



**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
BENCH AT AURANGABAD**

WRIT PETITION NO. 11862 OF 2025

. AHMEDNAGAR FORGINGS LIMITED
(NOW METALYST FORGINGS LIMITED)
B-20, Five Star MIDC, Shendra,
Aurangabad - 431154,
Through its Authorised Representative .. Petitioner

VERSUS

. DONGARE GANESH D.
S/O RAGHUNATH B. WAGH,
H. N. 2/5-11, Ramnagar,
Cidco, Aurangabad - 431003 .. Respondent

...
AND
...

WRIT PETITION NO. 12729 OF 2025

. METALYST FORGINGS LIMITED
B-20, Five Star MIDC, Shendra,
Aurangabad - 431154,
Through its Authorised Representative .. Petitioner

VERSUS

. SANJAY MAHADEO KHUNE,
Suler Jawalge,
Tq. Akkalkot,
Solapur, M. H. - 413216 .. Respondent

...
AND
...

WRIT PETITION NO. 12730 OF 2025

. METALYST FORGINGS LIMITED
B-20, Five Star MIDC, Shendra,
Aurangabad - 431154,

Through its Authorised Representative

.. Petitioner

VERSUS

VISHAL ANANDRAO KAWTHEKAR,
Address At: N-7, Ayodhyanager,
F-20/100, Aurangabad - 431003

.. Respondent

...
AND
...

WRIT PETITION NO. 12731 OF 2025

METALYST FORGINGS LIMITED
B-20, Five Star MIDC, Shendra,
Aurangabad - 431154,
Through its Authorised Representative

.. Petitioner

VERSUS

SANJAY AMBADAS KULKARNI,
Garkheda Parisar,
Aurangabad - 43100

.. Respondent

...
Advocate for the Petitioner/s: Mr. P. R. Katneshwarkar, Senior
Advocate a/w. Mr. Puneet Bindra, Mr. A. D. Kulkarni,
Mr. Prathmesh Kundalwadikar, Ms. Chaitali Seth i/b.
Mr. Amit Yadkikar
Advocate for the Respondents: Mr. B. R. Kawre
...

CORAM : ARUN R. PEDNEKER, J.

Reserved on : 16.12.2025

Pronounced on : 12.01.2026

Judgment:

1. Rule. Rule returnable forthwith. With consent of the parties heard finally.

2. All the Writ Petitions involve identical facts and issues. As such, they are taken up together.

3. In Writ Petition No.12730 of 2025, the petitioner challenges the order passed by the Industrial Tribunal, Aurangabad in Compliant (IT) No.1 of 2019 in Reference (I.T.) No.8 of 2017, in complaint filed under Section 33-A of The Industrial Disputes Act (for brevity "*the Act*") seeking a declaration that the petitioner / company has contravened the provisions of Section 33(2)(b) of the Act and having committed an offence, be punished with imprisonment for six months along with penalty or compensation of Rs.10,00,000/- and also for quashing and setting aside dismissal order dated 15.04.2019 with direction to the petitioner / company to reinstate the respondent / employee with continuity of service and full back wages.

4. The facts are primarily taken up from Writ Petition No.12730/2025, as under:

According to the complainant, the petitioner / company is a company registered under the Indian Companies Act. It is a Scheduled Engineering Industry engaged in the business of manufacturing of forged Industrial Automobile Components and the Manager appointed and authorized by the respondent has supervision and control over the activities of the complainant. The

complainant is a permanent workman since 02.11.2018 and his last drawn wages are Rs.22,500/- per month. The complainant is a active member of the Ahmednagar Forging Kamgar Sanghtana (for brevity "*the Trade Union*"). There was wage settlement between the Trade Union and the Management of the respondent in the year 2013, which expired in 2016. The respondent delayed the further wage agreement so the Trade Union raised dispute, which was referred for adjudication to the Tribunal vide Reference IT No.8 of 2017.

The respondent defaulted in repaying loan of the bankers / lenders. So bankers / lenders initiated proceedings under the Corporate Insolvency Resolution Process (CIRP) as per Insolvency and Bankruptcy Code 2016 before the N.C.L.T. A resolution professional was appointed. But during the pendency of the resolution process and industrial dispute, local management acted in a malicious and revengeful manner against the complainant. Even arbitrary action was taken against the active members of the Trade Union. Thus, a show cause notice was issued on 18.09.2018 with a view to victimize the complainant. Complainant replied on 08.10.2018 but without considering it, charge-sheet was issued on 10.10.2018 alleging false and fabricated charges of sleeping on duty. The respondent threatened to

terminate the services of the complainant, unless he resigned from the membership.

One Mr. V. D. Kulkarni was appointed as Enquiry Officer. Even application to appoint defence representative was rejected, but in view of the order of the Industrial Tribunal, the complainant was allowed to appoint defence representative. The enquiry was conducted without following principles of natural justice and dismissed the employee without compliance of mandatory provision of Section 33 of the Act.

Thus the dismissal dated 15.04.2019 is in utter violation of mandatory provisions, which is challenged before the Industrial Tribunal. No approval was sought under Section 33(2) (b) of the Act, so the de jure relationship is still continuing and protection granted to the workmen cannot be taken away by the respondent.

It is stated that the order of the dismissal is ineffective and the complainant is entitled for reinstatement with continuity and backwages.

The respondent / employee defended the complaint on various grounds.

5. For the purpose of this proceedings, arguments on merits of complainant are not required to be dealt with as the order

of the tribunal is specifically challenged on one ground i.e. the new management which is the Successful Resolution Applicant has received the entire company on a clean slate and that they are not bound to reinstate the employee and pay any wages to them. As there is no specific provision made for the same in the approved resolution plan.

6. The contention of the petitioner primarily is that they have received the company on a clean slate and that there can be no claim made by the complainant against the SRA (Successful Resolution Applicant).

7. Considering the above submissions, the arguments of the petitioner is restricted to the points raised by the petitioner and the facts necessary to decide the issue are noted below.

8. On 16.02.2017, the petition under Section 7 of the IBC being C.P (IB)/1555/MB/2017 titled "State Bank of India vs. Metalyst Forgings Ltd." came to be filed against Metalyst Forgings Ltd. Before the Ld. NCLT, Mumbai Bench. On 15.12.2017, the above petitioner under Section 7 of the IBC came to be admitted by the learned NCLT and consequentially the CIRP of Metalyst Forgings Ltd. commenced. Vide the Admission Order, the learned NCLT was pleased to appoint one Mr. Dinkar T. Venkatasubramanian as the

Resolution Professional whereafter the entire management of Metalyst Forgings Ltd. stood vested in him. The learned NCLT also declared a moratorium in terms of Section 14 of the Code whereafter institution or continuation of all pending proceedings against Metalyst Forgings Ltd. were prohibited. On 23.12.2017, the Resolution Professional made a public announcement in the Indian Express, Jansatta, Loksatta and Himachal Times thereby calling upon the creditors of Metalyst Forgings Ltd. to submit their claim with proof on or before 03.01.2018 to him. On 12.01.2018, the first meeting of the CoC was convened by the Resolution Professional. On 22.01.2018, the Resolution Professional published an advertisement in the Economic Times inviting Expression of Interest from prospective resolution applicants to submit their resolution plans for the resolution of Metalyst Forgings Ltd. On 27.06.2018, the consortium of Deccan Value Investors LP and DVI PE (Mauritius) Ltd. ("DVI /SRA") submitted its resolution plan. On 04.07.2018, despite the moratorium under Section 14 of the IBC having been declared and there being an express bar on the institution or continuation of pending proceedings against Metalyst Forgings Ltd., learned Industrial / Labour Court proceeded in the Reference Proceedings. On 28.08.2018, the resolution plan submitted by DVI came to be approved by the CoC. On 05.10.2018, Judgment came to be passed by this Hon'ble High Court in the 10

writ petitions whereby the Hon'ble High Court partly allowed the writ petitions and partly allowing the said petitions and direction that the Labour Court would not adjourn the proceedings sine die and would post the proceedings in the first week of each month commencing from December 2018 and the petitioner would be obliged to tender a purshis in each of these proceedings to update the status of the NCLT proceedings. On 14.05.2024, the resolution plan submitted by DVI came to be approved by the learned NCLT. Pursuant to the approval of the Resolution Plan by the learned NCLT the management of Metalyst Forgings Ltd. came to be transferred to the Implementation and Monitoring Committee ("IMC"). On 26.06.2024, the new board on Metalyst Forgings Ltd. came to be formed whereafter its management came to be transferred to the new management of SRA i.e. the Petitioner herein. On 08.04.2025, the petitioner company filed the following applications: (I) application dated 08.04.2025 seeking disposal of the Reference Proceedings in view of the approval of the resolution plan of the SRA which came to be marked as Exhibit C-101. (II) application marked as exhibit C-102 seeking to produce the documents necessary for the disposal of Exhibit C-101 Application. On 23.04.2025, the respondent filed his say to the Exhibit C-101 application which came to be marked as Exhibit U-14. On 02.07.2025, impugned order passed by the learned Labour Court

whereby the application Exhibit C-101 was erroneously dismissed, and it was observed that the claim of the respondent herein for reinstatement is tenable. Vide the impugned order, the learned Labour Court has erroneously proceeded to adjudicate the Reference Proceedings on merits, the same being bad in law.

9. In the above factual circumstances, the learned counsel appearing for the petitioner submits that, upon the approval of the Resolution Plan by the learned NCLT; all claims, proceedings and liabilities of the Corporate Debtor (the Petitioner herein) beyond the ambit of the Resolution Plan stood extinguished and the new management / S.R.A. has taken over the Corporate Debtor on a clean slate; free from any prior claims.

That once the Resolution plan of the S.R.A. was approved by the learned NCLT under Section 31 of the Code, all claims, proceedings and liabilities beyond the ambit of the Resolution Plan stood extinguished and the Petitioner Company, under the new management of the S.R.A. / DVI, could not have been held liable in respect of the same.

The insolvency and Bankruptcy Code 2016 shall override the Industrial Disputes Act, 1947 in the present facts.

It is submitted that Section 238 of the IBC shall override the provisions of the Industrial Disputes Act, 1947. A bare

reading of Section 238 of the Code would show that the provisions of the IBC shall have an effect notwithstanding anything inconsistent contained in the Industrial Disputes Act.

That in terms of Section 32A of the IBC, 2016; upon approval of the resolution plan, the liability of the new management of the Corporate Debtor (Petitioner Company herein) shall cease for offences and it shall not be prosecuted for offences from the date the Resolution Plan has been approved by the learned NCLT under Section 31 of the code.

That in the present case each of the ingredients of Section 32A of the IBC are met i.e. (I) the respondent was terminated by the erstwhile management of the petitioner company vide termination letter dated 15.02.2014 i.e. prior to the commencement of the CIRP of the petitioner company, (ii) the resolution plan has been approved by the learned NCLT under Section 31 of the Code vide its order dated 14.05.2024 and (iii) the resolution plan has resulted in the change of the management and control of the petitioner company.

In view thereof the liability of the petitioner company, if any, for the alleged termination of the respondent has ceased, and the petitioner company shall not be prosecuted for the alleged offence from the date the Resolution plan has been approved by the learned NCLT under Section 31 of the Code (i.e. 14.05.2024) which

resulted in the change in the control and management of the Corporate Debtor. The petitioner company is entitled to immunity against all forms of prosecution including the Reference Proceedings and the same cannot be proceeded with.

In the case of **Manish Kumar Vs. Union of India and another, 2021 5 SCC 1**, the Hon'ble Supreme Court has held that the IBC being a complete Code provides for the consequence of the change in management upon the approval of a resolution plan. Section 31(1) of the Code provides that upon the approval of a resolution plan, it shall become binding on all the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, guarantors and other stakeholders. Further, upon the approval of the resolution plan, all such claims, which were not a part of the approved resolution plan stand extinguished, and no person is entitled to initiate or continue any proceedings in respect of a claim, which was not part of the said resolution plan.

Allowing the continuation of the Reference Proceedings and subjecting the petitioner company under its new management to the reference proceedings is against the objects of the IBC.

Submissions in respect of the other three petitions filed on behalf of the Petitioner:-

10. That in addition to the present matter, the Petitioner Company has also filed the following matters against the separate Impugned Orders dated 21.01.2025:

- {i} Metalyst Forgings Ltd. vs. Sanjay Mahadeo Khune [WP/12729/2025(Civil)],
- {ii} Metalyst Forgings Ltd. vs. Sanjay Ambadas Kulkarni [WP/12731/2025(Civil)],
- {iii} Metalyst Forgings Ltd. vs. Vishal Anandrao Kawthekar [WP/12730/2025(Civil)].

The only factual dissimilarity between the aforesaid 3 matters and WP/11862/2025 (Civil) is that the termination of the Respondent in WP/11862/2025 (Civil) was terminated by the erstwhile management prior to the commencement of the CIRP of the Corporate debtor whereas the Respondents in WP/12729/2025 (Civil), WP/12731/2025 (Civil) and WP/12730/2025 (Civil) were terminated from their services by the Resolution professional post initiation of the CIRP of the Petitioner Company.

The clean slate principle as well as the protection under Section 32A of the Code have been propounded/enacted to ensure

that successful resolution applicants are protected from the wrongs of the erstwhile management of the Corporate Debtor and not disincentivized from submitting resolution plans.

11. The learned counsel for the respondents / employees submits that the respondents / employees could not have been terminated if Section 14(2) of the IBC had come into force and the moratorium is in force, there could have been no challenge under service condition even in the IBC without permission of the NCLT tribunal.

In view of Section 17(1)(b) he submits that the power of the management is suspended and the employee could have not been terminated from the service. The service of the employee was terminated on 15.04.2019 in Writ Petition No.12730 of 2025 and the order under Section 14(2) was passed on 15.12.2017.

He submits that the industrial undertaking is an ongoing concern and the claim of the petitioner qua the reinstatement is maintainable and the resolution professional ought to have been aware of the pending proceedings as he had already applied to the High Court for stay of the proceedings and that no financial transaction were prohibited by the court and the professional ought to have kept the claim of the petitioner alive in the resolution. The impugned order do not call for any interference.

CONSIDERATION:-

12. The relevant clauses of the Resolution plan are reproduced hereinbelow for ease of reference and to ascertain if any provision is made qua the respondents / employees in the resolution plan:

“ 3.4.2 As set out above, the Resolution Applicants understand that all Employee and Workmen Dues are being regularly paid and no such dues are expected to be outstanding. Further, based on our assessment, the Liquidation Value of the Corporate Debtor will be insufficient to satisfy the claims of even the Secured Financial Creditors in full and therefore will likely be insufficient for payment of the Employee and Workmen Dues in accordance with the provisions of the Code. Accordingly, the employees and Workmen shall be paid the Liquidation Value accruing to them, i.e. NIL amounts, except in case of payment of the Workmen Liquidation Dues as set out in sub-section 3.4.1 above. As a consequence, in the present case, except for the mandatory payments of Workmen Liquidation Dues (if any) as set out in sub-section 3.4.1 above, all dues payable to employees and workmen shall be written off in full and shall be, and be deemed to be, permanently extinguished as on the NCLT Approval Date.

3.4.3 Accordingly, and in accordance with the above, any and all claims or demands made by, or liabilities or obligations owed or payable to, (including any demand for any losses or damages, or interest, back wages, voluntary retirement compensation, compensation, penal interest, liquidated damages already accrued / accruing or in connection with any third party claims, or any claims made by any person who may claim to be a creditor by way of exercise of rights under Applicable Law or equity) any present or past, direct or indirect, permanent or temporary employee and/or workman of the Corporate Debtor, whether admitted or not due or contingent, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured. disputed or undisputed, present

or future, whether or not set out in the Information Memorandum, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to the Effective Date pursuant to this Resolution Plan, will be written off in full and shall be, and be deemed to be, permanently extinguished with effect from the NCLT Approval Date by virtue of the order of the NCLT approving this Resolution Plan. The Corporate Debtor or the Resolution Applicants shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto.

3.7 Management and Control of the Corporate Debtor

(d) Existing Manpower of the Corporate Debtor. *The Corporate Debtor shall, without any obligation, and subject to acceptable performance norms, endeavour to retain existing manpower, which was engaged by the Corporate Debtor in relation to its business. Presently, the Corporate Debtor employs 699 (Six Hundred Ninety Nine) employees and Workmen as of December 15, 2017 as per disclosure made available in the Information Memorandum spreadsheet in the Virtual Data Room to the Resolution Applicants. Employee head count can be increased or reduced based on the operational performance and growth of the Corporate Debtor. Certain members of the current management may be retained at the discretion of the Resolution Applicants for a period of 6 (six)-12 (twelve) months as consultants to ensure smooth transition of management and stabilization of operations.*

4.3.1 *Under this Resolution Plan, all Claims, demands, financial liabilities and obligations (including any potential claims, demands and financial liabilities) from:*

(a) *all adverse inquiries, investigations, notices, causes of action, suits, claims, disputes, litigation, arbitration or other judicial, regulatory or administrative proceedings against, the Corporate Debtor or the affairs of the Corporate Debtor, pending or threatened, present or future, (including without limitation, any investigation by any Governmental Authority) that have been initiated or are threatened ("Dispute") to be initiated against or by the Corporate Debtor (including*

those proceedings that relate to the Corporate Debtor); and

(b) any Encumbrance or collateral (whether enforced, crystallised or proceeded with or not) over the Assets (created and/or perfected for debt availed by the Corporate Debtor or a third party) (collectively "Security") that exists by operation of Applicable Law, or in connection with any debt owed to Financial Creditors, Operational Creditors, Other Creditors or any other debt or obligation of the Corporate Debtor, or in relation to a third party (including Related Parties) whose obligations were secured by the Corporate Debtor by creation any Security in favour of another person, at any time prior to the NCLT Approval Date, shall stand automatically revoked, released, cancelled, withdrawn, dismissed and deemed null and void (as the case may be) and all Claims arising from any Dispute or Security, whether set out herein or not, whether admitted or not, asserted or unasserted, crystallised or uncrystallised, known or unknown, secured or unsecured, disputed or undisputed, present or future, whether or not set out in the Information Memorandum, the Virtual Data Room, the balance sheets of the Corporate Debtor or the profit and loss account statements of the Corporate Debtor, in relation to any period prior to the Effective Date or arising on account of this Resolution Plan, will be written off in full and shall be, and be deemed to be, permanently extinguished on the Effective Date and with effect from the NCLT Approval Date by virtue of regulatory or administrative proceedings against, the Corporate Debtor for recovery of, or in relation to, Claims in relation to any debt owed by the Corporate Debtor to such Financial Creditor.

4.6 *Payments to Creditors submitting claims after approval of the Resolution Plan/persons whose claims were not accepted by the Resolution Professional The Code and the IBBI (CIRP) Regulations entitle all creditors of a corporate debtor to submit their claims to the resolution professional on or prior to the date on which the resolution plan gets approved by the COC. As a result, in the event any Creditor of the Corporate Debtor does not submit its claims to the Resolution Professional prior to the NCLT Approval Date, or fails to*

get the same admitted by making an application to the NCLT and in case the Resolution Professional or the COC refuses to accept the claims of such Creditor, then in such case, the said Creditor will not be entitled to receive any payments under the Resolution Plan. The unclaimed amounts which are not admitted or accepted shall stand extinguished and become NIL by virtue of the order of the NCLT approving this Resolution Plan.

4.8 ...XXX..*For the avoidance of doubt, once approved by the NCLT, this Resolution Plan is binding on the Corporate Debtor, members of the Corporate Debtor, Creditors, guarantors and other stakeholders involved in the Resolution Plan, any and all claims, demands, debts and financial liabilities arising on or after Insolvency Commencement Date in respect of the Corporate Debtor and until the Effective Date by virtue of the order of the NCLT approving this Resolution Plan: (i) be permanently extinguished; and (it) deemed to have stopped accruing to the Corporate Debtor, and the Resolution Applicants and shall at no point of time be, directly or indirectly, held responsible or liable in relation thereto for any reason whatsoever.”*

13. The petitioner was declared as a successful resolution applicant and the resolution plan was approved by the NCLT vide its order dated 14.05.2024. In the resolution plan, provision is not made qua the claim of the respondents / employees.

14. Clause 3.7 of the resolution plan is set out above, wherein it is observed that the existing manpower of the corporate debtor, the corporate debtor shall without any obligation and subject to acceptable performance norms endeavour to retain existing manpower, which was engaged by the corporate debtor in relation to its business. It is observed that presently the corporate

debtor employs 699 employees and workmen as of 15.12.2017 as per disclosure made available in the Information Memorandum spreadsheet in the virtual data room to the resolution applicants. It is stated that the respondents names are not in the list of 699 employees and they have also not filed any claims before the resolution professional.

LAW ON THE SUBJECT:-

15. In the instant case, the application moved under section 33A of the Industrial Disputes Act was pending. During the moratorium, the proceedings were under suspension and after moratorium period the matters are now proceeded further. The question before this court is, whether the proceedings could have been continued further before the Industrial Tribunal after the acceptance of resolution plan. However, this issue is no more in res integra as the same is concluded by the Hon'ble Supreme Court in the case of **Electrosteel Steel Limited (Now M/S Esl Steel Limited vs. Ispat Carrier Private Limited, Civil Appeal No.2896 of 2024, dated 21.04.2025**, wherein the Hon'ble Supreme Court by relying upon the earlier Judgments at paragraphs no.50, 50.1,51.52 has held that it is now well settled that once resolution plan is duly approved by the adjudicating authority under Sub-section 1 of Section 31 all claims which are not part of the resolution plan

shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect of the claim which is not a part of the resolution plan. In the case of *Essar Steel India Ltd. Committee of Creditors Vs. Satish Kumar Gupta, (2020) 8 SCC 531*, the Hon'ble Supreme Court had categorically declared that a successful resolution applicant cannot be faced with undecided claims after the resolution plan is accepted. Otherwise this would amount to a hydra head popping up which would throw into uncertainty the amount payable by the resolution applicant. It has been further observed that the lifting of the moratorium does not mean that the claim of the respondent would stand revived notwithstanding approval of the resolution plan by the adjudicating authority. Moratorium is intended to ensure that no further demands are raised or adjudicated upon during the corporate insolvency resolution process so that the process can be proceeded with and concluded without further complications.

CONCLUSION:-

16. Considering the law as declared by the Hon'ble Supreme Court and also considering the relevant clauses of the resolution plan, there is no scope left for payment of any dues by the petitioner / company and the petitions will have to be necessarily

allowed. In view of the resolution plan, as approved, the claim of the respondents would automatically stand extinguished.

17. It is argued by the respondents / employees that since their claims are yet to be adjudicated upon, no claim could have been raised before the resolution professional, in view of the Judgment of the Hon'ble Supreme Court in the case of **Electrosteel Steel Limited (Now M/S Esl Steel Limited vs. Ispat Carrier Private Limited)**, the Judgment of the Orissa High Court in the case of **M/s. Ferro Alloys Corp. Ltd., Bhadrak Vs. The Presiding Officer, Labour Court, Bhubaneswar and another, dated 29.08.2023**, cannot be relied upon.

18. However, by virtue of the Judgment of the Hon'ble Supreme Court in the case of **Electrosteel Steel Limited (Now M/S Esl Steel Limited vs. Ispat Carrier Private Limited)** as noted above, no further claim of the respondents / employees could have been adjudicated by the Industrial Tribunal and Labour Court. Even the claim for reinstatement without back-wages cannot be considered by the Labour Court / Industrial Tribunal. The proceeding pending before the Labour Court, Aurangabad bearing Reference (IDA) No.61 of 2014 stands terminated. The impugned order dated 02.07.2025, passed by the Presiding Officer, Labour Court-II, Aurangabad and the impugned orders dated 21.01.2025, passed by

the Presiding Officer, Industrial Tribunal, Aurangabad are quashed and set aside.

19. Rule is made absolute in above terms. The Writ Petitions are allowed accordingly.

[ARUN R. PEDNEKER, J.]

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