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Sec/Share/18-19/25

Date: 23rd May, 2018

BY E-MAIL/SPEED POST

Shri Jayanta Jash,
Chief General Manager,
Head of Division,
Corporation Finance Department (CFD),
Securities and Exchange Board of India,
Bandra Kurla Complex, Bandra (East),
Mumbai – 400051.
E-mail: jayantaj@sebi.gov.in.
Contact: 022-26449430.

Dear Sir,

Ref: Electrosteel Steels Limited (“ESL / Company”).

Sub.: Exemption to be granted for compliance under Regulation 33 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(i) Background

The equity shares of ESL are listed on BSE Limited and National Stock Exchange of India Limited.

Pursuant to the order dated April 17, 2018, the National Company Law Tribunal, Kolkata Bench (“NCLT”) has approved the resolution plan submitted by Vedanta Limited for Electrosteel Steels Limited (“**Approved Plan**”) under Section 31 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”). The copy of the NCLT order is enclosed and marked herewith as **Annexure 1**.

Further, as per the order dated May 01, 2018 of National Company Law Appellate Tribunal (“NCLAT”), the NCLT and ESL is required to maintain the status quo and the Company is allowed to spent amounts only to the extent of maintaining the Company as a going concern company (“**Order**”). The copy of Order is enclosed and marked herewith as **Annexure 2**. The relevant para of the Order is also reproduced below for your reference:

*“During the pendency of the appeal, the parties and the Adjudicating Authority will maintain the **status quo** as of today. The Committee appointed for management of the ‘Corporate Debtor’ will not spent any amount of the company, except for day to day functioning of the ‘Corporate Debtor’.”*

(ii) Applicable law

According to Regulation 33 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015 (“**SEBI LODR Regulations**”) “.....*the listed entity shall submit annual audited standalone financial results for the financial year, within sixty days from the end of the financial year along with the audit report and Statement on Impact of Audit Qualifications applicable only for the report with modified opinion.....*”

(iii) Obligation of ESL under SEBI LODR Regulations

We wish to inform you that the Company will not be able to meet the requirements of Regulation 33 of the SEBI LODR Regulations to *inter-alia*, consider and approve audited standalone financial results of the Company for the quarter / year ended on March 31, 2018 owing to the following reasons: (i) mismatch of liabilities of the Company in its books of account and those admitted by resolution professional of the Company under corporate insolvency resolution process of the Company (*i.e.* from July 21, 2017 to April 17, 2018) in terms of the Insolvency and Bankruptcy Code, 2016 and the impact on the amount of assets being carried in the books of accounts of the Company pending such resolution; and (ii) the Order to maintain the status quo of the Company in light of which the impact of the Approved Plan, which is a material event, cannot be adequately disclosed and reconciled. In view of the above, the audited financial statements that may be prepared, may not give a complete/ true and fair representation of financials of the Company

To conclude, ESL is not in a position to comply with provision of SEBI LODR Regulations, because of the above reasons which are beyond our control.

(iv) Request

In view of the above, as per Regulation 102 of the SEBI LODR Regulations, Securities and Exchange Board of India (“**SEBI**”) has powers to relax strict enforcement of any of the listing and disclosure requirements under SEBI LODR Regulations and this is a fit and a proper case in which SEBI ought to exercise its powers under Regulation 102 of SEBI LODR Regulations to exempt the requirements prescribed under Regulation 33 of SEBI LODR Regulations. The relevant portion of the Regulation 102 of the SEBI LODR Regulations is reproduced below for your reference:

“102. Power to relax strict enforcement of the regulations

The Board may in the interest of investors and securities market and for the development of the securities market, relax the strict enforcement of any requirement of these regulations, if the Board is satisfied that:

.....

.....

*(e) the non- compliance is caused **due to factors affecting** a class of entities but being **beyond the control** of the entities. ”*



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CIN: L27310JH2006PLC012663

Request you to acknowledge the receipt of this letter and take the same on record. Please contact the undersigned in case you require any clarifications.

Thanking you,

For **ELECTROSTEEL STEELS LIMITED**

Binaya Kumar Dash,
Company Secretary
ICSI : A-17982
Contact: 033-71034400
E-mail:binayak.dash@electrosteel.com

Encl. : As stated above

CC :

Mr. Manish Raval
Department of Corporate Services
BSE Limited
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai- 400001.

Mr. Avinash Kharkar
Listing Department
National Stock Exchange of India Ltd.,
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex,
Bandra (E),
Mumbai – 400 051.

Scrip Code : 533264

Scrip Code :ESL

IN THE NATIONAL COMPANY LAW TRIBUNAL
KOLKATA BENCH
KOLKATA

Coram: Mr. Jinan K.R.,
Hon'ble Member(J)
&
Mr. Madan B. Gosavi,
Hon'ble Member(J)

CA (IB) No. 277/KB/2018
&
CA (IB) No. 271/KB/2018
&
CA (IB) No. 281/KB/2018
In
CP (IB) No.361/KB/2017

By this common order we propose to dispose of the above applications filed under section 30(6) read with section 31(1) and section 60(5) of the Insolvency and Bankruptcy Code, 2016 along with C.P.(IB) No.361/KB/2017

In the Matter of:

Dhaivat Anjaria, Resolution Professional of
Electrosteel Steels Limited ..

...**APPLICANT/ RESOLUTION PROFESSIONAL**

-And-

In the matter of:

STATE BANK OF INDIA

.. **FINANCIAL CREDITOR**

-VERSUS-

ELECTROSTEEL STEELS LIMITED

.. **CORPORATE DEBTOR**

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RESOLUTION PLAN SUBMITTED BY VEDANTA LIMITED

For the Financial Creditor:

1. Mr. Souvik Mazumdar, Advocate
2. Mr. Arif Ali, Advocate

For the Operational Creditor (SRG Earth Resources Pvt. Ltd.)

1. Mr. Aashish Chowdhury, Advocate

For the Resolution Professional:

1. Mr. Siddhartha Datta, Advocate
2. Mr. Vivek Misra, Advocate
3. Ms. Isha Sinha, Advocate
4. Mr. Jay Saha, Advocate

For the Respondent Nos. 2 to 7:

1. Mr. Arun Kumar Mishra, Advocate : For the Corporate Debtor:
1. Mr. Sachhida Nand Pandey, Advocate

Date of pronouncement of Order: 17-4-18

Per Shri Jinan K. R., Member(J):

ORDER

The Company Application CA(IB) No.277/KB/2018 has been filed by the Resolution Professional, Mr. Dhaivat Anjaria for approval of a Resolution Plan of **Vedanta Limited** under sub-section 6 of Section 30 read with section 31(1) of the Insolvency and Bankruptcy code,2016 (hereafter referred to as Code).

2. The Company Petition CA(IB) No.361/KB/2017 was filed by State Bank of India/Financial Creditor under Section 7 of the Code for initiating Corporate Insolvency Resolution Process (in short CIRP) of Electro steel Limited/Corporate Debtor.

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3. Vide Order dated 21-07-2017, the application filed by SBI was admitted and the Resolution Professional, Mr. Dhaivat Anjaria was appointed as the interim Insolvency Resolution Professional(IRP).

4. At the first meeting of the Committee of the Creditors(CoC) held on 21-08-2017, the CoC approved the appointment of IRP and confirmed his appointment as the Resolution Professional. Before the expiry of duration of 180 days of the CIR process the duration was further extended to 17.04.2018 vide order in CA(IB) No. 555/KB/2017.

5. In the meanwhile, the Resolution Professional succeeds in his endeavour in identifying four Resolution Plans submitted to him by four Resolution Applicants and submitted all the four Resolution Plans before the CoC as per sub-section(4) of Section 30 of the Code for approving one Resolution Plan out of the four Resolution plans.

6. CA(IB) No. 277 of 2018 was filed by the Resolution Professional (RP) for the approval of Resolution Plan of Vedanta Limited approved by the CoC by 100% voting shares of the CoC. It is that plan of Vedanta Limited came up for consideration before us for the approval under sub-Section(1) of Section 31 of the Code.

7. It is contended on behalf of the Resolution Professional that the Resolution Plan submitted before us meets all the requirements as referred to in sub-section (2) of Section 30 and that a certificate as per Regulation 39(4) (a) is also annexed with the Report and upon the said contention prays for the approval of the Resolution Plan of Vedanta Limited.

8. Aggrieved by the approval of Resolution Plan of Vedanta Limited by the CoC, two Objectors come forward challenging approval of the said plan by

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filing two interim applications. One among the objectors is Renaissance Steel India Private Limited (RSIPL) and another Objector is SRG Earth Resources Private Limited an Operational Creditor.

9. The RSIPL filed the CA (IB) No. 281/KB/.2018 objecting the Resolution Plan, mainly, raising two grounds. Firstly it contends that the Committee of Creditors in disobedience of the common Order passed by this Bench in CA(IB)/202/2018 and CA(IB)/203/2018 dated 20-03-2018 approved the Resolution Plan. Secondly, it contends that the Resolution Plan submitted before this adjudicating authority not at all meets the requirements under Section 30(2)(e) of the Code and that Vedanta limited is ineligible under section 29A (d) of the Code. Despite its ineligibility the CoC approved its plan contended by the RSIPL. RSIPL prays for rejection of the plan of Vedanta limited.

10. The Operational Creditor, namely, SRG Earth Resources Private Limited by filing CA (IB) No. 271/KB/2018 contends that the Resolution Professional did not admit its entire claim in violation of the provisions of law and therefore, seek directions directing the Resolution Professional to determine the claim of the Applicant in accordance with the Regulation by affording an opportunity to the applicants to substantiate its claim. According to the applicant sufficient time was not granted to it for substantiating its claim and hence the resolution plan cannot be approved with out admitting the entire claim of the applicant. This application was seen filed on 26-03-2018.

11. The Ld. Sr. Counsel for the Resolution Professional submits that all the allegations levelled against the resolution professional are denied and his said submission as requested was recorded. However, as directed the resolution professional filed reply affidavit in CA (IB) No.271/KB/2018 denying the allegations levelled against the Resolution Professional and contends that sufficient opportunity was given to the applicant and admitted part of its claim

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as per the provisions of the Code and the Regulations. The resolution professional further contends that its claim in part was rejected as per the Audit Report and reconciliation of the debit note with the books and ledgers of the Corporate Debtor and rejected the claim of the Applicant aggregating Rs.1.79 crores which form part of the total claim submitted by the Applicant and that an additional amount of approximately Rs.0.73 crore was found to be unsupported and hence rejected.

12. He further would contends that out of the total claim of Rs. 313.51 crores, he admitted the claim of Rs. 0.89 crores in September, 2017 which was updated on the website of the Corporate Debtor and several opportunities have been given to the applicant by exchanging various E-mails in terms of which, inter alia, the Resolution Professional at the advice of his Advisors requested additional information and supporting data from the applicant and consequently, he found the total admitted claim amounting to Rs.1.55 Crores and he updated it on the list of Creditors available on the website of the Corporate Debtor and as a proof he produced Exhibit-4 in respect of the revised admitted claim of the Applicant amounting to Rs.1.55 crores along with the reply.

13. The Resolution Professional also contends that liquidation value of the Corporate debtor being Rs. 2899/- crores and the total admitted financial debt of the Corporate Debtor is Rs.13395/- crores, the liquidation value that becomes due to the Operational Creditors stands to be NIL and therefore, the allegation levelled by the Operational Creditor as against the Resolution Plan is not at all sustainable and prays for dismissal of the Application.

14. Heard the Id. Counsel for the Resolution Professional, the Ld. Counsel appearing on the side of the RSIPL, the Ld. Counsel for the Application of CA (IB) No.271/KB/2018, the Id. Counsel on the side of the Resolution Applicant,

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namely Vedanta Limited, the Ld. Counsel for the Financial Creditor/SBI, and the Ld. Counsel for the Committee of Creditors(CoC) and perused the records.

15. Upon hearing the arguments and going through the materials on record, the provisions of law and the various ruling relied upon by the Ld. Sr. Counsel the points that comes up for determination are the following:-

i) Whether 'connected party' of corporate debtor, M/s. Konkola Copper Mines Pvt. Ltd, having convicted to pay fine of ZMK 100000/- and in default, three years imprisonment, by the Court at Zambia, M/s. Vedanta limited becomes ineligible as a Resolution Applicant in view of amended Section 29A of the Code?

ii) Whether CoC in disobedience of the direction of the Adjudicating Authority in the common order passed in CA (IB) No 202/KB/2018 and CA(IB)No.203/KB/2018 decided to hold that Vedanta Limited is not ineligible and approved the resolution plan? If so on that ground whether the plan is liable to be rejected?

iii) Whether there is any infirmity or illegality in not admitting the entire claim of operational creditor, namely SRG Earth Resources Private Ltd. by the resolution professional as alleged?

Point No (i)

16. RSIPL is an unsuccessful bidder. By filing the CA (IB) No. 281 of 2018 RSIPL objected the approval of the resolution plan of Vedanta Limited upon two grounds. Firstly it contends that the CoC, in disobedience of the directions passed by the Adjudicating Authority in the common order in CA(IB)No. 202/KB/2018 and in CA(IB) No.203/KB/2018 dated 20-03-2018, did not consider the question of eligibility of Vedanta Limited under Section 29A (d) of the Code independently. Secondly it contends that Vedanta Limited being

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ineligible to submit the Resolution Plan under section 29A (d) approval of the Resolution Plan of Vedanta Limited is in violation of the Code and therefore, is liable to be rejected.

17. The second objection referred to above was raised by the RSIPL in CA (IB) No. 203/KB/2018. RSIPL also raised very same objections against Tata steel Ltd and filed CA(IB) No.202/KB/2018 challenging the decision of the Resolution Professional alleging that its objections regarding the eligibility of Vedanta limited and Tata Steel Limited was not considered by the Resolution Professional. Vide common order dated 20.03.2018 this Bench allowed the applications in part upon the following directions:-

(i) A copy of the decision taken by the RP in respect of eligibility of resolution applicant Tata Steel Ltd. and Vedanta Ltd. As per Section 29A, with supporting reasons for taking the decisions is to be given to the applicant within three days of the date of this order with proper acknowledgement.

(ii) The applicants are allowed to submit its reply or its further objections if any to the decisions taken by the RP to him in person or through by e-mail within three days of the date of receipt of the copy of the decision as directed above.

(iii) The RP is directed to place all the objections of the applicants with supporting documents before the CoC with a copy of this order for its independent consideration as per proviso to Section 30 of the Code.”

18. The CoC were in receipt of four resolution plans. Among the four resolution applicants whose resolution plans were considered by the resolution professional the RSIPL is the third highest bidder. If the 1st and 2nd bidder is found not eligible certainly RSIPL become the successful bidder.

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19. Under sub-section (3) of Section 30 of the Code, the Resolution Professional shall present to the Committee of Creditors for its approval such Resolution Plans which confirms to the conditions referred to in sub-section (2) of section 30 of the Code. According to the Ld. Counsel for RSIPL, the Resolution Plan of Vedanta Limited and Tata Limited before the CoC was in violation of Section 29A (d) of the Code and that the directions issued to the resolution professional and to the CoC was not at all considered by them and in disobedience of the direction in the above referred order of this Bench the CoC approved the resolution plan of the Vedanta Limited and therefore the plan is liable to be rejected.

20. As per the above referred order of this bench dated 20.03.2018 the CoC, is bound to have independent consideration of the objections raised by the applicant in the CA 281 of 2018 in regard to the application of Section 29A(d) read with proviso to sub-section(4) of section 30 of the amended Code.

21. The Ld. Counsel for the CoC submits that in pursuance of the directions issued in the above referred order, the Committee of creditors had considered the question of eligibility of the Vedanta Limited who is the H-1 Bidder and the reasons of the resolution professional being satisfied by the CoC and since there is no new objections raised on the side of the RSIPL and CoC sought opinion from some law firms on the point and ultimately declared that Vedanta limited does not suffer from any disqualification as the resolution applicant in terms of section 29A(d) of the Code by its own reasons. He further submits that Vedanta Limited resolution plan being the highest among the remaining three plans, that resolution plan was put to vote and passed with 100% voting share and it is that plan that came up for consideration before this Bench.

22. The findings of CoC for the rejection of the objections of RSIPL as per the report are the following:

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- (i) KCM being a corporate entity and not natural person, cannot be convicted of an offence punishable with imprisonment;
- (ii) The directors, officers or managers of KCM cannot be considered to be convicted of an offence solely based on the conviction of KCM;
- (iii) Even if directors, officers or managers of KCM are considered liable for the acts of KCM, such persons do not fall under the definition of 'connected person' under section 29(A)(d) of the Code;
- (iv) the interpretation of the phrase "...punishable with imprisonment for two years or more" excluded cases wherein the law does not provide a minimum sentence of two years.

23. The Committee of creditors being arrived at a decision on the aforesaid reasons, let us see whether Vedanta Limited is eligible to become a resolution applicant coming under the purview of Section 29A (d) of the Code.

24. One among the reasons of the CoC is Konkola Copper Mines(KCM) does not come under the purview of the definition of 'connected person' under Section 29(A)(d) of the Code. It is significant to note here that ***by order dated 20.03.2018 the Bench held that the Konkola Copper Mines Pvt Ltd, being the subsidiary Company of Vedanta Limited, was a connected party within the meaning of explanation to section 29A.***

Disregard to the decision of the Bench the CoC has held that KCM do not fall under section 29A (d). This finding of CoC is devoid of any merit and legally not sustainable since the CoC did not challenge the above referred order. Therefore, we hold that findings No.(iii) of the CoC is not sustainable.

In order to appreciate the remaining issues of facts and provisions of law, it would be relevant to read the provisions of Section 29A of the Code.

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25. Section 29A (d) of the amended Code reads as follows:

“(d).. *has been “convicted” for any offence punishable for imprisonment for two years or more.*”

26. Regarding the ‘connected persons’ connected to the resolution applicant the provision applicable is Section 29(A)(j) of the Code.

Section 29(A)(j) of the amended Code reads as follows:

“a connected person not eligible under clause (a) to (i).

Explanation to Section 29(a) defines the expression ‘connected persons’

- (i) *Any person who is the promoter or in the management or control of the resolution applicant; or*
- (ii) *Any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or*
- (iii) *The holding company, **subsidiary company**, associate company or **related party** of a person referred to in clauses(i) and (ii);”*

27. To prove that **Konkola Copper Mines** (KCM) is the connected person of Vedanta Limited, the applicant produced Annual Reports of Vedanta Resources Plc as Annexure A-7 along with the above refereed application CA(IB). No.203/KB/2018. So also the applicant produced proof to prove that KCM is a convict under various provisions of Environmental Protection and Pollution Control Act in force in Zambia. The applicant already establishes that KCM is the subsidiary of Vedanta Resources Plc and that Vedanta Ltd. is the subsidiary of Vedanta Resources Plc. Therefore, whether the KCM is the subsidiary of Vedanta Limited with in the meaning of Section 29A (j) doesn't arise again in the case in hand.

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28. No doubt, the KCM is a subsidiary Company of Vedanta Resources Plc and that Vedanta Limited is the subsidiary of Vedanta Resources Plc. That being so, if KCM is found convicted for any offence punishable for imprisonment for 2 years or more as provided under Section 29A (d), the Vedanta Limited who is the Resolution applicant, in this case, is ineligible.

29. So, the next question is whether the KCM has been convicted for any offence punishable for imprisonment for two years or more as provided in Section 29A (d) of the Code.

30. According to the Ld.Sr.Counsel for the RSIPL, the KCM was convicted for violating provisions of Section 91(1), Section 24 and Section 86(1 and 3) and under Section 12(b) of the Environmental Protection and Pollution Control(Water Pollution(Effluent and Wastewater)] Regulation Statutory Instrument No.172 of 1993 as per order passed on 25-11-2010 by Subordinate Court of First Class for the Chingola District Holden at Chingola, Zambia (Criminal Jurisdiction). According to him KCM is convicted by a foreign Court to pay a fine, in default imprisonment for three years and the punishment is much more severe than what is contemplated under section 29A (d) of the Code. He would further submits that 'punishable' has to be considered as person could be punished, up to a period of two years or more. It is essentially covers the punishment even for a day. He also submitted that the material on record reveals that the resolution professional and the CoC having taken decision to exonerate Vedanta Limited to qualify independently but they appear to have been carried away by some erroneous legal opinion given by some law firms. The resolution applicant Vedanta limited is therefore, to be declared as ineligible, argued by the Ld.Sr.Counsel.

31. It has come out in evidence that KCM had pleaded guilty to all four charges before the Subordinate Court of First Class for the Chingola, which imposed a monetary fine of ZMK 100000/- on KCM.

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32. The Ld. Sr. Counsel appearing for the Resolution Professional, CoC and Vedanta Limited attempted to convince us that the criminal statute require strict interpretation. More particularly when, on the basis of conviction of criminal offence, certain rights of person so convicted are being taken away. As per section 29A (d) person is ineligible if he is convicted for offence punishable for two years and more. Sentence imposed being a sentence to pay fine and neither the Directors of the Company nor the KCM was convicted in an offence punishable with imprisonment, or any of the directors were not imprisoned and fine ordered to pay has been paid, Section 29(A)(d) does not attract in the case in hand argued by the Ld. Sr. Counsel. He would further submits that the Directors, Officers or managers of KCM cannot be considered to be convicted of an offence only based on the conviction of KCM and therefore, they are not the person vicariously liable for the acts of the Company.

33. The above said being the arguments on either side let us have a look at the definition come under the purview of Code. Under the Code a 'person' is defined under section 3(23). it is good to read section 3(23) of the code. It read as follows:-

(23) 'person' includes-

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a trust;
- (e) a partnership;
- (f) a limited liability partnership; and
- (g) any other established under a statute, and includes a person resident outside India;.

34. So no doubt a company is a person as per the provisions of the Code and if the company or its directors or officers were convicted for an offence

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punishable under the purview of Section 29A(d) of the Code no doubt the Vedanta Limited is ineligible.

35. The Ld. Sr. Counsel appearing for the RSIPL at this juncture stressed his argument on the strength of a judgement of Hon'ble Supreme Court in (2005) 4 Supreme Court case 530 (***Standard Chartered Bank & Ors. Vs. Director of Enforcement and Ors.***) that under Corporate Laws, a Company is liable for fastening criminal liability.

36. By referring to Foreign Exchange Regulation Act, 1973, Section 56(1)(i), the Hon'ble Supreme Court, in the above cited decision has held, per majority, that "***though a Company cannot be sentenced to imprisonment, it can nevertheless be prosecuted and the Court can impose punishment of fine instead***".

37. On reading of the above said citation what we understood is that even in graver offence punishable with imprisonment and fine, the Court is duty bound to impose punishment to the company by sentencing the Company to pay fine in lieu of imprisonment. Imprisonment or fine and imprisonment ad fine is thereby distinguished by the Hon'ble Supreme Court in the above cited decision in regard to fastening criminal liability on a Company like the company in hand. It has been held that an offence punishable with **imprisonment or fine is less serious offence** than an offence punishable with imprisonment and fine.

38. By reading the above said citation, it appears to us that an offence punishable with imprisonment is different with that of an offence punishable with imprisonment or fine. The KCM in the case in hand, was found guilty of an offence punishable with imprisonment or fine for a term not exceeding 3 years or both. So there was no ***imprisonment, disqualification as stated under Clause(d) of Section 29A of the Code.***

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39. We have given our anxious thought to submissions of all the Ld Sr. Counsels for either side. The judgement of Ld. Magistrate at Singola Show that Ld. Magistrate took reformative approach while convicting KCM. Nothing brought to our notice that KCM a subsidiary of Vedanta Limited, was a habitual offender. The Magistrate Could have sentenced a representative of KCM for a period of three years as provided under the law but he did not. In short the connected person of the Resolution applicant as explained under section 29A of the Code was not convicted for imprisonment of a period of two years or more.

40. In the light of what is discussed above we are not at all convinced by the arguments of the Ld. Sr.Counsels. Before we come to the conclusion let us have a look at the object behind the introduction of amended section 29A to the Code. It reads as follows :

“the Ordinance aims at putting in place safeguards to prevent unscrupulous, undesirable persons from misusing or vitiating the provisions of the Code. The amendments aim to keep out such persons who have wilfully defaulted, are associated with non-performing assets, or are habitually no complaint and, therefore, are likely to be a risk to successful resolution of insolvency of a company addition to putting in place restrictions for such persons to participate in the resolution or liquidation process, the amendment also provides such check by specifying that the Committee of Creditors ensure the viability and feasibility of the resolution plan before approving it. The Insolvency and Bankruptcy Board of India (IBBI) has also been given additional powers.”

41. At this juncture it is also good to read the object of enactment of the Code. It reads as follows:

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“An Act to consolidate and amend the laws relating to re-organisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stake holders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

42. Bare in mind the legislative object of introduction of Section 29(A) to the Code and the object of the enactment of the Code and upon the above said reasons in our considered opinion, the resolution applicant Vedanta Limited cannot be said to be ineligible to submit the Resolution Plan. Accordingly we answer the point in negative and hold that Vedanta Limited is eligible resolution applicant.

Point no (ii)

43. The Ld. Counsel for the RSIPL submits that CoC, being the statutory body is bound by the decisions of the Adjudicating Authority and in disobedience of the directions passed by this Adjudicating Authority dated 20-03-2018, approved the Resolution Plan and therefore, the Resolution Plan is liable to be rejected.

44. Vide Order referred above, the Bench already hold that KCM, being a subsidiary of the holding Company of the Vedanta Limited, comes under the definition of 'connected' person under Section 29A (j). That order become final since nobody inclusive of CoC not challenged. Despite the above said findings of the Bench CoC have had a finding that KCM is not the 'connected person'. The said finding no doubt is in utter disregard of the findings of this Bench.

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Such a conduct from a committee like the CoC in the case in hand would not have occurred.

45. So also, as per the above said order the CoC was directed to have an independent decision in respect of eligibility of Vedanta Limited despite the decision of the Resolution Professional. On a perusal of the report what we understood is that the CoC accepted the reasoning of the Resolution Professional and the opinion of the advisors of the Resolution Professional and upholding the reasoning of the Resolution Professional and hold that Vedanta Limited is eligible as per section 29A of the Code. However, the Ld.Sr.Counsel for the Vedanta Limited submits that in addition to the reasoning of resolution professional the CoC sought opinion from law firms on the point and ultimately decided that Vedanta Limited does not suffer from any disqualification as the resolution applicant in terms of Section 29A (d) of the Code.

46. The reasons from deviating the direction of the Bench as highlighted above though not inspire our confidence we are not inclined to reject the resolution plan since it otherwise meets all the requirements mandated by the provisions of the Code and Regulations. This point is answered accordingly.

Point No (iii)

47. SRG Earth Resources Private Limited an operational creditor also challenged the plan contending mainly that its claim in full not considered by the resolution professional and upon said contention prays for issuing direction to the Resolution Professional to reconcile the outstanding dues of the applicant and accept and admit the entire claim of Rs. 3.35 crores as alleged by the applicant in CA (IB)No.271/KB/2018.This applicant filed the application on 26.03.2018. It came up for consideration at the fag end of the expiry of the duration of the CIRP challenging that its claim has not been considered properly by the Resolution Professional. The delay in challenging non inclusion

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of a claim finalised by a resolution professional before he finalise the resolution plan itself is an indication that there is no bonafide in the challenge raised by the applicant.

48. The Ld. Counsel for the Resolution Professional in answering to the objections of the above said operational creditor submits that the entire claim of all the Operational Creditors were taken into consideration by him in appropriate time as per Regulation 7 of Chapter IV of IBBI (Insolvency Resolution Process for Corporate persons) Regulations, 2016 and identified about 430 Operational Creditors till the end of 14-03-2018 and all the claims of the Operational Creditors inclusive of the claims of the applicants have been revived and admitted based on the information made available till 14-03-2018.

49. The Ld. Counsel for the Resolution Professional referred to the list of Operational creditors excluding the employees and the workmen whose claims have been admitted and uploaded. The copy of the list of Operational Creditors is annexed with the Reply affidavit dated 04-04-2018 in this IA. A Reference to the list of Operational Creditors shows that Sl. No. 17 is the SRG Earth Resources Private Limited. It shows that the amount claimed by the applicant is Rs. 3.35 crore and the Resolution Professional admitted the claim of the applicant of Rs. 1.55 crores and rejected Rs. 1.796 crores on the basis of Audit report and reconciliation of the debit note with the books and ledgers of the Corporate Debtor. The reasoning has been explained in the reply affidavit in detail and we do not find that uploading the claim of the applicant and admitting a portion of the claim and rejection of other portion of the claim is not at all found in violation of any of the provisions of the Code or any of the provisions of the Regulation.

50. Moreover, it is significant to note here that the liquidation value of the Corporate Debtor, here in the instant case, is Rs. 2899 crores. As per the records, the total admitted financial debt of the Corporate Debtor is Rs. 13,395

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crores. Therefore, no doubt, the liquidation value that due to the Operational Creditors stands to be NIL and therefore, none of the grounds alleged by the Applicant in its application CA(IB)No. 271/KB/2018 is found sustainable any of the provisions of the Code and Regulation and therefore the CA is liable to be dismissed.

51. The above said discussions and findings on Point No.(i) to (iii) leads to a legitimate conclusion that the Resolution Applicant Vedanta Limited is eligible under the amended provisions of Section 29A of the Code. So the next question is whether the resolution plan of corporate debtor is to be approved as per section 31(1) of the Code. As per Section 31(1) of the Code if the Adjudicating Authority is satisfied that the resolution plan as approved by the CoC under sub-section (4) of Section 30 meets the requirements as referred to in sub-section(2) of section 30 this Adjudicating Authority shall by order approve the resolution plan.

52. The resolution plan meets all the requirements to be complied under the provisions of the code and Regulation. The resolution applicant is Vedanta Limited is a Public Company and is the subsidiary of Vedanta Resources Plc. It claimed that it is the 6th largest diversified natural resources company in the world by EBITDA and the only global player with significant operations, expertise and majority sales in the Indian market. It also experienced in iron ore mining and pig iron manufacturing more than 15 years. The technical and economical viability of the resolution applicant in taking over the company not at all in challenge from any corner. On going through the plan we are also satisfied that the resolution applicant has taken into account the interest of all stakeholders and that the applicant have had necessary infrastructures that will enable the applicant to continue the corporate debtor company as a going concern. So we are satisfied that the corporate debtor is in a safer hand.

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53. For the foregoing reasons and discussions recorded herein above, in our considered opinion CA(IB) No.277/KB/2018 is liable to be allowed by approving the resolution plan. CA(IB) No.271/KB/2018 and CA(IB) No.281/KB/2018 is liable to be dismissed. Accordingly we hereby approve the resolution plan of corporate debtor upon the following orders:-

ORDER

CA(IB) No.277/KB/2018 is allowed by approving the Resolution Plan of Corporate Debtor Electro Steels Limited, which is approved by the of CoC with a voting share of 100% under section 31(1) of the Insolvency & Bankruptcy Code, 2016, which will be binding on the Corporate Debtor, its employees, members, creditors, coordinators and other stakeholders involved in the Resolution Plan.

2. The approved Resolution Plan shall come into force with immediate effect.
3. The moratorium order passed under Section 14 shall cease to have effect.
4. The Resolution Professional shall forward all records relating to the conduct of the Corporate Insolvency Resolution Process and the Resolution Plan to the Insolvency and Bankruptcy Board of India to be recorded on its database.
5. CA(IB)No.271/KB/2018 is dismissed. However, no order as to cost.
6. CA(IB)No.281/KB/2018 is dismissed. However no order as to cost.
7. CP(IB)No.361/KB/2018 is disposed of as above.

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Certified copy of the order may be issued, if applied for, upon compliance with all requisite formalities.

Sd

(M. B. Gosavi)
Member(Judicial)

Sd

(Jinab K.R.)
Member(Judicial)

Signed on this, the 17th day of April, 2016+

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 175 of 2018

IN THE MATTER OF:

Renaissance Steel India Pvt. Ltd.

...Appellant

Versus

Electrosteel Steels Ltd.

...Respondent

Present:

For Appellant : **Mr. S. N. Mukherjee, Senior Advocate assisted by
Mr. Sumant Batra, Mr. Sanjay Bhatt, Mr. Anup
Kumar, Ms. Honey Satpal and Mr. Pulkit Deora,
Advocates**

For 1st Respondent : **Mr. N.K. Kaul, Senior Advocate assisted by
Ms. Misha, Ms. Malvika Kamade, Mr. Sanyat, Mr.
Deepak Joshi, Ms. Hansa Kaul and Mr. R. Khatara,
Advocates**

For 2nd Respondent: **Mr. Sudipto Sarkar and Mr. Arun Kathpalia, Senior
Advocates assisted by
Mr. Diwakar Maheshwari and Mr. Aditya Vikram
Singh, Advocates**

For 4th Respondent: **Mr. Ramji Srinivasan, Senior Advocate assisted by
Mr. Bishwajit Dubey, Ms. Surabhi Khattar,
Mr. Tushar Bhardwaj and Mr. Naveen Hegde,
Advocates**

ORDER

01.05.2018 Learned counsel for the appellant is allowed to make necessary corrections in the cause-title of the appeal in terms of the NCLAT Rules by tomorrow i.e. 2nd May, 2018.

Issue notice on the respondents.

Ms. Misha, advocate accepts notice on behalf of the 1st Respondent - Electrosteel Steels Ltd. through 'Insolvency Resolution Professional' and also on

behalf of 3rd Respondent – ‘Resolution Professional’. Mr. Diwakar Maheshwari, Advocate accepts notice on behalf of 2nd Respondent – ‘Vedanta’ and Mr. Bishwajit Dubey, advocate accepts notice on behalf of ‘State Bank of India’. No further notice need be issued on them. They may file reply along with their respective Vakalatnama within ten days.

Learned counsel for the ‘Committee of Creditors – ‘State Bank of India’ will supply a comparative chart by the next date showing the offer given by the 1st, 2nd and 3 highest bidder(s). Parties will also point out whether any of the provisions in the ‘Resolution Plan’ submitted by one or other ‘Resolution Professional’ is against any of the provision of law.

Post the matter for admission on 17th May, 2018.

During the pendency of the appeal, the parties and the Adjudicating Authority will maintain the *status quo* as of today. The Committee appointed for management of the ‘Corporate Debtor’ will not spent any amount of the company, except for day to day functioning of the ‘Corporate Debtor’.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk