 376 of 2023 before the High Court of Jharkhand at Ranchi (briefly 'the High Court' hereinafter) under Article 227 of the Constitution of India assailing the order dated 03.03.2023 passed by the learned Presiding Officer, Commercial Court/District Judge-1, Bokaro in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018). It may be mentioned that by the aforesaid order dated 03.03.2023, learned Presiding Officer, Commercial Court/District Judge-1, Bokaro (referred to hereinafter as 'the Executing Court') had dismissed the application dated 14.05.2019 filed by the judgment debtor (appellant), further directing the judgment debtor (appellant) to comply with the award dated 06.07.2018 passed by the West Bengal Micro, Small and Medium Facilitation Council, Kolkata within fifteen days of the order.

3. Relevant facts may be briefly noted.

4. On 02.12.2014 and 20.12.2014, respondent filed claim petitions before the West Bengal Micro, Small and Medium Facilitation Council (briefly 'the Facilitation Council' hereinafter) for a total principal outstanding amount of Rs. 1,59,09,214.00 which were registered as Case No. 330/2014 and Case No. 331/2014. In Case No. 330/2014, the claim amount was Rs. 1,36,69,981.33, whereas in Case No. 331/2014 the claim amount was Rs. 22,39,233.00, thus the total amount being Rs. 1,59,09,214.00. The claims were

made under the provisions of the Micro, Small and Medium Enterprises Development Act, 2006 (hereinafter referred to as 'the MSME Act').

5. As per the requirement of the MSME Act, conciliation proceedings were initiated but attempt for conciliation failed. Thereafter, the arbitration proceedings were commenced on 07.06.2017.

6. On 27.06.2017, the financial creditors of the appellant invoked Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC' hereinafter) before the National Company Law Tribunal, Kolkata Bench (NCLT) which was registered as C.P. No.(IB) 361/KB/2017.

7. On 21.07.2017, NCLT imposed moratorium and an interim resolution professional was appointed.

8. On 24.07.2017, the interim resolution professional issued a public announcement calling upon all the creditors to submit their claims before him.

9. In view of the moratorium declared by the NCLT, arbitral proceedings before the Facilitation Council were kept in abeyance.

10. Respondent filed its claim before the resolution professional, who partly admitted the claim of the respondent.

11. On 29.03.2018, a resolution plan was submitted by Vedanta Limited before the NCLT wherein all the claims of operational creditors were settled at nil value.

12. However, claim of the respondent was not included in the resolution plan as approved by the committee of creditors. Ultimately, the resolution plan was approved by NCLT on 17.04.2018 under Section 31 of the IBC on and from which date the moratorium period came to an end.

13. In the order dated 17.04.2018, NCLT declared that the claims of all the operational creditors were settled at nil. No appeal was preferred by the respondent. However, the aforesaid order of the NCLT dated 17.04.2018 was challenged before the National Company Law Appellate Tribunal, New Delhi (NCLAT) in Company Appeal (AT) (Insolvency) No.175 of 2018 by some of the operational creditors. But the same was dismissed on 10.08.2018. Other creditors also approached NCLAT in Company Appeal (AT) (Insolvency) No.265/2018 and in analogous appeals. Specific ground taken was that in the resolution plan, the resolution applicant had not taken proper care of the operational creditors. These appeals were also dismissed by the NCLAT *vide* the order dated 20.08.2018. The matter was carried forward to this Court in Civil Appeal No. 1133 of 2019. However, this Court dismissed the said appeal *vide* the order dated 27.11.2019.

14. It appears that on lifting of the moratorium, Facilitation Council resumed arbitral proceedings. Appellant did not contest the arbitral proceedings. Ultimately, an award was passed on 06.07.2018. As per the award, the Facilitation Council directed the appellant to pay a sum of Rs.1,59,09,214.00 along with interest to the respondent in terms of Section 16 of the MSME Act.

15. Appellant did not challenge the award dated 06.07.2018 under Section 34 of the Arbitration and Conciliation Act, 1996 (briefly 'the 1996 Act' hereinafter).

16. Respondent instituted execution proceeding which was initially registered as Execution Case No.77 of 2018 and thereafter as Commercial Execution Case No.21 of 2022 before the Executing Court. At the stage of execution of the award, appellant filed a petition dated 14.05.2019 contending that the arbitral award was a nullity and hence not

executable as the claim of the respondent was already settled at nil as per the resolution plan and, therefore, nothing was payable to the respondent.

17. Executing Court by the order dated 03.03.2023 dismissed the petition of the appellant and directed it to comply with the award dated 06.07.2018 within fifteen days.

18. As noted above, this came to be challenged by the appellant before the High Court by filing a petition under Article 227 of the Constitution of India. High Court framed the following questions for consideration:

a. The arbitral award having not been challenged under Section 34 of the Act of 1996, whether the objection to execution of the arbitral award referrable to Section 47 of the Civil Procedure Code, 1908 (CPC) was maintainable by alleging that the arbitral award itself was a nullity and hence non-executable?

b. Whether the arbitral award in the present case could be assailed as a nullity and hence non-executable within the permissible grounds of raising such a plea?

c. Irrespective of maintainability of the objection to the arbitral award under Section 47 of the CPC, whether on facts, the Facilitation Council lost its jurisdiction to proceed and pronounce the arbitral award in view of the insolvency resolution plan of the petitioner which was duly approved under Section 31 of the IBC?

19. Insofar the first question is concerned, High Court opined that the plea of nullity *qua* an arbitral award can be raised in an execution proceeding under Section 47 of the CPC. However, the scope of interference would be very narrow. As regards the second question, High Court rejected the contention of the appellant that since the award suffered from patent or inherent lack of jurisdiction and therefore was a nullity, it can be questioned at the stage of execution without challenging the award under Section 34 of the 1996 Act. High Court answered the third question by holding that the Facilitation Council did not lose its jurisdiction to procced and pronounce the arbitral award notwithstanding approval of the resolution plan by the NCLT under Section 31 of IBC. Reasoning given by the High Court is that the arbitral proceedings were initiated prior to the insolvency resolution date, kept suspended during the moratorium period and resumed after lifting of the moratorium; the approved resolution plan simply determined the claim of the respondent as nil. Accordingly, *vide* the impugned judgment and order High Court dismissed the petition filed by the appellant under Article 227 of the Constitution of India.

20. Hence, the present appeal.

21. On 04.08.2023 notice was issued in the related SLP (C) No.15823/2023. It was submitted on behalf of the respondent that a sum of Rs.15,48,70,890.00 was withdrawn but gave an undertaking to deposit the said amount. This Court directed the respondent to deposit the said amount with the Executing Court with further direction to the Executing Court to invest the said amount in an interest bearing fixed deposit until further orders. In the hearing held on 20.02.2024, leave was granted.

22. Learned senior counsel for the appellant submits that the High Court had erroneously held that the resolution plan did not determine the claim of the respondent at nil and, therefore, the Facilitation Council had the jurisdiction to decide on the claim of the respondent.

22.1. He submits that the High Court had misread and misinterpreted the resolution plan which would be evident from a perusal of the relevant paragraphs of the resolution plan. Respondent had submitted its claim as an operational creditor to the resolution professional. Such claim was the same claim which formed the subject matter of the

proceedings before the Facilitation Council. Resolution applicant had submitted a resolution plan in respect of the appellant (corporate debtor) in accordance with the provisions of Section 30 of the IBC to enable the appellant to continue as a going concern. A reading of the relevant paragraphs of the resolution plan i.e. paragraphs 3.2(v), 3.4(ii) and 3.8(i) would indicate that the claims of the operational creditors including the debt of the respondent were settled at nil and, therefore, they were not entitled to any payment.

22.2. On 17.04.2018, NCLT approved the resolution plan under Section 31 of the IBC. Paragraph 50 of the order dated 17.04.2018 specifically recorded that the claims of all the operational creditors were settled at nil. This Court in Civil Appeal No. 1133 of 2019 after going through the resolution plan had observed that there was nil payment to be made to all the operational creditors as per the resolution plan submitted and approved.

22.3. Learned senior counsel submits that on 17.04.2018 when the NCLT had approved the resolution plan, claims of the operational creditors were settled at nil. This became binding on the respondent and all other authorities as per Section 31(1) of the IBC. In this connection, learned senior counsel has referred to and relied upon the decision of this Court in *Ajay Kumar Radheshyam Goenka Vs. Tourism Finance Corporation of India Ltd.*[1] In the said decision, this Court had made it abundantly clear that the creditor has no option but to join the process under the IBC. Once the plan is approved, it would bind everyone under the sun. He contended that the respondent had submitted its claim before the resolution professional but the same was not included in the resolution plan as was approved by the committee of creditors and then by the adjudicating authority i.e. NCLT which became binding on the respondent. Even if the respondent had not submitted its claim before the resolution professional, the approved resolution plan would still have been binding on the respondent.

22.4. He, therefore, submits that on approval of the resolution plan by the NCLT, claim of the respondent stood extinguished. Thus, respondent had no claim against the appellant (corporate debtor) in law. Respondent was also estopped from pursuing its claim before the Facilitation Council and also from seeking execution of the award after approval of the resolution plan.

22.5. After adverting to the objectives of the IBC, learned senior counsel submits that the appellant (corporate debtor) has been given a fresh and clean slate upon approval of the resolution plan. The same cannot be allowed to be defeated or frustrated by raising claims relatable to the period covered by the corporate insolvency resolution process. In this connection, learned senior counsel has placed reliance on the following decisions:

(i) *Essar Steel India Ltd. Committee of Creditors Vs. Satish Kumar Gupta*[2]

(ii) *Ghanshyam Mishra & Sons (P) Ltd. Vs. Edelweiss Asset Reconstruction Co. Ltd.*[3]

(iii) *Ruchi Soya Industries Ltd. Vs. Union of India*[4] (iv) *RPS Infrastructure Ltd. Vs. Mukul Kumar*[5]

22.6. On the basis of the above decisions, learned senior counsel submits that it would lead to an absurd situation if the respondent and other operational creditors are permitted to pursue their individual claims even after the corporate debtor goes through a successful

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[1] (2023) 10 SCC 545
[2] (2020) 8 SCC 531
[3] (2021) 9 SCC 657
[4] (2022) 6 SCC 343
[5] (2023) 10 SCC 718

corporate insolvency resolution process (CIRP) where the claims of the operational creditors were settled at nil in the resolution plan which was approved by the committee of creditors and finally by the adjudicating authority (NCLT). In such a case, the corporate debtor would once again have to struggle to sustain itself as a going concern to satisfy such claims. Thus, the object or the purport of IBC would be defeated.

22.7. Adverting to a decision of this Court in *Adani Power Ltd. Vs. Shapoorji Pallonji & Co. Pvt. Ltd.*[6], learned senior counsel submits that this Court has held that the resolution plan, as approved, is binding on all and cannot be made subject matter of arbitration or any other proceedings. Once the resolution plan is approved, the resolution applicant cannot be settled with any liability except what is mentioned in the resolution plan.

22.8. Learned senior counsel further submits that the resolution plan or the terms thereof could have been challenged by the respondent in the manner provided under Section 32 read with Section 61(3) of the IBC. Further, Section 63 of the IBC makes it abundantly clear that no civil court or authority shall have jurisdiction to entertain any suit or proceedings in respect of any matter over which NCLT or NCLAT has jurisdiction under the IBC and that a civil court would not have any jurisdiction.

22.9. He submits that respondent had accepted the resolution plan as approved and did not prefer any challenge thereto or the order of the NCLT approving the resolution plan. On the other hand, some operational creditors challenged the order dated 17.04.2018 passed by the NCLT approving the resolution plan. However, those challenges were dismissed by the NCLAT. When the matter reached this Court in Civil Appeal No. 1133 of 2019, this Court *vide* the order dated 27.11.2019 had clarified that implementation of the resolution plan was not stayed while dismissing the appeal.

22.10. Thus, the Facilitation Council lacked jurisdiction in respect of the claim of the respondent which was part of the subject matter of the resolution plan. Facilitation Council could not have continued with the arbitration proceedings and could not have passed the award in view of Section 63 read with Section 238 of the IBC. Therefore, learned senior counsel would submit that the award passed by the Facilitation Council is a nullity and *non est* in the eye of law. This award has been passed in respect of a claim which stood extinguished and did not exist in law.

22.11. Learned senior counsel submits that an award can be challenged in an execution proceeding on the ground of it being a nullity. In the instant case, Facilitation Council lacked jurisdiction to pass the award. Even if the appellant had not challenged the award under Section 34 of the 1996 Act, the issue of nullity could still be raised at the stage of execution. In this connection, learned senior counsel has referred to a decision of this Court in *Sarwan Kumar Vs. Madam Lal Aggarwal*[7]. In the circumstances, learned senior counsel submits that appellant was well within its right to object to execution of the award by contending that the award itself is a nullity since the Facilitation Council inherently lacked jurisdiction to arbitrate on the claim of the respondent post approval of the resolution plan.

22.12. In view of the above, learned senior counsel for the appellant submits that the execution petition filed by the respondent for execution of the award ought to have been dismissed by the Executing Court. High Court committed a manifest error in declining to entertain the objections filed by the appellant to execution of the award. That being the

[6] Civil Appeal No. 1741 of 2023
[7] (2003) 4 SCC 147

position, impugned order of the High Court is liable to be set aside, so also the execution proceedings.

23. Learned senior counsel for the respondent on the other hand supports the impugned order passed by the High Court.

23.1. He submits that the corporate debtor (appellant) which was being managed by the resolution professional, had knowledge of the arbitral award. As a matter of fact, appellant had taken shelter of the arbitral award to get the revision petition filed by the respondent before the Calcutta High Court disposed of. The revision petition was filed against an order passed under Section 14 of the 1996 Act. It was submitted before the High Court that an arbitral award was passed by the Facilitation Council and on the basis of such submission, Calcutta High Court had disposed of the aforesaid proceedings observing that Section 14 proceedings had been rendered infructuous leaving the partes to avail their remedies in accordance with law.

23.2. Learned counsel submits that upon approval of the resolution plan, the proceedings which were stayed by the Facilitation Council in view of the moratorium, did not automatically get terminated. On the contrary those stood revived. He submits that operational creditors whose claims were pending adjudication at the time of initiation of the corporate insolvency resolution process, formed a different class. Proceedings initiated by them would continue post lifting of moratorium for the purpose of quantification of their claims.

23.3. It is evident from the order passed by the Calcutta High Court that the appellant was aware of the arbitral award. Appellant did not challenge the award despite liberty granted by the High Court. Without challenging the award under Section 34 of the 1996 Act, it was not open to the appellant to challenge the same in a proceeding under Section 47 of the CPC.

23.4. Learned senior counsel for the respondent distinguished the case of *Ghanshyam Mishra* (supra) by contending that the said judgment was rendered in a distinguishable factual situation where the creditor had failed to lodge its claim upon public announcement by the resolution professional. Therefore, this Court held that such a creditor cannot file its claim thereafter and such claim gets extinguished. This judgment does not deal with claims filed before the interim resolution professional or resolution professional and not included in the resolution plan. High Court had noticed this fact and has rightly observed that since the respondent does not fall in the category of operational creditors whose claims were rendered nil, there was no occasion for the respondent to challenge the resolution plan.

23.5. Learned counsel submits that there is no inconsistency between IBC and the MSME Act. Therefore, High Court rightly did not examine the plea of inconsistency.

23.6. He has referred to various provisions of the IBC as well as to the decision of this Court in *Ghanshyam Mishra* (supra) and submits that imposition of moratorium and consequential approval of resolution plan does not terminate or put an end to pending proceedings but those were merely stayed. Legislature has not provided that upon approval of a resolution plan, all pending proceedings would get extinguished. Therefore, post expiry of the moratorium period, pending proceedings such as arbitral proceedings would stand revived and taken to their logical conclusion.

23.7. Learned senior counsel submits that in the present case, respondent had lodged its claim before the interim resolution professional and had also informed about the pendency of proceedings before the Facilitation Council. Interim resolution professional had

published an information memorandum on 20.10.2017 mentioning therein a list of claimants which did not include operational creditors whose claims were sub-judiced before different judicial fora. Validity of such claims would be decided after the judicial proceedings were complete. He submits that after lifting of moratorium, notices were duly issued to the appellant by the Facilitation Council but the appellant decided not to appear and contest the proceedings. After the award was passed, appellant did not challenge the same under Section 34 of the 1996 Act. Having not challenged the award in the forum designated by law, he could not have challenged the same by filing objections to the arbitral award in a proceeding under Section 47 of the CPC. Learned counsel asserts that Section 34 of the 1996 Act is the only acknowledged remedy available to challenge an award. Appellant had the opportunity to assail the award under Section 34 of the 1996 Act but he did not do so. Therefore, filing of application to declare the award a nullity in execution proceedings instituted by the respondent for execution of the award is a clear abuse of the process of law and was rightly rejected by the Executing Court which decision has been upheld by the High Court. Learned counsel further submits that since the claim of the respondent was pending before the Facilitation Council and in view of the information memorandum issued by the interim resolution professional, there was no need for the respondent to have challenged the resolution plan. Therefore, the High Court was fully justified in rejecting the petition filed by the appellant under Article 227 of the Constitution of India. The appeal is devoid of any merit and should, therefore, be dismissed.

24. Submissions made by learned counsel for the parties have received the due consideration of the Court.

25. At the outset, let us examine a few relevant provisions of the IBC. Section 30 provides for submission of resolution plan. As per sub-section (1), a resolution applicant may submit a resolution plan alongwith an affidavit stating that he is eligible under Section 29A to the resolution professional prepared on the basis of the information memorandum in terms of Section 29. Sub-section (2) says that the resolution professional shall examine each resolution plan received by him to confirm that such resolution plan complies with the requirement of clauses (a) to (f) of the said sub-section. Thereafter the resolution professional is required under sub-section (3) to present the resolution plans which are in conformity with the requirements of sub-section (2) to the committee of creditors for its approval. Sub-section (4) mandates that the committee of creditors may approve a resolution plan by vote of not less than 66 percent of the voting share of the financial creditors after considering its feasibility and viability. The resolution applicant may also attend such meeting of the committee of creditors though it shall not have the right to vote unless it is also a financial creditor (sub-section (5)). Once the resolution plan is approved by the committee of creditors, the resolution professional shall submit the same to the adjudicating authority in terms of sub-section (6).

26. Section 31 deals with approval of resolution plan. As per sub-section (1), if the adjudicating authority is satisfied that the resolution plan as approved by the committee of creditors meets the requirement of sub-section (2) of Section 30, it shall by order approve the resolution plan. Once the resolution plan is approved by the adjudicating authority, it 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 including statutory dues are owed, guarantors and other stakeholders involved in the resolution plan. However, before passing an order of approval, the adjudicating authority has to satisfy itself that the resolution plan has provisions for its effective implementation. Under sub-section (2), if the adjudicating authority is satisfied that the resolution plan does

not conform to the requirements referred to in sub-section (1), it may by an order reject the resolution plan. Sub-section (3) provides that once the resolution plan is approved under sub-section (1), the moratorium order passed by the adjudicating authority under Section 14 shall cease to have effect.

27. Under Section 32, any appeal from an order approving the resolution plan shall be in the manner and on the grounds laid down in sub-section (3) of Section 61. Section 61 provides for appeals and appellate authority. Subsection (1) says that any person aggrieved by an order of the adjudicating authority may prefer an appeal to the National Company Law Tribunal (NCLT) within thirty days as provided in sub-section (2). Be it stated that National Company Law Tribunal (NCLT) constituted under Section 408 of the Companies Act, 2013 is the adjudicating authority as defined in Section 5(1) of IBC. Sub-section (3) deals with an appeal against an order approving a resolution plan under Section 31. It says that such an appeal can be filed on the following grounds:

(i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;

(ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;

(iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Insolvency and Bankruptcy Board of India established under Section 188(1);

(iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or

(v) the resolution plan does not comply with any other criteria specified by the Insolvency and Bankruptcy Board of India.

28. Section 238 of IBC clarifies that provisions of IBC 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.

29. In *Essar Steel India Ltd.* (supra), a three-Judge Bench of this Court examined amongst others the role of resolution applicants, resolution professionals and the committee of creditors constituted under the IBC as well as the jurisdiction of NCLT and NCLAT *qua* resolution plans approved by the committee of creditors. After an elaborate and exhaustive analysis of various provisions of the IBC, the Bench concluded that a successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him has been accepted. This would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant. 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 corporate debtor. Paragraph 107 of the said decision reads as under:

107. For the same reason, the impugned NCLAT judgment [*Standard Chartered Bank* v. *Satish Kumar Gupta*, 2019 SCC OnLine NCLAT 388] 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.

30. An important question arose for consideration in *Ghanshyam Mishra* (supra). Again a three-Judge Bench of this Court examined a question as to whether any creditor including the central government, state government or any local authority is bound by the resolution plan once it is approved by the adjudicating authority under sub-section (1) of Section 31 of IBC? Corollary to the above question was the issue as to whether after approval of the resolution plan by the adjudicating authority, a creditor including the central government, state government or any local authority is entitled to initiate any proceeding for recovery of any of the dues from the corporate debtor which are not a part of the resolution plan approved by the adjudicating authority. In that case, the Bench concluded by holding that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the central government, any state government or any local authority, guarantors and other stakeholders. On the date of approval of the resolution plan by the adjudicating authority, all such claims which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. The Bench declared that all dues including statutory dues owed to the central government, any state government or any local authority if not part of the resolution plan shall stand extinguished and no proceeding in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued. Paragraph 102 of the aforesaid decision reads thus:

102 In the result, we answer the questions framed by us as under:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the central government, any state government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

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102.3. Consequently all the dues including the statutory dues owed to the central government, any state government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.

31. In *Ruchi Soya Industries Ltd.* (supra), a two-Judge Bench of this Court referred to the decision in *Ghanshyam Mishra* (supra) and thereafter declared that on the date on which the resolution plan was approved by the NCLT, all claims stood frozen and no claim, which is not a part of the resolution plan, would survive.

32. A three-Judge Bench of this Court in *Ajay Kumar Radheshyam Goenka* (supra) held that a creditor has no option but to join the process under the IBC. Once the plan is approved, it would bind everyone under the sun. The making of a claim under the IBC and accepting the same and not making any claim will not make any difference in the light of

Section 31 of IBC. Both the situations will lead to Section 31 and the finality and binding value of the resolution plan. Paragraph 62 of the said decision is extracted hereunder:

62. Thus, from the aforesaid, it is evident that the creditor has no option but to join the process under the IBC. Once the plan is approved, it would bind everyone under the sun. The making of a claim and accepting whatever share is allotted could be termed as an "Involuntary Act" on behalf of the creditor. The making of a claim under the IBC and accepting the same and not making any claim, will not make any difference in light of Section 31 IBC. Both the situations will lead to Section 31 and the finality and binding value of the resolution plan.

33. In a recent decision, a two-Judge Bench of this Court decided a contempt application in *M/s. JSW Steel Ltd. Vs. Pratishtha Thakur Haritwal*[8]. Contention of the petitioner was that respondents had wilfully disobeyed the judgment of this Court in *Ghanshyam Mishra* (supra) by issuing demand notices pertaining to the period covered by the corporate insolvency resolution process. In the above context, the Bench reiterated what was held in *Ghanshyam Mishra* (supra) which has been followed in subsequent decisions and thereafter declared that all claims which are not part of the resolution plan shall stand extinguished. No person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. Though the Bench did not take any action for contempt in view of the unconditional apology made by the respondents nonetheless the Bench reiterated the proposition laid down in *Ghanshyam Mishra* (supra) clarifying that even if any stakeholder is not a party to the proceedings before the NCLT and if such stakeholder does not raise its claim before the interim resolution professional/resolution professional, the resolution plan as approved by the NCLT would still be binding on him.

34. Having noticed the relevant provisions of IBC and the judgments of this Court, let us now deal with the challenge made in this appeal.

35. Respondent had supplied telescopic and type mounted cranes, 75 ton crawler cranes, hydra and trailors on hiring basis to the appellant pursuant to two purchase orders dated 02.06.2011 and 06.06.2011. Case No. 330 of 2014 pertains to 138 numbers of bills under eight work orders in which the disputed amount was Rs. 1,36,69,981.33; on the other hand Case No. 331 of 2014 pertains to 158 numbers of bills under nine work orders where the disputed amount was Rs. 22,39,233.00. Thus, the total disputed amount was Rs. 1,59,09,214.33. Buyer (appellant) did not make any payment so the entire amount was claimed as outstanding and due. Initially conciliation proceedings were initiated by the Facilitation Council but the buyer unit was not present though it had filed written submissions stating that on the request of the supplier it had appointed an arbitrator whereafter arbitration proceedings had commenced. As an independent arbitration agreement existed between the parties, Facilitation Council should not proceed under Section 18(3) of the MSME Act. Already arbitration process was going on as per the arbitration agreement. Facilitation Council in its proceedings dated 31.07.2017 noted that it appeared from newspaper reports and order copy of the NCLT that moratorium was declared under Section 14 of IBC in the matter of *State Bank of India Vs. Electrosteel Steels Ltd.* It was decided that the matter should be kept in abeyance till the moratorium period was over.

36. We shall now deal with the resolution plan and revert back to the proceedings of the Facilitation Council thereafter. The resolution plan was submitted by Vedanta Ltd. as resolution applicant and is dated 29.03.2018. Clause 3 contained the mandatory contents

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of the resolution plan. Clause 3.2(v) declared that while the liquidation value of the corporate debtor was Rs. 2,899.98 crores, the admitted debts of the financial creditors aggregated to approximately Rs.13,395.25 crores. The liquidation value was not sufficient to cover the debts of the financial creditors in full. Therefore, the liquidation value of the operational creditors or the other creditors or stakeholders of the corporate debtor including dues of the employees (other than workmen), government dues, taxes etc. and other creditors and stakeholders was nil. As such, they would not be entitled to any payment. The dissenting financial creditors would be entitled to receive 21.65 percent of the value of their admitted debt which would be paid in priority to any payment to the assenting financial creditors.

37. Clause 3.2(xii)(A) is relevant. It says that notwithstanding what is contained in the mandatory contents of the resolution plan, upon approval of the resolution plan by the NCLT under Section 31 of the IBC, on and from the effective date all pending proceedings relating to the winding up of the company i.e. the corporate debtor shall stand irrevocably and unconditionally abated in perpetuity and claims in connection with all violation or breach of any agreement by the corporate debtor shall be settled at nil value at par with operational creditors.

38. Clause 3.4 provides for a proposal for operational creditors (excluding employees and workmen). Sub-clause (ii) says that since the liquidation value is not sufficient to cover the debts of the financial creditors in full, therefore, the liquidation value of the operational creditors or the other creditors etc. was taken as nil. Thus nil payment was proposed under the resolution plan towards claims of operational creditors whether filed or not, whether admitted or not and whether or not set out in the provisional balance sheet or the list of creditors etc. Thus, no source was identified for such payment under the resolution plan.

39. Heading of Clause 3.8 is treatment of amounts claimed under ongoing litigations. Clause 3.8(i) states that all claims arising out of enquiries, investigations, notices, causes of action, suits, litigations, arbitrations, claims of the top 30 operational creditors against the corporate debtor in relation to any period prior to the effective date etc. shall be settled at nil.

40. The resolution plan as submitted by Vedanta Ltd. was examined by NCLT and by order dated 17.04.2018 approved the same. It was mentioned in the said order that the resolution plan had the approval of the committee of creditors with a voting share of 100 percent. It was clarified that the moratorium order passed under Section 14 IBC would cease to have effect as the approved resolution plan had come into force with immediate effect. Adjudicating authority i.e. NCLT declared that the approved resolution plan would be binding on the corporate debtor, its employees, members, creditors, coordinators and stakeholders involved in the resolution plan.

41. Reverting back to the proceedings before the Facilitation Council, it is seen that on 16.05.2018, Facilitation Council noted that the moratorium period of the corporate insolvency resolution process had expired. The buyer did not appear in the conciliation process as well as in the arbitration proceeding. Thereafter, the Facilitation Council passed the award dated 06.07.2018 holding that claim of the respondent was genuine. The buyer unit was liable to pay the outstanding amount of Rs. 1,59,09,214.33 with interest at the rate of 3 times of the prevailing bank rate.

42. At this stage, we may mention that respondent did not challenge the resolution plan before the NCLAT or before any other forum. On the other hand, a number of other operational creditors had challenged the order of the NCLT dated 17.04.2018 before the

NCLAT in Company Appeal (AT) (Insolvency) No. 175 of 2018. However, the said appeal was dismissed on 10.08.2018. Similar appeal being Company Appeal (AT) (Insolvency) No. 265 of 2018 was also dismissed by the NCLAT *vide* the order dated 20.08.2018. These orders were challenged before this Court in Civil Appeal No. 1133 of 2019 which was dismissed on 27.11.2019.

43. The decree holder i.e. the respondent filed an execution petition before the Executing Court for execution of the award dated 06.07.2018. In the said execution proceedings being Commercial Execution Case No. 21/2022 (Execution Case No. 77/2018), appellant had filed an application for declaring the award as a nullity and hence non-executable in view of the resolution plan approved by the NCLT. By the order dated 03.03.2023, the Executing Court noted that the judgment debtor (appellant) had not preferred any appeal against the award dated 06.07.2018. Instead of filing such an appeal, appellant had filed application dated 14.05.2019 for dismissing the execution proceedings on the ground that the award passed by the Facilitation Council was illegal and *non est* in the eye of law. Since the appellant did not file any application under Section 34 of the 1996 Act, the Executing Court dismissed the application of the appellant dated 14.05.2019 observing that the appellant was trying to deprive the decree holder of the fruits of the award by unnecessarily delaying the execution.

44. This order came to be challenged by the appellant before the High Court in a proceeding under Article 227 of the Constitution of India. We have already noted the three issues framed by the High Court for consideration. In so far the first issue is concerned, High Court is of the view that an award can be challenged in a proceeding under Section 47 CPC on the very limited ground of the award being a nullity or *void ab intio* or suffering from inherent lack of jurisdiction. However, the High Court opined that if an aggrieved party does not challenge an award under Section 34 of the 1996 Act, it cannot be permitted to object to its execution by alleging it to be a nullity though such a plea of nullity can be entertained if it is of such a grave nature that it is not even capable of being waived by one or the other party. Therefore, High Court concluded that the plea of nullity *qua* an arbitral award can be raised in a proceeding under Section 47 CPC but such a challenge would lie within a very narrow compass.

45. In so far the second issue is concerned, High Court rejected the contention of the appellant that since the award suffered from patent or inherent lack of jurisdiction, objection to the award can be taken at the stage of execution without challenging the award under Section 34 of the 1996 Act. While rejecting the said contention, High Court held that the arbitral proceedings culminating in the award cannot be said to be suffering from inherent lack of jurisdiction.

46. As regards issue No. 3, High Court examined as to how the claim of the respondent was dealt with in the resolution plan. After observing that the respondent was not included in the top 30 operational creditors whose claims were settled at nil, High Court held that the Facilitation Council had the jurisdiction to proceed and pronounce the award even after approval of the resolution plan. The arbitral proceedings were initiated prior to the resolution insolvency date, suspended during the moratorium period and resumed upon expiry of the moratorium period. High Court further observed that the approved resolution plan did not determine the claim of the respondent as nil and that the proceedings before the Facilitation Council was taken note of in the resolution plan.

47. High Court is correct in answering the first issue that a plea of nullity *qua* an arbitral award can be raised in a proceeding under Section 47 CPC but such a challenge would lie within a very narrow compass.

48. Section 36 of the 1996 Act deals with enforcement of arbitral awards. Sub-section (1) says that where the time for making any application to set aside an arbitral award under Section 34 has expired, then subject to the provisions of sub-section (2), such award shall be enforced in accordance with the provisions of CPC in the same manner as if it were a decree of the court. As per sub-section (2), where an application to set aside an arbitral award has been filed under Section 34, the filing of such an application shall not by itself render an award unenforceable unless an order of stay is granted by the court. Therefore, in terms of Section 36 of the 1996 Act, an award can be enforced in accordance with the provisions of CPC in the same manner as if it were a decree of a civil court.

48.1. Section 47 CPC deals with questions to be determined by the court executing decree. As per sub- section (1), all questions arising between the parties to the suit in which the decree was passed and relating to the execution, discharge or satisfaction of the decree shall be determined by the court executing the decree and not by a separate suit. Execution of decrees and orders is provided for in Order XXI CPC. The law is well settled that at the stage of execution, an objection as to executability of the decree can be raised but such objection is limited to the ground of jurisdictional infirmity or voidness. The law laid down by this Court in *Vasudev Dhanjibhai Modi Vs. Rajabhai Abdul Rehman*[9] is that only a decree which is a nullity can be the subject matter of objection under Section 47 CPC and not one which is erroneous either in law or on facts. The aforesaid proposition of law continues to hold the field.

49. Objection to execution of an award under Section 47 CPC is not dependent or contingent upon filing a petition under Section 34 of the 1996 Act. High Court was not justified in taking the view that since the appellant did not file a petition under Section 34 of the 1996 Act, therefore, it was precluded from filing an application before the Executing Court to declare the award as void and hence non-executable.

50. In so far the second and third issues are concerned, it is by now well settled that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, all claims which are not part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. In fact, this Court in *Essar Steel India Ltd.* (supra) had categorically declared that a successful resolution applicant cannot be faced with undecided claims after the resolution plan is accepted. Otherwise, this would amount to a hydra head popping up which would throw into uncertainty the amount payable by the resolution applicant. In so far the resolution plan is concerned, the resolution professional, the committee of creditors and the adjudicating authority noted about the claim lodged by the respondent in the arbitration proceeding. However, the respondent was not included in the top 30 operational creditors whose claims were settled at nil. This can only mean that the three authorities conducting the corporate insolvency resolution process did not deem it appropriate to include the respondent in the top 30 operational creditors. If the claims of the top 30 operational creditors were settled at nil, it goes without saying that the claim of the respondent could not be placed higher than the said top 30 operational creditors. Moreover, the resolution plan itself provides that all claims covered by any suit, cause of action, arbitration etc. shall be settled at nil. Therefore, it is crystal clear that in so far claim of the respondent is concerned, the same would be treated as nil at par with the claims of the top 30 operational creditors.

[9] (1970) 1 SCC 670

50.1. Lifting of the moratorium does not mean that the claim of the respondent would stand revived notwithstanding approval of the resolution plan by the adjudicating authority. Moratorium is intended to ensure that no further demands are raised or adjudicated upon during the corporate insolvency resolution process so that the process can be proceeded with and concluded without further complications. View taken by the High Court cannot be accepted in the light of the clear cut provisions of the IBC as well as the law laid down by this Court. In view of the resolution plan, as approved, the claim of the respondent stood extinguished. Therefore, the Facilitation Council did not have the jurisdiction to arbitrate on the said claim. Since the award was passed without jurisdiction, the same could be assailed in a proceeding under Section 47 CPC. View taken by the High Court that because the appellant did not challenge the award under Section 34 of the 1996 Act, therefore, it was precluded from objecting to execution of the award at the stage of Section 47 of CPC is wholly unsustainable.

51. Consequently, the view taken by the High Court that notwithstanding approval of the resolution plan by the NCLT, the Facilitation Council did not lose jurisdiction to proceed and pronounce the arbitral award, is erroneous and contrary to the law laid down by this Court.

52. In that view of the matter, we have no hesitation to hold that upon approval of the resolution plan by the NCLT, the claim of the respondent being outside the purview of the resolution plan stood extinguished. Therefore, the award dated 06.07.2018 is incapable of being executed. Consequently, the order dated 03.03.2023 passed by the Presiding Officer, Commercial Court/District Judge-1, Bokaro in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018) is hereby set aside. Execution proceedings in Commercial Execution Case No. 21 of 2022 (Execution Case No. 77 of 2018) pending in the Court of Presiding Officer, Commercial Court/District Judge-1, Bokaro, are hereby quashed. Resultantly, impugned order of the High Court dated 17.07.2023 is also set aside.

53. Appeal is accordingly allowed. However, there shall be no order as to cost.