

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 169 of 2018**

(Arising out of Order dated 19<sup>th</sup> April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in IA Nos. 98, 110, 111, 112, 121/NCLT/AHM/2018 and Inv. P 7, P 8/NCLT/AHM/2018 in CP (IB) No. 40 of 2017)

**IN THE MATTER OF:**

**Numetal Limited**

**...Appellant**

**Versus**

**Satish Kumar Gupta & Ors.**

**...Respondents**

**With**

**Company Appeal (AT) (Insolvency) No. 207 of 2018**

(Arising out of Order dated 19<sup>th</sup> April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in IA Nos. 98, 110, 111, 112, 121/NCLT/AHM/2018 and Inv. P 7, P 8/NCLT/AHM/2018 in CP (IB) No. 40 of 2017)

**IN THE MATTER OF:**

**Numetal Limited**

**...Appellant**

**Versus**

**Satish Kumar Gupta R.P. & Anr.**

**...Respondents**

**Present:**

**For Appellant: Mr. Mukul Rohtagi, Mr. Mihir Thakur, Senior Advocates assisted by Mr. Keyur Gandhi, Mr. Gautam Singh, Mr. Rudreshwar Singh, Mr. Arjun Joshi, Ms. Krishty Baptist and Ms. Shaili Singh Advocates.**

**For Respondents: Mr. Ramji Srinivasan, Senior Advocate assisted by Mr. Indranil Deshmukh, Mr. Raunak Dhillon,**

**Mr. Animesh Bisht, Mr. George Varghesse, Mr. Sidhant Sharma, Mr. Karan Khanna Advocates and Mr. Satish Kumar Gupta -RP for Respondent No. 1**

**Mr. Sudipto Sarkar, Senior Advocate assisted by Mr. Sapan Gupta, Mr. Vijayant Paliwal, and Ms. Mrida Lakhmani Advocates, for Committee of Creditors.**

**Dr. Abhishek Manu Singhvi, Mr. S.N. Mukherjee, Mr. Raju Nayor, Senior Advocates assisted by Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Vishal Gehrana, Mr. Anupam Prakash, Mr. Sameen Vyas, Mr. Abhishek Swaroop, Mr. Akhil Anand, Mr. Shubham Saigal, Ms. Misha Chandra, Avishkar Singhvi and Mr. Amit Bhandari, Advocates for Arcelormittal India Pvt. Ltd.**

**With**

**Company Appeal (AT) (Insolvency) No. 171, 172 & 173 of 2018**

(Arising out of Order dated 19<sup>th</sup> April, 2018 passed by the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, Ahmedabad in IA Nos. 98, 110, 111, 112, 121/NCLT/AHM/2018 and Inv. P 7, P 8/NCLT/AHM/2018 in CP (IB) No. 40 of 2017)

**IN THE MATTER OF:**

**Arcellor Mittal India Pvt. Ltd.**

**...Appellant**

**Versus**

**Satish Kumar Gupta(R.P.) & Ors.**

**...Respondents**

**Present:**

**For Appellant:**

**Mr. Harish Salve, Dr. Abhishek Manu Singhvi, Mr. S.N. Mukherjee, Mr. Raju Nayor, Senior Advocates assisted by Ms. Ruby Singh Ahuja, Mr. Sudhir Sharma, Mr. Vishal Gehrana, Mr. Anupam Prakash, Mr. Sameen Vyas, Mr. Abhishek Swaroop, Mr. Akhil Anand, Mr. Shubham Saigal, Ms.**

**Misha Chandra, Avishkar Singhvi and Mr. Amit Bhandari, Advocates for Arcelormittal India Pvt. Ltd.**

**For Respondents: Mr. Ramji Srinivasan, Senior Advocate assisted by Mr. Indranil Deshmukh, Mr. Raunak Dhillon, Mr. Animesh Bisht, Mr. George Varghesse, Mr. Sidhant Sharma, Mr. Karan Khanna Advocates and Mr. Satish Kumar Gupta -RP for Respondent No. 1.**

**Mr. Mukul Rohtagi, Mr. Mihir Thakur, Senior Advocates assisted by Mr. Keyur Gandhi, Mr. Gautam Singh, Mr. Rudreshwar Singh, Mr. Arjun Joshi, Ms. Krishty Baptist and Ms. Shaili Singh Advocates for Numetal Ltd.**

**Mr. Sudipto Sarkar, Senior Advocate assisted by Mr. Sapan Gupta, Mr. Vijayant Paliwal, and Ms. Mrida Lakhmani Advocates, for Committee of Creditors.**

## J U D G M E N T

### SUDHANSU JYOTI MUKHOPADHAYA, J.

Pursuant to applications under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as "I&B Code") filed by the 'Standard Chartered Bank' and the 'State Bank of India', the 'Corporate Insolvency Resolution Process' was initiated against 'Essar Steel India Limited'- ('Corporate Debtor').

2. In response to the advertisement, the Appellants- 'Numetal Limited' and 'Arcelor Mittal India Ltd.'- ('Resolution Applicants') ('AM India Ltd.' for short) along with another, submitted their Resolution

Plan(s). The 'Resolution Professional' held both the Appellants- 'Numetal Ltd.' and 'AM India Ltd.'- ('Resolution Applicants') ineligible in view of Section 29A of the 'I&B Code' which resulted in applications preferred by the Appellants before the Adjudicating Authority (National Company Law Tribunal), Ahmedabad Bench, under Section 60(5) of the 'I&B Code'.

3. The Adjudicating Authority by impugned order dated 19<sup>th</sup> April, 2018, while held that both the Appellants ineligible under Section 29A of the 'I&B Code', taking into consideration that the 'Committee of Creditors' has not followed the procedures under Section 30(4), partly allowed the applications directing the 'Resolution Professional' and the 'Committee of Creditors' to revisit and reconsider their decision in the light of proviso to Section 29A (c) read with proviso to Section 30(4) of the 'I&B Code' and to act in accordance with law and/or to make good of the disability. The parties were granted liberty to challenge the reconsidered decision of the 'Committee of Creditors' in accordance with law before appropriate forum.

4. Both the parties have challenged the impugned order dated 19<sup>th</sup> April, 2018, so far it relates to their respective findings and with regard to the findings of the contesting 'Resolution Applicant(s)'.

**Background of the case**

5. The 'Resolution Professional' issued advertisement on 6<sup>th</sup> October, 2017 under Section 25(2)(h) of the 'I&B Code' invitation seeking 'Expression of Interest' to submit 'Resolution Plan' for 'Essar Steel India Ltd.' from potential 'Resolution Applicants' which were to be submitted along with relevant document on or before 5 P.M. on 23<sup>rd</sup> October, 2017.

6. 'AM India Ltd.' submitted its 'Expression of Interest' to submit 'Resolution Plan' along with all relevant documents on 11<sup>th</sup> October, 2017.

7. The 'Numetal Ltd.' submitted 'Expression of Interest' of 'Resolution Plan' along with all relevant documents on 20<sup>th</sup> October, 2017, which was accepted and confirmed by the 'Resolution Professional' on 31<sup>st</sup> October, 2017.

8. After submission of the 'Expression of Interest' of 'Resolution Plan(s)', Section 29A was inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, followed by the 'Insolvency and Bankruptcy Code (Amendment) Act, 2017' w.e.f 23<sup>rd</sup> November, 2017.

9. In view of insertion of Section 29A, the 'Resolution Professional' by an addendum dated 8<sup>th</sup> February, 2018, asked the 'Resolution Applicants' to submit the 'Resolution Plans'. The 'AM India Ltd.'

thereafter, submitted 'Resolution Plan' on 12<sup>th</sup> February, 2018. 'Numetal' also submitted its 'Resolution Plan' on the same date i.e. 12<sup>th</sup> February, 2018.

10. On receipt of 'Resolution Plan's', the 'Resolution Professional' explained the eligibility of both the Appellants, after advice of 'Resolution Professionals', Legal Counsel, Cyril Amarchand Mangaldas (CAM), Mr. Darius Khambata, Former Advocate General, Maharashtra and Former Additional Solicitor General, for his opinion as follows:

**"Numetal Limited**

*As on the Plan Submission Date:*

*(a) Ravi Ruia (who is the father of Rewant Ruia (who is one of the ultimate beneficiaries and owners of a shareholder of Numetal through various holding companies and trusts and given that Numetal is relying on the credentials of its shareholders for the purposes of the resolution plan) is deemed to be acting in concert with) was the promoter of ESL, whose account was classified as an NPA for more than 1 year prior to the commencement of corporate insolvency resolution process (AIRP) of ESL on 2<sup>nd</sup> August, 2017, and*

*(b) Ravi Ruia (who Rewant Ruia is deemed to be acting in concert with) has executed guarantee in favour of SBI (for itself and a consortium of lenders) and the CIRP application filed by SBI has been admitted by the on 2 August 2017.*

*In light of the above, Rewant Ruia (who is acting jointly with the other shareholders of Numetal for the purposes of submission of the Resolution Plan) is ineligible under Section 29A of the IBC, specifically sub-section (c) and (h) and accordingly, as on the Plan Submission Date (i.e. 12 February, 2018), Numetal (which is nothing but an incorporated joint venture investment vehicle through which its shareholders are submitting the Resolution Plan) was not eligible under Section 29A of the IBC.*

*Both CAM and Mr. Darius Khambata concurred that Numetal was ineligible to submit its resolution plan as on 12 February 2018 on account of Section 29A (c) and (h) of the IBC.*

**ArcelorMittal India Private Limited**  
**(ArcelorMittal)**

*Eligibility of ArcelorMittal India Private Limited (AM India), the other Resolution applicant was tested on the facts relating to two instances: (i) KSS Petron; and (ii) Uttam Steels Limited (Uttam Galva), each of which were NPAs for more than 1 year.*

*In case of KSS Petron, Mr. L.N. Mittal, Chairman and CEO of the ArcelorMittal group (through holding companies) exercised negative control whereas in the case of Uttam Galva, ArcelorMittal Netherlands (AM Netherlands, a connected person of AM India) and classified as a promoter as well as exercised positive control over Uttam Galva.*

*The RP informed the COC that:*

- (i) in CAM's view, negative control over an entity also constituted control for the purposes of testing under Section 29A(c) of the IBC and accordingly, CAM was of the opinion that KSS Petron was also a reason on account of which AM India was disqualified; and*



(ii) *in the view of Mr. Darius Khambata, negative control did not constitute 'control' for the purposes of Section 29A(c) of the IBC and accordingly, KSS Petron was not a ground for disqualifying AM India.*

*On account of above two views, CAM recommended to the RP to take the opinion of Mr. Darius Khambata and rely on his advice.*

*Relying on Mr. Khambata's view, the RP stated that ArcelorMittal cannot be said to be in control of KSS Petron and hence KSS Petron was not a ground for disqualifying AM India.*

*As regards Uttam Galva, Both CAM and Mr. Darius Khambata were of the view that positive control (of the nature which AM Netherlands had in relation to Uttam Galva) constituted control for the purposes of Section 29A(c) of the IBC.*

*Further, the RP informed the COC that:*

(i) *in CAM's view, since AM Netherlands exercised positive control over Uttam Galva, merely divesting the shareholding prior to*

*submission of the resolution plan by AM India could not remote the disqualification of AM Netherlands under Section 29A(c) of the IBC unless cured by payment of the overdue amounts as mentioned in the proviso to Section 29A (c); and*

- (ii) *in Mr. Khambata's view, AM Netherlands has legitimately divested its shareholding in Uttam Galva and completed all legal and regulatory formalities relating to declassification of AM Netherlands as promoter of Uttam Galva, prior to submission of the resolution plan by AM India, it would be eligible to submit a resolution plan (and would not be subject to the disqualification under Section 29A(c) of the IBC for having an NPA of more than 1 year). Mr. Khambhata has opined that a resolution applicant needs to be eligible under Section 29A of the DC not only on the date of submission of the resolution plan but must also remain eligible till the approval of its resolution plan by the NCLT under Section 31 of the IBC.*

*On account of above two views, CAM recommended to the RP to take the opinion of Mr. Darius Khambata and rely on his advice.*

*RP stated that as on the Plan Submission Data, AM Netherlands (a connected person of AM India), continued to be classified as a promoter of Uttam Galva and had not completed the regulatory compliances relating to declassification as a promoter of Uttam Galva and accordingly, the resolution plan was ineligible.*

*Accordingly, and for the reasons mentioned, pursuant to paragraph 4.11.2(a) of the RFP, the Resolution Plans received are not eligible and as COC had asked only eligible plans to be presented, neither of these Resolution Plans are placed before CoC.*

*RP further mentioned that:*

- (i) the conclusion has been reached that the relevant Resolution Applicants are ineligible on the ground under sub-sections (c) and (h) of*

*Section 29A of the IBC (after having tested for its compliance) as set out above);*

- (ii) other than as stated above, since the evaluation of the Resolution Plan was still ongoing (including with regard to eligibility of each Resolution Applicant and its connected persons under Section 29A of the IBC and the checks being undertaken by Kroli in this regard), it may be noted that the RP has not determined the eligibility, validity or compliance of any Resolution Applicant or its connected persons under Section 29A of the DC (except as mentioned above).”*

11. However, in view of issues surrounding the eligibility of both the ‘Numetal Limited’ and ‘AM India Ltd.’, the ‘Committee of Creditors’ requested the ‘Resolution Professional’ to present options for the way forward, with a view to being fair and transparent treatment to all ‘Resolution Applicants’. In this background, the ‘Resolution Professional’ suggested following options to the ‘Committee of Creditors’:

- i. Initiate a new process of inviting bids from all interested parties (Starting with issuance of a new Expression of Interest) and follow the entire process as per new request

for proposals approved by the 'Committee of Creditors' ('Option 1'); or

- ii. Extend the due date for submission of 'Resolution Plans' (as defined in the request for proposals) and permit all the potential 'Resolution Applicants' (as defined in the request for proposal, along with its new addendum) to submit their new 'Resolution Plans' in respect of the 'Corporate Debtor' ('Option 2').

12. After discussions in the meeting of the 'Committee of Creditors' and keeping in view the timelines available in the 'Corporate Insolvency Resolution Process', Option 2 was put to vote and approved by a majority voting rights of the 'Committee of Creditors'.

**Relevant facts relating to 'Numetal Limited'**

13. The 'Corporate Insolvency Resolution Process' relates to 'Essar Steel India Limited ('ESIL') of which Mr. Ravi Ruia (hereinafter referred to as "Mr. Ravi") is the promoter.

14. Mr. Rewant Ruia (hereinafter referred to as "Mr. Rewant") is the son of Mr. Ravi, but does not hold any share in 'ESIL'- ('Corporate Debtor') nor he is the promoter.

15. Initially Mr. Rewant held 100% shares in 'Aurora Holdings Limited (for short, 'AHL'). The said 'AHL' held 100% shares in 'Aurora Enterprises' Limited (for short, 'AEL'). The 'AEL' in its turn held 100% shares in the 'Numetal Ltd.'. All of them were incorporated in Mauritius. Prior to submission of 1<sup>st</sup> 'Expression of Interest' of the Resolution Plan i.e. prior to 20<sup>th</sup> October, 2017, on 18<sup>th</sup> October, 2017, 'AEL' transferred 26.1% shares in 'Numetal Ltd.' to 'Essar Communication Limited', Mauritius (for short, 'ECL'), a sister concern of 'ESIL' ('Corporate Debtor'). On 20<sup>th</sup> October, 2017, Mr. Rewant settled the shares crediting 'Prisma Trust' as an irrevocable and discretionary trust whose beneficiaries are 'General Charities' and 'Solis Enterprise Ltd.', a company owned by Mr. Rewant. The trustees of 'Prisma Trust' acquired 100% shareholding of 'AHL' for US\$ 10,000 approximately from the trustees of 'Crescent Trust'.

16. 'I&B Code' was amended and Section 29A was inserted w.e.f. 23<sup>rd</sup> November, 2017. In view of such enactment and in furtherance of the intent recorded in the expression of interest to induct one VTB Bank and other investors as also to avoid any disqualification, the shareholding of 'Numetal Ltd.' underwent change on 22<sup>nd</sup> November, 2017 as under:

- (a) 'ECL' transferred all its shares i.e. 26.1% in 'Numetal Ltd.' to 'Crinium Bay', a wholly owned in direct subsidiary of 'VTB Bank';
- (b) 'AEL' transferred 13.9% shares held in 'Numetal Ltd.' to 'Crinium Bay'.

Consequently, 'Crinium Bay' held 40% shares in 'Numetal Ltd.'. As a result, as per the expression of interest, acquired control of 'Numetal Ltd.'.

- (c) 'AEL' transferred 25.1% shares in 'Numetal Ltd.' to 'Indo International Trading FZCO' ("INDO").
- (d) 'AEL' transferred 9.9% shares in 'Numetal Ltd.' to JSC VO Tyazhpromexport ("TPE").

Consequently, 'AEL' held 25% shares in 'Numetal Ltd.' as on 22<sup>nd</sup> November, 2017.

17. According to the learned Senior Counsel for the appellant 'Numetal Ltd.', 'AEL' cannot be considered to be an entity controlling 'Numetal Ltd.' in terms of expression of interest. Even otherwise as 'AEL' is holding only 25% shares in 'Numetal Ltd.' which cannot block any resolution of any nature in 'Numetal Ltd.'. Consequent to such change in the shareholding, the 'AEL' had no right to appoint any Director on the Board of 'Numetal Ltd.', nor the 'AEL' represented the Board of 'Numetal Ltd.'.

18. It is stated that 'VTB Bank' is one of the largest emerging market banking group listed in the 'Moscow Exchange' and 'London Stock Exchange', with total assets of Rs.14,30,000 crores approximately having a net-worth of Rs. 1,35,000 crores. The main shareholder of 'VTB Bank' is the Russian Government.

19. The other entity i.e. 'TPE', is a wholly owned subsidiary of the Russian State Corporation called Rostec (annual turn-over of approximately US\$ 21 Billion i.e. over Rs. 1,30,000 crores) and is a leading Engineering Company which had set up all the earlier Steel Plants in India such as Steel Authority of India Limited (SAIL) and Rashtriya Ispat Nigam Limited (RINL) and has operations in 30 countries.

20. The third entity, 'Indo' is trading in Steel and Steel related raw materials for the last 15 years and has trading relations with all the major steel manufacturers of the world.

21. 'Numetal Ltd.' has worked out the plan for putting in place a team of eminent experts and former Chairman of SAIL, Mr. Verma to lead the team.

22. Post declaration of ineligibility of 'Numetal Ltd.' and 'Arcellor Mittal', the 'Committee of Creditors' by its meeting held on 23<sup>rd</sup> March,



2018 decided to invite fresh 'Resolution Plans' from 'Numetal Ltd.', 'Arcelor Mittal' and 'Vedanta'.

23. Before submitting the subsequent 'Resolution Plan', the 'AEL' sold its shareholding to 'INDO' and 'TPE' resulting into change of shareholding in 'Numetal Ltd.' as follows:

- (a) 'Crinium Bay' ('VTB') 40%;
- (b) 'INDO' 34.1%; and
- (c) 'TPE' 25.9%.

24. Thereafter, the 'Resolution Plan' dated 29<sup>th</sup> March, 2018 submitted by 'Numetal Ltd.' offering Rs. 37000 Crores 'upfront payment' to the secured 'Financial Creditors', plus 'IRP' costs, workmen dues, and dues of 'Unsecured Financial Creditors', 'Operational Creditors' etc. In addition, 'Numetal Ltd.' also provided a caps plan for revival of the 'Corporate Debtor'.

**Stand of the 'Numetal Ltd.'**

25. According to the learned Senior Counsel for the 'Numetal Ltd.', the 'Aurora Enterprises Ltd.' ('AEL' for short) is not a promoter nor was in control or management of the 'Resolution Applicant'/ 'Numetal Ltd.'. Hence, the 'AEL' cannot be put to its scrutiny under Section 29A of the 'I&B Code'.

26. It was further submitted that Mr. Rewant does not own 'AHL', who is merely one of the beneficiaries of 'Prisma Trust', a discretionary trust. The said 'Prisma Trust' holds the share capital of Aurora Holdings Limited ('AHL' for short) the holding company of 'AEL'. As per settled principle of law the ownership and control over the assets of a trust vests with the trustees. A beneficiary cannot be said to be the owner of the assets of the trust nor can be said to be in control of the trust, especially in case of a discretionary trust. Therefore, 'AEL' can be put to scrutiny under Section 29A of the 'I&B Code' and Mr. Rewant cannot be put to such test.

27. Mr. Rewant cannot be put to test under Section 29A of the 'I&B Code', as it cannot be 'deemed' that Mr. Rewant is necessarily acting in concert with his father namely— Mr. Ravi, the promoter of 'Corporate Debtor'.

28. Even if it is accepted that Mr. Rewant is acting in concert with his father, it cannot be said that the appellant is consequently acting in concert with Mr. Rewant's father.

29. It was submitted that Mr. Ravi was the promoter of 'Essar Steel India Limited'- ('Corporate Debtor') and Mr. Rewant is his son. Mr. Rewant has his own business and otherwise directly or indirectly not connected with 'Essar Steel India Limited'- ('Corporate Debtor').

30. Following submission was also advanced by learned Senior Counsel for the Appellant:

- i. A shareholder cannot be said to be acting jointly or in concert with 'Numetal Ltd.' irrespective of its shareholding. In the instant case 'AEL's' shareholding was just 25% with no management or control rights or even a right of negative control. 'Numetal Ltd.' cannot be said to be acting jointly or in concert with any of its shareholders much less with 'AEL'.
- ii. 'AEL' or Mr. Rewant does not suffer from any ineligibility under clauses (a) to (i) of Section 29A.
- iii. 'Numetal Ltd.' has no connected person ineligible under clauses (a) to (i) of Section 29A.

31. It was also submitted that the 'Resolution Professional' wrongly held that 'Numetal Limited' is a consortium of four shareholders. Such finding is not based on any evidence.

32. Learned Senior Counsel for the 'Numetal Ltd.' also highlighting the subsequent development and made alternative submission regarding eligibility of 'Numetal Ltd.' on the basis of the following facts:

- i. The 'Committee of Creditors' its meeting held on 21<sup>st</sup> March, 2018 decided to invite fresh 'Resolution Plan' from those who had submitted EOI. 'Resolution Plan' were submitted by three entities i.e. 'Numetal Ltd.', 'Arcelor Mittal' and 'Vedanta' before 2<sup>nd</sup> April, 2018. Before submitting the 'Resolution Plan', on 29<sup>th</sup> March, 2018, 'AEL' sold its entire shareholding in 'Numetal Ltd.' to 'Indo' and 'TPE' resulting into the shareholding in 'Numetal Ltd.' being changed to Crinium Bay ('VTB') 40%, 'Indo' 34.1% and 'TPE' 25.9%. Therefore, on the date of submission of 'Resolution Plan' dated 29<sup>th</sup> March, 2018, 'AEL' was not a shareholder of 'Numetal Ltd.'

33. It was submitted that the post decision of the Adjudicating Authority, the 'Committee of Creditors' gave its decision on 8<sup>th</sup> May, 2018 which is erroneous as in the meantime there was a change in shareholding pattern of 'Numetal Ltd.'

34. According to the learned Senior Counsel the definition of 'person acting in concert' as defined in Section 2(q) of 'SEBI (Substantial Acquisition of Share and Takeover Regulations), 2011' is not applicable and even if it is presumed that Mr. Rewant is 100% shareholder in 'AEL', it cannot be held that 'Numetal Ltd.' is acting in concert with Mr. Ravi.

**Stands of the ‘Arcellor Mittal’ against ‘Numetal Ltd.’**

35. Mr. Harish Salve, learned Senior Counsel appearing on behalf of the appellant in one of the appeal referred to Article 5 of the European Union Regulation (EU) dated 31<sup>st</sup> July, 2014, which reads as follows:

“Article 5

[1] It shall be prohibited to directly or indirectly purchase, sell, provide brokering or assistance in the issuance of, or otherwise deal with transferable securities and money-market instruments with a maturity exceeding 90 days, issued after 1 August 2014 by:

- (a) *a major credit institution or other major institution having an explicit mandate to promote competitiveness of the Russian economy, its diversification and encouragement of investment, established in Russia with over 50 % public ownership or control as of 1 August 2014, as listed in Annex III; or*

- (b) *a legal person, entity or body  
established outside the Union  
whose proprietary rights are  
owned for more than 50 %by an  
entity listed in Annex III; or*
- (c) *a legal person, entity or body  
acting on behalf or at the  
direction of an entity referred to  
in point (b) of this paragraph or  
listed in Annex III.*

36. It was submitted that a combined reading of Article 5 and Article 13 demonstrates that the Council of the European Union has prohibited ‘VTB Bank’ from all securities trading within the territory of the EU or with companies incorporated under the law of an EU member state with a maturity increasing 90 days.

37. It was also submitted that Article 5(c) further prohibits securities transactions with legal persons acting on behalf of or at the direction of an entity listed in Annex III, therefore, apart from ‘VTB Bank’, the Resolution applicant itself would be prohibited from trading in securities and accessing the securities market of the EU. For this

reason, also, the Applicant is squarely attached with the disability under sub-clause (f) read with sub-clause (i) of Section 29A of the Code.

38. It was further submitted that similar sanctions have been imposed on 'VTB Bank' by the concerned authorities in the USA. Around March 2014 onwards, in the wake of Russia's annexation of Crimea, the U.S. Department of the Treasury's Office of Foreign Assets Control (OFAC) imposed various sanctions against Russia and Russian Entities. As part of the said sanctions, on 12.09.2014, the OFAC identified 'VTB Bank' and prohibited U.S. persons from or U.S. territories being used for,

“...transacting in, providing financing for, otherwise dealing in new debt or longer than 90 days maturity.....”

**Stand of the 'AM India Ltd.'**

39. Dr. Abhishek Manu Singhvi, learned Senior Counsel, also appeared on behalf of the 'AM India Ltd.' and submitted that 'Numetal Ltd.' was ineligible in terms of Section 29A. Referring to the dates, events and the manner in which 'AEL' and 'Numetal Ltd.' were constituted and shares were transferred by 'AEL' in favour of one or other shareholder of 'Numetal Ltd.', it was submitted that the sequence suggest that Mr. Rewant is the controller of 'AEL' who continued to be shareholder of 'Numetal Ltd.' till the date of submission of the

'Resolution Plan' dated 12<sup>th</sup> February, 2018. According to him, transferring the 'AEL's' entire remaining shareholding of 29% in 'Numetal Ltd.' is irrelevant because it happened much latter, and for the following reasons:

- a) The 'Resolution Plan' was submitted by 'Numetal Ltd.' on 12<sup>th</sup> February, 2018.
- b) 'Numetal' is a shell company and has no funds.

This submission is not based on any evidence but mere surmises and conjunctures. Aforesaid ground has also not been taken by the 'Resolution Professional' or the 'Committee of Creditors' or the Adjudicating Authority to declare 'Numetal Ltd.' as ineligible.

- c) Rs. 500 Crores deposited on behalf of 'Numetal Ltd.' still remains with the 'Resolution Professional'.

However, such ground cannot be accepted to hold that the 'Numetal Ltd.' as ineligible.

According to him there is a direct connection of 'AEL' with 'Numetal Ltd.' as the core money was deposited by 'AEL' on 12<sup>th</sup> March, 2018. However, aforesaid fact has been disputed by the 'Numetal Ltd.', the 'Resolution Professional' or 'Committee of Creditors' have also not



taken such plea that core money was not deposited by the 'Numetal Ltd.' but by 'AEL'.

### **Analysis of Law**

40. Section 29A deals with persons not eligible to submit a 'Resolution Plan', and reads as follows:

**"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."*

41. 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, if attracts any one or other ineligibility clause mentioned in clauses (a) to (i) is also 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.

42. 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 is 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.”

Therefore, it is to be looked into whether the persons who, with their misconduct contributed to defaults of companies’/ undesirable persons have submitted the resolution plan either in person or jointly with another person, or in concert with such person.

Therefore, while interpreting Section 29A the statement and object to achieve is required to be noticed.

43. As per Section 29A, a person who submits a 'Resolution Plan', is in itself or any other person 'acting jointly' or 'in concert with such person' if attracts any of the dis-qualification under clause (a) to (h) of Section 29A will be ineligible to submit a 'Resolution Plan'. Clause (i) of Section 29A further makes it clear that any disability corresponding to clauses (a) to (h) under any law in a jurisdiction outside India will be one of the criteria of ineligibility. Clause (j) stipulates that if any connected person is ineligible under clauses (a) to (i), the person who intend to submit, is not eligible to file 'Resolution Plan'.

44. On behalf of 'AM India Ltd.', it was submitted that 'VTB Bank' one of the shareholder of 'Numetal Ltd.' is ineligible in view of Article 5(c) of the EU Regulations of 2014. Though such submission has been made, no order or evidence has been placed on record to suggest that any order of prohibition was imposed by the European Union against the 'VTB Bank'. Neither the date of order nor order passed by any competent authority or court of law has been placed on record.

45. On the other hand, it will be evident that Council of European Union adopted Council Regulation (EU) No. 833/2014 concerning Restricting measures in view of Russia action. In fact, in view of situation in Ukraine, the European Union Regulation was adopted. Apart from the aforesaid fact, that 'AM India Ltd.' has not brought on record any penal order passed by any court of law relating to disability,

if any, which is corresponding to any of the disability shown in clauses (a) to (h) of Section 29A. Therefore, the stand taken by the 'AM India Ltd.' with regard to ineligibility of 'VTB Bank' is fit to be rejected.

46. The next question arises for consideration is whether 'AEL' can be held to be a 'person acting in concert', to hold 'Numetal Ltd.' ineligible on the date of submission of 1<sup>st</sup> 'Resolution Plan' on 12<sup>th</sup> February, 2018.

47. Mr. Harish Salve, learned Senior Counsel referred to clause (d) of Article 2(i) of the European Union "Directive 2004/25/EC of the European Parliament and of the Council of 21<sup>st</sup> April, 2004 on takeover bids for the purpose of definition of 'person acting in concert', which reads as follows:

**"Article 2**

**Definitions**

1. *For the purposes of this Directive:*

*(d) persons acting in concert shall mean natural or legal persons who cooperate with the offeror or the offeree company on the basis of an agreement, either express or tacit, either oral or written, aimed either at acquiring control of the offeree company or at frustrating the successful outcome of a bid:"*



48. On the other hand Dr. A.M. Singhvi, learned Senior Counsel appearing on behalf of the 'AM India Ltd.' relied on Regulation 2(1)(q) of the 'SEBI (Substantial Acquisition of Share and Takeover) Regulations, 2011' for the purpose of definition of 'person acting in concert', which reads as follows"

- (q) *"persons acting in concert" means,--*
- (1) *persons who, with a common objective or purpose of acquisition of shares or voting rights in, or exercising control over a target company, pursuant to an agreement or understanding, formal or informal, directly or indirectly co-operate for acquisition of shares or voting rights in, or exercise of control over the target company.*
- (2) *without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be persons acting in concert with other persons within the same category, unless the contrary is established,--*
- (i) *a company, its holding company, subsidiary company and any company under the same management or control;*

- (ii) a company, its directors, and any person entrusted with the management of the company;*
- (iii) directors of companies referred to in item (i) and (ii) of this sub-clause and associates of such directors;*
- (iv) promoters and members of the promoter group;*
- (v) immediate relatives;*
- (vi) a mutual fund, its sponsor, trustees, trustee company, and asset management company;*
- (vii) a collective investment scheme and its collective investment management company, trustees and trustee company;*
- (viii) a venture capital fund and its sponsor, trustees, trustee company and asset management company;*
- [(viiia) an alternative investment fund and its sponsor, trustees, trustee company and manager;]*
- (ix) [\*\*\*]*
- (x) a merchant banker and its client, who is an acquirer;*

- (xi) *a portfolio manager and its client, who is an acquirer;*
- (xii) *banks, financial advisors and stock brokers of the acquirer, or of any company which is a holding company or subsidiary of the acquirer, and where the acquirer is an individual, of the immediate relative of such individual:*

**Provided** *that this sub-clause shall not apply to a bank whose sole role is that of providing normal commercial banking services or activities in relation to an open offer under these regulations;*

- (xiii) *an investment company or fund and any person who has an interest in such investment company or fund as a shareholder or unitholder having not less than 10 per cent of the paid-up capital of the investment company or unit capital of the fund, and any other investment company or fund in which such person or his associate holds not less than 10 per cent of the paid-up capital of that investment company or unit capital of that fund:*

**Provided** that nothing contained in this sub-clause shall apply to holding of units of mutual funds registered with the Board;

*Explanation.—For the purposes of this clause “associate” of a person means,—*

(a) any immediate relative of such person;

(b) trusts of which such person or his immediate relative is a trustee;

(c) partnership firm in which such person or his immediate relative is a partner; and

(d) members of Hindu undivided families of which such person is a coparcener;”

49. It was submitted that Mr. Rewant being son of Mr. Ravi, ‘Promoter’ of ‘ESIL’ (‘Corporate Debtor’) comes within the meaning of ‘person acting in concert’. Mr. Rewant being the 100% shareholder of ‘AEL’, it is to be held that ‘Numetal Ltd.’ is ‘acting in concert’ with immediate relative of the ‘Corporate Debtor’.

50. The stand taken by the learned Senior Counsel for the ‘Numetal Ltd.’ is that Regulation 2(1) (q) cannot be relied upon for the purpose of defining the ‘person acting in concert’, as mentioned in Section 29A.

51. Sections 3 and 5 of the 'I&B Code' are the definition/provision but do not define the expression 'persons acting in concert'. As per Section 3(37) of the 'I&B Code' meaning of the 'words and expressions' used but not defined in the 'I&B Code' is to be found out from the definition in the Acts as mentioned therein, and reads as under :

*“3. In this Code, unless the context otherwise requires,—*

*(37) words and expressions used but not defined in this Code but defined in the Indian Contract Act, 1872, the Indian Partnership Act, 1932, the Securities Contract (Regulation) Act, 1956, the Securities Exchange Board of India Act, 1992, the Recovery of Debts Due to Banks and Financial Institutions Act, 1993, the Limited Liability Partnership Act, 2008 and the Companies Act, 2013, shall have the meanings respectively assigned to them in those Acts.”*

52. From Section 3(37) it is clear that the meaning of any 'word or expression' not defined in I&B Code can be traced out from 'the Indian Contract Act, 1872' or 'the Indian Partnership Act, 1932' or 'the

Securities Contract (Regulation) Act, 1956’ or ‘the Securities Exchange Board of India Act, 1992’ or ‘the Recovery of Debts Due to Banks and Financial Institutions Act, 1993’ or ‘the Limited Liability Partnership Act, 2008’ and/or ‘the Companies Act, 2013’.

53. None of the aforesaid Acts as mentioned in Section 3(37) provides definition of the expression ‘person acting in concert’. Therefore, we hold that the definition of ‘person acting in concert’ cannot be derived from any of the Acts as mentioned in Section 3(37).

54. The ‘SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011’ has been issued by the ‘SEBI’ in exercise of powers conferred by Section 30 read with clause (h) of sub-section (2) of Section 11 of the ‘Securities and Exchange Board of India Act, 1992’. The aforesaid Regulation, 2011 cannot be held to be an Act of Parliament, nor can be held to be part of ‘Securities and Exchange Board of India Act’.

55. The ‘SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011’ was enacted under the powers conferred under Section 30 of the ‘Securities and Exchange Board of India Act, 1992’. As per Section 31 of the said Act 1992, the rules and regulations are required to be laid before Parliament, which is as follows:

**“31. Rules and regulations to be laid before Parliament.—** Every rule and every regulation made

*under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or both Houses agree that the rule or regulation should not be made, the rule or regulation shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation.”*

56. The ‘SEBI (Substantial Acquisition of Shares and Takeover) Regulation, 2011’ has been approved by both the houses of the Parliament, therefore, it can be said that the Regulations 2011 is part of the self-contained Code, namely— ‘Securities and Exchange Board of India Act, 1992’.

57. In **“State of U.P. v. Babu Ram Upadhya- (1961) 2 SCR 679”**, the Hon’ble Supreme Court dealt with the position of rules made under a statute as follows:

*“23. What then is the effect of the said propositions in their application to the provisions of the Police Act and the rules made thereunder? The Police Act of 1861 continues to be good law under the Constitution. Para 477 of the Police Regulations shows that the rules in Chapter XXXII thereof have been framed under Section 7 of the Police Act. Presumably, they were also made by the Government in exercise of its power under Section 46(2) of the Police Act. Under para 479(a) the Governor's power of punishment with reference to all officers is preserved; that is to say, this provision expressly saves the power of the Governor under Article 310 of the Constitution. “Rules made under a statute must be treated for all purposes of construction or obligation exactly as if they were in the Act and are to be of the same effect as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation”:* see *Maxwell on the Interpretation of Statutes, 10th Edn., pp. 50-51. The statutory rules cannot be described as, or equated with, administrative directions. If so, the Police Act and the rules made*



*thereunder constitute a self-contained code providing for the appointment of police officers and prescribing the procedure for their removal. It follows that where the appropriate authority takes disciplinary action under the Police Act or the rules made thereunder, it must conform to the provisions of the statute or the rules which have conferred upon it the power to take the said action. If there is any violation of the said provisions, subject to the question which we will presently consider whether the rules are directory or mandatory, the public servant would have a right to challenge the decision of that authority.”*

58. In view of the decision aforesaid, it can be safely stated that the Regulations made under the ‘Securities and Exchange Board of India Act, 1992’ required to be treated for all purposes of construction or obligation as if they are part of the Act, and are to be of the same effect, as if contained in the Act, and are to be judicially noticed for all purposes of construction or obligation.

59. Therefore, we hold that the ‘Resolution Professional’ and the Adjudicating Authority rightly relied on Regulation 2(1)(q) of ‘SEBI (Substantial Acquisition of Share and Takeover) Regulations, 2011’ for the purpose of expression of ‘person acting in concert’.

**'Resolution Plan' submitted by the 'Numetal Ltd.' on 12<sup>th</sup> February, 2018**

60. As on 12<sup>th</sup> February, 2018, when the 1<sup>st</sup> 'Resolution Plan' was submitted by 'Numetal Ltd.', it had four shareholders.

- |                     |       |
|---------------------|-------|
| (i) 'Crinium Bay' : | 40%   |
| (ii) 'Indo' :       | 25.1% |
| (iii) 'TPE' :       | 9.9%  |
| (iv) 'AEL' :        | 25%   |

61. Admittedly, Mr. Rewant is 100% shareholder of 'AEL' and 'AEL' held 25% in 'Numetal Ltd.' even as on 12<sup>th</sup> February, 2018, Mr. Rewant being son of Mr. Ravi, who is the promoter of the 'Corporate Debtor', we hold that 'AEL' is a related party and comes within the meaning of 'person in concert' in terms of Regulation 2(1)(q).

62. In view of the aforesaid findings, we hold that at the time of submission of 1<sup>st</sup> Resolution Plan by 'Numetal Ltd.', one of the shareholders being 'AEL', 'Numetal Ltd.' was not eligible to submit 'Resolution Plan' in terms of Section 29A.

**Position of 'Numetal Ltd.' as on 29<sup>th</sup> March, 2018 when the subsequent 'Resolution Plan' was submitted by 'Numetal Ltd.'**

63. The 'Committee of Creditors' had extended the period for submitting a fresh 'Resolution Plan' by 2<sup>nd</sup> April, 2018. 'Numetal Ltd.' filed fresh 'Resolution Plan' on 29<sup>th</sup> March, 2018. On the said date the 'Numetal Ltd.' consisted of the three shareholders: -

- (a) 'Crinium Bay' ('VTB')- 40%;
- (b) 'INDO' - 34.1%; and
- (c) 'TPE'- 25.9%.

64. As on 29<sup>th</sup> March, 2018, as the 'AEL' was not the shareholder of 'Numetal Ltd.' and all the three shareholders aforesaid being eligible, we hold that 'Numetal Ltd.' in respect of 'Resolution Plan' dated 29<sup>th</sup> March, 2018, is eligible and the provision of Section 29A, as on 29<sup>th</sup> March, 2018 is not attracted to the 'Numetal Ltd.'. For the reasons aforesaid, we are of the view that the 'Resolution Plan' submitted by 'Numetal Ltd.' on 29<sup>th</sup> March, 2018 is required to be considered by the 'Committee of Creditors' to find out its viability, feasibility and financial matrix.

**Arcelor Mittal India Private Limited**

65. One Co-Promotion Agreement was executed on 4<sup>th</sup> September, 2009 between 'ArcelorMittal Netherland BV' ("AM Netherlands" for

short) and Indian Promoters of 'Uttam Galva'. As per the Co-Promotion Agreement, the foreign promoters i.e. 'AM Netherlands' will be entitled to nominate one half of the non-independent Directors on the Board of 'Uttam Galva' and both of them shall jointly nominate the independent Directors of 'Uttam Galva'. Clause 16 of the Co-Promotion Agreement read with Schedule-II thereof provides for a list of matters which requires affirmative vote of 'AM Netherlands'.

66. A letter of offer of 'AM Netherlands' to acquire 3,52,26,233 fully paid shares of the face value of Rs. 10/- representing 25.76% of the emerging capital of 'Uttam Galva'.

67. Canara Bank and Punjab National Bank, the 'Financial Creditors' of 'Uttam Galva' on 31<sup>st</sup> March, 2016 declared the account of 'Uttam Galva' as 'NPA'. At that time 'AM Netherlands' was a shareholder representing 25.76% of the emerging capital of 'Uttam Galva'.

68. 32<sup>nd</sup> Annual Report of 'Uttam Galva' dated 31<sup>st</sup> March, 2017 encloses list of promoters which includes 'AM Netherlands' holding 29% shares. The Annual Return filed for the F.Y. 2016-17 after the Annual General Meeting of 'Uttam Galva' held on 19<sup>th</sup> August, 2017.

69. As noticed, the 'Corporate Insolvency Resolution Process' of 'Essar Steel India Limited' started on 2<sup>nd</sup> August, 2017 pursuant to the 'Information Memorandum' of 'ArcelorMittal India Private Limited' which

submitted its 'Expression of Interest' to submit 'Resolution Plan' on 12<sup>th</sup> October, 2017.

70. 'AM Netherlands' is 100% subsidiary of 'ArcelorMittal Societe Anonyme' ("AMSA" for short) which is a listed company incorporated in Luxemburg. 'AM India Ltd.' is also a subsidiary (99.99%) of 'AMSA'. Accordingly, 'AMSA' is promoter, in the management and in control of 'AM India Ltd.'. According to the 'Resolution Professional', the 'Committee of Creditors' and the Adjudicating Authority in view of the aforesaid connection, 'AM Netherlands' becomes a connected person and such connected person has an account of 'Corporate Debtor'- 'Uttam Galva' under the management, control or of whom such connected person namely 'AM Netherlands' is a promoter and is classified as 'NPA' for more than one year before 2<sup>nd</sup> August, 2017.

71. 'KSS Petron Private Limited' ("KSS Petron" for short) is a wholly owned subsidiary of 'KazStroy Service Global BV Netherlands' ("KSS Global BV" for short). 'KSS Petron' has a subsidiary company called 'Petron Engineering & Construction Limited' ("Petron Engineering" for short). Pursuant to a Share Purchase Agreement dated 3<sup>rd</sup> March, 2011, one 'Freseli Investments Sari' ("Fraseli" for short) a company owned and controlled by a company called by 'Mittal Investments Sr' ("Mittal Investments" for short) acquired about one third of the share capital of 'KSS Global BV'. Pursuant to such acquisition, 'Fraseli' acquired control over 'KSS Global BV' which in turn controls 'KSS Petron' and 'Petron

Engineering'. 'Mittal Investments' is owned and controlled by LN Mittal Group, the promoters of the 'AM India Pvt. Ltd'.

72. Consequent to such acquisition of control by 'Fraseli', on 23<sup>rd</sup> May, 2011 a public announcement was made under 'SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997' for the acquisition of shares of 'Petron Engineering' *inter alia* by 'KSS Global BV' and 'Fraseli'. The public announcement was followed by the mandatory letter of the offer required under the 'SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997'.

73. The public announcement and the letter of offer, clearly disclose that 'Fraseli' is a company owned and controlled by 'Mittal Investments', which is owned and controlled by the LN Mittal Group.

74. Pursuant to the public announcement, 'Fraseli' had right to appoint Directors on the Board of 'KSS Global BV' and had affirmative voting rights on decisions regarding various matters at the Board and shareholder level in respect of 'KSS Global BV' and all companies controlled by 'KSS Global BV'. Such right of Fraseli to appoint Directors on the Board of 'KSS Global BV' and the right to exercise affirmative voting rights in respect of 'KSS Global BV' and its subsidiaries (including 'KSS Petron') also recorded in the Articles of Association of 'KSS Global BV'.

75. In the aforesaid background and public announcement and the letter of offer as well as the Articles of Association of 'KSS Global BV', it was held that 'Mittal Investments', wholly owned by LN Mittal Group, is the promoter of and in management and control of 'KSS Petron', which is an 'NPA'.

76. In this background, it was alleged that LN Mittal Group is a connected person of the 'AM India Ltd.', is the promoter and in control and management of 'KSS Petron' since 2011. As the 'KSS Petron' was classified as an 'NPA' by multiple banks and its 'Corporate Insolvency Resolution Process' initiated against 'KSS Petron' on 1<sup>st</sup> August, 2017.

77. In view of the aforesaid facts, the 'Resolution Professional' and the 'Committee of Creditors' held that 'AM India Ltd.' is ineligible. The Adjudicating Authority while noticed that Section 29A has come into force on 23<sup>rd</sup> November, 2017, whereas 'Expression of Interest' for 'Resolution Plan' was submitted by 'AM India Ltd.' much prior to the said date i.e. on 22<sup>nd</sup> October, 2017, referring second proviso to sub-section (4) of Section 30, the Adjudicating Authority observed and held that the 'AM India Ltd.' shall be eligible to submit a 'Resolution Plan', if it makes payment of all overdue amounts with interest thereon and charges relating to 'NPA' accounts before submission of 'Resolution Plan'. As the declassification started since 2<sup>nd</sup> August, 2017, the Adjudicating Authority held that it can only be remitted in the manner

as provided under clause (c) of Section 29A read with second proviso to sub-section (4) of Section 30 and in no other manner.

78. By impugned order, the Adjudicating Authority while held that in order to become eligible, overdue amounts to lenders in both the cases of 'KSS Petron' and 'Uttam Galva Steels Ltd.' should be paid by Arcelor Mittal before being eligible to bid, as provided in Section 29A itself. Further, it was observed that second proviso to sub-section (4) of Section 30 provides that if the 'Resolution Applicant' is held to be ineligible under clause (c) of Section 29A and if 'Resolution Plan' has been submitted prior to coming into force of Section 29A from 23<sup>rd</sup> November, 2017, the 'Resolution Applicant' should be allowed by the 'Committee of Creditors' such period not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of Section 29A. The matter was, accordingly, remanded to the 'Committee of Creditors' for giving opportunity to the 'Resolution Applicant' ('AM' India Ltd.) to pay overdue amounts to the lenders.

79. It is informed that in terms of the order of the Adjudicating Authority, 'AM India Ltd.' has kept a sum of Rs. 7000 crores in its 'Escrow account'. The amount has not been deposited with the 'Financial Creditors' in terms of third proviso to sub-section (4) of Section 30, as 'AM India Ltd.' has preferred the appeal against the impugned order.



**Stand of 'AM India Ltd.'**

80. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of the 'AM India Ltd.' submitted that both the objections raised as to the eligibility of the 'AM India Ltd.' are without any basis for the reasons as follows:

**Re: Ineligibility on account of Uttam Galva**

81. According to learned Senior Counsel, ineligibility under Section 29A has to be judged on the plan submission date. The usage of the word "a person shall not be eligible to **submit a 'Resolution Plan'** at the beginning of Section 29A and the usage of the word "**is**" in Section 29A (a), (b), (e) and (f) and the usage of the word "**has**" in Section 29A (c), (h) and (i) and also the use of the expression "**is a promoter**" in Section 29A(c). Therefore, ineligibility, like maintainability of a proceeding, has to be judged on the date of filing.

82. Alternatively, it was submitted that the 'AM Netherlands', a related party of 'AM India Ltd.', was a 'promoter' of the 'Uttam Galva' on the date when the account of the 'Uttam Galva' was classified as NPA in accordance with the guidelines of the Reserve Bank of India and when the 'Corporate Insolvency Resolution Process' of the 'Corporate Debtor' had commenced. By the time 'Expression of Interest' for 'Resolution

Plan' was submitted i.e. 12<sup>th</sup> February, 2018, 'AM Netherlands' had ceased to be a promoter in 'Uttam Galva' by reason of the following:-

- a) It had transferred its entire shareholding of 29.05% in 'Uttam Galva' on 7<sup>th</sup> February, 2018, who received the entire consideration for such transfer on 7<sup>th</sup> February, 2018; and'
- b) The Depository Participant Account of 'AM Netherlands' ceased to show the said shares and instead the demat account of the transferee i.e. 'Sainath Trading Company Private Limited' was credited with the said shares on and w.e.f. 7<sup>th</sup> February, 2018.

83. According to learned Senior Counsel, the sale stood concluded on 7<sup>th</sup> February, 2018 with the 'Depository Participant Account' of 'AM Netherlands' being rectified and not reflecting such shareholding and on 'Sainath Trading Company Private Limited' 'Depository Participant Account' being credited with the concerned shares.

84. Pursuant to the sale and as a consequence of 'AM Netherlands' shareholding becoming zero, the Co-Promotion Agreement dated 4<sup>th</sup> September, 2009, pursuant to which the status of 'promoter' had been conferred on 'AM Netherlands' in 'Uttam Galva', stood automatically

terminated on 7<sup>th</sup> February, 2018, in terms of clause 21.6 of the said agreement.

85. Subsequent thereto, on 8<sup>th</sup> February, 2018, 'Uttam Galva' filed Form 'GNL-2' and 'MGT-10' with the concerned Registrar of Companies reflecting the transfers, while also making the necessary disclosures with the 'BSE' and 'NSE' to declassify 'AM Netherlands' as a promoter of 'Uttam Galva'. Necessary disclosures of such transfer were also made by 'AM Netherlands' and 'Sainath Trading Company Private Limited' on 8<sup>th</sup> February, 2018 with the 'NSE' and 'BSE'.

86. As a consequence of the above, according to learned Senior Counsel, 'AM Netherlands' status as 'promoter' of 'Uttam Galva', *de-facto* and *de-jure*, ceased to exist well prior to date of submission of plan. The mere fact that 'NSE' and 'BSE' allowed the request of declassification on 21<sup>st</sup> March, 2018 and 23<sup>rd</sup> March, 2018 respectively could not, and in fact did not, change the position that 'AM Netherlands' had ceased to be a 'promoter' of 'Uttam Galva' since 7<sup>th</sup> February, 2018 itself. Even otherwise, such declassification, being only a ministerial act, dates back to the date of sale of shares i.e. 7<sup>th</sup> February, 2008 and is considered effective from the said date.

87. It was further submitted that the classification of 'AM Netherlands' as a 'promoter' of 'Uttam Galva' did not require any approval of any stock exchange or the 'SEBI'. It was classified as

promoter was by virtue of the Co-Promotion Agreement dated 4<sup>th</sup> September, 2009 and that having stood terminated when the entire shareholding of 'AM Netherlands' was transferred to 'Sainath Trading Company Private Limited' on 7<sup>th</sup> February, 2018, therefore, according to learned Senior Counsel, there is no question of applying proviso to Section 29A (c) being not applicable to 'AM India Ltd.'

88. It was submitted that Mr. L.N. Mittal cannot be considered to be a promoter or person in control of 'KSS Petron' by reason of the following:

- (a) 'Fraseli' held only a minority share of 32.22% in 'KSS Global BV';
- (b) Though the Shareholders' Agreement executed between 'Fraseli' and the other shareholders of 'KSS Global' permitted 'Fraseli' to appoint two out of six nominee Directors in 'KSS Global' and also provided for the affirmative vote of the shareholders with respect to certain matters, the same were merely protective rights and did not give control to 'Fraseli' over the affairs of 'KSS Global'.
- (c) The Shareholders Agreement specifically provided that the 'KSS Global' group, which included 'KSS Petron', would not be deemed to be an affiliate of 'Fraseli'.

(d) 'Fraseli' had no right in the appointment of the CEO of 'KSS Global; and

(e) 'Fraseli' did not hold any share in 'KSS Petron' and did not have the right to nominate any Directors in 'KSS Petron'.

89. Further, according to learned Senior Counsel for the Appellant, the entire shareholding of 'Fraseli' in 'KSS Global' was transferred on 9<sup>th</sup> February, 2018, which was before the plan submission date.

90. It also submitted that the 'Resolution Professional', after examination of all relevant material, had concluded that 'AM India Ltd.' was not disqualified on account of 'KSS Petron' issue.

**Stand of 'Numetal Limited' against 'AM India Ltd.'**

91. Mr. Mukul Rohatgi, learned Senior Counsel appearing on behalf of the 'Numetal Ltd.' submitted that an entity controlled and managed by connected persons of 'AM India Ltd.' allegedly divested its shareholding in 'KSS Global BV' (100% owner of 'KSS Petron' an NPA company) on 9<sup>th</sup> February, 2018 and its nominee Directors also resigned on the same day i.e. 3 days before submission of the 'Expression of Interest' of the 'Resolution Plan' for 'Essar Steel India Limited' on 12<sup>th</sup> February, 2018.

92. The NPA loans of 'Uttam Galva' and 'KSS Petron' aggregate to approximately Rs. 7,000 Crores as on 31<sup>st</sup> March, 2017 (with further interest accruing on the loans till repayment is made).

93. Referring to Section 29A, it was submitted that the terminal date to ascertain whether a person is ineligible under Section 29A, is on the date of commencement of the 'Corporate Insolvency Resolution Process' of the 'Corporate Debtor', which in the present case is 2<sup>nd</sup> August, 2017, and consequently, upon the introduction of the Section 29A on 23<sup>rd</sup> November, 2017, the stigma of defaulter stood attached to 'AM India Ltd.' regarding its NPA accounts of 'Uttam Galva' and 'KSS Petron'. The only manner provided in the Code for 'AM India Ltd.' to become eligible is through payment of all overdue amounts in accordance with the proviso to Section 29A (c).

94. The device adopted by 'AM India Ltd.' to sell its entire shareholding in its NPA companies on 7<sup>th</sup> February, 2018 and 9<sup>th</sup> February, 2018, merely days before submitting its 'Resolution Plan', is not a procedure known to law to efface itself of the ineligibility.

95. According to learned Senior Counsel for 'Numetal Ltd.', subsection (4) of Section 30 of the 'I&B Code' has no application to the present case since it applies only to cases where a 'Resolution Plan' had been submitted before the insertion of Section 29A i.e. prior to 23<sup>rd</sup> November, 2017. A window of 30 days was provided from 23<sup>rd</sup>

November, 2017 only to such persons who had submitted the 'Resolution Plan' before 23<sup>rd</sup> November, 2017, to make payment of overdue amounts to become eligible. Therefore, according to him, the second proviso to sub-section (4) of Section 30 is not attracted to the present case.

96. The 'Resolution Professional' has taken similar plea as they have taken before the Adjudicating Authority. According to 'Resolution Professional', 'AM India Ltd.' was ineligible in view of Section 29A (c).

97. Learned counsel appearing on behalf of the 'Committee of Creditors' submitted that they are ready to consider all the 'Resolution Plans' as may be cleared by this Appellate Tribunal.

98. It was submitted that the 'Committee of Creditors' will also notice whether 'Resolution Plans' are in accordance with the provisions of the 'I&B Code' for maximization of the assets of the 'Corporate Debtor' or not.

**Analysis of law and the case of 'AM India Ltd.'**

99. Section 25 of the 'I&B Code' relates to "*Duties of Resolution Professional*". Clause (h) of sub-section (2) of Section 25 reads as follows:

**"25. Duties of resolution professional.—.....**

xxx

xxx

xxx

*(2) For the purposes of sub-section (1), the resolution professional shall undertake the following actions, namely: — .....*

*xxx xxx xxx*

*(h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans."*

100. From the aforesaid provision, it is clear that the 'Resolution Professional' with the approval of the 'Committee of Creditors' is required to provide the date for submission of the 'Resolution Plan(s)' subject to condition as may be specified by the Board.

101. Section 29A relates to ineligibility of the 'Resolution Applicant', which stipulates that ineligible persons in terms of the said provision are not eligible to submit a 'Resolution Plan'.

102. Section 30 deals with "*Submission of Resolution Plan*". As per sub-section (1) of Section 30, a 'Resolution Applicant' may submit a



‘Resolution Plan’ to the ‘Resolution Professional’ prepared on the basis of the ‘Information Memorandum’, which the ‘Resolution Professional’ is to examine in terms of sub-section (2) of Section 30.

103. Proviso to sub-section (4) of Section 30 stipulates that the ‘Committee of Creditors’ shall not approve a ‘Resolution Plan’, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 where the ‘Resolution Applicant’ is ineligible under Section 29A and may require the ‘Resolution Professional’ to invite a fresh ‘Resolution Plan’ where no other ‘Resolution Plan’ is available with it.

104. Second proviso further stipulates that where the ‘Resolution Applicant’ referred to in the first proviso is ineligible under clause (c) of Section 29A, the ‘Resolution Applicant’ shall be allowed by the ‘Committee of Creditors’ such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of Section 29A, which is as follows:

***“30. Submission of resolution plan.—***

*xxx*

*xxx*

*xxx*

*Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant*

*shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:”*

105. The provisions of 'I&B Code', including Sections 25, 29A, 30, talk of 'Resolution Plan' but do not provide submission of any 'Expression of Interest' as was called for by 'Resolution Professional'. The 'Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016' while deals with 'Information Memorandum' (Regulation 36) and 'Resolution Plan' (Regulation 37), 'Mandatory Contents of 'Resolution Plan' (Regulation 38) and 'Approval of 'Resolution Plan' (Regulation 39) no provision has been made therein for submission of 'Expression of Interest'.

106. We have noticed that for inviting prospective resolution plans in terms of clause (h) of sub-section (2) of Section 25, the 'Resolution Professional' has with the approval of 'Committee of Creditors', issued advertisement on 6<sup>th</sup> October, 2017, relevant of which is as follows:

## ANNEXURE- E 182

**ESSAR STEEL INDIA LIMITED**  
**INVITATION SEEKING EXPRESSION OF INTEREST TO SUBMIT**  
**RESOLUTION PLAN FOR ESSAR STEEL INDIA LIMITED**

Essar Steel India Limited ("Corporate Debtor") is an integrated steel producer with an installed iron making capacity of c.10 MTPA and steel making capacity of c.9.7 MTPA. Pursuant to an order dated August 2, 2017 of Hon'ble National Company Law Tribunal, Ahmedabad ("NCLT"), the Corporate Insolvency Resolution Process ("CIRP") has been initiated in the matter of the Corporate Debtor as per the provisions of India's Insolvency and Bankruptcy Code 2016 ("IBC"). The NCLT had appointed Mr. Satish Kumar Gupta as the Interim Resolution Professional for the Corporate Debtor. The Committee of Creditors ("CoC") pursuant to the e-voting conducted on September 4, 2017 under regulation 26 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations") approved the appointment of Mr. Satish Kumar Gupta as the Resolution Professional ("RP") of the Corporate Debtor.

The RP under section 25(2)(h) of the IBC hereby invites all prospective lenders, investors and any other persons ("Potential Resolution Applicant") who meet the eligibility criteria ("Eligibility Criteria") available on the website of the Corporate Debtor ([www.essarsteel.com](http://www.essarsteel.com)) to put forward resolution plans in respect of the Corporate Debtor within the time lines indicated under regulation 39 (1) of the CIRP Regulations.

Any Potential Resolution Applicant who is desirous of submitting a resolution plan as above, is requested to submit expression of interest ("EOI") along with relevant documents to satisfy the Eligibility Criteria at or before 5 PM on October 23, 2017 either via email to [satishkg.ip@gmail.com](mailto:satishkg.ip@gmail.com) / [ip.essarsteel@gmail.com](mailto:ip.essarsteel@gmail.com) or by submitting physical/hard copies to Mr. Satish Kumar Gupta, C/o Alvarez & Marsal India Pvt. Ltd., Unit 703/704, 7<sup>th</sup> Floor, Tower A, Peninsula Corporate Park, G. K Marg, Lower Parel, Mumbai, Maharashtra 400013, India. Such Potential Resolution Applicant would also be required to submit a duly stamped and signed confidentiality undertaking ("Confidentiality Undertaking") as per the requirements of the IBC and the CIRP Regulations as a condition for receiving the information memorandum and other relevant information in relation to the Corporate Debtor. Format of the Confidentiality Undertaking is available on the website of the Corporate Debtor. Potential Resolution Applicants are encouraged to submit their EOIs along with the documents satisfying Eligibility Criteria and Confidentiality Undertaking at the earliest to start receiving the information memorandum and other relevant information in relation to the Corporate Debtor.

The consideration, evaluation and approval of eligible resolution plans forwarded by the RP to the CoC is within the powers of the CoC under the provisions of the IBC and the CIRP Regulations. The CoC may specify evaluation criteria separately for evaluation of the resolution plans. The detailed process and timeline for submission of resolution plans shall be separately communicated to the Potential Resolution Applicants who meet the Eligibility Criteria.

Please note that the RP is bound by law to present to the CoC for its approval under the IBC, only such resolution plans which confirm the conditions set out under section 30(2) of the IBC read along with regulation 38 of the CIRP Regulations. All Potential Resolution Applicants who are desirous of submitting a resolution plan in respect of the Corporate Debtor must read, understand and comply with all requirements under the IBC, the CIRP Regulations and any other applicable regulations under the IBC that are in force now or which may come into force subsequently, for resolution plan and all matters under, in pursuant to, in furtherance of or in relation to, this invitation.

For clarifications, if any, please contact: [satishkg.ip@gmail.com](mailto:satishkg.ip@gmail.com) / [ip.essarsteel@gmail.com](mailto:ip.essarsteel@gmail.com)

Please note that RP/CoC reserves the right to amend or modify the invitation/process without assigning any reason and without incurring any liability of whatsoever nature. Any amendment or modification shall be posted on the website of the Corporate Debtor. Potential Resolution Applicants should regularly visit the website of the Corporate Debtor for regular updates for clarifications, amendments, if any.

Sd/-  
 Satish Kumar Gupta  
 Resolution Professional-Essar Steel India Limited

107. In the present case, the 'Expression of Interest' was submitted by 'AM India Ltd.' on 11<sup>th</sup> October, 2017 and by 'Numetal Ltd.' on 20<sup>th</sup> October, 2017, both prior to 23<sup>rd</sup> November, 2017 i.e. the date Section 29A was inserted by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 but the 'Resolution Plans' were submitted by both 'AM India Ltd.' and 'Numetal Ltd.' on 12<sup>th</sup> February, 2018.

108. The question arises for consideration is as to what will be the position if, on the basis of 'Information Memorandum' the 'Expression of Interest' is submitted by the 'Resolution Applicants' prior to 23<sup>rd</sup> November, 2017 and whether they are eligible to take advantage of 2<sup>nd</sup> proviso to sub-section (4) of Section 30.?

109. Section 29A came into force on 23<sup>rd</sup> November, 2017. Those who submitted 'Resolution Plan' prior to the said date and if covered by clause (c) of Section 29A are entitled to derive benefit of second proviso to sub-section (4) of Section 30. Under 'I&B Code' there is no provision to submit 'Expression of Interest' prior to 'Resolution Plan'. What we find from the invitation seeking 'Expression of Interest' to submit a 'Resolution Plan' for 'Essar Steel Limited' published on 6<sup>th</sup> October, 2017 is the first stage of 'Resolution Plan'. Therefore, we hold that 'Expression of Interest' is part of the 'Resolution Plan', which follows the 'Resolution Plan'. In such case, the date of submission of the 'Expression of Interest' should be treated to be the date of submission of

the 'Resolution Plan'. In this background, we hold that the date of submissions of the 1<sup>st</sup> 'Resolution Plan(s)' of 'AM India Ltd.' and 'Numetal Ltd.' will be deemed to be 11<sup>th</sup> October, 2017/12<sup>th</sup> February, 2018 and 20<sup>th</sup> October, 2017/12<sup>th</sup> February, 2018 respectively.

110. If the aforesaid proposition is not accepted, it will deprive the 'Resolution Applicants' from deriving advantage of second proviso to sub-section (4) of Section 30 inserted on 23<sup>rd</sup> November, 2017, even though they acted to submit the 'Resolution Plan' by submitting the 'Expression of Interest' of 'Resolution Plan'.

111. In view of the aforesaid finding, we hold that the Adjudicating Authority rightly held that the Appellant- 'AM India Ltd.' should have been given the opportunity by the 'Committee of Creditors' in terms of second proviso to sub-section (4) of Section 30.

112. The question arises for consideration is whether the 'AM Netherlands' is eligible, having transferred its entire shareholding of 'Uttam Galva' on 7<sup>th</sup> February, 2018 and by transferring of its entire shareholding of 'Fraseli' in 'KSS Global' on 9<sup>th</sup> February, 2018 i.e. two to four days prior to the submission of 'Expression of Interest' (first phase of 'Resolution Plan').

113. Proviso to clause (c) of Section 29A reads as follows:

*“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”*

114. The aforesaid proviso to clause (c) makes it clear 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’. It does not stipulate any other mode to become eligible and thereby does not prescribe any other mode to become ineligible, including by selling the shares thereby existing as a member of the Company whose account has been classified as non-performing asset accounts in accordance with the guidelines of the Reserve Bank of India.

115. Second proviso to sub-section (4) of Section 30 also stipulates, as follows:

**“30. Submission of resolution plan.—**

(4) xxx                                          xxx                                          xxx

*Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution*

*applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A”*

116. From both the aforesaid provisions, it is clear that except in the manner the ‘Resolution Applicants’ can make it eligible and get rid of ineligibility under clause (c) of Section 29A that is by making payment of all overdue amounts in accordance with the proviso to clause (c) of Section 29A, no other manner a person, who is otherwise ineligible under clause (c) of Section 29A, can become eligible. There is no provision in the ‘I&B Code’ which permits an ineligible person to become eligible by selling or transferring its shares of the Company whose accounts have been declared as NPA in accordance with the guidelines of Reserve Bank of India.

117. Admittedly, ‘AM Netherlands’ is related party of ‘AM India Ltd.’. ‘AM Netherlands’ was the promoter of ‘Uttam Galva’ on the date when the ‘Uttam Galva’ classified as NPA in accordance with the guidelines of Reserve Bank of India and a period of one year has elapsed from the date of such classification, at the time of commencement of ‘Corporate Insolvency Resolution Process’ of the ‘Corporate Debtor’.

118. Once the stigma of “classification of the account as NPA” has been labelled on the promoter of the ‘Uttam Galva’, even after sale of shares by ‘AM Netherlands’ it may ceased to be a member or promoter of the ‘Uttam Galva’, but stigma as was attached with it will continue for the purpose of ineligibility under clause (c) of Section 29A, till payment of all overdue amount with interest and charges relating to NPA account of the ‘Uttam Galva’ is paid.

119. ‘AM Netherlands’ is 100% subsidiary of ‘AMSA’ which is a listed company incorporated in Luxemburg. ‘AM India Ltd.’ is also a subsidiary of ‘AMSA’ having 99.99% shareholding in it. Accordingly, ‘AMSA’ is also a promoter, in the management and in control of ‘AM India Ltd.’. ‘Fraseli’ is a company owned and controlled by a company called by ‘Mittal Investments’ acquired about one third of the share capital of ‘KSS Global BV’. Pursuant to such acquisition, ‘Fraseli’ acquired control over ‘KSS Global BV’ which in turn controls ‘KSS Petron’ and ‘Petron Engineering’. ‘Mittal Investments’ is owned and controlled by LN Mittal Group, the promoters of the ‘AM India Pvt. Ltd.’.

120. ‘AM India Ltd.’ divested its shareholding in ‘KSS Global BV’ which is 100% owner of ‘KSS Petron’ (a Company whose account has been declared as NPA). ‘AM India Ltd.’ has its control over it will be evident from the fact that it has nominee Directors, who also resigned on 9<sup>th</sup> February, 2018 i.e. 3 days before submission of the ‘Expression of



Interest' of 'Resolution Plan' by 'AM India Ltd.' This will be also clear from the fact that the 'AM India Ltd.' was nothing that an entity controlling and managing in 'KSS Global BV' (which is 100% owner of 'KSS Petron' an NPA Company) divested its shareholding in 'KSS Global BV' on 9<sup>th</sup> February, 2018 i.e. 3 days before submission of the 'Expression of Interest' of 'Resolution Plan'.

121. We have also noticed that consequent to such acquisition of control by 'Fraseli', on 23<sup>rd</sup> May, 2011 a public announcement was made under 'SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997' for the acquisition of shares of 'Petron Engineering' *inter alia* by 'KSS Global BV' and 'Fraseli'. Therefore, we hold that Mr. L.N. Mittal Group, a connected person of 'AM India Ltd.' being the promoter and in the control and management of 'KSS Petron' since 2011 and 'KSS Petron' having classified as 'NPA' by multiple banks, the stigma attached to it cannot be cleared by 'KSS Global' by divesting its shares in 'KSS Petron' on 9<sup>th</sup> February, 2018 and the stigma will continue for the purpose of ineligibility under clause (c) Section 29A, till the payment of all overdue amount with interest thereon and charges relating to NPA account of 'KSS Petron'.

122. Admittedly, there are three nominee Directors of 'AM India Ltd.' in 'KSS Petron', one of the NPA Company. The nominee Directors of the

Appellant- 'AM India Ltd.' had also resigned on 9<sup>th</sup> February, 2018 i.e. three days' before the submission of the 'Resolution Plan'. Therefore, it is clear that the 'AM India Ltd.' had complete control over the 'KSS Petron'.

123. It is informed that after impugned order passed by the Adjudicating Authority, the 'AM India Ltd.' had made conditional deposit of Rs. 7,000 Crores in its own current account (Escrow Account). Such depositions of the amount in its own Escrow Account does not qualify as a payment of overdue amounts in terms of proviso to clause (c) of Section 29A. A conditional offer to pay the over dues amount cannot be accepted till it is complied in the light of proviso to clause (c) of Section 29A unconditionally.

124. Dr. Abhishek Manu Singhvi, learned Senior Counsel appearing on behalf of 'AM India Ltd.' when asked, on instruction, submitted that if this Appellate Tribunal accept the 'Resolution Plan' submitted by the 'AM India Ltd.', it may deposit the non-performing assets amount with interest in the respective accounts which were declared as NPA in accordance with the guidelines of the Reserve Bank of India.

125. As we hold that 'AM India Ltd.' is also entitled to the benefit of second proviso to sub-section (4) of Section 30, we give one opportunity to the 'Resolution Applicant'- 'AM India Ltd.' to make payment of all overdue amount with interest thereon and charges relating to Non-

Performing Accounts of both the 'Uttam Galva' and the 'KSS Petron' in their respective accounts within three days i.e. by 11<sup>th</sup> September, 2018. If such amount is deposited in the accounts of both Non-Performing Accounts of 'Uttam Galva' and 'KSS Petron' within time aforesaid and is informed, the 'Committee of Creditors' will consider the 'Resolution Plan' submitted by 'AM India Ltd.' along with other 'Resolution Plans', including the 'Resolution Plan' submitted by the 'Numetal Ltd.' on 29<sup>th</sup> March, 2018, and if so necessary, may negotiate with the 'Resolution Applicant(s)'. An early decision should be taken by the 'Committee of Creditors' and on approval of the 'Resolution Plan', the 'Resolution Professional' will place the same immediately before the Adjudicating Authority who in its turn will pass order under Section 31 in accordance with law. The 'Successful Resolution Applicant' will take steps for execution of its 'Resolution Plan' and deposit the upfront money if proposed, in terms of the 'Resolution Plan'.

126. Taking into consideration the fact that a long period has taken due to pendency of the case before the Adjudicating Authority and thereafter, before this Appellate Tribunal, we direct the Adjudicating Authority to exclude the period the appeal was pending before this Appellate Tribunal i.e. from 26<sup>th</sup> April, 2018 till today (7<sup>th</sup> September, 2018) for the purpose of counting the total period of 270 days. The impugned order dated 19<sup>th</sup> April, 2018 passed by the Adjudicating Authority so far as it relates to eligibility of 'Numetal Ltd.' as on the date

of the submission of the 'Resolution Plan' dated 29<sup>th</sup> March, 2018 is set aside. The impugned judgment/order in respect to 'AM India Ltd.' is affirmed with conditions as mentioned in the preceding paragraphs. All the appeals are disposed of with aforesaid observations and directions. The parties will bear their respective cost.

(Justice S.J. Mukhopadhaya)  
Chairperson

(Justice Bansi Lal Bhat)  
Member(Judicial)

NEW DELHI  
7<sup>TH</sup> September, 2018

/AR/

