**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
IN ITS COMMERCIAL DIVISION**

**INTERIM APPLICATION NO. 1303 OF 2022
IN
COMMERCIAL SUMMARY SUIT NO. 219 OF 2016
AND
COMMERCIAL SUMMARY SUIT NO. 219 OF 2016**

**Arcelormittal Nippon Steel India Ltd. ...Applicant/Plaintiff
V/s.
Moorgate Industries India Private Ltd. ...Respondent/Defendant**

Mr. Sharan Jagtiani, Senior Advocate with Mr. Rohan Savant, Mr. Vishal Shriyan, Mr. Aditya Seetharaman and Ms. Riddhi Wagle i/b Vishal Shriyan for Applicant/Plaintiff.

Mr. Pesi Modi, Senior Advocate with Ms. Tanvi Gaitonde i/b Zerick Dastur Advocates and Solicitors for Respondent/Defendant.

**CORAM : ABHAY AHUJA, J.
RESERVED ON : 7th JANUARY, 2025
PRONOUNCED ON: 9th JUNE, 2025**

ORDER :

1. This Interim Application seeks a decree on admission under Order XII Rule 6 of the Code of Civil Procedure, 1908 (the "CPC") as under:-

> "a. This Hon'ble Court be pleased to pass a judgment and decree on admission in terms of prayer clause (a) of the suit, ordering and directing the Defendant to pay to the Plaintiff, the sum of Rs. 19,55,00,000/- (Rupees Nineteen Crore Fifty Five Lac Only) together with interest @ 24% per annum from the due date till the realization of the same by the Plaintiff forthwith."

2. The Plaintiff is a company previously known as Essar Steel India Limited and now as Arcelormittal Nippon Steel India Limited carrying on business *inter alia* of manufacturing steel products and is a fully integrated steel producer having steel mill in Hazira, Surat, Gujarat. The Defendant is a company (previously known as "Stemcor India Private Limited") engaged in the business of trading in steel and other materials. Moorgate Industries UK Limited (formerly known as "Stemcor UK") and Moorgate Industries DMCC (Formerly known as "Stemcor Mesa DMCC") are sister concerns / group companies of the Defendant.

3. On or about 7th April, 2012, the Defendant agreed to procure certain raw materials / consumables (Coke /coke pellets) for and on behalf of the Plaintiff worth Rs. 150 Crores on the terms and conditions to be agreed between the parties. The Defendant had requested the Plaintiff to provide for a security deposit of Rs. 10 Crores to enable it to procure the materials. On 7th April, 2012, itself the Plaintiff paid Rs. 10 crores by RTGS to the Defendant as an accountable advance being the security deposit.

4. On 23rd April, 2012, the Defendant acknowledged receipt of Rs. 10 crores towards the security deposit and further requested for Rs. 15 crores as security deposit as it expected an increase in the cost of procuring goods. The Plaintiff paid the further Rs. 15 crores to the Defendant by RTGS. It was agreed that the security deposit will be refunded to the Plaintiff immediately upon payment against goods delivered.

5. On 21st December, 2012, Moorgate UK and the Plaintiff entered into a sales contract-RIS0331 for supply of goods. Moorgate UK later agreed to two addenda to the sales contract being addendum dated 7th January, 2013 and 31st January, 2013.

6. On 15th April, 2013, the Defendant refunded Rs. 5.45 crores out of the total security deposit of Rs. 25 crores. It is the case of the Plaintiff that the Defendant, therefore, remains liable to refund the balance sum of Rs. 19.55 crores.

7. On 9th July, 2013, the Defendant addressed an email to the Plaintiff stating that the Plaintiff has outstanding payment obligations towards Moorgate UK (then referred to as “Stemcor UK”) and that the

deposit held by the Defendant in INR would be remitted back to the Plaintiff once all invoices / interest payment is made to Moortage UK (then referred to as "Stemcor UK")

8. On 12th July, 2013, the Defendant addressed an email stating the manner in which the payments between various entities should be made and that the Plaintiff had to clear its outstanding dues towards Moorgate UK and that the said deposit held by the Defendant would be remitted back to the Plaintiff once all invoices / interest payment is made to Moorgate UK.

9. On 23rd May, 2014, the Defendant addressed an email stating that the Plaintiff will have to pay the full invoice value to the Defendant's group entities before release of deposit. It has been submitted that the alleged outstanding of the Plaintiff is USD 3.6 million.

10. On 15th June, 2016, the Plaintiff through its advocate called upon the Defendant to repay the balance security deposit of Rs. 19.55 crores, however, the Defendant failed to pay the same. On 15th July, 2016, the Plaintiff therefore, filed the Commercial Summary Suit.

11. On 27th December, 2016, the summons for judgment came to be filed and on 14th January, 2017, the Defendant filed reply *inter alia* seeking leave to defend the Suit on the following grounds:-

"(i) USD 3.6 Million (Rs. 21.9 cores) plus interest is payable by the Plaintiff to suppliers sourced by the Defendant.

(ii) Amount of Rs. 5.45 crores out of Rs. 25 crores security deposit was refunded as the balance retained by the Defendant was the approximate amount to be paid by the Plaintiff.

(iii) In view of the fact that the Plaintiff is yet to clear the outstanding amount, the Defendant is well within its right to hold back the remaining security deposit as a security towards the payment of balance amounts by the Plaintiff. It has been agreed between the parties that the said amount will be paid to the Plaintiff only once the Plaintiff makes full payment towards the raw materials supplied.

12. On 9th February, 2017, the Plaintiff filed its affidavit in rejoinder to the summons for judgment.

13. On 30th June, 2017, a Petition came to be filed by the financial creditors of the Plaintiff (when it was known as "Essar Steel India Ltd.") i.e. State Bank of India and Standard Chartered Bank under Section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) for initiating the Corporate Insolvency Resolution Process (CIRP) of the Plaintiff.

14. On 17th July, 2017, the Defendant filed an additional affidavit in the summons for judgment.

15. On 2nd August, 2017, the CIRP was initiated against the Plaintiff vide order of NCLT, Ahmedabad, whereby the Petition filed against the Plaintiff was admitted. As a result, in terms of Section 14 of the IBC a moratorium became imposed on the continuation of any litigation / arbitration against the Plaintiff. The Interim Resolution Professional of the Plaintiff (IRP), who was also confirmed as RP, issued public announcements inviting claims of creditors of the Plaintiff under Sections 13 and 15 of the IBC.

16. Moorgate UK (earlier known as Stemcor UK) and Moorgate DMCC (earlier known as Stemcor DMCC) filed their claims in the CIRP of the Plaintiff and were categorized as operational creditors under the IBC having respectively submitted their claims of Rs. 21,630,314,844/- (USD 3,376,096.84) and Rs. 2,18,43,429/- (USD 340,936) in Form B. The claim of Moorgate UK was admitted by the RP with a notional value of Rs. 1/- and the claim of Moorgate DMCC was admitted in the sum of Rs. 2,18,43,429/- (USD 340,936). No claims were filed by the Defendant or any of the group entity of the Defendant except by Moorgate UK and Moorgate DMCC.

17. On 22nd January, 2018, an additional affidavit in rejoinder was filed by the Plaintiff in the summons for judgment.

18. On 5th February, 2018, an additional affidavit was filed by the Defendant in response to the Plaintiffs' additional affidavit in rejoinder *inter alia* sating the following:-

(i) The Defendant has time and again in several emails repeated and reiterated that the deposit held by the Defendant would not be repaid to the Plaintiff unless the Plaintiff has cleared all the outstanding dues of Moorgate UK.

(ii) the Defendant has not made (and never intends to make) a payment from the security deposit to Moorgate UK.

(iii) The security deposit funds are intended to be returned to the Claimant once it has performed in full its obligations to Moorgate UK and Moorgate DMCC and therefore cannot be any allegation of violation of the FEMA.

(iv) The security deposit is being withheld in part to ensure the Plaintiff's performance of its agreement with Moorgate UK which has been agreed to between the Plaintiff and Moorgate UK.

19. On 8th February, 2018, this Court granted unconditional leave to defend to the Defendant by passing the following order:-

". Heard learned Counsel for the parties. This summons for judgment is taken out in a summary suit seeking a decree in the sum of Rs.19.55 crores. The case of the Plaintiff is that the Defendant had agreed to procure certain raw materials/consumables for and on behalf of the Plaintiff worth an amount of Rs.150 crores on certain terms and conditions to be mutually agreed between the Plaintiff and the Defendant. It is submitted that as a security for this commitment, a sum of Rs.25 crores in two tranches of Rs.10 crores and Rs.15 crores was kept by the Plaintiff with the Defendant. It is the case of the Plaintiff that all goods supplied by the Defendant to the Plaintiff were fully paid for and there is a failure on the part of the Defendant to refund the security deposit of Rs.25 crores. It is submitted that the Defendant has refunded so far only Rs.5.45 crores, leaving a balance of Rs.19.55 crores recoverable from the Defendant. The suit is filed for recovery of this amount.

2. In reply, the Defendant submits that the agreement with the Plaintiff was for procurement of raw materials/consumables from suppliers identified by the Defendant. The Defendant from time to time procured such supplies from the members of the Stemcor Group, to which the Defendant belongs, and the Plaintiff's obligation was to pay for these supplies. It is submitted that the outstandings were basically payable to the suppliers from the Stemcor Group identified by the Defendant. It is the case of the Defendant that the deposit of Rs. 25 crores was towards a security for payment of the invoices raised by such suppliers. Learned Counsel for the Defendant points out that from the Plaintiff's own documents it is apparent that the payments by the Plaintiff under the contract were always made to the third party suppliers from Stemcor Group and not to the Defendant. The Defendant, in this behalf, has relied on a communication addressed by the Defendant to the Plaintiff, which is part of the plaint, where they have referred to outstandings from the invoices of various suppliers identified by the Defendant under the contract, for which they were withholding the Plaintiff's security deposit. The outstandings amount to about USD 3.653 million. That is more than the amount of security deposit held by the Defendant. There is not only failure to pay this amount on the part of the Plaintiff, but for over two years there was not even a whisper from the Plaintiff that the Defendant was not entitled to withhold the security deposit for these outstandings.

3. On these facts and the documents produced by the parties, including the Plaintiff's own documents, several triable issues arise. These triable issues involve substantial and plausible defence, for which the Defendant deserves unconditional leave to defend.

4. In the premises, the following order is passed:

The Defendant is granted unconditional leave to defend the suit. Written statements to be filed within four weeks. Place the suit for directions after four weeks. The summons for judgment is disposed of.”

20. On 5th April, 2018, a written statement came to be filed by the Defendant *inter alia* stating as under:-

(i) The Defendant by its email dated 12.07.2013 recorded the understanding with the Plaintiff that the security deposit with the Defendant would be returned to the Plaintiff only after all invoice/interest payment is made to Moorgate.

(ii) The Defendant by its email dated 23.05.2014 stated that unless the Plaintiff clears the amounts due and payable to Moorgate under the invoices and debit notes mentioned in the email, it would be unable to refund any security deposit.

(iii) It was expressly agreed to by the Plaintiff that the security deposit kept with the Defendant was to be returned only once payment is made in full against the various contracts executed by the Plaintiff with the Moorgate group.

(iv) The return of the security deposit was subject to the understanding and agreement between the Plaintiff and the other group companies of Moorgate and the Plaintiff has expressly agreed to the condition that the security deposit with the Defendant shall be refunded only after the Plaintiff has paid all sums due and payable to the concerned group company under respective contracts.

(v) The email dated 23 May 2014 further clarifies that the remaining security deposit can only be released once the balance payment is made in full by the Plaintiff.

(vi) The Defendant has repeatedly reminded the Plaintiff that the security deposit is aimed at securing the dues owed from the Plaintiff to the suppliers identified by the Defendant.

(vii) In view of the fact that the Plaintiff is yet to clear the outstanding amount, the Defendant is well within its right to hold back the remaining security deposit as a security towards the payment of balance amounts by the Plaintiff. It has been agreed between the parties that the said amount will be paid to the Plaintiff only once it makes full payment towards the raw material supplied.

21. On 23rd October, 2018, the Committee of Creditors of the Plaintiff approved the resolution plan and on 8th March, 2019, the same was approved by the NCLT, Ahmedabad. The order was carried in appeal, however, during the pendancy of an appeal, the Committee of Creditors modified the resolution plan on 27th March, 2019. On 15th November, 2019, the Supreme Court approved the amended resolution plan of the Plaintiff, whereby, it was *inter alia* held that the Resolution Applicant shall take over and run the business of the Plaintiff on a fresh slate. Paragraphs 66 and 67 of the said decision are relevant and are quoted as under:-

> *"66. Section 31(1) of the code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were…*
>
> *67. For the same reason, the impugned NCLAT judgment 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 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, the NCLAT judgment must also be set aside on this count."

22. On 16th December, 2019, payments were made to Moorgate UK and Moorgate DMCC as per the approved resolution plan :- Rs. 1/- was paid to Moorgate UK and Rs. 43,68,686/- was paid to Moorgate DMCC. It is the case of the Applicant that, therefore, the debt of Moorgate UK and Moorgate DMCC stood extinguished.

23. It is submitted that in the meantime Moorgate UK continued to pursue a certain LCIA arbitration against the Plaintiff, during the moratorium and an arbitration award dated 11th June, 2018, came to be passed during the period of the moratorium, which obviously was not permitted. It is the case of the Applicant that in view of the express provisions and settled law on the subject, the Plaintiff is not bound by this arbitration award and having participated in the CIRP of the Plaintiff, Moorgate UK was aware of the fact of the moratorium and equally subjected to the IBC.

24. It has been further submitted that between 16th September, 2019, and 14th February, 2020, the Defendant made payments in several tranches to Moorgate UK pursuant to the LCIA arbitration proceeding to which the Plaintiff is not a party and therefore, not concerned even with the arbitration award dated 7th March, 2019, passed in those proceedings nor with the payments made by the Defendant thereunder.

25. On 8th January, 2020, the name of the Plaintiff was changed from “Essar Steel India Limited” to “Arcelormittal Nippon Steel India Limited”.

26. It is submitted that on 30th March, 2021, the Gujarat High Court in the matter of ***GAIL (India) Limited and Ors Vs. Essar Steel Limited and Ors.***[1], following the decision of the Hon’ble Supreme Court dated 15th November, 2019, rejected an undecided claim against the Plaintiff holding that the claim of GAIL (India) Limited stood extinguished in view of the said decision of the Hon’ble Supreme Court.

1 Civil Application (For Direction) No. 1 of 2021 in Re/Letters Patent Appeal No. 1618 of 2005 dated 30th March, 2021.

27. That thereafter, on 11th March, 2022, the Plaintiff has filed this Application under Order XII Rule 6 of the CPC, seeking a decree on admission on the basis of the aforesaid facts.

28. Mr. Jagtiani, learned Senior Counsel appearing for the Plaintiff/Applicant submits that this Application has been filed on the basis of the admissions of the Defendant. In support Mr. Jagtiani draws this Court's attention to paragraph 9 of the Interim Application as well as paragraphs 19, 21, 23 and 25 of the written statement filed by the Defendant as well as paragraphs 19, 20 and 22 of the additional affidavit dated 5th February, 2018, paragraph 5 of the additional affidavit dated 18th July, 2017 in support.

29. Mr. Jagtiani has submitted that these pleadings / averments of the Defendant are judicial admissions made on oath before this Court, which clearly and unequivocally acknowledged that Rs. 19,55,00,000/- is a security deposit held by the Defendant and upon the liability towards dues of the Defendant's sister concerns (Moorgate UK and Moorgate DMCC) being discharged, the Defendant shall return the security deposit of Rs. 19,55,00,000/- to the Plaintiff.

30. Mr. Jagtiani would submit that it is an admitted position that the Defendant itself has no claim to the security deposit in the sum of Rs.19,55,00,000/- and that the only defence purported to be raised by the Defendant is that certain amounts were allegedly to be due by the Plaintiff to the Defendant's group concerns viz. Moorgate UK and Moorgate DMCC.

31. Mr. Jagtiani submits that during the pendency of the present Suit, the CIRP was initiated against the Plaintiff under the IBC vide order dated 2nd August, 2017, passed by the NCLT, Ahmedabad and Moorgate UK and Moorgate DMCC filed its claims before the resolution professional and those claims have not only been adjudicated but also paid, which constitutes a legal discharge of the debts owed to Moorgate UK and Moorgate DMCC in their entirety. Mr. Jagtiani would submit that, therefore, the only reason cited by the Defendant to refuse the return of the security deposit of Rs.19,55,00,000/- prior to the CIRP viz. that certain dues were payable by the Plaintiff to Moorgate UK and Moorgate DMCC no longer survive in law since those dues stood discharged by operation of law and pursuant to the order of the Hon'ble Supreme Court regarding the Plaintiff company i.e. **Committee of Creditors of *Essar Steel India Limited Vs. Satish Kumar Gupta and***

ors.[2]. Mr. Jagtiani would further submit that the decision of the Gujarat High Court in *GAIL (India) Limited and Ors Vs. Essar Steel Limited and Ors. (supra),* where it has been held in paragraph 15 that undecided claims of GAIL (India) Limited stood extinguished by the resolution plan, clearly supports the case of the Applicant/ Plaintiff.

32. Mr. Jagtiani has also relied upon the decision of the Hon'ble Supreme Court in the case of ***Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Assets Reconstruction Company Limited***[3] and has submitted that once a resolution plan is approved by the Committee of Creditors, and receives the imprimatur of the NCLT, it binds all stakeholders including the Defendant, Moorgate UK and Moorgate DMCC and the Corporate Debtor emerges from the CIRP on a clean slate with no continuing liabilities on account of claims (decided or undecided). Mr. Jagtiani has, therefore, submitted that the Applicant is entitled to a decree on admission as sought for.

33. On the other hand, Mr. Modi, learned Senior Counsel appearing for the Defendant has firstly submitted that the present application seeks to re-argue or re-agitate the case in the summons for judgment as

2. (2020) 8 SCC 531.
3 (2021) 9 SCC 657.

all the admissions have been on the basis of the record of this Court prior to the order dated 8th February, 2018, granting unconditional leave to the Defendant to defend the Suit.

34. Mr. Modi has further submitted that under Order XII Rule 6 of the CPC, the admissions are required to be unconditional, whereas here the admissions are conditional and therefore, no case is made out for grant of decree on admission within the parameters of Order XII Rule 6 of the CPC. Mr. Modi has relied upon the following three decisions in support:-

(i) Rajesh Mitra Vs. Karnani Properties[4]
(ii) Shantez Vs Applause Bhansali Films Pvt. Ltd.[5]
(iii) M. H. Construction Vs. State of Maharashtra[6]

35. Mr. Modi further submits that the amount placed with the Defendant (who is an agent of Moorgate UK and Moorgate DMCC) is not the property of the Plaintiff as it belonged to the Defendant / to the beneficiary of the deposit. That there is no proof that the deposit has been included in the assets carried forward in the CIRP or that the deposit was mentioned in the information memorandum.

4 (2024) SCC Online SC 2607.
5 2009 (4) Mh. LJ 37.
6 (2018) SCC Online Bom 13802.

36. It is also submitted that the Suit claim is barred by limitation and since limitation is a mixed question of fact and law, the same requires a trial before the issue is decided conclusively and therefore, no decree can be made in favour of the Plaintiff on admission or otherwise.

37. It has also been submitted that the deposit was never meant to be returned at all and that it was infact a payment made to the Defendant. Mr. Modi has referred to the amendment to the Plaint on page 15 of the Plaint as well as the amendment including page 24A. Mr. Modi submits that not only that, by email dated 7th April, 2012, it has been clearly recorded that the said deposit would stand forfeited in case of non performance.

38. Mr. Modi has further submitted that the LCIA arbitration proceedings between Moorgate UK and the Plaintiff which culminated in the arbitration award dated 11th June, 2018, were governed by the laws of England and hence the same were not affected by the CIRP moratorium in respect of the Plaintiff as IBC does not have extraterritorial application and the arbitration between Moorgate UK and the Plaintiff is governed by English law.

39. Further with reference to the arbitration award dated 7th March, 2019, with respect to the Moorgate UK and the Defendant, Mr. Modi submits that the said award is also not affected by the moratorium in respect of the Plaintiff since the Plaintiff is not a party to those proceedings. That Rs.19,55,00,000/- has been paid by the Defendant to the Moorgate UK in pursuance of the said award and accordingly, the deposit amount has been released by the Defendant and was no longer in the hands of the Defendant. The allegations of collusion and fraud in making the said award, Mr. Modi submits is a matter to be decided after trial by considering the evidence led by the Plaintiff and the Defendant and its probative value.

40. Mr. Modi submits that considering that there are several triable issues involved in the facts of the present case, no decree on admission can be passed as the issues would have to be heard and agitated by this Court and that, therefore, this Application is not tenable and be dismissed with costs.

41. I have heard the learned Senior Counsel at length and considered their rival contentions.

42. At the outset, it needs to be noted that the basic facts are not in dispute. No doubt, as noted earlier, after hearing on the summons for judgment this Court (Coram : S.C.Gupte, J. as His Lordship then was) has on 8th February, 2018, granted unconditional leave holding that on the basis of the documents produced by the parties including the Plaintiff's own documents, several triable issues arise and these triable issues involved substantial and plausible defence, for which the Defendant deserves unconditional leave to defend. The said finding was premised on the undisputed fact the deposit of Rs. 25 crores (of which the Defendant had refunded only Rs. 5.45 crores leaving a balance of Rs. 19.55 crores, for which the Plaintiff has filed the Suit for recovery) was towards the security for payment of invoices of suppliers of the Defendant from the Stemcor group (Moorgate group) identified by the Defendant, from whom the Defendant would procure raw materials / consumables for and on behalf of the Plaintiff and that the outstandings of the suppliers were about USD 3.653 million, which was more than the security deposit held by the Defendant and the said amounts not paid for over two years by the Plaintiff to the Defendant and therefore, the Defendant was not entitled to withhold the security deposit.

43. It is not in dispute that pursuant to the aforesaid order of unconditional leave, written statement was filed by the Defendant on 5th April, 2018.

44. It is also not in dispute that prior to the order of unconditional leave on 8th February, 2018, on 2nd August, 2017 CIRP was initiated against the Plaintiff on a Petition filed by State Bank of India and Standard Chartered Bank, under Section 7 of the IBC, whereby the Petition was admitted and IRP was appointed, as a result of which a moratorium was imposed under Section 14 of the IBC on the continuation of any litigation / arbitration initiated against the Plaintiff.

45. The IRP who was later confirmed as the RP issued public notices inviting claims from all persons claiming to be creditors of the Plaintiff under Sections 13 and 15 of the IBC.

46. It is not in dispute that only Moorgate UK and Moorgate DMCC who were part of the suppliers identified by the Defendant filed their claims as operational creditors in Form B respectively in the sum of Rs.21,63,03,148.44/- and Rs. 2,18,43,429/-. It is also not in dispute that the claim in Moorgate UK was admitted by the RP with a notional

value of Rs. 1/- and the claim of Moorgate DMCC was admitted by RP with a sum of Rs.2,18,43,429/- and that after the approval of the resolution plan by the Committee of Creditors on 23rd October, 2018 and the imprimatur of the NCLT, Ahmedabad on the same on 8th March, 2019, with a modification of the resolution plan on 27th March, 2019, during the pendency of an appeal against the order of the NCLT and finally the approval of the amended resolution plan by the Hon'ble Supreme Court on 15th November, 2019, in the case of *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and ors (supra),* on 16th December, 2019, payments of Rs. 1/- was made to Moorgate UK and Rs. 43,68,686/- was paid to Moorgate DMCC as per the amended resolution plan approved by the Hon'ble Supreme Court.

47. The Hon'ble Supreme Court in the case of *Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and others (supra)*, has clearly held that one of the principal objects of the IBC is providing for revival of the corporate debtor and to make it a going concern. The IBC is a complete Code in itself. Upon admission of a petition under Section 7, there are various important duties and functions entrusted to RP and CoC. RP is required to issue a publication inviting claims from all the stakeholders. He is required to

collate the said information and submit necessary details in the Information Memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by the RP as well as the CoC. In the negotiations that may be held between the CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made a concern. After the CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the IBC. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable.

48. The Hon'ble Supreme Court has also held that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31 of the IBC, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, Government, guarantors and other stakeholders. That 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 proceedings in respect of a claim, which is not part of the resolution plan. Consequently, all the dues including the statutory dues, 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 can be continued.

49. Paragraphs 93, 102.2 and 102.3 of the said decision are relevant and usefully quoted as under :

> *"**93.** As discussed hereinabove, one of the principal objects of the I&B Code is providing for revival of the corporate debtor and to make it a going concern. The I&B Code is a complete Code in itself. Upon admission of petition under Section 7 there are various important duties and functions entrusted to RP and CoC. RP is*

required to issue a publication inviting claims from all the stakeholders. He is required to collate the said information and submit necessary details in the information memorandum. The resolution applicants submit their plans on the basis of the details provided in the information memorandum. The resolution plans undergo deep scrutiny by RP as well as CoC. In the negotiations that may be held between CoC and the resolution applicant, various modifications may be made so as to ensure that while paying part of the dues of financial creditors as well as operational creditors and other stakeholders, the corporate debtor is revived and is made an on-going concern. After CoC approves the plan, the adjudicating authority is required to arrive at a subjective satisfaction that the plan conforms to the requirements as are provided in sub-section (2) of Section 30 of the I&B Code. Only thereafter, the adjudicating authority can grant its approval to the plan. It is at this stage that the plan becomes binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The legislative intent behind this is to freeze all the claims so that the resolution applicant starts on a clean slate and is not flung with any surprise claims. If that is permitted, the very calculations on the basis of which the resolution applicant submits its plans would go haywire and the plan would be unworkable."

*"**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 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."*
> *"**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."*

50. Therefore, once a resolution plan is approved by the Committee of Creditors and which has received the imprimatur of the NCLT, it binds all the stakeholders and the Corporate Debtor, which emerges from the CIRP, begins on a clean slate with no continuing liabilities on account of claims, whether decided or undecided.

51. Moorgate UK and Moorgate DMCC as noted above had made a claim as Operational Creditors and have also received their claims as per the amended resolution plan approved by the Hon'ble Supreme Court. The Plaintiff accordingly emerges from the CIRP on a clean slate with no continuing liabilities on account of claims decided or undecided.

52. In the case of *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others (supra)*, the Hon'ble Supreme Court has held that 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 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. That 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 and that the successful resolution applicant does so on a fresh slate.

53. Paragraph 107 of the said decision is relevant and is usefully quoted as under :

> *"**107.** For the same reason, the impugned NCLAT judgment" 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."

54. As noted above, the Hon'ble Supreme Court in the case of *Essar Steel India Limited vs. Satish Kumar Gupta and others (supra)*, has affirmed the admission of Moorgate UK's claim at a notional value of Re.1.

55. Paragraph 155 of the said decision is relevant and therefore usefully quoted as under :

*"**155.** So far as Dakshin Gujarat Vij Co. (Respondent 11 in Civil Appeal Diary No. 24417 of 2019), State Tax Officer (Respondent 12 in Civil Appeal Diary No. 24417 of 2019), Gujarat Energy Transmission Corporation Ltd. (Respondent 17 in Civil Appeal Diary No. 24417 of 2019) and Indian Oil Corporation Ltd. (Respondent 18 in Civil Appeal Diary No. 24417 of 2019) are concerned, the resolution professional*

admitted the claim of the abovementioned respondents notionally at INR 1 on the ground that there were disputes pending before various authorities in respect of the said amounts. However, NCLT through its judgment dated 8-3-20193 directed the resolution professional to register the entire claim of the said respondents. NCLAT in paras 44, 45 and 201 of the impugned judgment upheld' the order passed? by NCLT as aforesaid and admitted the claim of the abovementioned respondents. We therefore hold that this part of the impugned judgment deserves to be set aside on the ground that the resolution professional was correct in only admitting the claim at a notional value of INR 1 due to the pendency of disputes with regard to these claims."

56. In fact in the case of *Gail (India) Ltd. & others vs. Essar Steel Ltd. & others (supra)*, the Gujarat High Court while relying upon the decision of the Hon'ble Supreme Court dated 15th November 2019 in the case of Committee of Creditors of *Essar Steel India Limited Vs. Satish Kumar Gupta and ors.(supra)* observed that the claim made by Gail (India) Ltd. with regard to the transportation charges against Essar Steel India Limited is not only an infructuous claim but a rather dead claim now at this stage. That the undecided claim of Gail (India) Limited stands extinguished by the approved resolution plan.

57. Paragraphs 13, 14, 15 of the said decision of the Gujarat High Court are relevant and are usefully quoted as under :

> *"**13.** While such claim of Transportation charges never came to be adjudicated claim by any authority under provisions of the Insolvency and Bankruptcy Code, 2016 and which acquired a finality at the hands of the Hon'ble Supreme Court by the aforesaid judgment dated 15.11.2019, the said claim was rejected by the learned Single Judge against which GAIL India Limited filed the present Letters Patent Appeal No.1618 of 2005 which is pending this Court for last 15 years.*
>
> ***14.** We are of the considered opinion that much water has flown not only under the bridge but over the bridge also, and the claim made by the Appellant – GAIL India Limited with regard to the transportation charges against Essar Steel India Limited is not only infructuous claim but a rather dead claim now at this stage.*
>
> ***15.** The proceeding under provisions of the Insolvency and Bankruptcy Code, 2016 has acquired finality with the aforesaid judgment of the Hon'ble Supreme Court dated 15.11.2019, a complete copy of which is placed on our record with the present Civil Application No.1 of 2021 filed by Arcelor Mittal Nippon Steel India Limited which clearly shows a detailed discussion of the entire scheme and the provisions of the Insolvency and Bankruptcy Code, 2016 also and vide the aforesaid quoted para hereinabove, it clearly shows that 'undecided claim' of*

the operational creditor (the Appellant – GAIL India Limited) stands extinguished by the said Scheme of Rehabilitation or Revival approved by the Committee of Creditors which received the imprimatur or seal of approval by the Hon'ble Supreme Court by setting aside the directions of the NCLAT in its final judgment dated 4.7.2019 quoted above."

58. As noted above the main premise for unconditional leave was the claim of the suppliers of about USD 3.653 million. In view of the payments received pursuant to the resolution plan by the Claimants viz. Moorgate UK and Moorgate DMCC and the admitted position that no other claims were filed by the Defendant or any other group entity of the Defendant before the RP, the said basis of the unconditional leave no longer subsists in view of what has been observed above. Therefore, there would be no question now of the Defendant being entitled to withhold the security deposit in respect of the outstandings of the suppliers.

59. Having observed as above with respect to the claim of the suppliers, let us now consider the principles governing an Application under Order XII Rule 6 of the CPC.

60. In ***Uttam Singh Duggal & Co. Ltd. vs. United Bank of India and***

others[7], the Hon'ble Supreme Court has with regard to the object of Order XXII Rule 6 of Code of Civil Procedure, 1908 observed that the Court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on an admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment and that the Court should not unduly narrow down the meaning of this Rule as the Court can draw inference on the basis of the pleadings in the shape of application made under the Rule. While stating the decision in the case of *Shikharchand v. Bari Bai (AIR 1974 MP 75)*, it has been observed by the Hon'ble Supreme Court that the Rule is wide enough to afford relief not only in the cases of admissions in pleadings but also in the case of admission dehors pleadings.

61. Paragraphs 12 to 16 of the said decision are relevant and are usefully quoted as under :

> *"**12.** As to the object of Order 12 Rule 6, we need not say anything more than what the legislature itself has said when the said provision came to be amended. In the Objects and Reasons set out while amending the said Rule, it is stated that "where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the Rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to*

7 (2000) 7 SCC 120.

which according to the admission of the defendant, the plaintiff is entitled". We should not unduly narrow down the meaning of this Rule as the object is to enable a party to obtain speedy judgment. Where the other party has made a plain admission entitling the former to succeed, it should apply and also wherever there is a clear admission of facts in the face of which it is impossible for the party making such admission to succeed.

13. *The next contention canvassed is that the resolutions or minutes of the meeting of the Board of Directors, resolution passed thereon and the letter sending the said resolution to the respondent Bank cannot amount to a pleading or come within the scope of the Rule as such statements are not made in the course of the pleadings or otherwise. When a statement is made to a party and such statement is brought before the court showing admission of liability by an application filed under Order 12 Rule 6 and the other side has sufficient opportunity to explain the said admission and if such explanation is not accepted by the court, we do not think the trial court is helpless in refusing to pass a decree. We have adverted to the basis of the claim and the manner in which the trial court has dealt with the same. When the trial Judge states that the statement made in the proceedings of the Board of Directors' meeting and the letter sent as well as the pleadings when read together, leads to unambiguous and clear admission with only the extent to which the admission is made in dispute, and the court had a duty to decide the same and grant a decree, we think this approach is unexceptionable.*

14. *Before the trial Judge, there was no pleading* *much less an explanation as to the circumstances in which the said admission was made, as to take it out of the category of admissions which created a liability. On the other hand, what is stated in the course of the pleadings, in answer to the application filed under Order 12 Rule 6 CPC, the stand is clearly to the contrary. Statements had been made in the course of the minutes of the Board of Directors' meeting held on 30-5-1990 which we have already adverted to in detail. In the pleadings raised before the Court, there is a clear statement made by the respondent as to the undisputed part of the claim made by them. In regard to this aspect of communicating the resolution dated 30-5-1990 in the letter dated 4-6-1990 what is stated in the affidavit-in-opposition in application under Order 12 Rule 6 CPC is save what are matters on record and save what would appear from the letter (sic resolution) dated 30-5-1990 all allegations to the contrary are disputed and denied. This averment would clearly mean that the petitioner does not deny a word of what was recorded therein and what is denied is the allegation to the contrary. The denial is evasive and the learned Judge is perfectly justified in holding that there is an unequivocal admission of the contents of the documents and what is denied is extent of the admission but the increase in the liability is admitted.*

15. *Even without referring to the expression "otherwise" in Rule 6 of Order 12 CPC, we can draw an inference in the present case on the basis of the pleadings raised in the case in the shape of the applications under that Rule and the answering affidavit which clearly reiterates the admission. If that is so, interpretation of the expression "otherwise" becomes unnecessary.*

16. *The learned counsel for the appellant relied on a decision of this Court in Nagubai Ammal v. B. Shama Rao as to when an admission becomes relevant. Nagubai Ammal, which is locus classicus on the subject, states that merely because a written admission is made in a different context, such admission may not become relevant if the party making it has a reasonable explanation for that. But that is not the position in the present case at all. Learned counsel for the appellant further adverted to the decision in Balraj Taneja v. Sunil Madan in which the Court was concerned with a case of the effect of not filing a written statement and whether a decree could be passed only on that basis. That was a suit for specific performance and it was held that it could not be granted without even writing a detailed judgment and adverted to various provisions of the Code of Civil Procedure and reference was made to Order 12 Rule 6 by way of analogy and referred to the dictum in Razia Begum v. Sahebzadi Anwar Begum to state that Order 12 Rule 6 should be read along with proviso to Rule 5 of Order 8 CPC. In that case, what was noticed was that in cases governed by Section 42 and Section 43 of the Specific Relief Act, 1877 the court is not bound to grant declaration prayed for on the mere admission of the claim by the defendant if the court has reason to insist upon a clear proof apart from admission. The result of a declaratory decree confers status not only on the parties but for generations to come and so it cannot be granted on a rule of admissions and, therefore, insisted upon adducing evidence independent of the admission. That is not the position in the present case at all. We fail to see how this* *decision can be of any use to the petitioner. The decision in Pandam Tea Co. Ltd., Re pertains to the manner in which the balance-sheet should be read and has no bearing on the case. The decision in Shikharchand v. Bari Bai is to the effect that the Rule is wide enough to afford relief not only in cases of admissions in pleadings but also in the case of admission dehors pleadings. State Bank of India v. Midland Industries and Union of India v. Feroze & Co. cannot have any relevance because the facts arising in these cases and the present case are entirely different."*

62. In the case of ***Karam Kapahi and others vs. Lal Chand Public Charitable Trust and another***[8], the Hon'ble Supreme Court has observed that the principles behind Order XXII Rule 6 are to give the plaintiff a right to speedy judgment and that the said provision is to be exercised by the Court suo motu "ex debito justitiae". That keeping the width of this provision (i.e. Order XXII Rule 6) in mind, the Hon'ble Supreme Court has held that under this Rule admissions can be inferred from the facts and circumstances of the case.

63. Paragraphs 37 to 42 of the said decision are relevant and are usefully quoted as under :

*"**37.** The principles behind Order 12 Rule 6 are to give*

8 (2010) 4 SCC 753.

the plaintiff a right to speedy judgment. Under this Rule either party may get rid of so much of the rival claims about "which there is no controversy" (see the dictum of Lord Jessel, the Master of Rolls, in Thorp v. Holdsworth in Chancery Division at p. 640).

38. *In this connection, it may be noted that Order 12 Rule 6 was amended by the Amendment Act of 1976. Prior to amendment the Rule read thus:*

> *"6. Judgment on admissions—Any party may at any stage of a suit, where admissions of fact have been made, either on the pleadings, or otherwise, apply to the court for such judgment or order as upon such admissions he may be entitled to, without waiting for the determination of any other question between the parties; and the court may upon such application make such order, or give such judgment, as the court may think just."*

39. *In the 54th Law Commission Report, an amendment was suggested to enable the court to give a judgment not only on the application of a party but on its own motion. It is thus clear that the amendment was brought about to further the ends of justice and give these provisions a wider sweep by empowering the Judges to use it "ex debito justitiae", a Latin term, meaning a debt of justice. In our opinion the thrust of the amendment is that in an appropriate case, a party, on the admission of the other party, can press for judgment, as a matter of legal right. However, the court always retains its discretion in the matter of pronouncing judgment.*

40. *If the provision of Order 12 Rule 1 is compared with Order 12 Rule 6, it becomes clear that the provision of Order 12 Rule 6 is wider inasmuch as* *the provision of Order 12 Rule 1 is limited to admission by "pleading or otherwise in writing" but in Order 12 Rule 6 the expression "or otherwise" is much wider in view of the words used therein, namely: "admission of fact ... either in the pleading or otherwise, whether orally or in writing".*

41. *Keeping the width of this provision (i.e. Order 12 Rule 6) in mind this Court held that under this Rule admissions can be inferred from the facts and circumstances of the case (see Charanjit Lal Mehra v. Kamal Saroj Mahajan, SCC at p. 285, para 8). Admissions in answer to interrogatories are also covered under this Rule (see Mullas's Commentary on the Code, 16th Edn., Vol. II, p. 2177).*

42. *In Uttam Singh Duggal & Co. Ltd. v. United Bank of India this Court, while construing this provision, held that the Court should not unduly narrow down its application as the object is to enable a party to obtain speedy judgment."*

64. Mr. Pesi Modi, learned Senior Counsel for the Respondent/Defendant has relied upon the decision of the Hon'ble Supreme Court in the case of *Rajesh Mitra alias Rajesh Kumar Mitra and another vs. Karnani Properties Limited (supra)* to submit that in view of the said decision, this Court reject the application. I am afraid that the said decision does not assist the case of the Respondent/Defendant as the rejection therein was on the basis that the admission was in another unconnected matter which is not the

case here. In fact, the principles laid down in the said decision, clearly support the case of the Applicant/Plaintiff herein. In the concluding portion of paragraph 3 of the said decision, it has been observed that what has to be kept in mind is that Order XXII Rule 6 is an enabling provision conferring wide discretionary powers on the Courts which cannot be claimed by any party as a matter of right, however, in the subsequent sentence, it has been held that the Courts can invoke Order XXII Rule 6 only in cases where admissions are unconditional, unequivocal and unambiguous <u>or when admission is based upon undisputed inferences</u>.

65. The decision of the Hon'ble Supreme Court in the case of ***Charanjit Lal Mehra and Others Vs. Kamal Saroj Mahajan (Smt) and Anr***[9], it has been held in paragraph 8 *as under :*

> *"8………………. In fact, Order 12 Rule 6 CPC is enacted for the purpose of and in order to expedite the trials <u>if there is any admission on behalf of the defendants or an admission can be inferred from the facts and circumstances of the case without any dispute;</u> then, in such a case in order to expedite and dispose of the matter such admission can be acted upon. In the present case, looking at the terms of the lease deed, there can be no two opinions that the tenancy was joint/composite and not an individual one. Therefore, on these admitted facts the view taken by learned Single Judge of the High Court appears to be justified. In this connection, a reference may be made to a decision of this Court in the case of Uttam Singh d Duggal & Co. Ltd. v. United Bank of India. Their Lordships have held as follows: (SCC p. 121)*
>
> *"In the objects and reasons set out while amending*

9 (2005) 11 SCC 279.

Rule 6 of Order 12 CPC it is stated that 'where a claim is admitted, the court has jurisdiction to enter a judgment for the plaintiff and to pass a decree on admitted claim. The object of the rule is to enable the party to obtain a speedy judgment at least to the extent of the relief to which according to the admission of the defendant, the plaintiff is entitled.

The Supreme Court should not unduly narrow down the meaning of this rule as the object is to enable a party to obtain speedy judgment..............
"

(emphasis supplied)

66. As submitted on behalf of the Plaintiff that not only is there an admission by the Defendant in the additional affidavit dated 18th July, 2017, filed by the Defendant that the security deposit of Rs.19,55,00,000/- is a security deposit held with the Defendant and upon the liability towards dues of the Defendant's sister concerns being discharged the Defendant shall return the security deposit to the Plaintiff but also the additional affidavit dated 5th April, 2018 filed by the Defendant as well as the written statement contains these admissions. The said paragraphs are usefully quoted as under:-

"(i) Additional Affidavit dated 18th July, 2017 filed by the Defendant:-

"5. From the Addendum Agreement it will be seen that the Defendant is only holding the amount mentioned therein as security deposit. The security deposit amount was to be retained by the Defendant until full payment was made by the Plaintiff to Stemcor UK Pvt. Limited. The amount mentioned as security deposit in the

Addendum Agreement is a part of the total security deposit by the Defendant towards certain suppliers procured by the Defendant under the invoices / debit notes annexed at Exhibit A of the Affidavit in Reply."

(ii) Additional Affidavit dated 5th February, 2018 filed by the Defendant:-

"19. The Defendant has time and again in several emails repeated and reiterated that the deposit held by the Defendant would not be repaid to the Plaintiff unless the Plaintiff has cleared all the outstanding overdues of Stemcor UK Limited.

20. The Defendant has not made (and never intends to make) a payment from the Security Deposit to Stemcor UK Limited. The Security Deposit funds are intended to be returned to the Claimant once it has performed in full its obligations to Stemcor UK Limited and Stemcor MESA and therefore, there cannot be any allegation of violation of the FEMA.

…

22. I say that the security deposit is being withheld in part to ensure the Plaintiff's performance of its agreement with Stemcor UK Limited, which has been agreed to between the Plaintiff and Stemcor UK Limited."

(iii) Written Statement dated 5th April, 2018 filed by the Defendant:-

"19….

(vi) As can be understood from the RIS0331 Addendum 1, it was agreed between the Plaintiff and Moorgate UK that the Plaintiff would make a security deposit with the Defendant as a security towards making payments under the RIS0331 Contract.

(vii) Accordingly, the Security Deposit that the Plaintiff had placed with the Defendant in the sum of Rs. 25,00,00,000 (Rupees Twenty Five Crore Only) is also a security deposit towards the obligations of the Plaintiff under the RIS0331 Contract.

…

21. The Defendant by its email dated 12.07.2013 (at Exhibit F) recorded the understanding with the Plaintiff that the security deposit with the Defendant would be returned to the Plaintiff only after all invoice/interest payment is made to Moorgate...AND The Defendant replied to the same by its email dated 23.05.2014 clarifying that unless the Plaintiff clears the amounts due and payable to Moorgate under the invoices and debit notes mentioned in the email, it would be unable to refund any security deposit."

23. … and the fact that it was expressly agreed to by the Plaintiff that the security deposit kept with the Defendant was to be returned only once payment is made in full against the various contracts executed by the Plaintiff with the Moorgate group.

...

25. (g) The Defendant submits that the return of the Security deposit was subject to the understanding and agreement between the Plaintiff and the other group companies of Moorgate and the Plaintiff has expressly agreed to the condition that the security deposit with the Defendant shall be refunded only after the Plaintiff has paid all sums due and payable to the concerned group company under respective contracts.

…

(j) In fact the email further clarifies that the remaining Security Deposit can only be released once the balance payment is made in full by the Plaintiff...() On the contrary, by the very documents relied upon by the Plaintiff to make the claim, it is evident that the Defendant has repeatedly reminded the Plaintiff that the Security Deposit is aimed at securing the dues owing from the Plaintiff (now an insolvent company under resolution process under the IBC Code) to the suppliers identified by the Defendant.

…

> (m) In view of the fact that the Plaintiff is yet to clear the outstanding amount, the Defendant is well within its right to hold back the remaining Security Deposit as a security towards the payment of balance amounts by the Plaintiff. It has been agreed between the parties that the said amount will be paid to the Plaintiff only once the Plaintiff makes full payment towards the raw material supplied.”

67. The Defendant has submitted that all the admissions on the basis of which the Interim Application has been filed, were on record of this Court prior to the order dated 8th February, 2018, granting unconditional leave to defend the Suit and that therefore, by the present Application, the Plaintiff is seeking to re-argue or re-agitate the summons for judgment.

68. I am afraid that the said submissions made on behalf of the Defendant are misplaced. The Application has been filed on the basis of events that had transpired after the order dated 8th February, 2018, granting unconditional leave to defend the Suit. The unconditional leave was granted as this Court had arrived at a finding that triable issues were involved. As noted above, the triable issues arose in view of the outstandings of the suppliers of the Defendant group, which as noted above have already been paid pursuant to an amended resolution plan as approved by the Hon’ble Supreme Court.

69. This Interim Application proceeds on the basis that after the order dated 8th February, 2018, was passed, the Applicant underwent CIRP under the provisions of the IBC and payments were made to Moorgate UK and Moorgate DMCC as a part of the CIRP, in due and complete discharge of their debts. That pursuant to the approved resolution plan, the debts of the Defendant's group companies (Moorgate UK and Moorgate DMCC) were discharged on 16th December, 2019 and the discharge of debts of the Defendant's group companies (which debts were the only basis on which the order granting unconditional leave was passed) is a fact which is ex-facie after the order dated 8th February, 2018. The present Application also relies on admissions made in its written statement dated 5th April, 2018 which is almost two months after the order dated 8th February, 2018, was passed. Thus, the Defendant's submissions that all the admission and facts based on which the present Interim Application is made, were already on record of this Court prior to the order dated 8th February, 2018 was passed is entirely misplaced. The critical events which transpired after the order dated 8th February, 2018, was passed, in fact extinguish the only conditionality attached to the admissions made by the Defendant and it is on that premise that the present Application is

made. That for this reason, the Defendant cannot be allowed to take shelter under the order dated 8th February, 2018 or argue that an attempt is being made to re-argue or re-agitate the summons for judgment.

70. Mr. Modi has relied upon the decision of this Court in the case of *M. H. Construction Vs State of Maharashtra and Ors. (supra),* as in this case it was held that the decree on admission could not be granted as at an earlier stage, summons for judgment had already been rejected. It must be noted that although no fault can be found with the principle, however, in the facts of the present case, on the basis of events that have transpired post disposal of the summons for judgment, the resolution plan has been approved on 8th March, 2019, by NCLT, Ahmedabad modified on 27th March, 2019 by the Committee of Creditors pending the appeal and approved by the Hon'ble Supreme Court on 15th November, 2019, although the Application is based on the admissions on the basis of undisputed original facts.

71. It has been contended on behalf of the Respondent /Defendant that under Order XII Rule 6 of the CPC the admissions are required to be unconditional and that the admissions in this case are conditional

and therefore, no case is made out for a decree on admission.

72. I am unable to agree with this contention. The condition was that the deposit made by the Plaintiff would be returned once payments due to Moorgate UK and Moorgate DMCC have been made. As noted above, these entities made a claim with the resolution professional and have been paid in accordance with the resolution plan as placed by the Hon'ble Supreme Court and in view of the clean slate principle as discussed above, once payments have been made, the debts stand completely discharged. That, thereafter, there is no outstanding obligation or condition remaining for the Corporate Debtor viz. the Plaintiff to comply with. In fact, in the decision of *Rajesh Mitra Vs. Karnani Properties (supra)* relied upon on behalf of the Defendant itself, it has been observed that Courts can invoke Order XII Rule 6 of the CPC, when admission is based upon undisputed inferences. Therefore, even assuming that the admission is conditional, the undisputed inference is that upon the condition being fulfilled and there being a valid, legal and due discharge of debts of the Plaintiff owed to Moorgate UK, the balance security deposit becomes due and payable to the Plaintiff. Accordingly, this contention raised by the Defendant stands rejected.

73. With respect to the contention of the Defendant that the amount placed with the Defendant is not the property of the Plaintiff and the same belongs to the Defendant/ the beneficiary of the deposit, it is to be noted that it has been admitted in the pleadings and an agreed position that the amount in question is a deposit. Paragraphs 19 (vii), (viii) and 21 of the written statement clearly bare this out, where the Defendant has consistently pleaded that the amount paid is a deposit for the sake of convenience the said paragraphs are usefully quoted as under:-

> "True Facts:-
> 19 Before dealing with the Plaint as filed by the Plaintiff, the Defendant would like to state that the true and correct facts of the case are as under:-
> […]
> (vii) Accordingly, the security deposit that the Plaintiff had placed with the Defendant in the sum of Rs. 25,00,00,000/- (Rupees Twenty Five Crore Only) is also a security deposit towards the obligations of the Plaintiff under the RIS0331 Contract. The amount mentioned as security deposit in the Addendum Agreement to the RIS0331 Contract is a part of the total security deposit held by the Defendant towards certain contracts entered into by the Plaintiff with the Moorgate group companies. A copy of the invoices/debit notes in connection with which the Plaintiff made the security deposit are annexed hereto and marked as Exhibit D.
>
> (viii) The fact that the Plaintiff has made a payment of Rs. 25,00,00,000/- (Rupees Twenty Five Crore Only) with the Defendant by way of security deposit can be further understood from the below emails- it is noteworthy that the Plaintiff admits to the amount being a security deposit, but is trying to lie about payments towards the obligations for the

security deposit allegedly having been made without a shred of evidence to show that such payments have indeed been made:

[…]

21. The Defendant by its email dated 12.7.2013 (at Exhibit F) recorded the understanding with the Plaintiff that the security deposit with the Defendant would be returned to the Plaintiff only after all invoice/ interest payment is made to Moorgate. Despite there being a clear understanding between the parties, evidenced by both the correspondence and indeed by the documents and agreements, some of which are subject matter of pending arbitration, the Plaintiff wrote an email dated 31.1.2014 seeking refund of the security deposit. The Defendant replied to the same by its email dated 23.5.2014 clarifying that unless the Plaintiff clears the amounts due and payable to Moorgate under the invoices and debit notes mentioned in the email, it would be unable to refund any security deposit. A copy of the email dated May 23, 2014 is annexed as Exhibit J to the Plaint."

74. In fact, paragraph 20 of the additional affidavit filed by the Defendant in response to the Plaintiff's additional affidavit in rejoinder clearly indicates that the deposit was never intended to be paid to Moorgate UK or to any other foreign entity. The said paragraph is also usefully quoted as under:-

"20. It is denied that the Defendant has violated the provisions of the Foreign Exchange Management Act, 1999 by holding/receiving the deposit on behalf of Stemcor UK Limited as alleged or at all. The Defendant has not made (and never intends to make) a payment from the security deposit to Stemcor UK Limited: The security deposit funds are intended to be returned to the Claimant once it has performed in full its obligations to Stemcor UK Limited and Stemcor MESA and therefore there canot be any allegation of violation of the FEMA. [...]"

75. In this connection, the decision of the Hon'ble Supreme Court in the case of ***Nagindas Ramdas Vs. Dalpatram Ichharam***[10]*,* with respect to the judicial admissions, admissible under Section 58 of the Evidence Act is also relevant. Paragraph 27 of the said decision in this regard is usefully quoted as under:-

> *"27. From a conspectus of the cases cited at the bar, the principle that emerges is, that if at the time of the passing of the decree, there was some material before the Court, on the basis of which, the Court could be prima facie satisfied, about the existence of a statutory ground for eviction, it will be presumed that the Court was so satisfied and the decree for eviction, though apparently passed on the basis of a compromise, would be valid. Such material may take the shape either of evidence recorded or produced in the case, or, it may partly or wholly be in the shape of an express or implied admission made in the compromise agreement, itself. Admissions, if true and clear, are by far the best proof of the facts admitted. Admissions in pleadings or judicial admissions, admissible under Section 58 of the Evidence Act, made by the parties or their agents at or before the hearing of the case, stand on a higher footing than evidentiary admissions. The former class of admissions are fully binding on the party that makes them and constitute a waiver of proof. They by themselves can be made the foundation of the rights of the parties. On the other hand, evidentiary admissions which are receivable at the trial as evidence, are by themselves, not conclusive. They can be shown to be wrong."*
>
> (emphasis supplied)

10 (1974) 1 SCC 242.

76. Accordingly, the aforesaid admissions in the pleadings constitute judicial admissions and that the security deposit has been admitted as such to be returned to the Plaintiff once the Plaintiff has performed its obligations. In my view, therefore, it is an admitted position that this deposit in the hands of the Defendant did not belong to the Defendant or any of its group companies. The Defendant itself does not have any claim on the money nor had the Defendant supplied any goods to the Plaintiff. The money is a deposit which admittedly is to be returned to the Plaintiff.

77. The Defendant has also contended that there is no proof that the deposit has been included in the assets carried forward in the CIRP or that the deposit was mentioned in the Information Memorandum. In my view, the entire submission is misconceived. As noted above, under the scheme of the IBC, the resolution plan is binding on all stakeholders including the Defendant, Moorgate UK and Moorgate DMCC. Clause 2 of the resolution plan is usefully quoted as under:-

> "Nothing in this Resolution Plan shall affect the rights of the Corporate Debtor to recover any amounts due to the Corporate Debtor from any Third Party (including any Related Party) except in the case of personal and corporate guarantees provided for and on behalf of the Corporate Debtor to the Financial Creditors and there shall be no set off of any such amounts recoverable by the Corporate Debtor or any liability extinguished pursuant to this Resolution Plan."

78. It has been contended that the Plaintiff continues to be the same corporate entity as always. Pre CIRP and post CIRP, the Plaintiff as a juristic entity is one and the same. There has been a change of name and change of shareholders, but that in no way alters the existence of the Plaintiff or its proprietorship of assets held prior to the CIRP. The suggestion militates against crore principles of IBC and Company Law. It is trite that in view of the provisions of the Companies Act, 2013, the effect of a change of name of a company is a mere change in the nomenclature while the entity remains the same body corporate and holds all the properties movable and immovable, tangible and intangible, as the Company was holding before the change of the name and even the Corporate Identification Number (U27100GJ1976FLC03787) of the Plaintiff continues to be the same today, as it was prior to the Plaintiff being admitted to CIRP.

79. It has also been contended that the claim is barred by limitation and that since limitation is a mixed question of fact and law the same requires a trial before the issue is decided conclusively and therefore, no decree can be made in favour of the Applicant on admission or otherwise.

80. It is observed that the deposit was paid via two payments: one on 7th April, 2012 and the other on 24th April. 2012. A perusal of the email dated 12th July, 2013 (Exhibit F to the written statement) and email dated 23rd May, 2014 (Exhibit G to the Plaint) clearly indicates that the Defendant has acknowledged the liability to return the security deposit of course subject to claims of its group entities being paid.

81. In my view, under Section 18 of the Limitation Act, the Defendant's email are acknowledgments extending the period of limitation. The Suit was filed by 18th July, 2016, i.e. within three years of the date of acknowledgment dated 23rd May, 2014. In fact in paragraph 12 of the Plaint, this aspect has been specifically pleaded. The said paragraph 12 is usefully quoted as under:-

> "12. The Plaintiff states that the Defendant has confirmed acknowledged its liability to repay the Outstanding security deposit amount vide its email dated 23/05/2014. Thus, the present suit is well within the period of limitation."

82. In ***Khan Bahadur Shapoor Freedom Mazda Vs. Durga Prasad Chamaria***[11], it has been held that acknowledgments must indicate the jural relationship and that they must be construed liberally, even though they do not specify the exact nature and specific character of

11 AIR 1961 SC 1236

the liability for it to constitute an extension of limitation. Paragraph 6 of the said decision is usefully quoted as under:-

> "6. It is thus clear that acknowledgment as prescribed by s. 19 merely renews debt; it does not create a new right of action. It is a mere acknowledgment of the liability in respect of the right in question; it need not be accompanied by a promise to pay either expressly or even by implication. The statement on which a plea of acknowledgment is based must relate to a present subsisting liability though the exact nature or the specific character of the said liability may not be indicated in words. Words used in the acknowledgment must, however, indicate the existence of jural relationship between the parties such as that of debtor and creditor, and it must appear that the statement is made with the intention to admit such jural relationship. Such intention can be inferred by implication from the nature of the admission, and need not be expressed in words. If the statement is fairly clear then the intention to admit jural relationship may be implied from it. The admission in question need not be express but must be made in circumstances and in words from which the court can reasonably infer that the person making the admission intended to refer to a subsisting liability as at the date of the statement. In construing words used in the statements made in writing on which a plea of acknowledgment rests oral evidence has been expressly excluded but surrounding circumstances can always be considered. Stated generally courts lean in favour of a liberal construction of such statements though it does not mean that where no admission is made one should be inferred, or where a statement was made clearly without intending to admit the existence of jural relationship such intention could be fastened on the maker of the statement by an involved or far-fetched process of reasoning. Broadly stated that is the effect of the relevant provisions contained in s. 19, and there is really no substantial difference between the parties as to the true legal position in this matter."

83. During the course of the hearing, it has been contended on behalf of the Defendant that the deposit was never meant to be returned at all and in fact it was a payment made to the Defendant, although it has been contended on behalf of the Applicant that at this late stage such a misconstruction of the pleadings ought to be rejected, however, on behalf of the Applicant it has been submitted that the Defendant has always accepted the deposit as such and that it has never been the Defendant's case that the same was the payment due to the Defendant. As noted above, it is an agreed position that the amount in question is a deposit and not a payment and therefore, this contention on behalf of the Defendant has to be rejected. The fact is that the Applicant has consistently demanded the repayment of the deposit and the same has also been admitted by the Defendant that it must be paid back. Therefore, to raise this new contention at the time of hearing only needs to be rejected. It is observed from Exhibit D -1 at page 41 of the Plaint that the incorrect ledger entry of Rs. 15,00,00,000/- to the account of Stemcor DMCC (Moorgate DMCC) instead of the Defendant was rectified by crediting the Stemcor MESA DMCC account and debiting the Defendant's account. Therefore, this contention only deserves to be rejected not only as an afterthought but also on the basis of the facts on record.

84. Coming to the contention raised on behalf of the Defendant with respect to the forfeiture of the deposit, it has been pointed out to this Court that this argument is contrary to the subsequent correspondence addressed by the Defendant and the pleadings in the written statement as it has been clearly admitted that the amount paid by the Applicant to the Defendant is a deposit and will be returned to the Applicant once the dues of the Defendant's group companies are paid. My attention is once again drawn to the emails dated 12th July, 2013 and 23rd May, 2014, which clearly indicates that these are emails acknowledging the liability to return the security deposit and are subsequent to the email dated 7th April, 2012. Firstly, the reliance on the language of forfeiture, in my view, is entirely contrary to the Defendant's own correspondence. In fact, the said reliance is also contrary to the pleadings which constitute judicial admissions. In reply to the summons for judgment in paragraph 14 the Defendant has submitted as under:-

> "14. In view of the fact that the Plaintiff is yet to clear the outstanding amount, the Defendant is well within its right to hold back the remaining security deposit as a security towards the payment of balance amounts by the Plaintiff. It has been agreed between the parties that the said amount will be paid to the Plaintiff only once the Plaintiff makes full payment towards the raw materials supplied."

85. Further, in an additional affidavit dated 5th February, 2018, filed by the Defendant in paragraph 20, as also noted above, it has been clearly stated that the security deposit funds are intended to be returned to the Claimant once it has performed its obligations to Stemcor UK and Stemcor MESA.

86. Secondly, a forfeiture at the instance of Moorgate UK or Moorgate DMCC is not legally tenable given that their claims were made during the CIRP process and also paid pursuant thereto. The claims are fully discharged. Moreover, forfeiture can only be at the instance of the Creditor and it is not the Defendant's case that it is a Creditor as the Defendant has admitted that the goods were provided by its group entities and that it was merely holding the security on their behalf.

87. It has also been contended on behalf of the Defendant that the LCIA arbitration proceedings between Moorgate UK and the Plaintiff culminating in the award dated 11th June, 2018, were governed by English law and were not affected by the CIRP moratorium in respect of the Plaintiff as the IBC does not have extraterritorial jurisdiction.

88. It is not in dispute that Moorgate UK and Moorgate DMCC participated in the CIRP of the Plaintiff and it cannot be contended by the Defendant on behalf of Moorgate UK that the provisions of IBC do not apply to the arbitration between Moorgate UK and the Plaintiff which is governed by English law. In any event, nothing would turn at this stage in as much as the payment made to Moorgate UK as part of the CIRP to the Plaintiff constitutes a valid discharge of all debts owed by the Plaintiff to Moorgate UK. Therefore, this contention cannot be sustained.

89. The Defendant has also contended that the LCIA arbitration proceedings between Moorgate UK and the Defendant culminating in the award dated 7th March, 2019, would also not be affected by the moratorium since the Plaintiff is not a party to those proceedings and that the Defendant has paid over the sum of Rs. 19.55 crores to Moorgate UK pursuant to the said award. That the allegations of collusion and fraud in the making of the said award of 2019 is a matter to be decided after trial by considering the evidence led by the Plaintiff and the Defendant and its probative value.

90. It has been submitted on behalf of the Applicant and rightly so that the proceedings between Moorgate UK and the Defendant culminating in the award of 2019 are irrelevant to this Application in as much as the Applicant/ Plaintiff is concerned with the return of the deposit. It does not matter that the said monies had been paid by the Defendant to Moorgate UK as that would be the responsibility of the Defendant and the Plaintiff is in no way concerned with the same. Moorgate UK has already been paid in accordance with the approved resolution plan and as noted above the Plaintiff has been discharged in that regard, but would definitely would have a right to the security deposit on the basis of the admissions noted above. Therefore, this contention on behalf of the Defendant also deserves to be rejected and is hereby rejected.

91. In the circumstances, the admissions, in my view are unambiguous not only based upon the judicial admissions on the basis of pleadings as noted above but also upon the undisputed inferences based on material on record including the decision dated 15th November, 2019, of the Hon'ble Supreme Court in the case of *Committee of Creditors of Essar Steel India Limited vs. Satish Kumar Gupta and others (supra)* and the undisputed position that Moorgate

UK and Moorgate DMCC have received the monies as per the approved resolution plan and the other claims having stood extinguished and the Plaintiff discharged and no person being entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan, in view of the clean slate principle as enunciated by the Hon'ble Supreme Court in the case of *Ghanshyam Mishra and Sons Private Limited Vs. Edelweiss Assets Reconstruction Company Limited (supra)*. Considering the object of Order XII Rule 6 of the CPC of speedy judgment, in the circumstances of this case, therefore, no useful purpose will be served in sending the matter to trial.

92. Accordingly, I am inclined to allow the Application. The Application accordingly stands allowed in terms of prayer Clause (a) which reads thus:-

> "a. This Hon'ble Court be pleased to pass a judgment and decree on admission in terms of prayer clause (a) of the suit, ordering and directing the Defendant to pay to the Plaintiff, the sum of Rs. 19,55,00,000/- (Rupees Nineteen Crore Fifty Five Lac Only) together with interest @ 24% per annum from the due date till the realization of the same by the Plaintiff forthwith."

93. In view of what has been held as above it would not be necessary to deal with other arguments made on behalf of the parties.

94. The Suit accordingly stands decreed in terms of prayer Clause (a) of the Plaint, which reads thus:-

> "a. That the Defendant be ordered and decreed to pay to the Plaintiff a sum of Rs. 19,55,00,000/-(Rupees Nineteen Crore Fifty Five Lakhs) together with interest @ 24% per annum till the realisation of the same by the Plaintiff."

95. Decree be drawn up expeditiously.

(ABHAY AHUJA, J.)

96. After the order is pronounced, Mr. Jagtiani, learned Senior Counsel appearing for the Interim Applicant/Plaintiff submits that after this order was reserved on 7th January, 2025, on 17th January, 2025, the Plaintiff has received a fresh Certificate of Incorporation as a Private Limited Company and that the name has changed to "Arcelormittal Nippon Steel India Private Limited" and that the same be reflected in the order.

97. Ms. Gaitonde, learned Counsel appearing for the Defendant has no objection if the amendment is allowed, however, submitting that this Court grant a stay on the order.

98. Mr. Jagtiani, learned Senior Counsel for the Applicant/Plaintiff vehemently opposes the request for stay.

99. Accordingly, let the the name of the Applicant/Plaintiff in the title to the Plaint and in other proceedings as well as in this order be read as Arcelormittal Nippon Steel India Private Limited.

100. Further, Mr. Jagtiani, learned Senior Counsel has also submitted that since this is a Commercial Suit and that there is a provision under Section 35 of the Commercial Courts Act, 2015, this Court may consider awarding of costs as mandated by the said provision.

101. Considering that the Commercial Suit has been decreed pursuant to this order, in view of the Section 35 of the Code of Civil Procedure, 1908 as amended by Commercial Courts Act, 2015, as applicable to the Commercial disputes, this Court also awards costs in the matter.

102. As far as the request for the stay is concerned, in view of what has been stated in the order, the request for stay is rejected.

NIKITA YOGESH GADGIL Digitally signed by NIKITA YOGESH GADGIL Date: 2025.06.10 12:59:54 +0530

(ABHAY AHUJA, J.)