ELECTROSTEEL STEELS LIMITED

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GK Tower, 2nd & 3rd floor,
19, Camac Street, Kolkata – 700017
West Bengal, India
Board Number: + 91-33-7103 4400
Fax No: + 91-33-2290 2882
CIN: L27310JH2006PLC012663

Sec/Share/18-19/68

Date: 10th August, 2018

BY ONLINE FILING

The Manager
Dept. of Corporate Services
BSE Ltd.
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai- 400001
Scrip Code : 533264

The Manager
Listing Department
National Stock Exchange of India Ltd.,
Exchange Plaza, C-1, Block G,
Bandra Kurla Complex,
Bandra (E)
Mumbai – 400 051
Scrip Code : ELECTROSL

Dear Sir/Madam,

Subject: Electrosteel Steels Limited (Company) – NCLAT Order dated 10th August, 2018

In continuation of our earlier intimation dated 3rd May, 2018 and 2nd June, 2018 and pursuant to Regulation 30 of Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015, we hereby inform you that National Company Law Appellate Tribunal (NCLAT) vide its Judgement dated 10th August, 2018 (copy enclosed) has inter alia upheld the eligibility of Vedanta Limited under Insolvency And Bankruptcy Code, 2016 and dismissed appeals filed by Renaissance Steel India Pvt. Ltd. challenging the resolution plan of Vedanta Limited for Electrosteel Steels Limited.

We 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.

Yours faithfully,
For **ELECTROSTEEL STEELS LIMITED**

BINAYA KUMAR DASH
Digitally signed by BINAYA KUMAR DASH
Date: 2018.08.10 14:15:25 +05'30'

(Binaya Kumar Dash)
Company Secretary
ICSI: A-17982

Encl: As Stated Above.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

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

[Arising out of Order dated 17th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in CA (IB) No. 277/KB/2018, CA (IB) No. 271/KB/2018, CA (IB) No. 281/KB/2018 and CA (IB) No. 361/KB/2017]

IN THE MATTER OF:

Renaissance Steel India Pvt. Ltd. ...Appellant

Vs

Electrosteels Steel India Ltd. ....Respondent

Present:

For Appellant: **Mr. Amrendra Sharan, Sr. Advocate with Ms. Honey Satpal, Mr. Pulkit Deora and Mr. Anup Kumar, Advocates.**

For Respondents: **Mr. Arun Kathpalia, Sr. Advocate with Mr. Diwakar Maheshwar, Mr. Aditya N Singh and Mr. Samaksh Goyal, Advocates for R-2.**

Mr. Tushar Mehta, ASG and Mr. Ramji Srinivasan, Sr. Advocate with Mr. Kanu Agrawal, Mr. L. Vishwanathan, Mr. Gaurav Gupte, Mr. Bishwajit Dubey, Ms. Surabhi Khattar, Ms. Srideepa Bhattacharyya, Mr. Tushar Bhardwaj and Mr. Naveen Hegde, Advocates for R-4.

Mr. Jayant Mehta, Mr. Sajal Jain and Mr. Ashish Rana, Advocates for (Suspended) Board of Directors.

With

Company Appeal (AT) (Insolvency) No 223 of 2018

[Arising out of Order dated 17th April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata in CA (IB) No. 277/KB/2018, CA (IB) No. 271/KB/2018, CA (IB) No. 281/KB/2018 and CA (IB) No. 361/KB/2017]

IN THE MATTER OF:

Renaissance Steel India Pvt. Ltd. ...Appellant

Vs

Electrosteels Steel India Ltd. & Ors. ....Respondents

Present:

For Appellant: **Mr. Amrendra Sharan, Sr. Advocate with Ms. Honey Satpal and Ms. Srishti Kapoor, Advocates.**

For Respondents: **Mr. Rajiv Nayar, Sr. Advocate with Ms. Ruby Singh Ahuja, Mr. Utsav Trivedi, Ms. Tahira Karanjawala, Mr. Sanjeet and Mr. Shubham Saigal, Advocates for Respondent No.2 (Tata Steel).**

Mr. Gourab Bannerjee, Sr. Advocate with Ms. Misha, Mr. Sapan Gupta, Mr. Shantanu Chaturvedi and Ms. Mrida Lakhmani, Advocates for R-3 (RP).

Mr. Tushar Mehta, ASG and Mr. Ramji Srinivasan, Sr. Advocate with Mr. Kanu Agrawal, Mr. L. Vishwanathan, Mr. Gaurav Gupte, Mr. Bishwajit Dubey, Ms. Surabhi Khattar, Ms. Srideepa Bhattacharyya, Mr. Tushar Bhardwaj and Mr. Naveen Hegde, Advocates for R-4 (CoC).

Mr. Arun Kathpalia, Sr. Advocate with Mr. Diwakar Maheshwar, Mr. Aditya N Singh and Mr. Samaksh Goyal, Advocates for Vedanta.

Company Appeal (AT)(Insolvency) No. 221 of 2018

[Arising out of Order dated 15th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, in C.A. Nos. 244, 186, 217 &176 (PB)/2018 in CP.P. (IB)-201(PB)/2017]

IN THE MATTER OF:

Neeraj Singal ...Appellant

Vs

Bhushan Steel Ltd. & Ors. ....Respondents

Present:

For Appellant: **Mr. S. Ganesh, Senior Counsel with Mr. Sakate Khaitan, Mr. Puneet Singh Bindra, Mr. Dhiraj Mhetre, and Ms. Akshita Gupta, Advocates.**

For Respondents: **Dr. A.M. Singhvi, Mr. Rajiv Nayar, Senior Advocates with Mr. V.P. Singh, Mr. R.S. Ahuja, Mr. A.R. Choudhary, Mr. Aman Sharma, Mr. Tahira Karanjawala, Mr. Aditya Jalan, Mr. Priyank Laddia, Mr. Abhiskar Singhvi, Mr. Utsav Trivedi, Mr. Navandeep Matta, Mr. Raghav Seth, Mr. Sahil Monga and Ms. Manjira Dasgupta, Advocates for Respondent No. 3- Tata Steel Ltd.**

Mr. Gaurab Banerjee, Mr. Arun Kathpalia, Senior Advocates with Mr. Manmeet Singh, Mr. A.R. Frey, Ms. Anjali Anchayil, Mr. Samaksh Goyal, Ms. Bani Brar and Mr. Arvind Maumar Gupta, Advocates for R.P.

Ms. Misha, Mr. Vaijayant Paliwal and Ms. Jasveen Kaur, Advocates for CoC.

With

Company Appeal (AT)(Insolvency) No. 233 of 2018

[Arising out of Order dated 15th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, in C.A. Nos. 244, 186, 217 &176 (PB)/2018 in CP.P. (IB)-201(PB)/2017]

IN THE MATTER OF:

Larsen & Toubro Ltd. **...Appellant**

Vs

Bhushan Steel Ltd. & Ors. **....Respondents**

Present:

For Appellant: **Mr. Mihir Thakur, Senior Advocate along with Mr. Rishi Agrawala, Mr. Mitul Shelat and Ms. Aastha Mehta, Advocates.**

For Respondent: **Dr. A.M. Singhvi, Mr. Rajiv Nayar, Senior Advocates with Mr. V.P. Singh, Mr. R.S. Ahuja,**

Mr. A.R. Choudhary, Mr. Aman Sharma, Mr. Tahira Karanjawala, Mr. Aditya Jalan, Mr. Priyank Laddia, Mr. Abhiskar Singhvi, Mr. Utsav Trivedi, Mr. Navandeep Matta, Mr. Raghav Seth, Mr. Sahil Monga and Ms. Manjira Dasgupta, Advocates for Respondent No.2- Tata Steel Ltd.

Ms. Misha, Mr. Vaijayant Paliwal and Ms. Jasveen Kaur, Advocates for CoC.

With

Company Appeal (AT)(Insolvency) No. 267 of 2018

[Arising out of Order dated 15th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, in C.A. Nos. 244, 186, 217 &176 (PB)/2018 in CP.P. (IB)-201(PB)/2017]

IN THE MATTER OF:

Bhushan Energy Ltd. ...Appellant
Through its Resolution Professional

Vs

State Bank of India & Ors. ....Respondents

Present:

For Appellant: **Mr. Rajeeve Mehra, Senior Advocate along with Mr. Amar Gupta, Mr. Mayank Mishra, Ms. Niti Arora, Mr. Ritunjay Gupta and Ms. Pallavi Kumar, Advocates.**

For Respondents: **Dr. A.M. Singhvi, Mr. Rajiv Nayar, Senior Advocates with Mr. V.P. Singh, Mr. R.S. Ahuja, Mr. A.R. Choudhary, Mr. Aman Sharma, Mr. Tahira Karanjawala, Mr. Aditya Jalan, Mr. Priyank Laddia, Mr. Abhiskar Singhvi, Mr. Utsav Trivedi, Mr. Navandeep Matta, Mr. Raghav Seth, Mr. Sahil Monga and Ms. Manjira Dasgupta, Advocates for Respondent No.3- Tata Steel Ltd.**

Ms. Misha, Mr. Vaijayant Paliwal and Ms. Jasveen Kaur, Advocates for CoC.

With

Company Appeal (AT)(Insolvency) No. 357 of 2018

[Arising out of Order dated 15th May, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, in C.A. Nos. 244, 186, 217 &176 (PB)/2018 in CP.P. (IB)-201(PB)/2017]

IN THE MATTER OF:

Brij Bhushan Singal ...Appellant

Vs

Bhushan Steel Ltd. & Ors. ....Respondents

Present:

For Appellant: **Mr. Puneet Singh Bindra, Mr. Dhiraj Mhetre, Mr. Sakate Khaitan, Ms. Akshita Gupta, Advocates.**

For Respondents: **Through RP- Mr. Arun Kathpalia, Senior Counsel, Mr. Manmeet Singh, Mr. A Robin Frey, Ms. Anukrit Gupta, Ms. Anjali Anchayil, Advocates for Respondent No. 1**

Mr. Rajiv Nayar, Senior Advocate along with Mr. V.P. Singh, Mr. R.S.Ahuja, Mr. A.R. Chodhury, Mr. Aditya Jalan, Mr. Priyank Ladoveer, Mr. Raghav Seth, Mr. Aman Sharma, Mr. Tahira Karanjawala and Mr. Sahil Monga, Advocates for Respondent No. 3 – Tata Steel Ltd.

Ms. Misha, Mr. Vaijayant Paliwal and Ms. Jasveen Kaur, Advocates for CoC.

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

In all the appeals as common question of law is involved and one of the Resolution Applicants- 'Tata Steel Limited' is common, though they were heard separately but with a view to notice the submissions made by learned counsel for the parties in two separate sets of the appeals, the appeals are disposed of by this common judgment.

For proper appreciation of the case, we have referred different sets of appeals as appeal arising out of 'Resolution Process' against 'Electrosteels Steels Limited' and 'Resolution Process' initiated against 'Bhushan Steel Ltd.' as the case may be.

Appeals arising out of "Electrosteels Steels Limited"-

2. Pursuant to an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") filed by the State Bank of India- ('Financial Creditor'), 'Corporate Insolvency Resolution Process' was initiated against 'Electrosteels Steels Limited'- ('Corporate Debtor'). By impugned order dated 17th April, 2018 in CA (IB) No. 277/KB/2018, CA (IB) No. 271/KB/2018, CA (IB) No. 281/KB/2018 and CA (IB) No. 361/KB/2017, the Adjudicating Authority (National Company Law Tribunal), Kolkata Bench, Kolkata, held that the 'Resolution Applicants'- 'Vedanta Limited' and 'Tata Steel Limited' are eligible and not barred by Section 29A (d) of the 'I&B Code'. The 'Resolution Plan' submitted by

'Vedanta Limited' has been approved by the Adjudicating Authority as the plan fulfils the requirement under Section 30(2).

3. The aforesaid order dated 17th April, 2018, approving the 'Resolution Plan' of 'Vedanta Limited' has been challenged by the Appellant- 'Renaissance Steel India Private Limited', another 'Resolution Applicant' in Company Appeal (AT) (Insolvency) No. 175 of 2018. Prayer has been made to declare 'Vedanta Limited' as ineligible under Section 29A (d) of the 'I&B Code'.

Appeals arising out of "Bhushan Steel Ltd."

4. Another application under Section 7 of the 'I&B Code' was filed by the State Bank of India- ('Financial Creditor') for initiation of 'Corporate Insolvency Resolution Process' against 'Bhushan Steel Ltd.'- ('Corporate Debtor'). By the impugned order dated 15th May, 2018, the Adjudicating Authority held that 'Tata Steel Limited' is eligible as 'Resolution Applicant' and not barred by Section 29A (d) of the 'I&B Code' and approved the 'Resolution Plan' submitted by 'Tata Steel Limited'.

5. In Company Appeal (AT) (Insolvency) No. 223 of 2018, same Appellant challenging the same very order dated 17th April, 2018, prayed for a declaration that 'Tata Steel Limited' is ineligible under Section 29A (d) of the 'I&B Code'.

6. In Company Appeal (AT) (Insolvency) No. 221 of 2018, 'Mr. Neeraj Singal'- a Shareholder of 'Bhushan Steel Ltd.'- ('Corporate Debtor') has challenged the order dated 15th May, 2018 passed by the Adjudicating Authority, Principal Bench, New Delhi and also sought for a declaration that "Tata Steel Limited" is ineligible under Section 29A (d) of the 'I&B Code'.

7. 'Bhushan Energy Limited' in Company Appeal (AT) (Insolvency) No. 267 of 2018 has also challenged the order dated 15th May, 2018, passed by the Adjudicating Authority, Principal Bench, New Delhi, but on different grounds.

8. The same very order dated 15th May, 2018 has been challenged by 'Larsen & Toubro Limited'- ('Operational Creditor') in Company Appeal (AT) (Insolvency) No. 233 of 2018 in so far it relates to allocation made in the 'Resolution Plan' in respect of 'Operational Creditor's'.

9. Mr. Brij Bhushan Singal, a Shareholder along with Others, have also challenged the order dated 15th May, 2018 in Company Appeal (AT) (Insolvency) No. 357 of 2018 raising grievance against the approved 'Resolution Plan'.

10. The Divisional Forest Officer, Bokaro Forest Division, Department of Forests & Environment, Government of Jharkhand, Bokaro, filed an application CA (IB) No. 307/KB/2018 for its substitution as a party to the proceedings of 'Bhushan Steel Ltd.' so as to protect the 'forest lands'

allegedly in the illegal possession of 'Bhushan Steel Ltd.'- ('Corporate Debtor').

11. Upon hearing the argument of the learned counsel and considering the contentions, the Adjudicating Authority held that remedy available to the Applicant- 'Divisional Forest Officer, Bokaro Forest Division', seems to have already initiated and pending against the 'Corporate Debtor'. Allowing or rejecting the 'Resolution Plan' in the case in hand will not affect the legal remedy, if any available to the Applicant- 'Divisional Forest Officer, Bokaro Forest Division'. The said order has been challenged by the State of Jharkhand.

12. Apart from other issues, the following questions arise for consideration:

i. Whether 'Vedanta Limited', being a 'connected person' of 'Konkola Copper Mines' (hereinafter referred to as "KCM") is ineligible in terms of Section 29A (d) of the 'I&B Code'?

ii. Whether 'Tata Steel Limited' being a 'related party' of the 'Tata Steel Limited, UK' is ineligible under Section 29A (d) of the 'I&B Code'?

Electrosteels Steels Limited ('Corporate Debtor')

Issue No.1:- *Whether 'Vedanta Limited', being 'connected person' of 'Konkola Copper Mines' (hereinafter referred to as "KCM") is ineligible in terms of Section 29A (d) of the 'I&B Code'?*

13. According to Appellant, 'Vedanta Limited' is a subsidiary of 'Vedanta Resources PLC' which holds 50.13% equity in 'Vedanta Limited' as per the Annual Report of 'Vedanta Resources PLC' for the year 2017.

14. 'Vedanta Resource PLC' has another subsidiary, 'Konkola Copper Mines' (hereinafter referred to as "KCM"), which was/ is undertaking mining operations in Zambia's Copper belt and Central Provinces. 'Vedanta Resource PLC' holds equity of 79.4% in 'KCM' as per the Annual Report of 'Vedanta Resources PLC'.

15. According to the Appellant, it has learnt from a report prepared by Environment Justice Australia, which is available in public domain that 'KCM' was charged with a criminal prosecution by the Government of Zambia for pollution and harm caused to environment. The Government of Zambia brought a successful criminal prosecution against 'KCM' for pollution and harm caused and charged 'KCM' with four offences relating to the pollution:

I. 'Polluting the environment contrary to Section 91(1) of the Environmental Protection and Pollution Control Act No. 12 of 1990 Cap 204 of the Laws of Zambia;

II. Discharging poisonous, toxic, eco-toxic, obnoxious or obstruction matter, radiation or other pollutant into the aquatic environment contrary to Sections 24 and 91(1) of the

Environmental Protection and Pollution Control Act No. 12 of 1990 Cap 204 of the Laws of Zambia;

III. Wilfully failing to report an act or incident of pollution of the environment contrary to Section 86 sub-sections (1) and (3) of the Environmental Protection and Pollution Control Act No. 12 of 1990 Cap 204 of the Laws of Zambia; and

IV. Failure to comply with the requirements for discharge of effluent contrary to Regulation 12(b) of the Environmental Protection and Pollution Control [Water Pollution (Effluent and wastewater)] Regulation Statutory Instrument No. 172 of 1993.

16. Subordinate Court of First Class for the Chingola District Holden at Chingola, Zambia (Criminal Jurisdiction), by order dated 25th November, 2010, held the 'KCM' guilty of all four charges and imposed a monetary fine on 'KCM'.

17. Further case of the Appellant is that one of the charges for which penalty has been inflicted upon 'KCM' by Subordinate Court of First Class of Chingola was failure to comply with the requirements for discharging of effluent contrary to Regulation 12(b) of the 'Environmental protection and Pollution Control [Water Pollution (Effluent and wastewater)] Regulation Statutory Instrument No. 172 of 1993'.

18. The sentence imposed on 'KCM' by proceeding dated 25th November, 2010 by the Subordinate Court of First Class for the Chingola District Holden at Chingola, Zambia (Criminal Jurisdiction) is as follows:

"SENTENCE

I have taken into consideration the mitigation of the accused. I have taken into consideration that the Accused is a first offender. I have also taken into consideration that KCM has readily admitted the charge. I have also noted that KCM has put in place various measures to prevent the re-occurrence of similar accidents in future. Further, I have also noted that the company is remorseful for whatever happened.

Having considered these mitigation factors, may I state that KCM indeed is a big company but does not mean that the company must go to sleep when it comes to monitoring the use/operations of the machines. KCM has very qualified people in the land who know what they do when at work. It is in this vein that KCM should have acted quickly to avert the situation.

May I also state that KCM should ensure that similar accidents are avoided because in future the accident may be so huge that no amount of money will ever

be received to compensate the damage. KCM is to abide by the programme elaborated in Court as to the repairs of the Tanks of TLP. The sentences to run consecutively.

That being the case I will fine the accused as follows:

In count 1, the accused is fined the sum of K10,800,000.

In count 2, the accused is fined the sum of K10,800,000.

In count 3, the accused is fined the sum of K270,000.00"

19. Mr. Amarendra Sharan, learned Senior Counsel appearing on behalf of the Appellant submitted that a person who pollutes the environment or contravenes any provision of the Act for which no penalty is provided shall be guilty of an offence and liable upon conviction to a fine or imprisonment for the terms mentioned in Section 91 (1) of the 'Environmental Protection and Pollution Control Act' of Republic of Zambia (hereinafter referred to as "Zambia Act"), which reads as follows:

"91. (1) A person who pollutes the environment or contravenes any provision of this Act for which no penalty is provided shall be guilty of an offence and liable upon conviction to a fine not exceeding fifteen

thousand penalty units or to imprisonment for a term not exceeding three years or to both.

(2) For a continuing violation, a court may order a daily fine not exceeding seven thousand five hundred penalty units.

(3) Where an offence under this Act is committed by a body of persons- (a) in the case of a body corporate, every director or similar officer of the body shall be guilty of the offence; or (b) in the case of a partnership, every partner shall be guilty of an offence.

(4) A person shall not be guilty of an offence under subsection (3), if he proves to the satisfaction of the court that the act constituting the offence was done without his knowledge, consent or connivance and that he did his part to prevent the commission of the offence having regard to all the circumstances of the case."

20. Referring to Section 29A (d) of the 'I&B Code', it was submitted that 'KCM' being a 'related party' and a 'connected party' of 'Vedanta Limited' having convicted for the offence under Sections 24, 86 & 91(1) of the Zambia Act, which includes punishment and imprisonment of three years (Section 91(1)), the 'Vedanta Limited' is also ineligible in terms of Section 29A (d).

21. It was further submitted that phrase 'punishable' with imprisonment for two years or more used in clause (d) of Section 29A of the 'I&B Code' do not connote that for incurring the resultant disqualification or ineligibility, the sentence to be awarded has to be obligatorily one for imprisonment for two years or more. If a person, including a 'Corporate Person' is convicted of an offence which is punishable with imprisonment for two years or more or fine or both and is awarded only a sentence of fine or with that of imprisonment even for a lesser term in case of default in payment of fine, the said clause would come into play.

Stand of the Counsel for the 'Vedanta Limited'

22. Mr. CA Sundaram, learned Senior Counsel appearing on behalf of 2nd 'Vedanta Limited' referring to Section 29A (d) submitted that the 'Resolution Applicant' or a person connected with him ought to have been convicted for an offence 'punishable' with imprisonment. According to him, 'punishable' necessarily means 'capable of being punished', therefore, the person who has been convicted ought to have been convicted for an offence for which they could have been punished with imprisonment or for which they were capable of being punished by imprisonment.

23. It was also submitted that the 'connected person' who was convicted in the instant case is a company (KCM) and the individual directors were not convicted. Therefore, the only conviction relevant for the purpose of Section

29A (d) read with Section 29A (j) is that of the Zambian company (KCM). The Zambian Company is not capable of being punished with imprisonment at all since a company cannot be punished by imprisonment.

24. Further, according to him, Section 29A (d) has to be interpreted as a Section providing for a mandatory imprisonment for two years or more, otherwise, the words used would have been imprisonment 'upto' two years or more and not 'for' two years or more.

25. Referring to Section 91 of the Zambian Act under which the alleged conviction took place, it was submitted that the sentence was for imprisonment not exceeding three years or fine, which will not have the same meaning as contemplated in Section 29A (d). The intent of Section 29A(d) can be gleamed from the Regulations themselves and cannot be made applicable to stale events where the conviction has taken place more than eight years ago, as in the instant case. Therefore, according to learned Senior Counsel, 'Vedanta Limited' cannot be held to be ineligible in terms of Section 29A(d).

Stand of the Counsel for the 'Committee of Creditors'

26. Mr. Tushar Mehta, learned Senior Counsel appearing on behalf of the State Bank of India- 'Committee of Creditors', referring to Section 29A(d) submitted that 'Literal Interpretation' of the term 'imprisonment' would only apply to natural persons and not to juristic persons, but to apply the

provision of Section 29A(d) the other conditions will be required to be found in existence. Referring to term 'punishable' as defined in the Black's Law Dictionary and the 'punishable range' under the relevant penal law, he submitted that it has no relevance with the 'actual punishment imposed'.

'Bhushan Steel Limited'

Stand of the Counsel for 'Mr. Neeraj Singhal'

27. The case of the Appellant- 'Mr. Neeraj Singhal' is that 'Tata Steel Ltd.' - 'Resolution Applicant' is a 'connected person' of 'Tata Steel UK'. The aforesaid 'connected person' has been found guilty on two counts under the 'Health and Safety at Work Act, 1974, UK' (hereinafter referred to as "U.K Act") vide an order dated 2nd February, 2018 for failing to discharge its duties under Section 2(1) of the 'U.K Act'. The objection raised is that since 'Tata Steel UK' has been convicted by order dated 2nd February, 2018 passed by the Crown Court at Kingston Upon Hull of an offence punishable with imprisonment for two years or more it attracted disqualification under Section 29A (d) of the 'I&B Code'.

28. Mr. S. Ganesh, learned Senior Counsel for the Appellant referred to ineligibility prescribed under Section 29A (d) of the 'I&B Code' and submitted that the said provision makes a person ineligible to submit a 'Resolution Plan' if such 'person' or its subsidiary has been 'convicted' for any offence 'punishable' by imprisonment for two years or more.

29. According to him, Section 29A (d) of the 'I&B Code' has two distinct elements:

i. The 'person' (which includes a company) should have been convicted for an office; and

ii. That offence should be 'punishable' by imprisonment of two years or more. Even imprisonment of just two years (and not more) is sufficient to attract 29A (d) of the 'I&B Code'.

30. It was submitted that a Company can never incur the disqualification under Section 29A (d) of the 'I&B Code' even if it had committed a very serious crime and also has been convicted of that crime cannot be accepted. Such an interpretation being contrary to the 'Statement of Objects and Reasons' for the introduction of Section 29A, which exclude all undesirable persons from the 'Resolution Process'.

31. According to learned Senior Counsel, a corporate criminal does not cease to be an undesirable person only because of the corporate garb which it wears. Section 29A (d), therefore, much necessarily be given a purposive interpretation so as to advance the objects for which it has been enacted instead of stultifying it and reducing it to a dead letter, which is exactly what the Respondents interpretation does.

Stand on behalf of the "Tata Steel Limited"

32. Dr. A.M. Singhvi, learned Senior Counsel while submitted that the Applicant is responsible for the financial breakdown of the 'Corporate Debtor'. Further submitted that the appeal is not maintainable for its not being an aggrieved person.

33. In so far as Section 29A (d) of the 'I&B Code' is concerned, it was submitted that on the language of Section 29A (d) read with explanation (iii) below the same, no such disqualification is contemplated.

34. According to learned Senior Counsel, as per the 'sentencing guidelines' under the 'U.K Act', the English Court cannot impose a sentence of imprisonment on a Company and thereby the only available penalty is that of a fine which has actually been done.

35. It was further submitted that a Court can impose a fine and/or a custodial sentence on a Director of the Company and if the Director is being prosecuted with punishment of imprisonment in addition to the Company, the matter would have been different but it is not the position in the present case.

36. Referring to Section 33(1) of the 'U.K Act' and Section 29A (d) of the 'I&B Code', it was contended that the Indian Law only talks of imposition of

punishment of imprisonment of two years or more in order to attract disability, whereas under the English Law both have been provided. It has accordingly been argued that where 'imprisonment or fine' are envisaged the Courts have the discretion to impose fine and where the imprisonment is the only punishment, a company cannot even be prosecuted as imposition of custodial sentence is a legal impossibility. In support of his submissions, reliance has been placed on the decisions of the Hon'ble Supreme Court which we will refer at appropriate stage.

Provisions of law

37. Section 29A prescribes 'ineligibility to be 'Resolution Applicant', as quoted below:

> "***29A. Persons not eligible to be resolution applicant.—*** *A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—*
>
> *(a) is an undischarged insolvent;*
>
> *(b) is a wilful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949;*
>
> *(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance*

with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

(d) has been convicted for any offence punishable with imprisonment for two years or more;

(e) is disqualified to act as a director under the Companies Act, 2013;

(f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

(g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or

fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;

(h) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;

(i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or (j) has a connected person not eligible under clauses (a) to (i)

Explanation.— For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) (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): Provided that nothing in clause (iii) of this Explanation shall apply to—

(A) a scheduled bank; or

(B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or

(C) an Alternate Investment Fund registered with the Securities and Exchange Board of India."

38. The substantive provision of Section 29A of the 'I&B Code' suggests that not only a person is ineligible to submit a 'Resolution Plan', but also a person with any other person acting jointly or in concert with such person, attracts any one or other ineligibility clause mentioned in clauses (a) to (i) is ineligible. In terms of clause (j) of Section 29A, if the 'connected person' is not eligible under clauses (a) to (i), then also the person who submits the 'Resolution Plan' is not eligible.

39. The expression 'connected person' has been provided in *explanation* below Section 29A, which includes the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) to (ii) of *explanation* and reads as follows:

> *"Explanation.— For the purposes of this clause, the expression "connected person" means—*
>
> *(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*
>
> *(iv) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):*
>
> *Provided that nothing in clause (iii) of this Explanation shall apply to—*
>
> *(A) a scheduled bank; or*
>
> *(B) an asset reconstruction company registered with the Reserve Bank of India under section 3*

of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or

(C) an Alternate Investment Fund registered with the Securities and Exchange Board of India.".

40. Section 29A (d) relates to 'ineligibility'; if a person or any other person acting jointly or in concert with such person or 'connected person' has been convicted for any offence 'punishable with imprisonment for two years or more'. In terms of clause (i) of Section 29A, if such person or any other person acting jointly or in concert with such person has been subject to any disability, corresponding to clauses (a) to (h) under any law in a jurisdiction outside India is also ineligible.

Literal Interpretation

41. If Section 29A is construed literally, the term "imprisonment" would only apply to 'natural persons' and not to 'juristic persons'.

42. To apply Section 29A(d), the following conditions will be required to be found in existence: -

a) There has to be a conviction;
b) Conviction should be for an offence which is punishable with 'imprisonment"; and
c) Sentence of imprisonment shall be for two years or more.

43. Since a 'juristic person' can never be imprisoned, Section 29A(d) would never apply to 'juristic persons' that is to say other than 'natural persons'. Section 29A will, thus, read as under:

> *"29A. A person shall not be eligible to submit a resolution plan, if such person, or any other* ***person*** *acting jointly or in concert with such person—*
>
> *xxx xxx xxx*
>
> *(d) has been convicted for any offence punishable with imprisonment for two years or more;"*

44. The term "punishable" as defined in the Black's Law Dictionary specifically denotes the element of capability to it. The said definition is as under:

> *"Deserving of or capable or liable to punishment; capable of being punished by law or right"*

Thus, the word "punishable" denotes the "punishable range" under the relevant penal law and has no relevance with the "actual punishment **imposed**" in a given case.

45. In this context, the definition provisions contained in Section 3(23) needs to be examined, which reads as under:

> *"3. In this Code,* ***unless the context otherwise requires,*** *—*
>
> *xxx xxx xxx*

(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 entity established under a statute, and included a person resident outside India;"

46. Reading Section 29A (d) it can be construed that the context requires the term 'person' in Section 29A (d) to be read as a natural person who can be imprisoned.

This would mean that in case of a mere conviction of a corporate/juristic person, obviously without "imprisonment" (and even with fine), the said corporate/juristic person will not be ineligible under Section 29A(d).

Purposive Interpretation

47. There is yet another way in which Section 29A (d) can be read and construed in a purposive manner as under:

a) As per this construction even a corporate person can attract disqualification under Section 29A (d) in spite of the fact that the juristic person, *per se*, itself cannot be imprisoned.
b) As the jurisprudence has evolved over the years in India as well as in other jurisdictions, there is no dispute that a company is liable to be prosecuted and punished for criminal offences. The earlier authorities to the effect that "corporations" cannot

commit a crime, is now diluted and now generally accepted modern rule is that except for such crimes which a corporation is held incapable of committing by reason of the fact that they involve *"mens rea"*, a corporate body can be criminally prosecuted.

48. The above referred legal position which can even make a corporate entity liable for disqualification under Section 29A (d) is, prima facie, not possible as there is no provision in Section 29A (d) requiring the corporation can also be punished **"with fine"** and only mentions "imprisonment" (which cannot be imposed on a corporation).

49. Section 29A must be interpreted in light of the mischief it sought to curtail. The 'Statement of Objects and Reasons' appended to the Insolvency and Bankruptcy Code (Amendment) Bill, 2017 (Bill No. 280 of 2017) in Lok Sabha (ultimately passed as Act 8 of 2018), seeking the abovesaid amendment stated as under:

> *"2. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of liquidation. Concerns have been raised that* ***persons who, with their misconduct contributed to defaults of companies*** *or* ***are otherwise***

> ***undesirable***, *may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gain or regain control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. In addition, in order to check that the undesirable persons who may have submitted their resolution plans in the absence of such a provision, responsibility is also being entrusted on the committee of creditors to give a reasonable period to repay overdue amounts and become eligible.*

50. To illustrate the object of the Act, it may be pointed that suppose a corporate entity is found to be indulging in an offence punishable under Prevention of Corruption Act and material has emerged showing payment of illegal gratification by a corporate entity leading to an offence under Prevention of Corruption Act, would such a corporate entity be held eligible to be a resolution applicant merely because it is not a *'natural person'*? This may defeat the very object of the Act.

51. The concept of vicarious liability and lifting of corporate veil is, now not an alien concept even in criminal jurisprudence. A corporate entity always acts through human agency and such human agency can always be

"imprisoned". The principles laid down in the case of *Iridium* have been affirmed subsequently in "***Sunil Bharti Mittal v. CBI– (2015) 4 SCC 609"***. Further, it is important to refer the judgment in "***K Sitaram & Anr. v. CFL Capital Financial Service Limited & Anr.– (2017) 5 SCC 725"***. Para 28 of the said judgment reads as under:

> *"28. With regard to the contention of the learned Senior Counsel for the appellants herein that there can be no vicarious liability attributed to the Director, Deputy Director of a Company unless the statute specifically creates so, no doubt, a corporate entity is an artificial person which acts through its officers, Directors, Managing Director, Chairman, etc. If such a company commits an offence involving mens rea, it would normally be the intent and action of that individual who would act on behalf of the company that too when the criminal act is that of conspiracy. Thus, an individual who has perpetrated the commission of an offence on behalf of the company can be made an accused, along with the company, if there is sufficient evidence of his active role coupled with criminal intent. Second situation in which an individual can be implicated is in those cases where the statutory regime itself attracts the*

doctrine of vicarious liability, by specifically invoking such a provision."

52. If this interpretation is applied, Section 29A (d) would read as under:

"29A. A person shall not be eligible to submit a resolution plan, if ***such person****, or* ***any other person acting jointly or in concert*** *with such person—*

xxx xxx xxx

(d) has been convicted for any offence ***punishable*** *with imprisonment for two years or more;"*

This means that in a case where a **"person acting jointly or in concert"** [viz an individual natural person acting on behalf of the corporate person (proposed resolution applicant)] is "convicted with imprisonment"- while acting on behalf of the company- for two years or more, the corporate/juristic person would get hit by the embargo under Section 29A (d).

53. It is, therefore, for the 'Resolution Professional' while discharging his duty under Section 30(3) and by the 'Committee of Creditors' while discharging its duty under Section 30(4) and thereafter by the Adjudicating Authority under Section 31 that each case will have to be examined whether Section 29A (d) is attracted or not based upon the above referred interpretation depending upon the facts of each case.

Therefore, it may not serve the ends of justice and may defeat the object of the 'I&B Code' by completely excluding corporate entities from Section 29A (d) of the 'I&B Code'.

54. The Hon'ble Supreme Court in ***"Sube Singh and Ors. Vs. State of Haryana and Ors. – (1989) 1 SCC 235"*** held:

> *"8. In Bouvier's Law Dictionary, the meaning of the word "punishable" has been given as "liable to punishment". In Words and Phrases — Permanent Edition, the following meaning has been given:*
>
> > *"The word 'punishable' in a statute stating that a crime is punishable by a designated penalty or term of years in the State prison limits the penalty or term of years to the amount or term of years stated in the statute."*
>
> *9. The word "punishable" is ordinarily defined as deserving of or capable or liable to punishment, punishable within statute providing that defendant may have ten (sic) peremptory challenges if offences charged is "punishable" with death or by life imprisonment; means deserving of or liable to punishment; capable of being punished by law or*

right, may be punished, or liable to be punished, and not must be punished.

10.Corpus Juris Secundum gives the meaning as:

"Deserving of, or liable to, punishment; capable of being punished by law or right; said of persons or offences. The meaning of the term is not 'must be punished', but 'may be punished', or 'liable to be punished'."

In the absence of a definition of "punishable" we have referred to these for gathering the exact meaning of the word. In the sense given to the word, as above, there can be no doubt that the offence of murder is punishable with death even though the punishment awarded is not death but imprisonment for life.

xxx xxx xxx

12. "Punishable" carries a meaning "liable to be punished" as indicated by the three-Judge Bench. Since the offence under Section 302 is punishable with death, the provisions of the Punjab Borstal Act would not cover an offence under Section 302 of IPC and the benefit would not therefore, be available to an accused convicted of the offence under Section 302 of the IPC."

55. The expression 'punishable' actually qualifies the offence relatable thereto and functionally couples the offence with the punishment which may be either of imprisonment or fine or both. The word 'punishable' calibrates the range of punishment/sentence for the offence and is commensurate thereto as legislatively envisaged. The word used in Section 29A (d) is 'punishable' and not 'punished', therefore, the word 'punishable' is a link between the offence and the penalty prescribed by law depending on the gravity of the offence but in no way is an indicator of the viability or feasibility of the implementation of the punishment of the convicted. The offence so much so that if anyone is convicted of that offence and is punishable for the sentence prescribed by way of imprisonment, the disqualification, debarment and/or ineligibility stemming from such conviction would be attracted, irrespective of the actual punishment awarded by the Court.

Eligibility/Ineligibility of 'Vedanta Limited'

56. 'Vedanta Limited' is a subsidiary of 'Vedanta Resources PLC' which holds 50.13% equity in 'Vedanta Limited' as per the Annual Report of 'Vedanta Resources PLC' for the year 2017.

57. 'Vedanta Resource PLC' has another subsidiary, 'KCM', which was/ is undertaking mining operations in Zambia's Copper belt and Central Provinces. 'Vedanta Resource PLC' holds equity of 79.4% in KCM as per the

Annual Report of 'Vedanta Resources PLC', therefore, it can be safely stated that 'Vedanta Limited' is a 'connected person' of 'KCM'.

58. It is not in dispute that the 'KCM' has been held guilty with regard to four offences relating to pollution on 25th November, 2010 by the Subordinate Court of First Class for the Chingola District Holden at Chingola, Zambia (Criminal Jurisdiction), for which three counts fine has been imposed.

59. Section 91(1) of the Zambia Act, for which 'KCM' has been held guilty, which reads as follows:

> *"91. (1) A person who pollutes the environment or contravenes any provision of this Act for which no penalty is provided shall be guilty of an offence and liable upon conviction to a fine not exceeding fifteen thousand penalty units or to imprisonment for a term not exceeding three years or to both.*

60. The question arises for consideration is whether offence which is punishable under Section 91(1) of the Zambia Act, is corresponding to clause (d) of Section 29 A of the 'I&B Code', which reads as follows:

> *"**29A. Persons not eligible to be resolution applicant.** —(d) has been convicted for any offence*

punishable with imprisonment for two years or more;"

61. Before deciding such issue, it is desirable to notice decision of the Hon'ble Supreme Court in ***"Standard Chartered Bank and Ors. Vs. Directorate of Enforcement and Ors.— (2004) 4 SCC 530"*** wherein the Hon'ble Supreme Court observed:

"63. There appears to be a difference of opinion amongst the learned counsel assailing the correctness of the majority view in Velliappa [(2003) 11 SCC 405 : 2004 SCC (Cri) 1214] as to whether the task of the Court in the case on hand is one of statutory interpretation. ***Some counsel have argued that it is open to the court to read the words "imprisonment and fine" as "imprisonment or fine". In our view, such a construction is impermissible. First, it virtually amounts to rewriting of the section. The court would be reading the section as applicable to different situations with different meanings. If the offender is a corporate entity, then only fine is imposable; if the offender is a natural person, he shall be visited with both the mandatory term of***

imprisonment and fine. The exercise would then become one of putting a fluctuating or varying interpretation on the statute depending upon the circumstances. *That is not permissible for the court, either on principle, or on precedent. While it may be permissible for the court to read the word "and" as "or", or vice versa, whatever the interpretation, it must be uniformly applied to all situations. If the conjunction "and" is read disjunctively as "or", then the intention of Parliament would definitely be defeated as the mandatory term of imprisonment would not be available even in the case of a natural person. We have not been shown any authority for the proposition that it is open to the court to put an interpretation on a statute which could vary with the factual matrix.*

64. ***Secondly, when a statute says the court shall impose a term of "imprisonment and a fine", there is no option left in the court to say that under certain circumstances it would not impose the mandatory term of imprisonment****. It is trite principle that punishment must follow the conviction.*

> *66.* ***Thirdly, if on the words used by the legislature it is impossible to effectuate the intention of the legislation, namely, to punish a company to imprisonment, it is not possible to read the section in any other manner to impose any other punishment on the offender.***
>
> *"[**W]e cannot aid the legislature's defective phrasing of the statute; we cannot add, and mend, and, by construction, make up deficiencies which are left there"**, said the Judicial Committee in Crawford v. Spooner, MIA at p. 187. In other words, the language of Acts of Parliament and more especially of the modern Acts, must neither be extended beyond its natural and proper limits, in order to supply omissions or defects, nor strained to meet the justice of an individual case."*

62. In ***"S.P.K. Dhamodhar Vs. Narayanasamy– 2010 (5) CTC 734"*** , the Hon'ble High Court of Madras was considering the provisions of Section 33-A(1)(i) of the Representation of the People Act, 1951, therein distinction between the provision of Sections 499 and 500 of the Indian Penal Code, 1860 was noticed. The punishment for defamation, prescribed under Section 500 of the Indian Penal Code, 1860, is 'simple imprisonment' for a term which may extend to two years or with fine or with both was held to be not

similar to that of offence punishable with two years or more as prescribed under Section 33(A)(1)(i) of the Representation of the People Act, 1951.

63. From the aforesaid findings, it is clear that the word used by the legislature to effectuate the intention of the legislation to punish a person for imprisonment, i.e. ***"has been convicted for any offence punishable with imprisonment for two years or more"***, cannot be read in any other manner to equate the same with any other punishment on the offender.

64. In this context, we may refer to Section 441 of the Companies Act, 2013, which relates to 'compounding of certain offences' whether committed by the Company or any Officer thereof, relevant of which reads as follows:

> *"**441. Compounding of certain offences.—** (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) any offence punishable under this Act (whether committed by a company or any officer thereof) with fine only, may, either before or after the institution of any prosecution, be compounded by—*
>
> *(a) the Tribunal; or*
>
> *xxx xxx xxx*
>
> *(6) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974) —*

(a) any offence which is punishable under this Act, with imprisonment or fine, or with imprisonment or fine or with both, shall be compoundable with the permission of the Special Court, in accordance with the procedure laid down in that Act for compounding of offences;

(b) any offence which is punishable under this Act with imprisonment only or with imprisonment and also with fine shall not be compoundable."

65. From sub-section (6) of Section 441 of the Companies Act, 2013, it is clear that the offence which is punishable under the said Act, with imprisonment or fine, or with imprisonment or fine or with both, has not been treated to be similar to any offence which is punishable under the said Act with imprisonment only or with imprisonment and fine. While the offence which is punishable with imprisonment or fine, or with imprisonment or fine or with both have been made compoundable by the Tribunal with the permission of the Special Court, the offence which is punishable with imprisonment only or with imprisonment with fine cannot be compounded by the Tribunal, being severe punishment.

66. Severity of punishment is dependent on the gravity of offence. Therefore, to find out the similarity between the punishment, it is required to notice whether severity of one or other punishment is similar or not.

67. The Zambia Act do not use the word "offence punishable" as used in Section 29A (d) on conviction. For the offence prescribed under Section 91(1) of the Zambia Act punishment prescribed is that the person *"liable upon conviction to a fine not exceeding fifteen thousand penalty units or to imprisonment for a term not exceeding three years or to both".*

68. The word 'punishable' having not used in Section 91(1) of the Zambia Act and the severity of punishment being lessor than the offence "punishable with imprisonment for two years or more" having no alternative penalty of fine, Section 91(1) of the Zambia Act cannot be said to be similar to Section 29A (d) of the 'I&B Code'.

69. Section 29A (d) stipulates imprisonment without fine which in its turn apply to 'natural persons' alone. However, if the offence would have been punishable with imprisonment or fine, such provision could have been applicable to both the 'corporate person' and to 'natural person'.

70. The offence punishable with imprisonment of two years or more as prescribed under Section 29A (d) is more severe in nature than the offence punishable with imprisonment or fine as stipulated under Section 91(1) of the Zambia Act. Therefore, we find that the offence punishable under

Section 91(1) of the Zambia Act cannot be held to be corresponding to clause (d) of Section 29A of the 'I&B Code', which is more severe.

71. However, a 'Corporate Debtor' even if not convicted for any offence punishable with imprisonment for two years or more as prescribed under Section 29A (d), shall be ineligible to submit a 'Resolution Plan', if it is found that the other person acting jointly or in concert with such person (natural person) has been convicted for any offence punishable with imprisonment for two years or more. If a 'connected person' is not eligible under clause (d) of Section 29A, being a 'natural person' convicted for any offence punishable with imprisonment for two years or more as prescribed under Section 29A (d), in such case also a 'Corporate Debtor' will become ineligible, even though Section 29A (d) is not attracted directly to the 'corporate person' (juristic person).

72. 'Vedanta Resources PLC' was convicted for the offence punishable under Section 91(1) of Zambia Act with a fine not exceeding fifteen thousand penalty units or to imprisonment for a term not exceeding three years or to both. Though we hold that the offence for which the aforesaid punishment prescribed is not corresponding to clause (d) of Section 29 A, it is to be seen whether 'connected person', if an individual (natural person) has been punished or not. But no such allegation has been made that any of the Director of 'Vedanta Resources PLC' was convicted for the offence punishable with imprisonment of two years or more.

73. For the said reasons, we hold that 'Vedanta Resources PLC', who is a 'connected person' of 'Vedanta Limited' is not covered by clause (d) of Section 29A of the 'I&B Code'.

74. In view of the aforesaid findings, we hold that 'Vedanta Limited' is eligible and clause (d) of Section 29A of the 'I&B Code' is not attracted in its case.

'Tata Steel Limited'/ 'Tata Steel UK'

75. 'Tata Steel UK' is the 'connected person' who has been found guilty on two counts under the 'U.K Act' vide an order dated 2nd February, 2018 for failing to discharge its duties under Section 2(1) of the 'U.K Act' convicted under Section 33 (1) (a) of the 'U.K Act'.

76. Schedule 3A of the 'U.K Act' provides mode of trial and maximum penalty, relevant of which reads as follows:

> "The mode of trial and maximum penalty applicable to each offence listed in the first column of the following table are as set out opposite that offence in the subsequent columns of the table.

Offence	**Mode of trial**	**Penalty on summary conviction**	**Penalty on conviction on indictment**
An offence under	Summarily or	Imprisonment	Imprisonment for a

section 33(1) (a) consisting of a failure to discharge a duty to which a person is subject by virtue of sections 2 to 6.	on indictment.	for a term not exceeding 12 months, or a [fine], or both.	term not exceeding two years, or a fine, or both.
An offence under section 33(1) (a) consisting of a failure to discharge a duty to which a person is subject by virtue of section 7.	Summarily or on indictment.	Imprisonment for a term not exceeding 12 months, or a [fine], or both.	Imprisonment for a term not exceeding two years, or a fine, or both.

"

77. Penalty on conviction on indictment for the offence under Section 33(1) (a), punishment of imprisonment for a term not exceeding two years, or a fine, or both, has been prescribed. However, the language of Section 29A (d) prescribes disqualification for offence punishable with imprisonment of two years or more. In the 'U.K Act", the word 'punishable' has not been mentioned, therein term of 'imprisonment' has been prescribed with alternative punishment of fine.

78. In the case of 'Tata Steel UK', the penalty on conviction on indictment under Section 33(1)(a) of the 'U.K Act' prescribes 'imprisonment for a term not exceeding twelve months, or a fine, or both'. The provision in Section 29A (d) which stipulates *"has been convicted for any offence punishable with*

imprisonment for two years or more", cannot be equated with Section 33(1)(a) of the 'U.K Act'.

79. The severity for the offence under Section 29A (d) is much more than the severity of offence punishable under Section 33(1) (a) of the 'U.K Act'. In terms of the 'U.K Act', a person whether juristic or natural, they can be punished with alternative punishment of fine but the offence punishable as per Section 29A (d) being severe, as no such alternative punishment can be imposed. Therefore, we hold that Section 33(1) (a) of the 'U.K Act' is not similar nor corresponding to clause (d) of Section 29A of the 'I&B Code'.

80. For the said reason, we hold that 'Tata Steel UK', which is the 'connected person' of 'Tata Steel Limited', does not attract the disability under Section 29A of the 'I&B Code' and for the said reason, we also hold that 'Tata Steel Limited' is eligible to file the 'Resolution Plan'.

Claim of 'Larsen and Toubro Limited'- ('Operational Creditor')

81. The Appellant- 'Larsen and Toubro Limited'- ('Operational Creditor') (hereinafter referred to as "L&T") has also challenged the order dated 15th May, 2018, challenging the cost of Rs. 1,00,000/- (Rupees One Lakh Only) imposed by the Adjudicating Authority on the Appellant- 'L&T'.

82. Learned counsel appearing on behalf of the Appellant submitted that the Adjudicating Authority failed to appreciate that the Successful

'Resolution Applicants' ('Tata Steel Limited') cannot exercise any discretion over allocation of the amounts Rs. 1200 crores to be paid to the 'Operational Creditors'. Reliance has been placed on Section 55(4)(b) of the Transfer of Property Act, 1883 and submitted that the said provision creates a statutory charge in favour of the Appellant, which cannot be extinguished by the 'Resolution Applicant' taking recourse of the 'I&B Code'.

83. However, such submission cannot be accepted as the 'Resolution Applicant' is to file 'Resolution Plan' in the manner as prescribed under the 'I&B Code' and the Regulations framed thereunder.

84. Section 30(2) of the 'I&B Code' mandates the 'Resolution Professional' to examine each 'Resolution Plan' received by him. The 'Resolution Professional' is required to ensure that the 'Resolution Plan' confirm payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the 'Corporate Debtor' (clause (a)) and provides for repayment of the debts of 'Operational Creditors' in such manner as may be specified by the Board which shall not be less than the amount to be paid to the 'Operational Creditors' in the event of a liquidation of the 'Corporate Debtor' under Section 53 (clause (b)). In view of the specific provisions and Section 30(2) (b), the Appellant cannot derive any advantage out of Section 55(4)(b) of the Transfer of Property Act, 1883.

85. It was brought to our notice that the admitted claim of all the 'Operational Creditors' is approximately Rs. 1,422 crores and the 'Resolution

Applicant' has allocated Rs. 1,200 crores for payment in favour of the 'Operational Creditors' i.e. about 83% of the dues. The main grievance of the Appellant is that the allocation has been made by the 'Resolution Applicant'-('Tata Steel Limited') with certain discretion, which is not permissible.

86. Learned Senior Counsel appearing on behalf of the 'Tata Steel Limited' submitted that as per the 'I&B Code', liquidation value of 'Bhushan Steel Limited' was computed at Rs. 14,541/- crores which was less than the outstanding financial debt of the 'Corporate Debtor' which is Rs. 56,051/- crores.

87. It was also submitted that if the 'Corporate Debtor' goes into liquidation as per Section 53 the 'Operational Creditors' would be entitled to 'NIL' amount.

88. It was submitted that the 'Resolution Professional' as on 8th January, 2018 verified and admitted amount owed to the 'Operational Creditors' to the extent of Rs. 1,050 Crores approximately. It is informed that as per the 'Resolution Plan', the claim of the 'Operational Creditors' will be settled to the extent of Rs. 1,200 Crores within a period of twelve months.

89. It is stated that the 'Tate Steel Limited' verily believes that the aforesaid amount subsequently increased to Rs. 1,422 Crores is the substantial amount offered towards meeting 'Operational Creditors' claims, as long as they meet the requirements of the 'Resolution Plan'.

90. It is informed that Rs. 1,200 crores will be payable to 'Operational Creditors' within 12 months from the closing date i.e. 18th May, 2018 excluding employees and workmen. The said amount will be distributed in the following manner:

a) Rs. 200 cores will be paid on a *pro rata* basis to the 'Operational Creditors' other than employees and workmen and related party 'Operational Creditors'; and

b) Rs. 1,000 crores will be paid to capital and sundry creditors based on the criticality vis-à-vis the continued business viability of 'Bhushan Steel Limited' at discretion of the 'Resolution Applicant', to be exercised based on the criteria specified in the 'Resolution Plan'.

91. It is stated that Rs. 1,000 crores is based on cogent, commercial and intelligible criteria and any 'Operational Creditor' falling within the said criteria will be treated equally.

92. On hearing counsel for the parties and taking into consideration the submissions made by the counsel for the Appellant- 'Operational Creditor' and the Respondents, we hold that the 'Resolution Plan' submitted by 'Tata Steel Limited' is fair and equitable to all the Creditors, including the 'Operational Creditors', therefore, no interference is called for.

Brij Bhushan Singal

93. The grievance of the Appellant- 'Mr. Brij Bhushan Singal' is against the 'Resolution Plan' submitted by the 'Tata Steel Limited' as approved by the Adjudicating Authority.

94. It was submitted that the approval of the 'Resolution Plan' is illegal as it purports to transfer the 'preference shares' of the 'preference shareholders' of 'Bhushan Steel Limited' unilaterally and without their consent for a fixed consideration of Rs. 100/- as against Rs. 2269 crores.

95. It was submitted that the Adjudicating Authority ought to have rejected the 'Resolution Plan' as it is illegal in so much as its implementation has led to automatic redemption and cancellation of the preferential shares of the Appellants.

96. It was submitted that the 'Resolution Plan' is violative of Section 55 of the Companies Act, 2013.

97. As per 'I&B Code', the shareholders are not treated to be creditors. It is the promoters/shareholders who are responsible for initiation of 'Corporate Insolvency Resolution Process' which resulted due to non-payment of dues of the 'Financial Creditor(s)' and/or the 'Operational Creditor(s)', apart from 'Secured Creditor(s)' or 'Unsecured Creditor(s)'. Therefore, there is no scope for argument left to the shareholders or any

party holding similar documents that a sanction is required under one or other provisions of law.

98. The 'Resolution Plan' automatically does not amount to transfer or reduction of shares, including preferential shareholding. It is merely a proposal of one or other 'Resolution Applicants' and once it is approved by the 'Committee of Creditors' and thereafter by the 'Adjudicating Authority' under Section 31, will be binding on all the stakeholders, including the 'Corporate Debtor', 'Members' (shareholders), 'Financial Creditors', 'Operational Creditors' etc. If the provision of Section 55 of the Companies Act, 2013 is to be complied, it can be complied only after the approval of the 'Resolution Plan'. Before the approval of the 'Resolution Plan' is approved by the Adjudicating Authority, the 'Resolution Plan' being mere a proposal, the question of following Section 55 of the Companies Act, 2013 does not arise.

99. For the reasons aforesaid, we are not inclined to interfere with the impugned order dated 15th May, 2018.

Application filed by the Divisional Forest Officer, Bokaro Forest Division, Department of Forests & Environment, Government of Jharkhand, Bokaro.

100. The Government of Jharkhand has taken plea that part of the land shown in the 'Resolution Plan' do not belong to 'Bhushan Steel Limited'-('Corporate Debtor'). Forest land, as was notified by the Government of

India, 1958, is in illegal possession of the 'Bhushan Steel Limited', which has also been reflected in the 'Resolution Plan'.

101. It is not in dispute that the Government of Jharkhand and its Officers have already initiated recovery proceedings against the 'Corporate Debtor' for recovering the alleged forest lands alleged to have been encroached by the 'Corporate Debtor'; litigations are pending in different Courts. In this background, after hearing the counsel for the 'Resolution Professional', the Adjudicating Authority held that the 'Resolution Applicant'- 'Tata Steel Limited' is aware of the proceedings and that whatever assets held by the 'Corporate Debtor' alone is to be taken over. If the title of land is defective, it cannot be cured upon taking over the assets of the 'Corporate Debtor' by the 'Resolution Applicants'. The Adjudicating Authority for the said reason held that remedy available to the Applicant/State of Jharkhand and its Officers, having already initiated and pending against the 'Corporate Debtor', allowing or rejecting the 'Resolution Plan' will not affect the legal remedy.

102. We find no reason to differ with aforesaid observation of the Adjudicating Authority as it is always open to the State of Jharkhand and its Officers to act in terms of the decisions, if any, given by the Court of Competent Jurisdiction where litigations are pending with regard to disputed land in question.

103. For the reasons aforesaid, we are not inclined to interfere with the impugned order dated 17th April, 2018 passed in the case of the

'Electrosteels Steel India Ltd' in CA (IB) No. 277/KB/2018, CA (IB) No. 271/KB/2018, CA (IB) No. 281/KB/2018 and CA (IB) No. 361/KB/2017, which are under challenge in the Company Appeal (AT) (Insolvency) No. 175 of 2018 and in the Company Appeal (AT) (Insolvency) No. 223 of 2018. They are accordingly dismissed.

104. For the same very reason, we are not inclined to interfere with the order dated 15th May, 2018, passed by the Adjudicating Authority in the case of 'Bhushan Steel Limited' under challenge in Company Appeals (AT) (Insolvency) Nos. 221, 233, 267 & 357 of 2018. They are accordingly dismissed. However, in the facts and circumstances of the case, there shall be no order as to cost.

(Justice Bansi Lal Bhat)
Member (Judicial)

(Justice S.J. Mukhopadhaya)
Chairperson

NEW DELHI
10th August, 2018
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