

**BEFORE THE PRESIDING OFFICER AND JUDGE, LABOUR COURT-II,
AT AURANGBAD**

Ahmednagar Forgings Limited

Ref IDA No.67/2014

.. First party

V/s.

Shyam Tulshiram Dhangare

.. Second party

ORDER BELOW EXH. C-101
(Delivered on this 02.07.2025)

- 1) The applicant i.e. newly added first party which is new management of Metalyst Forgings Limited has filed this application for disposal of present reference in view of approval of resolution plan of the successful resolution applicant under insolvency and bankruptcy code.
- 2) It is submitted by the applicant the new management of Metalyst Forgings Limited i.e. the first party in this case is seeking for disposal of present reference as the same became infructuous in view of approval of resolution plan. It is also submitted that Metalyst Forging Limited has successfully undergone a Corporate Insolvency Resolution Process ("CIRP") in accordance with the provisions of the IBC wherein the Resolution Plan submitted by Deccan Value Investors LP and DVI PE (Mauritius) Limited ("S.R.A. / DVI") read with Addendums thereto (collectively hereinafter referred to as the "Resolution Plan") has been approved by the Ld. National Company Law Tribunal, Mumbai Bench ("Ld. NCLT") vide its Order dtd. 14.5.2024 ("Plan Approval Order"). The Plan Approval Order has not been challenged and has now attained finality.

- 3) The first party also submitted that the first party is a company engaged in the business of manufacturing automobile components wherein it undertakes activities such as forging, high-pressure diecasting, machining and sub-assembly for both passenger and commercial vehicles. That on 28.03.2011, the second party was appointed as a Trainee for one-year whereafter he was placed under a probation of 6 months and eventually appointed as the post of Junior Foreman (Die Shop) in S-I Grade at a salary of Rs. 8,500/- p.m. on 28.3.2012 by the erstwhile management of the first party company. That sometime around 2014, the second party became a member of the Bhartiya Kamgar Union. That on 7.2.2014, the previous management of the applicant company issued letter regarding the shifting of machines and further transferred certain workmen to Sanaswadi, Pune factory on 8.2.2014.
- 4) The first party also submitted that on 8.2.2014, one Mr. Mhatre, leader in Bharatiya Kamgar Sangathan along with 5 other persons committed offence punishable under Sections 143, 452 & 506 of the I. P. C. and accordingly on 10.2.2014, an FIR bearing Cr. No. I 32/2014 was registered by P. S. Karmad by the previous management of the applicant. On 11.2.2014 at 3.50 PM. Mr. Mhatre along with 50/60 hooligans and around 25 to 30 factory workmen (including the second party herein) armed with clubs and sticks, iron bars, pickaxes and shovels arrived at the factory premises with the avowed intention to commit a riot and to cause injuries to the factory employees and damage factory property. The said persons were stopped by the security of the factory and the said persons attempted to forcibly enter the

factory premises and hurled abuses at the gate of the factory. In view of the above incident, the previous management of the applicant company issued termination letter dtd. 15.2.2014 and after paying a sum of Rs. 21,118/- terminated the second party herein. Thereafter, the previous management of the applicant sent a letter dtd. 12.3.2014 to the Govt. Labour Officer regarding the termination of the second party. Since the conciliation proceedings between the parties failed, the Appropriate Government vide order dtd. 29.4.2014 passed under Section 10(1) read with 12(5) of the I. D. Act referred the instant dispute to this Court.

- 5) The first party also submitted that on 8.5.2014, the second party filed his statement of claim and adduced its affidavit of evidence. However, the written statement dtd. 21.11.2016 on behalf of the previous management of the applicant company came to be filed only after a round of litigation before the Hon'ble High Court. While the present proceedings remained pending, in the meantime, a petition under Section 7 of the IBC being C. P (IB)/1555/MB/2017 titled **"State Bank of India V/s Metalyst Forgings Ltd."** came to be filed against the previous management of the applicant before the Ld. NCLT, Mumbai Bench. The above petition under Section 7 of the IBC came to be admitted by the Ld. NCLT vide its order dtd. 15.12.2017 and consequentially the CIRP of Metalyst Forgings Ltd. Commenced. Vide the Admission Order, the Ld. NCLT was pleased to appoint Mr. Dinkar T. Venkatasubramnian as the Resolution Professional whereafter the entire management of Metalyst Forgings Ltd. stood vested in him. The Ld. NCLT further declared a moratorium in terms of Section

14 of the Code whereafter all proceedings against Metalyst Forgings Ltd. were prohibited. A copy of the admission order/Moratorium dtd. 15.12.2017 passed by the Ld. NCLT, Mumbai Bench in C. P. (IB)/1555/MB/2017 is produced on record.

- 6) The first party also submitted that on 23.12.2017 the Resolution Professional made a public announcement (Form A) in terms of the Code in the Indian Express, Jansatta, Loksatta and Himachal Times thereby calling upon the creditors of Metalyst Forgings Ltd. to submit their claims with proof on or before 3.1.2018 to him. A copy of the public announcement admission (Form A) dtd. 23.12.2017 published by the Resolution Professional is produced on record. Pursuant to the aforesaid, the Resolution Professional constituted the Committee of Creditors and convened the first meeting of the Committee of Creditors on 12.1.2018. In terms of the Code, on 22.1.2018, the Resolution Professional published an advertisement in the Economic Times inviting Expression of Interest from prospective resolution applicants to submit their Resolution Plans for the resolution of Metalyst Forgings Ltd.
- 7) The first party also submitted that pursuant to the Expression of Interest, DVI/S.R.A. submitted its resolution plan. Subsequent addendums were also submitted on behalf of DVI/S.R.A. A copy of the resolution plan (along with Addendums) submitted by DVI is produced on record. Despite the moratorium under Section 14 of the IBC having been declared, this Court proceeded in the present reference

proceedings and passed the order dtd. 4.7.2018. Pursuant thereto the Resolution Professional, on behalf of the previous management of the applicant was constrained to file W. P. (C) No. 9410 of 2018 titled **“Metalyst Forgings V/s Ganesh Dnyandeo Dongare”** (and 9 other Writ Petitions) before the Hon’ble High Court of Judicature of Bombay at Aurangabad. Simultaneously, the CIRP of the first party company continued and the resolution plan submitted by DVI came to be approved by the Committee of Creditors on 28.8.2018.

- 8) It is also submitted that post approval of the resolution plan, the management of Metalyst Forgings Ltd. came to be transferred to the Implementation and Monitoring Committee (“IMC”) and subsequently the new Board of Metalyst Forgings Ltd. came to be formed, and its management came to be transferred to the new management of DVI/S.R.A. That purshish came to be filed on behalf of the new management in the instant matter informing the Hon’ble Court of the approval of the resolution plan of the S.R.A. In view of the approval of the resolution plan of the S.R.A. all claims as provided in the resolution plan stand frozen and have become binding on all stakeholders (including employees) of Metalyst Forgings Ltd. and all such claims, which were not a part of the resolution plan stand extinguished and no person is entitled to initiate or continue any proceedings in respect to a claim, which was not part of the said resolution plan, in view thereof, the applicant has preferred the present application seeking disposal of the present reference case.

- 9) On the other hand the learned Counsel for the second party as per his say at Exh. U-15 it is submitted that the second party has challenged his termination by raising industrial dispute through a demand notice. Lateron the first party had not cooperted in conciliation. Therefore, the Conciliation Officer has submitted failure report so the appropriate Govt. Has forwarded this reference for adjudication. On 8.5.2014 the second party has filed his statement of claim seeking reinstatement, continuity of service with full back wages. After appearance of first party it had filed say. Thereafter this Court allowed the first party to prove the alleged charges. Lateron, during pendency of proceedings and at the stage of evidence before the Labour Court, the creditors of the company initiated proceedings bearing No. CP(IB) No. 1555/MB/C-I/2017 before the National Company Law Tribunal(NCLT), Mumbai Bench-I, under Section 30(6) of the Insolvency and Bankruptcy Code, 2016, read with Regulation 39(4) of the Insolvency Resolution Process for Corporate Persons Regulations, 2016. By order dtd. 15.12.2017, the creditors sought approval of a resolution plan under the provisions of Section 31(1) of the Code, and a Resolution Professional. In the present matter pertaining to reinstatement, full back wages, and consequential benefits of employment, the first party attempted to seek a stay of the proceedings before the Labour Court by referring to the pendency of the matter before the National Company Law Tribunal (NCLT). However, the Labour Court, by a reasoned order dtd. 4.7.2018, was pleased to reject the said request. Aggrieved by the said order, the first party preferred Writ Petition No. 9410 of 2018 before the Hon'ble Bombay High Court,

Bench at Aurangabad. During the course of the hearing, a statement was made on behalf of the first party that the proceedings before the NCLT would likely be conducted within four to six months, and accordingly, it was prayed that the proceedings before the Labour Court be stayed until such time.

- 10) It is further submitted by the second party that the Hon'ble High Court rejected the request for granting stay to the Labour Court proceedings and observed that

9. It is therefore, stated taht as soon as there is a change of management and a resolution is reacted before the NCLT, the first party, who is the first party employer in the reference proceedings before the LC, would make a statement before the Labour Court and support such statement by placing documents on record to initiate a change of Management, Thereafter, these respondents, who are second party workmen, could request the Labour Court for addition or deletion of parties in view of the law laid down in M/s Hochtief Gammon V/s Industrial Tribunal, Bhubaneshwar, (AIR 1964 SC 17461) and Digambar Madye and other V/s Union of India and others (12015 (II) CLR540)

11. Need less to state, the Labour Court would not adjourn the proceedings sine die and would post the proceedings in the first week of each month commencing from December 2018, and the FP would be obliged to tender a purshis in each of these proceedings to update the status of the NCLT proceedings. Once the moratorium is lifted by the NCLT and if there is a change in management, the second party workmen would be permitted to move application for additions/deletion of the first party employer as noted above and the first party or the new management would not oppose such an amendment. If the change in Management occurs, which is necessarily to be in tune with Section 25FF of the IDA 1947 and in which process the workers have no say, it would oblige the first party to place on record before the LC in each of these proceedings, the details of the transfer of ownership or Management with further details as to whether the present workers are being continued in employment or are being discharges. So also, the new

Management would then have to take a call as regards the pending reference cases and it would be open to the new management to explore the possibility of the settlement contest the proceedings on their merits.

- 11) The second party further submitted that while passing the said order, the Hon'ble High Court further observed that upon the lifting of the moratorium by the NCLT, and in the event of a change in management, the second party – being the workman – would be at liberty to file an application for addition or deletion of parties, specifically to implead the new management. It was also observed that the existing or incoming management shall not oppose such an amendment. Pursuant thereto, the second party filed an application for continuation of proceedings, submitting that the company remains the same and that the operational plant has been acquired by the prospective buyer, who has also continued the terms of employment of the workmen. The said application was allowed, and permission was granted to implead the new management by issuing notices in the name of the company. By virtue of the NCLT order, although there has been a change in management, such change was effected without due compliance with Section 25FF of the Industrial Disputes Act, 1947. It is submitted that the services of all workmen have continued uninterrupted on the same terms and conditions of employment. However, the management has failed to place on record any documents evidencing compliance with Section 25FF, including payment of full and final settlement to the employees, the sale certificate executed in consonance with the NCLT order, and detailed information regarding the transfer of ownership or management. Furthermore, there is no disclosure as to whether

the existing workers have been continued in service or discharged.

- 12) The second party further submitted that the Hon'ble High Court had granted liberty to add or substitute the prospective buyer as a party to the proceedings in the event of any change in ownership or management. In accordance with the said liberty, the Labour Court Proceedings were adjourned with a standing direction to the first party to update the status of the NCLT proceedings by the first week of the every month. The prospective buyers is added as party as per the directions of High Court, the notices are properly served and they appeared. The FP has to workout the matter and prove the charges as alleged otherwise Court may pass appropriate order. The erstwhile management has deposited certain amount in the Court, the application for withdrawal was moved but it was opposed by the prospective management saying that, it cannot be withdrawn unless the matter is decided finally or there is express liberty by the High Court for withdrawal. It is clear from the attitude of the FP that some time they accept the verdict of High Court and some time they deny in confused mind. It is submitted that the moratorium imposed under the IBC has since been lifted, and the new buyer/management has taken over the assets and liabilities of the company, including responsibility for the workforce. As per available records, Metalyst Forgings Limited (MFL) has been acquired by a U. S. - based entity, Deccan Value Investors (DVI Group), without effecting any change in the company's name or the service conditions of its employees. Moreover, by virtue of the order dtd. 14.5.2024 in CP(IB) No. 155/MB/C-I/2017 passed by

the Hon'ble NCLT, Mumbai Bench-I, the prospective buyer has expressly accepted the liabilities of the company, including obligations towards its employees and the continuation of their service conditions. In light of the above, it is most respectfully prayed that the present application filed by the first party be rejected with exemplary costs, as the same is in direct contravention of the directions issued by the Hon'ble High Court and is a deliberate attempt to mislead the Labour Court. The second party unequivocally denies all averments made in the impugned application and states that the name of the first party company has been retained by the prospective buyer, who has also assumed responsibility for all existing liabilities, including those pertaining to the workmen.

- 13) Heard both the sides. Admittedly, the resolution plan of S.R.A. was approved by NCLT by its order dtd. 14.5.2024. It is not disputed that after the approval by NCLT management of Metalyst Forgings came to be transferred and the first party i.e. Board of Metalyst Forgings formed and now, the new management i.e. the first party added in the first proceeding is looking after the affairs of Metalyst Forgings. It appears from the record that during pendency of this proceeding the first party has filed Writ Petition No. 9410/2018 before Hon'ble Bombay High Court, Bench at Aurangabad. The said Writ Petition was decided on 5.10.2018. In the said case Hon'ble Bombay High Court has held that :

Once the moratorium is lifted by the NCLT and if there is a change in management, the second party workmen would be permitted to move applications for addition/deletion of the first

party employer as noted above and the first party or the new management would not oppose such an amendment. If the change in Management occurs, which is necessarily to be in tune with Section 25FF of the Industrial Disputes Act, 1947, and in which process, the workers have no say, it would oblige the first party to place on record before the Labour Court in each of these proceedings, the details of the transfer of ownership or Management with further details as to whether the present workers are being continued in employment or are being discharged. So also, the new Management would then have to take a call as regards the pending reference cases and it would be open to the new management to explore the possibility of a settlement or contest the proceedings on their merits.”

- 14) From perusal of this order passed by Hon'ble High Court it can be easily gathered that Hon'ble Bombay High Court has held that the second party is at liberty to add the new management. Accordingly, after lifting the moratorium and after change in Management the second party has filed application for addition of new management. Accordingly, this Court has decided the said application after calling the say of present first party i.e. new Management and after giving the opportunity of hearing to both sides. So far as the tenability of the present reference against the first party is concerned, admittedly, the second party has claimed that the initial management i.e. Metalyst Forgings has terminated his services. So also he has claimed reinstatement from the then first party. Now, the management of Metalyst Forgings is changed and the new management has taken over the previous management. As per the first party as the resolution plan is already approved all the claims as provided in the said plan stands frozen. It is also submitted that the claims which were not part of resolution plan stands extinguished, no person is entitled to initiate or continue any proceeding in respect of claim which

was not part of said resolution plan. No doubt the resolution plan is accepted by Hon'ble NCLT. However, only by that fact the present proceeding can not be disposed of because the case is reference forwarded by Assistant Commissioner of Labour for adjudication of question as to whether the second party workman is entitled to be reinstated in service with continuity of service and with back wages from 15.2.2014. The first party has produced copy of resolution plan approved by NCLT along with list Exh. C-95. On perusal of said plan it can be gathered that as per Section 3.4 of resolution plan how the dues of workman and employees is discussed. It is mentioned that :

3.4.3] Accordingly, and in accordance with the above, any and all claims or demands made by, or liabilities or obligations owed or payable to, (including any demand for any losses or damages, or interest, back wages, voluntary retirement compensation, compensation, penal interest, liquidated damages already accrued / accruing or in connection with any third party claims, or any claims made by any person who may claims to be a creditor by way of exercise of rights under Applicable Law or equity) any present or past, direct or indirect, permanent or temporary employee and/or workman of the Corporate Debtor, whether admitted or not, due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Information Memorandum, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to the Effective Date pursuant to this Resolution Plan, will be written off in full and shall be, and be deemed to be, permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan. The Corporate Debtor or the Resolution Applicants shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

- 15) On perusal of above referred contents of resolution plan at the most it can be said that the first party can not be held liable for back wages. However, so far as the claim of second party workman for reinstatement in my opinion for that purpose the present proceeding is certainly tenable. Admittedly, the present first party has take over previous company therefore, the claim of second party workman is tenable against the newly added first party. In my opinion if on merits the second party has proved the fact that his termination is against the provisions of law. Hence, in that case the first party will be entitled for the reinstatement. However, for deciding the said issue is necessary to decide the present proceeding on merit i.e. after giving the opportunity to both sides to lead the evidence. Considering all these facts I came to the conclusion that the present reference can not be disposed of on the ground that the resolution plan is approved by NCLT. Hence, the present application is liable to be rejected. In the result I pass following order;

ORDER

1. The application is rejected.

(S. S. Sahasrabudhe)

Presiding Officer,

Labour Court-II, Aurangabad

Dated : 02/07/2025

ggd/-

Order dictated on : 02/07/2025

Order transcribed & signed on : 02/07/2025