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IN THE HIGH COURT OF KARNATAKA AT BENGALURU

DATED THIS THE 26TH DAY OF FEBRUARY, 2026

BEFORE

THE HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CIVIL MISC. PETITION NO. 243 OF 2023

BETWEEN

KNK CONSTRUCTION PRIVATE LIMITED
(FORMERLY KNOWN AS KNK NEXGEN CONSTRUCTION PVT LTD)
NO 19, 33RD A CROSS
11TH MAIN
BANGALORE 560041
REP BY ITS DIRECTOR
MR DARSHAN PUSHPARAJ

.... PETITIONER

(BY SRI. PRADEEP NAIK., ADVOCATE FOR
SMT. ANUPAMA G. HEBBAR., ADVOCATE)

AND

M/S MODERN ASSET
A PARTNERSHIP FIRM
BEARING REGISTRATION NO GNR/449/2012-13
HAVING OFFICE AT NO 23,
4F SANKEY SQUARE
SANKEY ROAD
LOWER PALACE ORCHARDS
BENGALURU 560003
REP BY ITS PARTNER
MR KUNAL B GOWDA

.... RESPONDENT

(BY SRI. DHYAN CHINNAPPA., SR ADVOCATE FOR
SRI. SUNDARARAMAN, ADVOCATE)

THIS CMP IS FILED UNDER SECTION 11(6) OF THE ARBITRATION AND CONCILIATION ACT, 1996 READ WITH THE APPOINTMENT OF ARBITRATORS BY THE CHIEF JUSTICE OF KARNATAKA HIGH COURT SCHEME, 1996 PRAYING TO APPOINT AN ARBITRATOR, WHO IS FORMER HONBLE JUDGE OF THE DISTRICT

COURT IN KARNATAKA AS THIS HONBLE COURT MAY DEEM FIT, TOWARDS CONSTITUTION OF ARBITRAL TRIBUNAL FOR ADJUDICATION UPON ALL THE CLAIMS AND DISPUTES OF THE PETITIONER AGAINST THE RESPONDENT, THROUGH THE ARBITRATION AND CONCILIATION CENTRE, BENGALURU PURSUANT TO THE CLAUSE NO. 19.13 OF THE CC DATED 09.07.2018 .AND ETC.

THIS CMP COMING ON FOR ORDERS AND HAVING BEEN RESERVED FOR ORDERS ON 19.12.2025, THIS DAY, THE COURT PRONOUNCED THE FOLLOWING:

CORAM: HON'BLE MR. JUSTICE SURAJ GOVINDARAJ

CAV ORDER

1. The Petitioner is before this Court seeking for the following reliefs:

> *(a) Appoint an arbitrator, who is former Honble Judge of the District Court in Karnataka as this Honble Court may deem fit, towards constitution of arbitral tribunal for adjudication upon all the claims and disputes of the Petitioner against the Respondent, through the Arbitration and Conciliation Centre, Bengaluru pursuant to the clause No. 19.13 of the CC dated 09.07.2018*
>
> *(b) Award costs*
>
> *(c) Grant such other relief(s) that this Hon'ble High Court deems fit, in the interests of justice and equity.*

2. The Respondent is stated to have floated a tender for the construction of an office building located at Sy.No.2/2, Venkatala Village, Yelahanka Hobli, Bengaluru. The Petitioner, having bid for the same, was declared successful and awarded the tender. The

Letter of Intent (**LOI**) came to be issued on 7.5.2018, and the Letter of Award (**LOA**) came to be issued on 28.5.2018, confirming the acceptance of the bid of the Petitioner for an amount of Rs.1,33,68,56,000/-.

3. Thereafter, a contract was entered into on 9.7.2018, which included the Conditions of Contract (**CC**). The scope of work for the Petitioner's services was contained in the above documents, more fully described in the drawings, specification, bill of quantities.

4. Respondent initially made a payment of a sum of Rs.3,06,01,970/- as mobilisation advance to the Petitioner, in pursuance of which, the Petitioner furnished a bank guarantee against such advance payment, which was required to be kept alive until the entire advance payment was repaid/adjusted. The Petitioner furnished a mobilisation bank guarantee on 23.01.2019 for a sum of Rs.1,56,13,250/-. The agreement stipulated that 5% of all payments made to the Petitioner would be retained till completion of the defect liability period, that is, twelve months.

5. The Petitioner claims to have commenced the work on 1.6.2018 and carried out the work in an efficient manner, and alleges that there are certain delays and defaults on the part of the Respondent as well as variations in the scope of works. The time period, therefore, was extended until 31.12.2019. The Petitioner claims that 95% of the work had been completed, and at that stage, when the balance of the work was in the process of being completed on 9.1.2020, the Respondent issued a notice alleging breach on the part of the Petitioner and called upon the Petitioner to remedy the defaults within 14 days.

6. The defaults were contested by the Petitioner. In the meanwhile, the Corporate Insolvency Resolution Process (**CIRP**) had been initiated against the Petitioner, and a moratorium was imposed with effect from 11.12.2019, which was only lifted on 5.4.2022. It is during the period of the moratorium that it is alleged that the Respondent had illegally invoked the mobilisation bank guarantee and terminated the contract/agreement. Apart from that, the Petitioner has various claims against the Respondent on various heads of account, which resulted in irreconcilable disputes arising between the parties. In that background, the Petitioner vide a legal notice dated

13.3.2023 invoked the arbitration clause being Clause 19.13 of the CC by nominating its arbitrator, which is reproduced hereunder for easy reference:

> ***19.13. ARBITRATION & RELATED ISSUES***
>
> *The Parties shall attempt to settle any dispute or differences in relation to or arising out of or touching this Works Contract or the validity, interpretation, construction, performance breach or enforceability of this Works Contract (collectively Disputes), by way of negotiation. To this end, each of the Parties shall use its reasonable endeavors to consult or negotiate with the other party in good faith and in recognising the Parties mutual interests and attempt to reach a just and equitable settlement satisfactory to both parties. If the parties have not settled the Dispute by negotiation within 30(Thirty) days from the date on which negotiation are initiated, the Disputes, if not solved /settled, shall be referred to, and finally resolved by Arbitration by the Sole Arbitrator appointed by the Employer. The Arbitration proceedings shall be handled & construed as per the Indian Contracts Act 1872 and the Arbitration and Conciliation Act, 1996 and Rules and amendments made there under.*
>
> *The arbitration proceedings shall be conducted at Bangalore.*
>
> *The prevailing party in the Arbitration conducted hereunder shall be entitled to recover from the other party (as part of the arbitral award or order) its attorney's fees and other costs.*

7. The Respondent had issued a reply notice on 10.4.2023 denying the existence of an arbitration agreement between the parties, and it is in that background that the Petitioner has approached this Court seeking the appointment of an arbitrator.

8. Notice having been issued, the Respondent has entered an appearance and filed his objections statement, taking up various contentions. According

to the Respondent, the Respondent has terminated the contract/agreement on 25.02.2020. Since the Corporate Insolvency Resolution Process of the Petitioner commenced on 17.12.2019, claims were called for from the creditors of the Petitioner.

9. Accordingly, the Respondent sent their claims to the Resolution Professional (**RP**) on 1.3.2020 along with supporting documents, namely proof of claim. Reconciliation of the account was also submitted, certified by the project consultant, wherein it was computed that the Respondent was liable to receive a sum of Rs.12,26,30,840.63/- from the Petitioner even after encashing the bank guarantee for a sum of Rs.1,56,13,250/-.

10. Though the RP had accepted the entire claim submitted by the Respondent and quantified the amount payable by the Petitioner to the Respondent at Rs.12,26,30,840/- as per the list of operational creditors submitted by the RP and uploaded on the website. The RP, having secured details from the Petitioner and his representative as regards any amounts due by the Respondent to the Petitioner, had taken into account the submissions made and tabulated the dues by holding that there is no

amount due by the Respondent to the Petitioner, and as such, no claim could be made by the Petitioner now.

11. The National Company Law Tribunal (NCLT) had approved the final resolution plan dated 16.10.2020 submitted by the successful resolution applicants and has also approved the resolution plan. It is contended that the said resolution plan is binding on the corporate debtor, namely, the Petitioner, as well as its creditors, including the Respondent and other governmental and statutory authorities. In the resolution plan, neither the RP nor the Petitioner has reserved any liberty to institute proceedings against the Respondent for any claim made against the Respondent. As per the resolution plan, it was proposed that the operational creditors would be paid 0.71% of the amount claimed, and it is on that basis that the payments were made in the time frame stipulated therein.

12. On that basis, it is contended that there is no arbitration agreement in existence. The disputes are non-arbitrable. The claims made by the Petitioner are deadwood claims. The clean slate theory would be applicable, and on that basis, it is contended that

there being no arbitrable dispute, the petition is required to be dismissed.

13. Sri Pradeep Naik, learned counsel appearing for the Petitioner, would submit that:

13.1. The scope of Section 11 of the Arbitration and Conciliation Act 1996 (Hereinafter for brevity referred to as ***A&C Act***) is extremely narrow and is limited to determining, *prima facie,* the existence of an arbitration agreement. His contention is that once an arbitration agreement is placed before the Section 11 Court, the Section 11 Court should appoint an arbitrator and refer the parties for adjudication by the arbitrator. None of the disputed aspects ought to be considered by this Court.

13.2. In this regard, he relies upon the decision of the Hon'ble Apex Court in the case of ***SBI General Insurance vs Krish Spinning***[1], more particularly Paras 110, 113, 114, 115, 116, 117, 118, 119, 121 and 138, which are reproduced hereunder for easy reference:

> ***110.*** *The parties have been conferred with the power to decide and agree on the procedure to be adopted for appointing arbitrators. In cases where the agreed upon*

[1] 2024 12 SCC 1

procedure fails, the courts have been vested with the power to appoint arbitrators upon the request of a party, to resolve the deadlock between the parties in appointing the arbitrators.

113. *The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.*

114. *The use of the term "examination" under Section 11(6-A) as distinguished from the use of the term "rule" under Section 16 implies that the scope of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to "rule" under Section 16. The prima facie view on existence of the arbitration agreement taken by the Referral Court does not bind either the Arbitral Tribunal or the Court enforcing the arbitral award.*

115. *The aforesaid approach serves a twofold purpose — firstly, it allows the Referral Court to weed out non-existent arbitration agreements, and secondly, it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence of the arbitration agreement in depth.*

116. *Referring to the Statement of Objects and Reasons of the Arbitration and Conciliation (Amendment) Act, 2015, it was observed in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] that the High Court and the Supreme Court at the stage of appointment of arbitrator shall examine the existence of a prima facie arbitration agreement and not any other issues. The relevant observations are extracted hereinbelow: (SCC p. 104, para 220)*

*"220. The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie arbitration agreement and [**Ed.**: The words between two asterisks have been emphasised in original as well.] not other issues [**Ed.**: The words between two asterisks have been emphasised in original as well.] ". These other issues*

not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the Referral Court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators."

(emphasis supplied)

117. *In view of the observations made by this Court in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] , it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] and adopted in NTPC Ltd. v. SPML Infra Ltd. [NTPC Ltd. v. SPML Infra Ltd., (2023) 9 SCC 385 : (2023) 4 SCC (Civ) 342] that the jurisdiction of the Referral Court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re [Interplay Between Arbitration Agreements under the Arbitration Act, 1996 & the Stamp Act, 1899, In re, (2024) 6 SCC 1 : 2023 INSC 1066] .*

118. *The dispute pertaining to the "accord and satisfaction" of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by "accord and satisfaction".*

> ***119.*** *The question of "accord and satisfaction", being a mixed question of law and fact, comes within the exclusive jurisdiction of the Arbitral Tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the Arbitral Tribunal, should not be looked into by the Referral Court, even for a prima facie determination, before the Arbitral Tribunal first has had the opportunity of looking into it.*
>
> ***121.*** *Tests like the "eye of the needle" and "ex facie meritless", although try to minimise the extent of judicial interference, yet they require the Referral Court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.*
>
> ***138.*** *The existence of the arbitration agreement as contained in Clause 13 of the insurance policy is not disputed by the appellant. The dispute raised by the claimant being one of quantum and not of liability, prima facie, falls within the scope of the arbitration agreement. The dispute regarding "accord and satisfaction" as raised by the appellant does not pertain to the existence of the arbitration agreement, and can be adjudicated upon by the Arbitral Tribunal as a preliminary issue.*

13.3. By relying on ***Krish Spinning's*** case, his submission is that the judicial interference under the ***A&C Act*** is limited, confined to the examination of the existence of an arbitration agreement. The said examination is also a restrictive examination only for the purpose of weeding out cases where there are no arbitration agreements. His submission is that it is the arbitral tribunal that has to rule on the issue of the existence of the arbitration

agreement by considering the contentions taken after evidence and arguments advanced. His submission is also that the validity of the arbitration agreement would have to be decided by the arbitrator and not by the Section 11 Court, including the aspect of whether there is accord and satisfaction, since it is a mixed question of law and fact. He therefore submits that in the present matter, whether there was accord and satisfaction in the CIRP process or not, would have to be determined by the arbitral tribunal.

13.4. He refers to and relies upon the decision of the Hon'ble Apex Court in the case of ***In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act, 1899***[2] more particularly paras 62, 165 to 169 and 220, which are reproduced hereunder for easy reference:

> ***65.*** *The Stamp Act is a fiscal legislation which is intended to raise revenue for the Government. It is a mandatory statute. In Hindustan Steel Ltd. v. Dilip Construction Co. [Hindustan Steel Ltd. v. Dilip Construction Co., (1969) 1 SCC 597] , this Court dealt with the import of Sections 35, 36 and 42 of the Stamp Act. One of the parties relied on the difference in the phraseology between Sections 35 and*

[2] (2024) 6 SCC 1

36 to argue that an instrument which was insufficiently stamped or not stamped could be admitted in evidence upon the payment of duty and a penalty (if any) but that it could not be acted upon, once admitted. It was argued that Section 35 operates as a bar in two respects, namely, the admission of an instrument into evidence as well as acting upon that instrument. It was argued that Section 36, in contrast to Section 35, removed the bar in one respect alone — the admissibility of the instrument into evidence. This Court rejected this argument and held that the provisions of the Stamp Act clearly provide that an instrument could be admitted into evidence as well as acted upon once the appropriate duty has been paid and the instrument is endorsed : (Hindustan Steel case [Hindustan Steel Ltd. v. Dilip Construction Co., (1969) 1 SCC 597] , SCC p. 600, para 6)

"6. … The argument ignores the true import of Section 36. By that section an instrument once admitted in evidence shall not be called in question at any stage of the same suit or proceeding on the ground that it has not been duly stamped. Section 36 does not prohibit a challenge against an instrument that it shall not be acted upon because it is not duly stamped, but on that account there is no bar against an instrument not duly stamped being acted upon after payment of the stamp duty and penalty according to the procedure prescribed by the Act. The doubt, if any, is removed by the terms of Section 42(2) which enact, in terms unmistakable, that every instrument endorsed by the Collector under Section 42(1) shall be admissible in evidence and may be acted upon as if it has been duly stamped."

(emphasis in original)

165. *The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination. Since the Arbitration Act is a self-contained code, the requirement of "existence" of an arbitration agreement draws effect from Section 7 of the Arbitration Act. In Duro Felguera [Duro Felguera, S.A. v. Gangavaram Port Ltd., (2017) 9 SCC 729 : (2017) 4 SCC (Civ) 764] , this Court held that the Referral Courts only need to consider one aspect to determine the existence of an arbitration agreement — whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement. Therefore, the scope*

of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16. We accordingly clarify the position of law laid down in Vidya Drolia [Vidya Drolia v. Durga Trading Corpn., (2021) 2 SCC 1 : (2021) 1 SCC (Civ) 549] in the context of Section 8 and Section 11 of the Arbitration Act.

166. *The burden of proving the existence of arbitration agreement generally lies on the party seeking to rely on such agreement. In jurisdictions such as India, which accept the doctrine of competence-competence, only prima facie proof of the existence of an arbitration agreement must be adduced before the Referral Court. The Referral Court is not the appropriate forum to conduct a mini-trial by allowing the parties to adduce the evidence in regard to the existence or validity of an arbitration agreement. The determination of the existence and validity of an arbitration agreement on the basis of evidence ought to be left to the Arbitral Tribunal. This position of law can also be gauged from the plain language of the statute.*

167. *Section 11(6-A) uses the expression "examination of the existence of an arbitration agreement". The purport of using the word "examination" connotes that the legislature intends that the Referral Court has to inspect or scrutinise the dealings between the parties for the existence of an arbitration agreement. Moreover, the expression "examination" does not connote or imply a laborious or contested inquiry. [P. Ramanatha Aiyar, The Law Lexicon (2nd Edn., 1997) 666.] On the other hand, Section 16 provides that the Arbitral Tribunal can "rule" on its jurisdiction, including the existence and validity of an arbitration agreement. A "ruling" connotes adjudication of disputes after admitting evidence from the parties. Therefore, it is evident that the Referral Court is only required to examine the existence of arbitration agreements, whereas the Arbitral Tribunal ought to rule on its jurisdiction, including the issues pertaining to the existence and validity of an arbitration agreement. A similar view was adopted by this Court in Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd. [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234]*

168. *In Shin-Etsu [Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd., (2005) 7 SCC 234] , this Court was called upon to determine the nature of adjudication contemplated by unamended Section 45 of the Arbitration Act when the objection with regards to the arbitration agreement being "null and void, inoperative or incapable of being performed" is raised before a judicial authority. Writing for the majority, B.N. Srikrishna, J. held that Section 45 does not require the judicial authority to give a final determination. The Court observed that : (SCC p. 267, para 74)*

"74. There are distinct advantages in veering to the view that Section 45 does not require a final determinative finding by the Court. First, under the Rules of Arbitration of the International Chamber of Commerce (as in force with effect from 1-1-1998), as in the present case, invariably the Arbitral Tribunal is vested with the power to rule upon its own jurisdiction. Even if the Court takes the view that the arbitral agreement is not vitiated or that it is not invalid, inoperative or unenforceable, based upon purely a prima facie view, nothing prevents the arbitrator from trying the issue fully and rendering a final decision thereupon. If the arbitrator finds the agreement valid, there is no problem as the arbitration will proceed and the award will be made. However, if the arbitrator finds the agreement invalid, inoperative or void, this means that the party who wanted to proceed for arbitration was given an opportunity of proceeding to arbitration, and the arbitrator after fully trying the issue has found that there is no scope for arbitration. Since the arbitrator's finding would not be an enforceable award, there is no need to take recourse to the judicial intercession available under Section 48(1)(a) of the Act."

169. *When the Referral Court renders a prima facie opinion, neither the Arbitral Tribunal, nor the Court enforcing the arbitral award will be bound by such a prima facie view. If a prima facie view as to the existence of an arbitration agreement is taken by the Referral Court, it still allows the Arbitral Tribunal to examine the issue in depth. Such a legal approach will help the Referral Court in weeding out prima facie non-existent arbitration agreements. It will also protect the jurisdictional competence of the Arbitral Tribunals to decide on issues pertaining to the existence and validity of an arbitration agreement.*

220. *The above extract indicates that the Supreme Court or High Court at the stage of the appointment of an arbitrator shall "examine the existence of a prima facie*

arbitration agreement and not other issues". These other issues not only pertain to the validity of the arbitration agreement, but also include any other issues which are a consequence of unnecessary judicial interference in the arbitration proceedings. Accordingly, the "other issues" also include examination and impounding of an unstamped instrument by the Referral Court at the Section 8 or Section 11 stage. The process of examination, impounding, and dealing with an unstamped instrument under the Stamp Act is not a time-bound process, and therefore does not align with the stated goal of the Arbitration Act to ensure expeditious and time-bound appointment of arbitrators. Therefore, even though the Law Commission of India Report or the Statement of Objects and Reasons of the 2015 Amendment Act do not specifically refer to SMS Tea Estates [SMS Tea Estates (P) Ltd. v. Chandmari Tea Co. (P) Ltd., (2011) 14 SCC 66 : (2012) 4 SCC (Civ) 777] , it nevertheless does not make any difference to the position of law as has been set out above.

13.5. By referring to ***Interplay between Arbitration Agreements***, the submission is that the scope of reference under Section 11 is confined to the examination of the existence of an arbitration agreement, which is only a *prima facie* determination. The referral courts only need to consider one aspect to determine the existence of the arbitration agreement, namely, whether the underlying contract contains an arbitration agreement, which provides for arbitration pertaining to disputes that have arisen between the parties to the agreement. The burden of proving the existence of the arbitration agreement is on the party seeking to

rely on the agreement. His submission is that the existence of Clause 19.13 in the agreement is not disputed by the Respondent, and that existence has been established by the Petitioner, requiring the matter to be referred to arbitration. His submission is also that the finding of the Section 11 Court is only a *prima facie* finding. The same will not be binding on the arbitral tribunal. That issue could be decided by the arbitral tribunal.

13.6. He relies upon the decision of the Hon'ble Apex Court in the case of ***Duro Felguera S A., vs. Gangavaram Port Ltd.,***[3] more particularly Paras 48, 56 to 59 thereof which are reproduced hereunder for easy reference:

> ***48.*** *Section 11(6-A) added by the 2015 Amendment, reads as follows:*
>
> *"**11. (6-A)** The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement."*
>
> *(emphasis supplied)*
>
> *From a reading of Section 11(6-A), the intention of the legislature is crystal clear i.e. the Court should and need only look into one aspect—the existence of an arbitration agreement. What are the factors for deciding as to*

[3] (2017) 9 SCC 729

whether there is an arbitration agreement is the next question. The resolution to that is simple—it needs to be seen if the agreement contains a clause which provides for arbitration pertaining to the disputes which have arisen between the parties to the agreement.

56. *Having said that, this being one of the first cases on Section 11(6-A) of the 1996 Act before this Court, I feel it appropriate to briefly outline the scope and extent of the power of the High Court and the Supreme Court under Sections 11(6) and 11(6-A).*

57. *This Court in SBP & Co. v. Patel Engg. Ltd. [SBP and Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] overruled Konkan Railway Corpn. Ltd. v. Mehul Construction Co. [Konkan Railway Corpn. Ltd. v. Mehul Construction Co., (2000) 7 SCC 201] and Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd. [Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd., (2002) 2 SCC 388] to hold that the power to appoint an arbitrator under Section 11 is a judicial power and not a mere administrative function. The conclusion in the decision as summarised by Balasubramanyan, J. speaking for the majority reads as follows: (SBP & Co. case [SBP and Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] , SCC pp. 663-64, para 47)*

"47. We, therefore, sum up our conclusions as follows:

(i) The power exercised by the Chief Justice of the High Court or the Chief Justice of India under Section 11(6) of the Act is not an administrative power. It is a judicial power.

(ii) The power under Section 11(6) of the Act, in its entirety, could be delegated, by the Chief Justice of the High Court only to another Judge of that Court and by the Chief Justice of India to another Judge of the Supreme Court.

(iii) In case of designation of a Judge of the High Court or of the Supreme Court, the power that is exercised by the Designated Judge would be that of the Chief Justice as conferred by the statute.

(iv) The Chief Justice or the Designated Judge will have the right to decide the preliminary aspects as indicated in the earlier part of this judgment. These will be his own jurisdiction to entertain the request, the existence of a valid arbitration agreement, the existence or otherwise of a live claim, the existence of the condition for the exercise

of his power and on the qualifications of the arbitrator or arbitrators. The Chief Justice or the Designated Judge would be entitled to seek the opinion of an institution in the matter of nominating an arbitrator qualified in terms of Section 11(8) of the Act if the need arises but the order appointing the arbitrator could only be that of the Chief Justice or the Designated Judge.

(v) Designation of a District Judge as the authority under Section 11(6) of the Act by the Chief Justice of the High Court is not warranted on the scheme of the Act.

(vi) Once the matter reaches the Arbitral Tribunal or the sole arbitrator, the High Court would not interfere with the orders passed by the arbitrator or the Arbitral Tribunal during the course of the arbitration proceedings and the parties could approach the Court only in terms of Section 37 of the Act or in terms of Section 34 of the Act.

(vii) Since an order passed by the Chief Justice of the High Court or by the Designated Judge of that Court is a judicial order, an appeal will lie against that order only under Article 136 of the Constitution to the Supreme Court.

(viii) There can be no appeal against an order of the Chief Justice of India or a Judge of the Supreme Court designated by him while entertaining an application under Section 11(6) of the Act.

(ix) In a case where an Arbitral Tribunal has been constituted by the parties without having recourse to Section 11(6) of the Act, the Arbitral Tribunal will have the jurisdiction to decide all matters as contemplated by Section 16 of the Act.

(x) Since all were guided by the decision of this Court in Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd. [Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd., (2002) 2 SCC 388] and orders under Section 11(6) of the Act have been made based on the position adopted in that decision, we clarify that appointments of arbitrators or Arbitral Tribunals thus far made, are to be treated as valid, all objections being left to be decided under Section 16 of the Act. As and from this date, the position as adopted in this judgment will govern even pending applications under Section 11(6) of the Act.

(xi) Where District Judges had been designated by the Chief Justice of the High Court under Section 11(6) of the Act, the appointment orders thus far made by them will be

treated as valid; but applications if any pending before them as on this date will stand transferred, to be dealt with by the Chief Justice of the High Court concerned or a Judge of that Court designated by the Chief Justice.

(xii) The decision in Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd. [Konkan Railway Corpn. Ltd. v. Rani Construction (P) Ltd., (2002) 2 SCC 388] is overruled."

(emphasis supplied)

58. *This position was further clarified in National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd. [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] To quote: (SCC p. 283, para 22)*

"22. Where the intervention of the Court is sought for appointment of an Arbitral Tribunal under Section 11, the duty of the Chief Justice or his designate is defined in SBP & Co. [SBP and Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] This Court identified and segregated the preliminary issues that may arise for consideration in an application under Section 11 of the Act into three categories, that is, (i) issues which the Chief Justice or his designate is bound to decide; (ii) issues which he can also decide, that is, issues which he may choose to decide; and (iii) issues which should be left to the Arbitral Tribunal to decide.

22.1. The issues (first category) which the Chief Justice/his designate will have to decide are:

(a) Whether the party making the application has approached the appropriate High Court.

(b) Whether there is an arbitration agreement and whether the party who has applied under Section 11 of the Act, is a party to such an agreement.

22.2. The issues (second category) which the Chief Justice/his designate may choose to decide (or leave them to the decision of the Arbitral Tribunal) are:

(a) Whether the claim is a dead (long-barred) claim or a live claim.

(b) Whether the parties have concluded the contract/transaction by recording satisfaction of their mutual rights and obligation or by receiving the final payment without objection.

> *22.3. The issues (third category) which the Chief Justice/his designate should leave exclusively to the Arbitral Tribunal are:*
>
> *(i) Whether a claim made falls within the arbitration clause (as for example, a matter which is reserved for final decision of a departmental authority and excepted or excluded from arbitration).*
>
> *(ii) Merits or any claim involved in the arbitration."*
>
> ***59.** The scope of the power under Section 11(6) of the 1996 Act was considerably wide in view of the decisions in SBP and Co. [SBP and Co. v. Patel Engg. Ltd., (2005) 8 SCC 618] and Boghara Polyfab [National Insurance Co. Ltd. v. Boghara Polyfab (P) Ltd., (2009) 1 SCC 267 : (2009) 1 SCC (Civ) 117] . This position continued till the amendment brought about in 2015. After the amendment, all that the courts need to see is whether an arbitration agreement exists—nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected.*

13.7. By relying on ***Duro Felguera***, his submission is that after the amendment made to Section 11 in 2015 by inserting Section 6-A, an appointment of an arbitrator would have to be made, notwithstanding any judgment, decree or order of any court, by confining the examination of the existence of an arbitration agreement. Thus, he submits that irrespective of the findings of the NCLT and or orders passed by the NCLT, if there is an existence of an arbitration agreement, this Court is required to refer the matter to arbitration. His

submission is that after the amendment, all that the courts need to see is whether an arbitration agreement exists and nothing more, nothing less and none of the other issues are required to be examined.

13.8. He relies upon the decision of the Hon'ble Apex Court in the case of ***Demerara Distilleries (P) Ltd., vs. Demerara Distillers Ltd.,***[4] more particularly para 5 thereof, which is reproduced hereunder for easy reference:

> ***5.*** *Of the various contentions advanced by the respondent Company to resist the prayer for appointment of an arbitrator under Section 11(6) of the Act, the objections with regard the application being premature; the disputes not being arbitrable, and the proceedings pending before the Company Law Board, would not merit any serious consideration. The elaborate correspondence by and between the parties, as brought on record of the present proceeding, would indicate that any attempt, at this stage, to resolve the disputes by mutual discussions and mediation would be an empty formality. The proceedings before the Company Law Board at the instance of the present Respondent and the prayer of the petitioners therein for reference to arbitration cannot logically and reasonably be construed to be a bar to the entertainment of the present application. Admittedly, a dispute has occurred with regard to the commitments of the respondent Company as regards equity participation and dissemination of technology as visualised under the Agreement. It would, therefore, be difficult to hold that the same would not be arbitrable, if otherwise, the arbitration clause can be legitimately invoked. Therefore, it is the objection of the respondent Company that the present petition is not maintainable at the instance of the petitioners which alone would require an in-depth consideration.*

[4] (2015) 13 SCC 610

13.9. By relying on ***Demerara,*** his submission is that whether the disputes are arbitrable, premature or not, would not merit serious consideration in proceedings under Section 11. Once there was an arbitration clause in the agreement, the matter would have to be referred to arbitration.

13.10. He relies on the judgment of the Hon'ble Karnataka High Court in the case of ***Mphasis Limited vs. Strategic Outsourcing Services Private Limited***[5] more particularly Para 10 thereof, which is reproduced hereunder for easy reference:

> ***10.*** *The provisions of the Act were amended by Act No. 3 of 2016 which came into force with effect from 23.10.2015. Sub-section (6A) was added to section 11 of the Act which provides that the Supreme Court or as the case may be, the High Court, while considering an application under sub-section (4) or sub-section (5) or sub-section (6) shall, notwithstanding any Judgment, decree or order of any Court, confine to the examination of existence of an arbitration agreement. Admittedly, in the instant case, the agreement dated 15.07.2016 executed between the parties contains an arbitration clause, viz., clause No. 5. The Respondent can raise all his objections before the arbitrator under Section 16 of the Act which need not be examined in this summary proceedings. So far as submission of the Respondent that this petition is premature is concerned, suffice it to say that in the notice dated 25.01.2018, the Petitioner has clearly stated that the Petitioner has been following up with the Respondent to perform its obligation under the agreement. However, despite lapse of 60 days, no action was taken and therefore, the Petitioner is forced*

[5] 2019 SCC Online Kar 4026

to invoke the arbitration clause. In the reply dated 12.02.2018, the aforesaid averment of fact has not been specifically denied and it has been merely stated that notice has been issued without exhausting alternative remedy. Besides that, Delhi High court in the case of RAVINDRAKUMAR VERMA supra, has held that even if the requirement as stated for invoking the arbitration is not complied with, the same cannot prevent reference to the arbitration because the procedure/precondition has to be taken as directory and not a mandatory requirement. I am in respectful agreement with the aforesaid view. Therefore, the objection raised by the Respondent that this proceeding is premature cannot be sustained.

13.11. By relying on ***Mphasis***, his submission is that a Coordinate Bench of this Court has held that once the agreement is admitted, the arbitration clause therein also having been admitted, any other objection would have to be raised under Section 16 of the ***A&C Act*** which cannot be examined in a proceedings under Section 11 which is summary proceedings and therefore, he submits that any issue raised by the respondents would have to be considered by the arbitrator and not by this Court.

13.12. On the basis of the above, he submits that the petition is required to be allowed and an Arbitrator be appointed.

14. Sri Dhyan Chinnappa, learned senior counsel appearing for the Respondent, would submit that:

14.1. The petition suffers from ***suppressio veri, suggestio falsi***. There is no valid enforceable arbitration agreement subsisting between the parties in view of the approval of the resolution plan and the consequent operation of the Clean Slate doctrine under Section 31 of the Insolvency and Bankruptcy Code, 2016 (IBC). His submission is that once the CIRP process has been commenced and completed, there is a Clean Slate doctrine that applies, inasmuch as neither the creditor nor the debtor of the company undergoing CIRP proceedings can make any claim against each other, against the company, or by the company against any creditor or debtor. Thus, he submits that insofar as all the parties/stakeholders are concerned, the slate is wiped clean without anyone having a remedy against others arising out of or related to the CIRP process.

14.2. His submission is that the Petitioner, having been directed to make payment of a sum of Rs.1,74,967/- to the Respondent, it is deemed that all the claims of the Petitioner have also been wiped clean and that the Petitioner cannot make any claim against the Respondent.

14.3. His submission is that, on the CIRP proceedings taking place, all the rights and liabilities of the parties are deemed to be fully dealt with and crystallised during that process, and no action can be taken up subsequent thereto. He refers to section 31 of the IBC, which is reproduced hereunder for easy reference:

> ***Section 31. Approval of resolution plan.***
>
> *(1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on 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 involved in the resolution plan.*
>
> *Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.]*
>
> *(2) Where the Adjudicating Authority is satisfied that the resolution plan does not confirm to the requirements referred to in sub-section (1), it may, by an order, reject the resolution plan. (3) After the order of approval under sub-section (1),--*
>
> *(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect; and*
>
> *(b) the resolution professional shall forward all records relating to the conduct of the corporate insolvency resolution process and the resolution plan to the Board to be recorded on its database.*

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination, as referred to in section 5 of the Competition Act, 2002 (12 of 2003), the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors.

14.4. By referring to Section 31, he submits that the said provision does not preserve, revive or reserve any contractual rights or action in favour of the Petitioner against the Respondent, nor does it provide for continuation of a terminated contract or the arbitration clause contained therein. His submission in this regard is that all the aspects are deemed to have been dealt with by the RP during the CIRP process. The contract having been terminated on 25.2.2020, CIRP proceedings were commenced on 17.12.2019, and the Respondent had submitted its proof of claim on 11.3.2020. The resolution plan was approved on 5.4.2022, the arbitration notice was issued on 13.3.2023, and subsequently, in September 2025, the

Petitioner made payment of the dues to the Respondent.

14.5. During the said process, the Petitioner has accepted the claims of the Respondent as determined by the RP to be 0.71%. Thus, the Respondent has received only 0.71 paise for every one rupee receivable by the Respondent, and has been made to take a haircut for 99.29 paise. On that basis, he submits that if the Petitioner were to continue with the arbitration process only in respect of the claim of the Petitioner, after the Respondent having taken an haircut, this would amount to double jeopardy, in as much the Respondent has only received 0.71% of the amount due to it, but the Petitioner would be permitted to raise its entire claim. The Respondent has not received 99.29 paise for every rupee. Thus, he submits that the Respondent, having received only 0.71 paise per rupee, there being more than a sum of Rs.12 crore, which has been due, the Petitioner, after wiping off the liability to the Respondent, cannot agitate arbitral proceedings claiming the amounts due without making payment to the Respondent.

14.6. His submission is that the clean slate doctrine would either have to apply to both parties in its entirety or not at all. There cannot be a selective application of the clean slate doctrine only to the creditor, like the Petitioner who underwent the CIRP process, putting at risk and disadvantage the Respondent. Such an anomalous situation would lead to the Respondent's claim being wiped out, but the Petitioner's claim continuing, which is not the purpose and object of the resolution process. His submission is that the IBC does not contemplate, nor can this Court endorse, such an inequitable result. In that background, he submits that the matter may not be referred to arbitration and if referred to arbitration, the Respondent be permitted to raise all its claims against the Petitioner.

14.7. He submits that the decisions in ***Krish Spinning*** and ***Duro Felguera*** would not be applicable to these facts since they are wholly distinguishable on the facts. In those matters, what was considered was with respect to a subsisting arbitration agreement and in that background, what was seen was whether, *prima*

facie, the existence of the arbitration agreement was established. Those decisions did not deal with a situation where the very contract and arbitration clause stood extinguished by operation of law under a statutory insolvency policy on approval of the resolution plan under Section 31 of the IBC. His submission is that there is a distinction between the extinguishment of the contract by way of a statute and the termination of an agreement by the parties. If the statute extinguishes a contract, the arbitration clause cannot be relied upon.

14.8. Insofar as accord and satisfaction, his submission is that the judgment in ***Krish Spinning*** dealt with the aspect of accord and satisfaction between the parties, and not according to the satisfaction decided by the Court like the NCLT, on the basis of the recommendation made by the RP. The RP, having considered all the dues by both parties, has balanced the amounts due and paid 71 paise for every rupee to the Respondent, which is deemed to have been made after taking into

consideration all the dues of the Respondent to the Petitioner.

14.9. Insofar as ***Demerara*** and ***Mphasis***, his submission is that those judgments are not relevant to the present dispute since in the present matter, the underlying contract has stood terminated after being extinguished under an approved resolution plan. On that basis, he submits that the Cicil Miscellaneous Petition is required to be dismissed.

15. Sri Pradeep Naik, learned counsel appearing for the Petitioner in rejoinder, would submit that:

15.1. The clean slate doctrine would apply only against the corporate debtor, and not as regards the claims by the corporate debtor. In that he submits that the clean slate applies only to the claims of the Respondent against the Petitioner, and not as regards the claims of the Petitioner against the Respondent. In this regard, he relies upon the decision of the Hon'ble Apex Court in the case of ***COC Essar Steel India Ltd., vs. Satish Kumar Gupta and Ors.,***[6], more, particularly paras 105 to

[6] (2020) 8 SCC 531

107, which are reproduced hereunder for easy reference:

105. *Section 31(1) of the Code makes it clear that once a resolution plan is approved by the Committee of Creditors it shall be binding on all stakeholders, including guarantors. This is for the reason that this provision ensures that the successful resolution applicant starts running the business of the corporate debtor on a fresh slate as it were. In SBI v. V. Ramakrishnan [SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] , this Court relying upon Section 31 of the Code has held: (SCC p. 411, para 25)*

"25. Section 31 of the Act was also strongly relied upon by the respondents. This section only states that once a resolution plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the resolution plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him."

106. *Following this judgment in V. Ramakrishnan case [SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] , it is difficult to accept Shri Rohatgi's argument that that part of the resolution plan which states that the claims of the guarantor on account of subrogation shall be extinguished, cannot be applied to the guarantees furnished by the erstwhile Directors of the corporate debtor. So far as the present case is concerned, we hasten to add that we are saying nothing which may affect the pending litigation on account of invocation of these guarantees. However, Nclat judgment being contrary to Section 31(1) of the Code and this Court's judgment in V.*

Ramakrishnan case [SBI v. V. Ramakrishnan, (2018) 17 SCC 394 : (2019) 2 SCC (Civ) 458] , is set aside.

107. *For the same reason, the impugned Nclat judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, Nclat judgment must also be set aside on this count.*

15.2. By relying on ***Satish Kumar Gupta***'s case, he submits that once a resolution plan is approved by the Committee of Creditors (COC), it shall be binding on all stakeholders, including guarantors, so as to ensure the successful resolution applicant starts running the business. His submission is that once a successful resolution process has taken place, the successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan and in that view of the matter, his submission is that the Respondent, having

received certain monies, cannot claim any monies against the Petitioner. It is only the Petitioner who can claim monies from the Respondent. He relies upon the judgment of the Hon'ble Apex Court in the case of ***Ghanashyam Mishra & Sons (P) Ltd., vs. Edelweiss Asset Reconstruction Co. Ltd.,***[7] more particularly paras 65, 68, 69, 102.1, 102.2, and 102.3, which are reproduced hereunder for easy reference:

> ***65.*** *Bare reading of Section 31 of the I&B Code would also make it abundantly clear that once the resolution plan is approved by the adjudicating authority, after it is satisfied, that the resolution plan as approved by CoC meets the requirements as referred to in sub-section (2) of Section 30, it shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders. Such a provision is necessitated since one of the dominant purposes of the I&B Code is revival of the corporate debtor and to make it a running concern.*
>
> ***68.*** *All these details are required to be contained in the information memorandum so that the resolution applicant is aware as to what are the liabilities that he may have to face and provide for a plan, which apart from satisfying a part of such liabilities would also ensure, that the corporate debtor is revived and made a running establishment. The legislative intent of making the resolution plan binding on all the stakeholders after it gets the seal of approval from the adjudicating authority upon its satisfaction, that the resolution plan approved by CoC meets the requirement as referred to in sub-section (2) of Section 30 is that after the approval of the resolution plan, no surprise claims should be flung on the successful resolution applicant. The dominant purpose is that he should start with fresh slate on the basis of the resolution plan approved.*

[7] (2021) 9 SCC 657

69. *This aspect has been aptly explained by this Court in Essar Steel (India) Ltd. (CoC) [Essar Steel (India) Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443] : (SCC p. 616, para 107)*

"107. For the same reason, the impugned Nclat judgment in Standard Chartered Bank v. Satish Kumar Gupta [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the adjudicating authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons,

102. *In the result, we answer the questions framed by us as under:*

102.1. *That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the Central Government, any State Government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.*

102.2. *The 2019 Amendment to Section 31 of the I&B Code is clarificatory and declaratory in nature and therefore will be effective from the date on which the I&B Code has come into effect.*

> ***102.3.*** *Consequently all the dues including the statutory dues owed to the Central Government, any State Government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.*

15.3. By relying on ***Ghanashyam Mishra's*** case, he submits that once the resolution plan is approved by the adjudicating authority after it is satisfied that the resolution plan is approved by the COC meets the requirement as referred to in subsection (2) of section 30, it shall be binding on the corporate debtor and his employees, members, creditors, guarantors and other stakeholders. An information memorandum, once submitted, containing all the details, the resolution applicant becomes aware of what liabilities the resolution applicant may have to face and provide a plan. The same cannot be subsequently negated by one of the creditors, claiming any money post the resolution plan becoming successful.

15.4. He relies on the judgment of the Hon'ble Apex Court in the case of ***Gluckrich Capital Pvt. Ltd., vs. The State of West Bengal and***

Ors.,[8] more particularly Paras 5 to 10, which are reproduced hereunder for easy reference:

> ***5.*** *It is further submitted that the judgment and order dated January 18, 2023 passed in W.P. (C) (PIL) No. 4 of 2023 in the case of Smt. Sudipa Nath v. Union of India* passed by the Tripura High Court has wrongly relied upon the judgment of this Court in the case of Usha Ananthasubramanian v. Union of India** and has erroneously held that section 66 of the IBC cannot be invoked against other persons, entities or organisations with which there was any business transaction by the corporate debtor, but only the persons who were responsible for the conduct of business of the corporate debtor can be proceeded against.*
>
> ***6.*** *We have considered the arguments advanced by the learned counsel for the applicant and perused the record.*
>
> ***7.*** *In our considered opinion, in the name of seeking a clarification, the endeavour of the applicant herein is to indirectly get over with the judgment and order dated January 18, 2023 in W.P. (C) (PIL) No. 4 of 2023*** passed by the Tripura High Court. Such an endeavour, in the guise of a clarification, cannot be permitted.*
>
> ***8.*** *We may also observe that the Tripura High Court has rightly relied upon the observations made by this Court in a binding precedent, in Usha*
>
> ** See (2023) 237 Comp Cas 458 (Tripura).*
>
> *** See (2020) 220 Comp Cas 295 (SC) ; (2020) 4 SCC 122.*
>
> **** See Smt. Sudipa Nath v. Union of India (2023) 237 Comp Cas 458 (Tripura).*
>
> *Ananthasubramanian v. Union of India*, which pertains to a matter under section 339(1) of the Companies Act, 2013 which is pari materia with section 66 of the IBC. The High Court in the case of Smt. Sudipa Nath v. Union of India** has rightly observed that*** :*
>
> *"That section 66(1) also directed towards making such persons personally liable for such fraudulent trading to*

[8] 2023 SCC Online SC 1187

recouping losses incurred thereby and to provide that the NCLT can pass order holding such persons liable to make such contributions to the assets of the corporate debtor as it may deem fit. No power has been conferred on the NCLT to pass such orders against other organisations/legal entities (other than the corporate debtors) with whom such business was carried out against any person responsible in such other organisations/legal entities for carrying on business with the corporate debtor. For the said purpose, the ratio of the judgment of the hon'ble Supreme Court in Usha Ananthasubramanian v. Union of India in the context of section 339(1) one of the companies Act, 2013 as extracted above would clearly apply even in the context of section 66(1) of the IBC. Accordingly, an application under section 66(1) by the resolution professional would not bar any civil action in accordance with law, either at the instance of the resolution professional or liquidator or by the corporate debtor in its new avatar on a successful CIRP for recovery of any dues payable to the corporate debtor by such organisation/legal entities. Such legal action is independent of section 66(1)."

9. *Learned counsel appearing for the respondents has pointed out to us that even the NCLT in other similar matters has taken the same view following the judgment of this Court in Usha Ananthasubramanian v. Union of India. Reference has been made to the order dated February 9, 2023# passed in an application in C.P. (IB) No. 4258/(MB) of 2019.*

10. *We are of the considered opinion that in such circumstances, it is for the resolution professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to the corporate debtor, which may be available in law. The remedy against third party, however, is not available under section 66 of the IBC, and the civil remedies which may be available in law, are independent of the said section.*

** See (2020) 220 Comp Cas 295 (SC) ; (2020) 4 SCC 122.*

*** See (2023) 237 Comp Cas 458 (Tripura).*

**** See page 467 of 237 Comp Cas.*

 # See Barclays Bank PLC v. Piramal Capital and Housing Finance Ltd. (2023) 239 Comp Cas 825 (NCLT).

15.5. By referring to ***Gluckrish Capital's*** case, his submission is that the Hon'ble Apex Court has categorically come to a conclusion that even after the successful resolution, the successful resolution applicant, as the case may be, could take such civil remedies against a third party for recovery of dues payable by the corporate debtor, which may be available under law.

15.6. He relies upon the decision of ***Electrosteel Steel Limited (Now M/s.ESL Steel Limited) vs Ispat Carrier Private Limited***[9]***,*** more particularly, para 29 to 33, 50 and 50.1, which are reproduced hereunder for easy reference:

> ***29.*** *In Essar Steel India Ltd. (supra), a three-Judge Bench of this Court examined amongst others the role of resolution applicants, resolution professionals and the committee of creditors constituted under the IBC as well as the jurisdiction of NCLT and NCLAT qua resolution plans approved by the committee of creditors. After an elaborate and exhaustive analysis of various provisions of the IBC, the Bench concluded that a successful resolution applicant cannot suddenly be faced with 'undecided' claims after the resolution plan submitted by him has been accepted. This would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of corporate debtor. Paragraph 107 of the said decision reads as under:*

[9] 2025 INSC 525

107. For the same reason, the impugned NCLAT judgment [Standard Chartered Bank v. Satish Kumar Gupta, 2019 SCC OnLine NCLAT 388] in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.

***30**. An important question arose for consideration in Ghanshyam Mishra (supra). Again a three-Judge Bench of this Court examined a question as to whether any creditor including the central government, state government or any local authority is bound by the resolution plan once it is approved by the adjudicating authority under sub-section (1) of Section 31 of IBC? Corollary to the above question was the issue as to whether after approval of the resolution plan by the adjudicating authority, a creditor including the central government, state government or any local authority is entitled to initiate any proceeding for recovery of any of the dues from the corporate debtor which are not a part of the resolution plan approved by the adjudicating authority. In that case, the Bench concluded by holding that once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the central government, any state government or any local authority, guarantors and other stakeholders. On the date of approval of the resolution plan by the adjudicating authority, all such claims which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. The Bench declared that all dues including statutory dues owed to the central*

government, any state government or any local authority if not part of the resolution plan shall stand extinguished and no proceeding in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued. Paragraph 102 of the aforesaid decision reads thus:

102 In the result, we answer the questions framed by us as under:

102.1. That once a resolution plan is duly approved by the adjudicating authority under sub-section (1) of Section 31, the claims as provided in the resolution plan shall stand frozen and will be binding on the corporate debtor and its employees, members, creditors, including the central government, any state government or any local authority, guarantors and other stakeholders. On the date of approval of resolution plan by the adjudicating authority, all such claims, which are not a part of the resolution plan, shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim, which is not part of the resolution plan.

102.3. Consequently all the dues including the statutory dues owed to the central government, any state government or any local authority, if not part of the resolution plan, shall stand extinguished and no proceedings in respect of such dues for the period prior to the date on which the adjudicating authority grants its approval under Section 31 could be continued.

***31.** In Ruchi Soya Industries Ltd. (supra), a two-Judge Bench of this Court referred to the decision in Ghanshyam Mishra (supra) and thereafter declared that on the date on which the resolution plan was approved by the NCLT, all claims stood frozen and no claim, which is not a part of the resolution plan, would survive.*

***32.** A three-Judge Bench of this Court in Ajay Kumar Radheshyam Goenka (supra) held that a creditor has no option but to join the process under the IBC. Once the plan is approved, it would bind everyone under the sun. The making of a claim under the IBC and accepting the same and not making any claim will not make any difference in the light of Section 31 of IBC. Both the situations will lead to Section 31 and the finality and binding value of the resolution plan. Paragraph 62 of the said decision is extracted hereunder:*

62. Thus, from the aforesaid, it is evident that the creditor has no option but to join the process under the IBC. Once the plan is approved, it would bind everyone under the sun. The making of a claim and accepting whatever share is allotted could be termed as an "Involuntary Act" on behalf of the creditor. The making of a claim under the IBC and accepting the same and not making any claim, will not make any difference in light of Section 31 IBC. Both the situations will lead to Section 31 and the finality and binding value of the resolution plan.

33. *In a recent decision, a two-Judge Bench of this Court decided a contempt application in M/s. JSW Steel Ltd.*

Vs. Pratishtha Thakur Haritwal8. Contention of the Petitioner was that respondents had wilfully disobeyed the judgment of 2025 INSC 401 this Court in Ghanshyam Mishra (supra) by issuing demand notices pertaining to the period covered by the corporate insolvency resolution process. In the above context, the Bench reiterated what was held in Ghanshyam Mishra (supra) which has been followed in subsequent decisions and thereafter declared that all claims which are not part of the resolution plan shall stand extinguished. No person will be entitled to initiate or continue any proceeding in respect to a claim which is not part of the resolution plan. Though the Bench did not take any action for contempt in view of the unconditional apology made by the respondents nonetheless the Bench reiterated the proposition laid down in Ghanshyam Mishra (supra) clarifying that even if any stakeholder is not a party to the proceedings before the NCLT and if such stakeholder does not raise its claim before the interim resolution professional/resolution professional, the resolution plan as approved by the NCLT would still be binding on him.

50. *In so far the second and third issues are concerned, it is by now well settled that once a 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 proceeding in respect to a claim which is not part of the resolution plan. In fact, this Court in Essar Steel India Ltd. (supra) 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. In so far the resolution plan is concerned, the resolution professional, the*

committee of creditors and the adjudicating authority noted about the claim lodged by the Respondent in the arbitration proceeding. However, the Respondent was not included in the top 30 operational creditors whose claims were settled at nil. This can only mean that the three authorities conducting the corporate insolvency resolution process did not deem it appropriate to include the Respondent in the top 30 operational creditors. If the claims of the top 30 operational creditors were settled at nil, it goes without saying that the claim of the Respondent could not be placed higher than the said top 30 operational creditors. Moreover, the resolution plan itself provides that all claims covered by any suit, cause of action, arbitration etc. shall be settled at nil. Therefore, it is crystal clear that in so far claim of the Respondent is concerned, the same would be treated as nil at par with the claims of the top 30 operational creditors.

50.1. *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. View taken by the High Court cannot be accepted in the light of the clear cut provisions of the IBC as well as the law laid down by this Court. In view of the resolution plan, as approved, the claim of the Respondent stood extinguished. Therefore, the Facilitation Council did not have the jurisdiction to arbitrate on the said claim. Since the award was passed without jurisdiction, the same could be assailed in a proceeding under Section 47 CPC. View taken by the High Court that because the appellant did not challenge the award under Section 34 of the 1996 Act, therefore, it was precluded from objecting to execution of the award at the stage of Section 47 of CPC is wholly unsustainable.*

15.7. By relying on ***Electrosteel's*** case, he submits that once the resolution plan is completed, no claim can be made by the creditor.

15.8. He relies upon the decision of the National Company Law Tribunal, Jaipur Bench, in ***M/s.Indus Container Lines Pvt. Ltd. vs Jadoun International Pvt. Ltd.,***[10] more particularly paras 1, 14 to 16, which are reproduced hereunder for easy reference:

> ***1.*** *The present application bearing IA No. 231/JPR/2019 was filed by the Resolution Professional/Applicant under Section 60(5) read with Section 20 of the Insolvency and Bankruptcy Code (IBC/Code) seeking necessary directions against Respondent No. 2, namely, M/s Kanak Murbles & Granites Pvt Ltd. i.e, the Respondent No. 2 be directed to pay the outstanding amount of Rs. 14,55,229/- due to the Corporate Debtor.*
>
> ***14.*** *The Resolution Professional in the present matter had approached this forum for recovery of debt which is allegedly owed by the Respondent No. 2 to the Corporate Debtor whereas it has forgotten the underlying principle which enunciates that this is not a debt recovery forum. There is no doubt that the Resolution Professional has ampie powers to proceed and protect the debts of the Corporate Debtor, but it cannot do so by merely filing an Application under Section 60(5) of the Code in the pending CIRP of the Corporate Debtor. The Hon'ble Supreme Court in the matter of Gluckrich Capital Pvt. Ltd. Vs. The State of West Bengal & Ors., on 19.05.2023 held:*
>
> *"We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to corporate debtor which may be available in law. The remedy against third party. however, is not available under Section 66 of IBC, and the civil remedies which may be available in law, are independent of the said Section.*
>
> ***15.*** *The Applicant has attached a list of invoices as pending payment against the Respondent No. 2. The Respondent No. 2 has challenged the debt on the ground that the said amount was set-off against the claim of the Respondent*

[10] IA (IBC) No.359/jpr/2019 in IB No.707(p\PB)/2018 dated 11.8.2023

No. 2 due from the proprietorship firm Jagannath Marbles and Granites, which is managed by the erstwhile director of the Corporate Debtor and the said proprietorship firm in turn owes certain debt to the Respondent No. 2 Company.

16. *We are not divulging into the merits of the case which has been presented by both the parties. While the Applicant at the time of filing of the Application, with the intention to protect the assets of the Corporate Debtor, approached this Authority, the recovery prayed for cannot be granted. We cannot divert from the principles and ratio which has evolved in pursuance to the IBC over a period of time. The Adjudicating Authority does not have the jurisdiction to allow the Application filed by the Resolution Professional. The Successful Resolution Applicant is at liberty to proceed against its debtors by filing appropriate application with the competent Court of law and for the purpose of the same, the period of this Application shall be excluded from limitation.*

15.9. By relying on the ***Indus Container*** case, his submission is that recovery of monies in the insolvency proceedings cannot be granted by filing an application under section 60 (5) of the IBC. The successful resolution applicant would be at liberty to proceed against his debtors by filing an appropriate application with the competent Court. Thus, he submits that the right of the successful resolution company, that is, the Petitioner, to recover monies continues even after the completion of the CIRP process, which has now been exercised by the Petitioner and cannot be negated by the Respondent.

16. Sri. Dhyan Chinnappa, learned senior counsel in sur-rejoinder, submits that:

16.1. ***Satish Kumar Gupta's*** case is not applicable since it did not deal with the situation where the corporate debtor, like the Petitioner, had not asserted any counterclaims or recoveries against a creditor, like the Respondent, whose claim stood admitted, crystallised and settled during the CIRP. The judgment not having determined if the claim of the creditor, that is, the Petitioner, survives and only having dealt with the claim of the debtor, like the Respondent, that decision would not be applicable. The Respondent's claim has been admitted in full, no counterclaim has been recorded, and such a situation has not been dealt with.

16.2. Insofar as ***Ghanashyam Mishra***'s case, he again submits that that decision also addressed only one side of the equation. When there were claims against the corporate debtor, the claims of the corporate creditor not been dealt with, that decision is inapplicable.

16.3. Insofar as ***Gluckrich Capital's*** case, his submission is that was a case where the statutory authorities' rights were extinguished. Since the issue before the Court was whether government claims could be pursued post approval of the resolution plan.

16.4. As regards ***Electrosteel***, he submits that that was a case arising out of an execution of an arbitral award in favour of an operational creditor and in that background, the Hon'ble Apex Court held that the claims of the creditors stood extinguished upon approval of the resolution plan and that the arbitral award could not be executed post-CIRP.

16.5. On the basis of the above submissions, he submits that the resolution process being completed, the claims of the Respondent having been considered by resolution professional and payments made would be deemed to have taken into account, the claims of the Petitioner against the Respondent and as such, after the resolution process is completed, the Petitioner cannot initiate proceedings once again inasmuch as the Respondent has been forced to

take a haircut on account of statutory provision of a sum of Rs.99.29 paise per rupee and cannot be now mulcted with further claims of the Petitioner without the Respondent having a recourse to raise a claim for the balance amounts.

17. Heard Sri Pradeep Naik, learned counsel appearing for the Petitioner and Sri Dhyan Chinnappa, learned senior counsel appearing for the Respondent. Perused papers.

18. Upon hearing the learned counsel for the parties, perusing the pleadings and documents placed on record, and having regard to the statutory scheme under the Arbitration and Conciliation Act, 1996 and the Insolvency and Bankruptcy Code, 2016, the following questions arise for consideration:

i. Whether Clause 19.13 of the Conditions of Contract dated 09.07.2018 constitutes a valid arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996. If so, whether such arbitration agreement survives termination of the underlying contract and continues to subsist notwithstanding the approval of the Resolution Plan under Section 31(1) of the Insolvency and Bankruptcy Code, 2016?

ii. **What is the scope of jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act, 1996. In particular, whether in view of Section 11(6-A), this Court is confined to a prima facie examination of the existence of an arbitration agreement, or whether it is competent to examine the legal consequences flowing from the approval of a Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016, including the applicability and effect of the "Clean Slate" doctrine?**

iii. **What is the effect of approval of the Resolution Plan under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 on the claims sought to be raised in the present proceedings. Whether, upon such approval, all claims not forming part of the Resolution Plan stand extinguished in their entirety, including claims of the corporate debtor against third parties; or whether such extinguishment operates only in respect of claims against the corporate debtor, leaving intact independent remedies of the corporate debtor against its counterparties?**

iv. **Whether, having regard to the initiation and completion of the Corporate Insolvency Resolution Process, the submission and adjudication of claims before the Resolution Professional, and the implementation of the approved Resolution Plan without any express reservation of rights, the disputes now sought to be raised by the Petitioner**

stands extinguished by operation of law, or amount to accord and satisfaction, waiver or estoppel, or whether they constitute live and arbitrable disputes capable of being referred to arbitration?

v. What is the interplay between the doctrine of competence-competence under Section 16 of the Arbitration and Conciliation Act, 1996 and the statutory finality attached to an approved Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016. Specifically, whether upon a prima facie arbitration agreement being shown, all objections ought to be left to the Arbitral Tribunal; or whether the statutory consequences of approval of the Resolution Plan constitute a threshold jurisdictional bar which this Court is required to examine at the stage of Section 11?

vi. Whether any live and subsisting arbitrable dispute survives between the parties so as to warrant exercise of jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996, and consequently, whether the present petition deserves to be allowed by appointment of a Sole Arbitrator or dismissed for want of a subsisting arbitrable claim or enforceable arbitration agreement.

vii. What Order?

19. I answer the above points as follows:

20. **<u>Answer to Point No.(i):</u> Whether Clause 19.13 of the Conditions of Contract dated 09.07.2018 constitutes a valid arbitration agreement within the meaning of Section 7 of the Arbitration and Conciliation Act, 1996. If so, whether such an arbitration agreement survives termination of the underlying contract and continues to subsist notwithstanding the approval of the Resolution Plan under Section 31(1) of the Insolvency and Bankruptcy Code, 2016?**

20.1. Sri Pradeep Naik, learned counsel appearing for the Petitioner, submits that the scope of Section 11 of ***A&C Act*** is extremely narrow and is limited to determining, prima facie, the existence of an arbitration agreement. His contention is that once an arbitration agreement is placed before the Section 11 Court, the Section 11 Court should appoint an arbitrator and refer the parties for adjudication by the arbitrator. None of the disputed aspects ought to be considered by this Court.

20.2. Learned counsel submits that Clause 19.13 of the Conditions of Contract dated 09.07.2018 is an arbitration clause that satisfies all the requirements of Section 7 of the Act. The said clause is in writing, it is part of the contract between the parties, it provides for reference of

disputes to arbitration by a Sole Arbitrator appointed by the Employer, it specifies that the arbitration proceedings shall be conducted at Bangalore, and it expressly refers to the ***A&C Act***. The existence of Clause 19.13 is not disputed by the Respondent. On that basis, he submits that the existence of an arbitration agreement has been established by the Petitioner.

20.3. By relying on the decision of the Hon'ble Apex Court in **SBI General Insurance vs Krish Spinning**, he submits that the judicial interference under the ***A&C Act*** is limited, confined to the examination of the existence of an arbitration agreement. The said examination is also a restrictive examination only for the purpose of weeding out cases where there are no arbitration agreements. His further submission is that it is the arbitral tribunal that has to rule on the issue of the existence of the arbitration agreement by considering the contentions taken after evidence and arguments advanced. The validity of the arbitration agreement would have to be decided

by the arbitrator and not by the Section 11 Court.

20.4. Placing reliance on **In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act 1996 and the Indian Stamp Act, 1899**, his submission is that the scope of reference under Section 11 is confined to the examination of the existence of an arbitration agreement, which is only a prima facie determination. The referral courts only need to consider one aspect to determine the existence of the arbitration agreement, namely, whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to disputes that have arisen between the parties to the agreement.

20.5. He further relies upon **Duro Felguera S.A. vs Gangavaram Port Ltd.** and submits that after the amendment made to Section 11 in 2015 by inserting Section 6-A, an appointment of an arbitrator would have to be made notwithstanding any judgment, decree or order of any court by confining the examination to

the existence of an arbitration agreement. After the amendment, all that the courts need to see is whether an arbitration agreement exists and nothing more, nothing less.

20.6. He additionally relies upon **Demerara Distilleries (P) Ltd. vs Demerara Distillers Ltd.,** and submits that whether the disputes are arbitrable, premature or not, would not merit serious consideration in proceedings under Section 11. Once there was an arbitration clause in the agreement, the matter would have to be referred to arbitration.

20.7. By placing relaince on **Mphasis Limited vs Strategic Outsourcing Services Private Limited** he submits that a Coordinate Bench of this Court has held that once the agreement is admitted, the arbitration clause therein also having been admitted, any other objection would have to be raised under Section 16 of the ***A&C Act*** which cannot be examined in proceedings under Section 11 which is summary proceedings.

20.8. In rejoinder, learned counsel for the Petitioner submits that the arbitration agreement being

separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged. He relies upon **Krish Spinning**, wherein the Hon'ble Apex Court has held that the arbitration agreement, being separate and independent from the underlying substantive contract, continues to remain in existence even after the original contract stands discharged by accord and satisfaction.

20.9. Sri Dhyan Chinnappa, learned senior counsel appearing for the Respondent, submits that the petition suffers from suppressio veri, suggestio falsi.

20.10. His primary contention is that there is no valid enforceable arbitration agreement subsisting between the parties in view of the approval of the Resolution Plan and the consequent operation of the Clean Slate doctrine under Section 31 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as ***the IBC***). His submission is that once the CIRP process has been commenced and completed,

the Clean Slate doctrine would apply inasmuch as neither the creditor nor the debtor of the company undergoing CIRP proceedings can make any claim against each other.

20.11. Learned senior counsel further submits that the Respondent had terminated the contract/agreement on 25.02.2020. The CIRP of the Petitioner commenced on 17.12.2019. The Respondent submitted its proof of claim to the Resolution Professional on 11.03.2020. The RP had accepted the entire claim submitted by the Respondent and quantified the amount payable by the Petitioner to the Respondent at Rs.12,26,30,840/-. The Resolution Plan was approved on 05.04.2022. As per the Resolution Plan, the operational creditors would be paid 0.71% of the amount claimed. Accordingly, the Respondent received only 0.71 paise for every one rupee receivable. His submission is that if the Petitioner were to continue with the arbitration process only in respect of its own claim, after the Respondent having taken a haircut of 99.29 paise per rupee, this would amount to double jeopardy.

20.12. Learned senior counsel refers to Section 31 of the IBC and submits that the said provision does not preserve, revive or reserve any contractual rights or action in favour of the Petitioner against the Respondent, nor does it provide for continuation of a terminated contract or the arbitration clause contained therein. His submission is that all the aspects are deemed to have been dealt with by the RP during the CIRP process.

20.13. Learned senior counsel submits that the decisions in **Krish Spinning** and **Duro Felguera** would not be applicable to these facts since they are wholly distinguishable. In those matters, what was considered was with respect to a subsisting arbitration agreement and in that background, what was seen was whether, prima facie, the existence of the arbitration agreement was established. Those decisions did not deal with a situation where the very contract and arbitration clause stood extinguished by operation of law under a statutory insolvency regime on approval of the Resolution Plan under Section 31 of the IBC. His submission is that there is a distinction between

the extinguishment of the contract by way of a statute and the termination of an agreement by the parties.

20.14. Insofar as accord and satisfaction, learned senior counsel submits that **Krish Spinning** dealt with accord and satisfaction between the parties inter se, and not according to the satisfaction decided by a Court like the NCLT on the basis of the recommendation made by the RP. The RP, having considered all the dues by both parties, has balanced the amounts due and paid 0.71 paise per rupee to the Respondent, which is deemed to have been made after taking into consideration all the dues of the Respondent to the Petitioner.

20.15. Insofar as **Demerara** and **Mphasis**, his submission is that those judgments are not relevant to the present dispute since in the present matter, the underlying contract has stood terminated after being extinguished under an approved Resolution Plan.

20.16. In sur-rejoinder, learned senior counsel submits that the Clean Slate doctrine would either have to apply to both parties in its entirety or not at

all. There cannot be a selective application of the Clean Slate doctrine only to the creditor. Such an anomalous situation would lead to the Respondent's claim being wiped out, but the Petitioner's claim continuing, which is not the purpose and object of the resolution process.

20.17. The first question that this Court is called upon to address is whether Clause 19.13 of the Conditions of Contract dated 09.07.2018 constitutes a valid arbitration agreement within the meaning of Section 7 of the Act. Section 7 of the Arbitration and Conciliation Act, 1996 reads as follows:

> ***7. Arbitration agreement****.—(1) In this Part, "arbitration agreement" means an agreement by the parties to submit to arbitration all or certain disputes which have arisen or which may arise between them in respect of a defined legal relationship, whether contractual or not.*
>
> *(2) An arbitration agreement may be in the form of an arbitration clause in a contract or in the form of a separate agreement.*
>
> *(3) An arbitration agreement shall be in writing.*
>
> *(4) An arbitration agreement is in writing if it is contained in—*
>
> *(a) a document signed by the parties;*
>
> *(b) an exchange of letters, telex, telegrams or other means of telecommunication including communication through electronic means which provide a record of the agreement; or*

(c) an exchange of statements of claim and defence in which the existence of the agreement is alleged by one party and not denied by the other.

(5) The reference in a contract to a document containing an arbitration clause constitutes an arbitration agreement if the contract is in writing and the reference is such as to make that arbitration clause part of the contract.

20.18. On a plain reading of Section 7, an arbitration agreement must satisfy the following requirements: (a) it must be an agreement by the parties to submit disputes to arbitration; (b) the disputes must arise in respect of a defined legal relationship, whether contractual or not; (c) the agreement must be in writing; and (d) it may be in the form of an arbitration clause in a contract or a separate agreement.

20.19. Clause 19.13 of the Conditions of Contract, which is the arbitration clause in question, is reproduced hereunder for ease of reference:

19.13. ARBITRATION & RELATED ISSUES

The Parties shall attempt to settle any dispute or differences in relation to or arising out of or touching this Works Contract or the validity, interpretation, construction, performance breach or enforceability of this Works Contract (collectively Disputes), by way of negotiation. To this end, each of the Parties shall use its reasonable endeavors to consult or negotiate with the other party in good faith and in recognising the Parties mutual interests and attempt to reach a just and equitable settlement satisfactory to both parties. If the parties have not settled the Dispute by negotiation within 30(Thirty) days from the date on which negotiation are initiated, the Disputes, if not solved /settled, shall be referred to, and finally resolved by Arbitration by

the Sole Arbitrator appointed by the Employer. The Arbitration proceedings shall be handled & construed as per the Indian Contracts Act 1872 and the Arbitration and Conciliation Act, 1996 and Rules and amendments made there under.

The arbitration proceedings shall be conducted at Bangalore.

The prevailing party in the Arbitration conducted hereunder shall be entitled to recover from the other party (as part of the arbitral award or order) its attorney's fees and other costs.

20.20. On a careful reading of Clause 19.13, this Court finds that:

20.20.1. The clause provides for submission of disputes to arbitration. It states that disputes, if not settled by negotiation within 30 days, "shall be referred to, and finally resolved by Arbitration by the Sole Arbitrator appointed by the Employer." This satisfies the requirement under Section 7(1) that there be an agreement to submit disputes to arbitration.

20.20.2. The disputes contemplated are those "in relation to or arising out of or touching this Works Contract or the validity, interpretation, construction, performance breach or enforceability of this Works

Contract." This relates to a defined legal relationship, namely, the contractual relationship under the Works Contract. This satisfies the requirement that disputes arise in respect of a defined legal relationship.

20.20.3. The clause is contained in the Conditions of Contract dated 09.07.2018, which is a written document executed between the parties. This satisfies the requirement under Section 7(3) that the arbitration agreement be in writing, and under Section 7(2) read with Section 7(4)(a) that it is contained in a document.

20.20.4. The clause further specifies the seat of arbitration as Bangalore and makes express reference to the Arbitration and Conciliation Act, 1996.

20.21. It is pertinent to note that the Respondent does not dispute the existence of Clause 19.13 in the Conditions of Contract. The Respondent's objection is not that there is no arbitration clause, but that the arbitration clause has ceased to be enforceable on account of the

completion of the CIRP process and the approval of the Resolution Plan. This is a significant distinction. The existence of the arbitration clause, on a prima facie examination, is clearly established.

20.22. The next limb of this Point requires this Court to examine whether the arbitration agreement survives the termination of the underlying contract and continues to subsist notwithstanding the approval of the Resolution Plan under Section 31(1) of the IBC.

20.23. The doctrine of separability of the arbitration clause from the underlying contract is a well-established principle. The Hon'ble Apex Court in **SBI General Insurance vs Krish Spinning** has categorically held at Para 118 that:

> ***118.*** *The dispute pertaining to the "accord and satisfaction" of claims is not one which attacks or questions the existence of the arbitration agreement in any way. As held by us in the preceding parts of this judgment, the arbitration agreement, being separate and independent from the underlying substantive contract in which it is contained, continues to remain in existence even after the original contract stands discharged by "accord and satisfaction".*

20.24. The principle emanating from **Krish Spinning** is clear: the arbitration agreement is separate

and independent from the underlying substantive contract. It continues to remain in existence even after the original contract stands discharged. The rationale behind this principle is that the arbitration agreement has an autonomous existence, and its survival does not depend on the continued subsistence of the underlying contract. This is the doctrine of separability, which is recognised in Section 16(1)(a) of the Act, which provides that an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract.

20.25. The Respondent's contention is that the contract having been terminated on 25.02.2020 and the CIRP process having been completed with the approval of the Resolution Plan, the arbitration clause has ceased to exist. However, this contention confuses two distinct legal concepts: (a) the termination of the underlying contract, and (b) the continued existence of the arbitration agreement. The termination of the contract does not ipso facto terminate the arbitration clause contained therein. As held in **Krish Spinning** (supra), the arbitration

agreement survives the discharge of the contract.

20.26. As regards the impact of the approval of the Resolution Plan on the arbitration agreement, this Court notes that Section 31 of the IBC deals with the approval of the Resolution Plan and its binding nature on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders. However, Section 31 does not expressly provide for the extinguishment of arbitration agreements. The extinguishment, if any, is of claims and not of the arbitration agreement per se. There is a distinction between the extinguishment of a claim and the extinguishment of the mechanism (i.e., the arbitration agreement) by which a claim may be adjudicated.

20.27. The Respondent's submission that the decisions in **Krish Spinning** and **Duro Felguera** are distinguishable is noted. Learned senior counsel argues that those decisions dealt with subsisting arbitration agreements and not with situations where the contract stood extinguished by operation of law. This Court,

however, finds that the principle of separability is of universal application. Whether the contract is terminated by the parties or stands extinguished by operation of law, the arbitration clause, being an autonomous agreement, retains its independent existence. The doctrine of separability does not carve out any exception for statutory extinguishment of the underlying contract.

20.28. In **In Re: Interplay between Arbitration Agreements**, at Para 165, the Hon'ble Apex Court has held that the legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement, and the use of the term "examination" itself connotes that the scope of the power is limited to a prima facie determination. The requirement of "existence" draws effect from Section 7 of the Act. In **Duro Felguera** (supra), the Hon'ble Apex Court has held that the referral courts only need to consider one aspect: whether the underlying contract contains an arbitration agreement which provides for arbitration pertaining to the disputes which have arisen between the parties.

20.29. Applying the above principles to the facts of the present case, this Court finds, on a prima facie examination, that Clause 19.13 constitutes a valid arbitration agreement within the meaning of Section 7 of the Act. The clause satisfies all the formal requirements of a valid arbitration agreement. As regards its survival, the doctrine of separability, as enunciated in **Krish Spinning** (supra), mandates that the arbitration agreement continues to exist independent of the underlying contract. The termination of the contract and the approval of the Resolution Plan do not, prima facie, extinguish the arbitration agreement.

20.30. Insofar as the decisions relied upon by the Respondent are concerned, the Respondent has primarily sought to distinguish the decisions relied upon by the Petitioner rather than placing reliance upon any independent authority to support the proposition that an arbitration clause stands automatically extinguished upon approval of a Resolution Plan. No authority has been placed before this Court, by the Respondent, which holds that Section 31 of the IBC expressly or impliedly extinguishes an

arbitration agreement. The extinguishment, if at all, is of claims, and not of the arbitration agreement as a dispute resolution mechanism.

20.31. **Accordingly, I answer Point No.(i) by holding that Clause 19.13 of the Conditions of Contract dated 09.07.2018 constitutes a valid arbitration agreement within the meaning of Section 7 of the Act, and the said arbitration agreement, by virtue of the doctrine of separability, survives the termination of the underlying contract and continues to subsist, prima facie, notwithstanding the approval of the Resolution Plan under Section 31(1) of the IBC.**

21. **<u>Answer to Point No.(ii):</u> What is the scope of jurisdiction of this Court under Section 11 of the Arbitration and Conciliation Act, 1996. In particular, whether in view of Section 11(6-A), this Court is confined to a prima facie examination of the existence of an arbitration agreement, or whether it is competent to examine the legal consequences flowing from the approval of a Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016, including the applicability and effect of the "Clean Slate" doctrine?**

21.1. Sri Pradeep Naik, learned counsel for the Petitioner, submits that the scope of examination under Section 11 is extremely narrow and is confined to the prima facie existence of an arbitration agreement. He relies upon Section 11(6-A), which was introduced by the 2015 Amendment and provides that the High Court, while considering an application under sub-section (4), (5) or (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement. The provision is extracted hereunder:

> ***Section 11(6-A).*** *The Supreme Court or, as the case may be, the High Court, while considering any application under sub-section (4) or sub-section (5) or sub-section (6), shall, notwithstanding any judgment, decree or order of any court, confine to the examination of the existence of an arbitration agreement.*

21.2. Learned counsel relies upon **Krish Spinning** (supra), where at Para 117, the Hon'ble Apex Court observed: "it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement,

and nothing else." His submission is that the words "and nothing else" are of critical importance and conclusively determine that this Court cannot venture into examining the legal consequences of the Resolution Plan or the applicability of the Clean Slate doctrine.

21.3. Learned counsel further relies upon **Interplay between Arbitration Agreements** (supra), and **Duro Felguera** (supra), to reiterate that after the 2015 Amendment, the courts need to see only whether an arbitration agreement exists, nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator.

21.4. Learned counsel further relies upon **Demerara Distilleries** (supra), to submit that objections regarding disputes not being arbitrable, proceedings being premature, and similar contentions would not merit any serious consideration at the Section 11 stage. He also relies upon **Mphasis Limited** (supra), where a Coordinate Bench of this Court held that once the agreement is admitted and the arbitration

clause therein is also admitted, any other objection would have to be raised under Section 16 of the Act, which cannot be examined in summary proceedings under Section 11.

21.5. Sri Dhyan Chinnappa, learned senior counsel for the Respondent, submits that the decisions relied upon by the Petitioner cannot be read as laying down an absolute rule that this Court is prohibited from examining any aspect beyond the bare existence of an arbitration clause. His submission is that where the very foundation of the contractual relationship, including the arbitration clause, has been extinguished by operation of a statute, namely, the IBC, the question is no longer merely about the formal existence of the arbitration agreement, but about whether any enforceable arbitration agreement continues to subsist at all.

21.6. Learned senior counsel submits that the Clean Slate doctrine, which flows from Section 31 of the IBC as interpreted by the Hon'ble Apex Court, is a statutory consequence of the approval of the Resolution Plan. It is not a contractual defence like accord and satisfaction

or waiver. When a statute extinguishes all rights and liabilities, the question whether the arbitration clause survives is itself a question that goes to the existence of the arbitration agreement.

21.7. His submission is that **Krish Spinning** dealt with the aspect of accord and satisfaction between private parties, and the Court held that such a question, being a mixed question of law and fact, should be left to the arbitral tribunal. However, the present case does not involve mere contractual accord and satisfaction but involves the statutory extinguishment of claims through an approved Resolution Plan under the IBC, which is a fundamentally different legal question.

21.8. The question of the scope of jurisdiction of this Court under Section 11 is a threshold question that must be answered before proceeding to examine the substantive issues raised by the parties. The answer to this question will determine the extent to which this Court may venture into the legal consequences of the approval of the Resolution Plan.

21.9. Section 11(6-A) of the ***A&C Act*** is clear and unambiguous. It mandates that the Court shall confine itself to the examination of the existence of an arbitration agreement. The word "shall" leaves no room for discretion. The word "confine" sets the outer boundary of the Court's jurisdiction. The phrase "existence of an arbitration agreement" defines the subject matter of the Court's examination.

21.10. The Hon'ble Apex Court, in a series of decisions, has consistently narrowed the scope of inquiry at the Section 11 stage. In **SBI General Insurance vs Krish Spinning** (supra), the Hon'ble Apex Court, at Para 113, held:

> ***113.*** *The scope of examination under Section 11(6-A) is confined to the existence of an arbitration agreement on the basis of Section 7. The examination of validity of the arbitration agreement is also limited to the requirement of formal validity such as the requirement that the agreement should be in writing.*

21.11. At Para 114, the Court further held that the use of the term "examination" under Section 11(6-A), as distinguished from the use of the term "rule" under Section 16, implies that the scope

of enquiry under Section 11(6-A) is limited to a prima facie scrutiny of the existence of the arbitration agreement, and does not include a contested or laborious enquiry, which is left for the Arbitral Tribunal to "rule" under Section 16.

21.12. At Para 117, the Court went further and held:

> ***117.*** *...it is clear that the scope of enquiry at the stage of appointment of arbitrator is limited to the scrutiny of prima facie existence of the arbitration agreement, and nothing else. For this reason, we find it difficult to hold that the observations made in Vidya Drolia and adopted in NTPC Ltd. v. SPML Infra Ltd. that the jurisdiction of the Referral Court when dealing with the issue of "accord and satisfaction" under Section 11 extends to weeding out ex facie non-arbitrable and frivolous disputes would continue to apply despite the subsequent decision in Interplay Between Arbitration Agreements...*

21.13. This is a significant development in the law. The Hon'ble Apex Court has, in **Krish Spinning**, effectively overruled the wider scope of inquiry that was permitted under **Vidya Drolia vs Durga Trading Corporation** and **NTPC Ltd. vs SPML Infra Ltd.**. The earlier position which permitted the Referral Court to weed out ex facie non-arbitrable and frivolous disputes has been displaced by the narrower position that the Court's examination is limited to the prima

facie existence of the arbitration agreement, and nothing else.

21.14. In **In Re: Interplay between Arbitration Agreements** (supra), the Hon'ble Apex Court at Para 165 held:

> ***165.*** *The legislature confined the scope of reference under Section 11(6-A) to the examination of the existence of an arbitration agreement. The use of the term "examination" in itself connotes that the scope of the power is limited to a prima facie determination...The scope of examination under Section 11(6-A) should be confined to the existence of an arbitration agreement on the basis of Section 7. Similarly, the validity of an arbitration agreement, in view of Section 7, should be restricted to the requirement of formal validity such as the requirement that the agreement be in writing. This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16.*

21.15. In **Duro Felguera** (supra), the Hon'ble Apex Court at Para 59 held:

> ***59.*** *...After the amendment, all that the courts need to see is whether an arbitration agreement exists - nothing more, nothing less. The legislative policy and purpose is essentially to minimise the Court's intervention at the stage of appointing the arbitrator and this intention as incorporated in Section 11(6-A) ought to be respected.*

21.16. The cumulative effect of these decisions is that this Court, at the Section 11 stage, is not the appropriate forum to conduct a mini-trial or to

determine contested questions of law and fact. The examination is confined to a prima facie scrutiny of the existence of the arbitration agreement on the basis of Section 7. This examination is limited to the formal validity of the arbitration agreement, namely, whether it is in writing and whether it provides for arbitration of the disputes between the parties.

21.17. Now, the question that arises is whether the legal consequences of the approval of the Resolution Plan under Section 31 of the IBC, including the applicability and effect of the Clean Slate doctrine, fall within the scope of the limited examination permitted under Section 11(6-A). The Respondent contends that when a statute extinguishes the arbitration agreement itself, the question goes to the existence of the arbitration agreement and is therefore within the scope of Section 11(6-A).

21.18. This Court has carefully considered this contention. The Clean Slate doctrine, as articulated in the decisions relied upon by both parties, primarily operates on claims and not on the arbitration agreement per se. Section 31 of

the IBC speaks of the Resolution Plan being binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders. It does not, in terms, provide for the extinguishment of arbitration agreements. The extinguishment, if any, is of claims that were or could have been raised during the CIRP process.

21.19. The question whether the claims sought to be raised by the Petitioner stand extinguished by virtue of the approval of the Resolution Plan is not a question that goes to the formal existence of the arbitration agreement under Section 7 of the Act. It is a substantive question that involves examination of the scope and effect of Section 31 of the IBC, the nature of the claims, whether they were or should have been raised before the RP, and whether they survive the completion of the CIRP process. These are contested questions of law and fact that are more appropriately determined by the Arbitral Tribunal under Section 16 of the Act.

21.20. As held in **Krish Spinning** (supra), at Para 119:

> ***119.*** *The question of "accord and satisfaction", being a mixed question of law and fact, comes within the exclusive jurisdiction of the Arbitral Tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the Arbitral Tribunal, should not be looked into by the Referral Court, even for a prima facie determination, before the Arbitral Tribunal first has had the opportunity of looking into it.*

21.21. At Para 121, the Hon'ble Apex Court further observed:

> ***121.*** *Tests like the "eye of the needle" and "ex facie meritless", although try to minimise the extent of judicial interference, yet they require the Referral Court to examine contested facts and appreciate prima facie evidence (however limited the scope of enquiry may be) and thus are not in conformity with the principles of modern arbitration which place arbitral autonomy and judicial non-interference on the highest pedestal.*

21.22. Applying this principle, the question of whether the Clean Slate doctrine extinguishes the Petitioner's claims involves examination of contested facts, including: (a) the nature and extent of the claims; (b) whether these claims were submitted to the RP; (c) whether the Resolution Plan addresses such claims; and (d) the effect of the Resolution Plan on claims of the corporate debtor against third parties. These are precisely the kinds of contested

questions that the Hon'ble Apex Court has held should not be examined at the Section 11 stage.

21.23. In **Demerara Distilleries** (supra), at Para 5, the Hon'ble Apex Court observed that objections regarding disputes not being arbitrable would not merit any serious consideration at the Section 11 stage if the arbitration clause can be legitimately invoked. Similarly, in **Mphasis Limited** (supra), the Coordinate Bench of this Court held that the Respondent can raise all his objections before the arbitrator under Section 16 of the Act, which need not be examined in summary proceedings. These principles are squarely applicable to the present case.

21.24. **Accordingly, I answer Point No.(ii) by holding that enquiry under Section 11(6-A) of the Act, is confined to a prima facie examination of the existence of an arbitration agreement. The legal consequences flowing from the approval of the Resolution Plan under Section 31 of the IBC, including the applicability and**

effect of the Clean Slate doctrine, involve contested questions of law and fact that do not go to the formal existence of the arbitration agreement under Section 7, and are therefore not within the scope of the limited examination permitted at the Section 11 stage. These questions are more appropriately left to be determined by the Arbitral Tribunal under Section 16 of the Act.

22. **<u>Answer to Point No.(iii):</u> What is the effect of approval of the Resolution Plan under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 on the claims sought to be raised in the present proceedings. Whether, upon such approval, all claims not forming part of the Resolution Plan stand extinguished in their entirety, including claims of the corporate debtor against third parties; or whether such extinguishment operates only in respect of claims against the corporate debtor, leaving intact independent remedies of the corporate debtor against its counterparties?**

22.1. Sri Pradeep Naik, learned counsel for the Petitioner, in rejoinder, submits that the Clean Slate doctrine would apply only against the

corporate debtor, and not as regards the claims by the corporate debtor. His submission is that the Clean Slate applies only to the claims of the Respondent against the Petitioner, and not as regards the claims of the Petitioner against the Respondent.

22.2. In support of this submission, he relies upon **COC Essar Steel India Ltd. vs Satish Kumar Gupta and Ors.**, particularly Paras 105 to 107. At Para 107, the Hon'ble Apex Court held that a successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted, as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant. All claims must be submitted to and decided by the resolution professional. This the successful resolution applicant does on a fresh slate.

22.3. Learned counsel submits that this formulation is directed at protecting the resolution applicant from surprise claims by creditors. The "fresh slate" or "clean slate" is for the benefit of the

successful resolution applicant in running the business of the corporate debtor. It does not extinguish the corporate debtor's own claims against third parties.

22.4. He further relies upon **Ghanashyam Mishra & Sons (P) Ltd. vs Edelweiss Asset Reconstruction Co. Ltd.,** At Para 102.1, the Hon'ble Apex Court held that once a resolution plan is duly approved, the claims as provided in the resolution plan shall stand frozen and all such claims which are not a part of the resolution plan shall stand extinguished. However, learned counsel submits that this extinguishment relates to claims against the corporate debtor, and not to claims of the corporate debtor against third parties.

22.5. Most significantly, learned counsel relies upon **Gluckrich Capital Pvt. Ltd. vs The State of West Bengal and Ors.** at Para 10, the Hon'ble Apex Court categorically held:

> ***10.*** *We are of the considered opinion that in such circumstances, it is for the Resolution Professional or the successful resolution applicant, as the case may be, to take such civil remedies against third party, for recovery of dues payable to the corporate debtor, which may be available in law. The remedy against third party, however, is not available under section 66 of the IBC, and the civil remedies which may be available in law, are independent of the said section.*

22.6. Learned counsel further relies upon **Electrosteel Steel Limited vs Ispat Carrier Private Limited**. While this decision primarily deals with the extinguishment of claims of creditors against the corporate debtor, learned counsel submits that it reinforces the distinction between claims against the corporate debtor (which stand extinguished) and claims of the corporate debtor against its counterparties (which survive).

22.7. Learned counsel also relies upon the decision of the National Company Law Tribunal, Jaipur Bench in **M/s Indus Container Lines Pvt. Ltd. vs Jadoun International Pvt. Ltd. (IA (IBC) No.359/JPR/2019)**, where the Tribunal held that the successful resolution applicant is at liberty to proceed against its debtors by filing appropriate application with the competent Court of law.

22.8. Sri Dhyan Chinnappa, learned senior counsel for the Respondent, submits that Section 31 of the IBC does not preserve, revive or reserve any contractual rights or action in favour of the Petitioner against the Respondent. His

submission is that on the CIRP proceedings taking place, all the rights and liabilities of the parties are deemed to be fully dealt with and crystallised during that process and no action can be taken up subsequent thereto.

22.9. Learned senior counsel submits that the RP had considered all the claims of both parties. The Respondent submitted its claim of Rs.12,26,30,840.63. The RP, having secured details from the Petitioner and his representative as regards any amounts due by the Respondent to the Petitioner, had taken into account the submissions made and tabulated the dues by holding that there is no amount due by the Respondent to the Petitioner. On that basis, the Resolution Plan was prepared, approved and implemented. Thus, all claims of the Petitioner against the Respondent are deemed to have been considered and resolved during the CIRP process.

22.10. In sur-rejoinder, learned senior counsel distinguishes the decisions relied upon by the Petitioner. He submits that **Satish Kumar Gupta** did not deal with the situation where the

corporate debtor had not asserted any counterclaims against a creditor whose claim stood admitted, crystallised and settled during the CIRP. He submits that **Ghanashyam Mishra** addressed only one side of the equation, dealing with claims against the corporate debtor. He submits that **Gluckrich Capital** was a case where the statutory authorities' rights were extinguished and the issue was whether government claims could be pursued post approval. He submits that **Electrosteel** was a case arising out of execution of an arbitral award in favour of an operational creditor, and the Court held that the claims of the creditors stood extinguished upon approval of the Resolution Plan.

22.11. Learned senior counsel's core submission is that the resolution process being completed, the claims of the Respondent having been considered by the RP and payments made, this would be deemed to have taken into account the claims of the Petitioner against the Respondent. The Respondent has been forced to take a haircut of Rs.99.29 paise per rupee and cannot now be mulcted with further claims

of the Petitioner without the Respondent having recourse to raise a claim for the balance amounts.

22.12. This is the central question in the present proceedings, and it requires a careful examination of the scope and operation of Section 31 of the IBC. Section 31(1) provides:

> ***Section 31(1).*** *If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on 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 involved in the resolution plan.*

22.13. The language of Section 31(1) makes the Resolution Plan binding on the corporate debtor, its employees, members, creditors, guarantors and other stakeholders "involved in the resolution plan." The provision is designed to ensure that the successful resolution applicant can commence the business of the corporate debtor on a fresh slate, free from the burden of pre-existing claims that were addressed during the CIRP process.

22.14. The question is: does the extinguishment under Section 31 operate symmetrically, i.e., does it extinguish both claims against the corporate debtor and claims of the corporate debtor? Or does it operate asymmetrically, extinguishing only claims against the corporate debtor while leaving intact the corporate debtor's own claims?

22.15. On a careful examination of the case law cited before this Court, the following principles emerge:

22.16. First, in **COC Essar Steel India Ltd. vs Satish Kumar Gupta** (supra), the Hon'ble Apex Court held at Para 107 that a successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan has been accepted. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order to take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate. The principle articulated here is the protection of the resolution applicant

from surprise claims by creditors. The "fresh slate" operates to shield the resolution applicant from claims that were or ought to have been raised during the CIRP process. This principle is directed at claims against the corporate debtor, not claims of the corporate debtor.

22.17. Second, in **Ghanashyam Mishra** (supra), the Hon'ble Apex Court held at Para 102.1 that once a resolution plan is duly approved, the claims as provided in the resolution plan shall stand frozen and will be binding on all stakeholders. On the date of approval, all such claims which are not a part of the resolution plan shall stand extinguished and no person will be entitled to initiate or continue any proceedings in respect to a claim which is not part of the resolution plan. Again, this formulation is directed at claims against the corporate debtor. The purpose is to ensure that the resolution plan is not undermined by stale or undisclosed claims.

22.18. Third, and most significantly, in **Gluckrich Capital Pvt. Ltd. vs The State of West**

Bengal (supra), the Hon'ble Apex Court at Para 10 categorically held that the Resolution Professional or the successful resolution applicant may take such civil remedies against third party for recovery of dues payable to the corporate debtor which may be available in law. The civil remedies which may be available in law are independent of the IBC. This decision directly addresses the question at hand. It recognises that the corporate debtor, through its resolution applicant, retains the right to pursue claims against third parties even after the completion of the CIRP process.

22.19. Fourth, in **Electrosteel Steel Limited vs Ispat Carrier Private Limited** (supra), the Hon'ble Apex Court at Para 50 held that once a resolution plan is approved, all claims which are not part of the resolution plan shall stand extinguished. However, this was in the context of a creditor's claim against the corporate debtor. The Court held that the claims of the Respondent (creditor) stood extinguished. Significantly, the decision does not hold that the corporate debtor's own claims against its counterparties stand extinguished.

22.20. Fifth, the decision of the NCLT, Jaipur Bench in **M/s Indus Container Lines Pvt. Ltd. vs Jadoun International Pvt. Ltd.** (supra) though not binding sheds some light on this issue. At Para 16, the Tribunal held that the successful resolution applicant is at liberty to proceed against its debtors by filing appropriate application with the competent Court of law. This decision, while of a Tribunal and not binding on this Court, is consistent with the ratio of **Gluckrich Capital** and reinforces the principle that the corporate debtor's remedies against third parties survive the CIRP process.

22.21. The Respondent's attempt to distinguish these decisions is noted. However, the attempt is not persuasive. The core principle that emerges from **Gluckrich Capital** is not limited to any particular type of claim or claimant. It is a general statement of law that the resolution applicant may take civil remedies against third parties for recovery of dues payable to the corporate debtor. The Respondent is a third party vis-a-vis the corporate debtor's claims, and the Petitioner's claims against the Respondent (for delays, defects, withholding of

amounts, etc.) are civil remedies that are independent of the IBC process.

22.22. The Respondent's submission regarding double jeopardy and inequity is an argument of considerable force. It is true that the Respondent has received only 0.71% of its admitted claim of Rs.12,26,30,840, representing a massive haircut. If the Petitioner is permitted to pursue its claims against the Respondent without the Respondent having a corresponding right to pursue its full claims against the Petitioner, the result appears asymmetric. However, this asymmetry is a consequence of the statutory scheme of the IBC, which is designed to revive the corporate debtor as a going concern. The Clean Slate doctrine, as articulated by the Hon'ble Apex Court, operates in one direction: to protect the resolution applicant from claims. It does not, by its own logic, extinguish the corporate debtor's claims against others. The equitable concerns raised by the Respondent, while understandable, cannot override the clear legal position established by the Hon'ble Apex Court.

22.23. That said, it is not for this Court, at the Section 11 stage, to finally determine the scope and effect of the Resolution Plan on the specific claims sought to be raised by the Petitioner. The question of whether the Petitioner's claims were or ought to have been raised before the RP, whether they were considered during the CIRP process, and whether they survive the approval of the Resolution Plan, are all contested questions of fact and law that are more appropriately determined by the Arbitral Tribunal. This Court's observations are, at best, prima facie in nature and do not bind the Arbitral Tribunal.

22.24. **Accordingly, I answer Point No.(iii) by holding that on a prima facie examination, the extinguishment under Section 31(1) of the IBC operates primarily in respect of claims against the corporate debtor. Claims of the corporate debtor against third parties, including claims by the Petitioner against the Respondent, are not automatically extinguished by the approval of the Resolution Plan. The corporate debtor, through its resolution**

applicant, retains the right to pursue independent civil remedies against its counterparties, as held by the Hon'ble Apex Court in Gluckrich Capital (supra). However, the final determination of this question, including the scope and effect of the Resolution Plan on the specific claims sought to be raised, is left to the Arbitral Tribunal.

23. **<u>Answer to Point No.(iv):</u> Whether, having regard to the initiation and completion of the Corporate Insolvency Resolution Process, the submission and adjudication of claims before the Resolution Professional, and the implementation of the approved Resolution Plan without any express reservation of rights, the disputes now sought to be raised by the Petitioner stands extinguished by operation of law, or amount to accord and satisfaction, waiver or estoppel, or whether they constitute live and arbitrable disputes capable of being referred to arbitration?**

23.1. Sri Pradeep Naik, learned counsel for the Petitioner, submits that the disputes sought to be raised by the Petitioner are live and arbitrable disputes. His primary submission is

that the completion of the CIRP process does not amount to accord and satisfaction, waiver or estoppel in respect of the Petitioner's claims against the Respondent. He relies upon **Krish Spinning** (supra), to submit that the question of accord and satisfaction is a mixed question of law and fact that comes within the exclusive jurisdiction of the Arbitral Tribunal. At Para 138, the Court held that the dispute regarding accord and satisfaction does not pertain to the existence of the arbitration agreement and can be adjudicated upon by the Arbitral Tribunal as a preliminary issue.

23.2. Learned counsel submits that the Petitioner has various claims against the Respondent on various heads of account, including claims arising from delays, defaults on the part of the Respondent, variations in the scope of works, and the illegal invocation of the mobilisation bank guarantee during the period of the moratorium. These claims were not raised or adjudicated during the CIRP process. The CIRP process was concerned with the claims of creditors against the corporate debtor, and not

with the corporate debtor's claims against its counterparties.

23.3. Learned counsel further submits that the fact that the Resolution Plan has been approved and implemented without any express reservation of rights does not, by itself, amount to waiver or estoppel. The corporate debtor, having been under moratorium from 11.12.2019 to 05.04.2022, was not in a position to pursue its claims during that period. The arbitration notice was issued on 13.03.2023, promptly after the moratorium was lifted. This demonstrates that the Petitioner did not intend to abandon its claims.

23.4. Sri Dhyan Chinnappa, learned senior counsel for the Respondent, submits that the disputes sought to be raised by the Petitioner stand extinguished by operation of law. His submission is that the completion of the CIRP process, the submission of claims by the Respondent to the RP, the determination by the RP that no amount was due by the Respondent to the Petitioner, and the approval and implementation of the Resolution Plan,

collectively operate as a final settlement of all claims between the parties.

23.5. Learned senior counsel submits that the RP had specifically considered whether any amounts were due by the Respondent to the Petitioner, and had concluded that no such amounts were due. On that basis, the Resolution Plan was formulated, which provided for payment of 0.71% of the operational creditors' claims. The Respondent received payment on this basis. The entire process was supervised by the NCLT and the Resolution Plan was approved by the Adjudicating Authority. The Petitioner cannot now seek to reopen settled matters.

23.6. His further submission is that even if the question of accord and satisfaction is ordinarily a matter for the Arbitral Tribunal, the present case is different because the settlement has been effected not by agreement between the parties but by operation of a statutory process under the IBC. The statutory finality attached to the Resolution Plan by Section 31 goes beyond mere contractual accord and satisfaction.

23.7. The question before this Court is whether the disputes sought to be raised by the Petitioner have been extinguished by operation of law, or amount to accord and satisfaction, waiver or estoppel. This question requires examination of several interconnected issues.

23.8. First, as regards accord and satisfaction. The Hon'ble Apex Court in **SBI General Insurance vs Krish Spinning** (supra) has dealt with this issue directly and conclusively. At Para 119, the Court held:

> ***119.*** *The question of "accord and satisfaction", being a mixed question of law and fact, comes within the exclusive jurisdiction of the Arbitral Tribunal, if not otherwise agreed upon between the parties. Thus, the negative effect of competence-competence would require that the matter falling within the exclusive domain of the Arbitral Tribunal, should not be looked into by the Referral Court, even for a prima facie determination, before the Arbitral Tribunal first has had the opportunity of looking into it.*

23.9. At Para 138, in the context of the specific dispute before it, the Court held:

> ***138.*** *The existence of the arbitration agreement as contained in Clause 13 of the insurance policy is not disputed by the appellant. The dispute raised by the claimant being one of quantum and not of liability, prima facie, falls within the scope of the arbitration agreement. The dispute regarding "accord and satisfaction" as raised by the appellant does not pertain to the existence of the arbitration agreement, and can be adjudicated upon by the Arbitral Tribunal as a preliminary issue.*

23.10. The principle is clear. The question of accord and satisfaction is a mixed question of law and fact that falls within the exclusive jurisdiction of the Arbitral Tribunal. The Referral Court ought not to examine this question, even on a prima facie basis, before the Arbitral Tribunal has had the opportunity to examine it. This is the negative effect of the competence-competence doctrine.

23.11. The Respondent's contention that the present case is different because the settlement was effected by operation of a statutory process under the IBC, and not by agreement between the parties, is noted. This is an argument that merits consideration. However, even accepting this distinction at face value, the question of whether the CIRP process constitutes a statutory form of accord and satisfaction, or whether it operates differently from contractual accord and satisfaction, is itself a complex legal question that involves interpretation of the IBC, examination of the scope of the Resolution Plan, and determination of whether specific claims were or ought to have been addressed during the CIRP process. These are contested

questions that are more appropriately determined by the Arbitral Tribunal.

23.12. Second, as regards waiver and estoppel. The Respondent's submission is that the Petitioner, by not reserving its rights during the CIRP process and by implementing the Resolution Plan without any express reservation, has waived its claims against the Respondent. However, waiver requires voluntary relinquishment of a known right. The Petitioner was under moratorium from 11.12.2019 to 05.04.2022. During this period, the Petitioner's affairs were managed by the RP and, subsequently, by the resolution applicant. The Petitioner may not have been in a position to assert its claims during this period. Whether the failure to assert claims during the CIRP amounts to waiver is, again, a factual question that should be determined by the Arbitral Tribunal.

23.13. Similarly, estoppel requires a representation of fact by one party, reliance on that representation by the other party, and consequent detriment. Whether the Petitioner's

conduct during the CIRP amounted to a representation that it would not pursue its claims, whether the Respondent relied on such representation, and whether the Respondent suffered detriment as a result, are all factual questions that cannot be resolved at the Section 11 stage.

23.14. Third, as regards extinguishment by operation of law. As discussed in connection with Point No.(iii), the extinguishment under Section 31 of the IBC primarily operates in respect of claims against the corporate debtor. The Hon'ble Apex Court in **Gluckrich Capital** (supra) has recognised the right of the corporate debtor to pursue civil remedies against third parties. Whether the specific claims sought to be raised by the Petitioner in this case survive the CIRP process is a question that requires detailed examination of the Resolution Plan, the claims submitted to the RP, and the nature of the Petitioner's claims. This examination cannot be undertaken at the Section 11 stage.

23.15. Fourth, the Respondent's submission regarding the RP's determination that no amount was due

by the Respondent to the Petitioner is a factual assertion that is disputed by the Petitioner. The Petitioner claims to have various claims against the Respondent on various heads of account. Whether the RP's determination is binding on the Petitioner's claims, and whether the Petitioner's claims were in fact considered and rejected during the CIRP process, are contested questions of fact that cannot be resolved in these proceedings.

23.16. **Accordingly, I answer Point No.(iv) by holding that the question of whether the disputes sought to be raised by the Petitioner stand extinguished by operation of law, or amount to accord and satisfaction, waiver or estoppel, involves contested questions of law and fact that are within the exclusive jurisdiction of the Arbitral Tribunal. On a prima facie examination, the disputes sought to be raised by the Petitioner constitute live and arbitrable disputes capable of being referred to arbitration. The final determination of these questions, including the effect of the CIRP process on**

the specific claims sought to be raised, is left to the Arbitral Tribunal.

24. **<u>Answer to Point No.(v):</u> What is the interplay between the doctrine of competence-competence under Section 16 of the Arbitration and Conciliation Act, 1996 and the statutory finality attached to an approved Resolution Plan under Section 31 of the Insolvency and Bankruptcy Code, 2016. Specifically, whether upon a prima facie arbitration agreement being shown, all objections ought to be left to the Arbitral Tribunal; or whether the statutory consequences of approval of the Resolution Plan constitute a threshold jurisdictional bar which this Court is required to examine at the stage of Section 11?**

24.1. Sri Pradeep Naik, learned counsel for the Petitioner, submits that the doctrine of competence-competence, as embodied in Section 16 of the Act, gives the Arbitral Tribunal the power to rule on its own jurisdiction, including the existence and validity of the arbitration agreement. His submission is that once a prima facie arbitration agreement is shown, all objections, including those arising from the CIRP process, ought to be left to the Arbitral Tribunal. He relies upon **Krish**

Spinning (supra), **Interplay between Arbitration Agreements** (supra), and **Duro Felguera** (supra), to submit that the Referral Court should not exercise jurisdiction that is within the domain of the Arbitral Tribunal.

24.2. Learned counsel relies upon **Interplay between Arbitration Agreements** (supra), at Para 165, where the Hon'ble Apex Court held that "This interpretation also gives true effect to the doctrine of competence-competence by leaving the issue of substantive existence and validity of an arbitration agreement to be decided by Arbitral Tribunal under Section 16."

24.3. Sri Dhyan Chinnappa, learned senior counsel for the Respondent, submits that the statutory finality attached to an approved Resolution Plan under Section 31 of the IBC constitutes a threshold jurisdictional bar that this Court is required to examine at the Section 11 stage. His submission is that the Clean Slate doctrine is not merely a defence on the merits of the dispute, but goes to the very jurisdiction of the Arbitral Tribunal to entertain the dispute. If the claims stand extinguished by operation of law,

there is no live dispute to be arbitrated, and the appointment of an arbitrator would be an exercise in futility.

24.4. His further submission is that the competence-competence doctrine cannot be stretched to a point where it requires the Court to refer to arbitration a dispute that has been conclusively resolved by a statutory process. The IBC, being a special statute with overriding effect under Section 238, prevails over the provisions of the ***A&C Act*** to the extent of any inconsistency.

24.5. Section 16 of the ***A&C Act*** provides:

> ***Section 16. Competence of arbitral tribunal to rule on its jurisdiction.*** *(1) The arbitral tribunal may rule on its own jurisdiction, including ruling on any objection with respect to the existence or validity of the arbitration agreement, and for that purpose, - (a) an arbitration clause which forms part of a contract shall be treated as an agreement independent of the other terms of the contract; and (b) a decision by the arbitral tribunal that the contract is null and void shall not entail ipso jure the invalidity of the arbitration clause.*

24.6. The doctrine of competence-competence, as embodied in Section 16, has both a positive and a negative dimension. The positive dimension empowers the Arbitral Tribunal to rule on its own jurisdiction. The negative dimension restricts the Referral Court from making determinations that fall within the domain of

the Arbitral Tribunal. The Hon'ble Apex Court in **Krish Spinning** (supra) has explicitly recognised the negative effect of the competence-competence doctrine at Para 119, holding that the matter falling within the exclusive domain of the Arbitral Tribunal should not be looked into by the Referral Court, even for a prima facie determination, before the Arbitral Tribunal first has had the opportunity of looking into it.

24.7. The Respondent contends that the statutory finality of the Resolution Plan under Section 31 of the IBC constitutes a threshold jurisdictional bar. This Court has considered this contention carefully. The question is whether the approval of the Resolution Plan creates a legal situation where there is no live dispute to be arbitrated, or whether it merely raises a defence that the claims have been extinguished, which defence should be considered by the Arbitral Tribunal.

24.8. In the considered view of this Court, the question of whether the Petitioner's specific claims survive the CIRP process is not a threshold jurisdictional question but a

substantive defence that goes to the merits of the dispute. The following considerations support this conclusion:

24.8.1. First, the existence of the arbitration agreement is not in dispute. As found under Point No.(i), Clause 19.13 constitutes a valid arbitration agreement that survives the termination of the underlying contract.

24.8.2. Second, the Clean Slate doctrine, as discussed under Point No.(iii), operates primarily in respect of claims against the corporate debtor. The Hon'ble Apex Court in **Gluckrich Capital** (supra) has recognised the corporate debtor's right to pursue civil remedies against third parties. Whether the Petitioner's specific claims fall within the category of survivable claims is a factual question.

24.8.3. Third, as held by the Hon'ble Apex Court in **Krish Spinning** (supra) at Para 121, tests that require the Referral Court to examine contested facts and appreciate evidence are not in conformity with the

principles of modern arbitration. The question of whether the CIRP process constitutes a statutory bar to the Petitioner's claims requires examination of the Resolution Plan, the claims submitted to the RP, the nature of the Petitioner's claims, and the scope of the RP's determination. These are contested factual inquiries.

24.8.4. Fourth, the approach in **Krish Spinning** (supra) at Paras 114-115 is of importance, the Court held that the limited scope of enquiry at the Section 11 stage serves a twofold purpose: (a) it allows the Referral Court to weed out non-existent arbitration agreements, and (b) it protects the jurisdictional competence of the Arbitral Tribunal to rule on the issue of existence in depth. This approach preserves the autonomy of the arbitral process and ensures that substantive defences are not determined by the Referral Court.

24.9. As regards the Respondent's submission that the IBC has overriding effect under Section 238, this Court notes that Section 238 provides that the provisions of the IBC shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. However, the question is not whether the IBC overrides the Arbitration Act, but whether the specific consequences of the Resolution Plan create a jurisdictional bar to arbitration in the present case. This is a question of fact and law that is more appropriately determined by the Arbitral Tribunal, which will have the benefit of full evidence and detailed submissions.

24.10. It is also relevant to note that the Arbitral Tribunal, under Section 16, is fully competent to determine whether it has jurisdiction to entertain the dispute, including whether the claims have been extinguished by operation of law. If the Arbitral Tribunal finds that the claims stand extinguished, it can decline jurisdiction or dismiss the claims on that ground. This preserves the statutory finality of the Resolution Plan while also respecting the autonomy of the arbitral process.

24.11. **Accordingly, I answer Point No.(v) by holding that the doctrine of competence-competence under Section 16 of the *A&C Act* requires that, upon a prima facie arbitration agreement being shown, objections relating to the substantive effect of the approved Resolution Plan on the claims sought to be raised should be left to the Arbitral Tribunal. The statutory consequences of approval of the Resolution Plan under Section 31 of the IBC do not constitute a threshold jurisdictional bar which this Court is required to examine at the stage of Section 11. The Arbitral Tribunal is fully competent under Section 16 to determine whether the claims have been extinguished by operation of law, and this question should be left to the Tribunal.**

25. **<u>Answer to Point No.(vi):</u> Whether any live and subsisting arbitrable dispute survives between the parties so as to warrant exercise of jurisdiction under Section 11(6) of the Arbitration and Conciliation Act, 1996, and consequently, whether the present petition deserves to be allowed by appointment of a**

Sole Arbitrator or dismissed for want of a subsisting arbitrable claim or enforceable arbitration agreement.

25.1. Sri Pradeep Naik, learned counsel for the Petitioner, submits that the Petitioner has various claims against the Respondent arising from the construction contract, including claims relating to delays and defaults on the part of the Respondent, variations in the scope of works, illegal invocation of the mobilisation bank guarantee during the moratorium period, and other heads of account. These claims constitute live and arbitrable disputes. The arbitration clause in Clause 19.13 is broad enough to cover these disputes, as it encompasses all disputes "in relation to or arising out of or touching this Works Contract." On that basis, he submits that the petition deserves to be allowed and an Arbitrator be appointed.

25.2. Sri Dhyan Chinnappa, learned senior counsel for the Respondent, submits that no live or subsisting arbitrable dispute survives between the parties. His submission is that all claims

have been fully dealt with during the CIRP process. The RP determined that no amount was due by the Respondent to the Petitioner. The Resolution Plan has been approved and implemented. The Respondent has received payment of 0.71% of its claim. On these facts, there is no surviving dispute that warrants the appointment of an arbitrator. His submission is that the petition deserves to be dismissed for want of a subsisting arbitrable claim.

25.3. This Point, in substance, is a synthesis of the findings under the preceding Points. The answer to this Point flows directly from the cumulative effect of the answers to Points (i) through (v).

25.4. Under Point No.(i), this Court has found, on a prima facie examination, that Clause 19.13 constitutes a valid arbitration agreement that survives the termination of the underlying contract and continues to subsist notwithstanding the approval of the Resolution Plan.

25.5. Under Point No.(ii), this Court has held that at the Section 11 stage, the Court is confined to a prima facie examination of the existence of an

arbitration agreement. The legal consequences of the Clean Slate doctrine involve contested questions that are not within the scope of the limited examination permitted.

25.6. Under Point No.(iii), this Court has found, on a prima facie basis, that the extinguishment under Section 31 of the IBC operates primarily in respect of claims against the corporate debtor, and that claims of the corporate debtor against third parties survive, as held in **Gluckrich Capital** (supra).

25.7. Under Point No.(iv), this Court has held that the questions of accord and satisfaction, waiver and estoppel are contested questions that are within the exclusive jurisdiction of the Arbitral Tribunal, and that the disputes, prima facie, constitute live and arbitrable disputes.

25.8. Under Point No.(v), this Court has held that the doctrine of competence-competence requires that objections relating to the effect of the Resolution Plan on the claims should be left to the Arbitral Tribunal.

25.9. The cumulative effect of these findings is that: (a) a valid arbitration agreement exists and subsists prima facie; (b) the scope of this Court's examination is limited to the prima facie existence of the arbitration agreement; (c) the Petitioner's claims against the Respondent, prima facie, survive the CIRP process; and (d) all substantive objections are to be determined by the Arbitral Tribunal.

25.10. In these circumstances, this Court is satisfied that live and subsisting arbitrable disputes, prima facie, survive between the parties so as to warrant exercise of jurisdiction under Section 11(6) of the Act. The Petitioner has established, prima facie, the existence of an arbitration agreement and the existence of disputes that fall within the scope of that agreement. The Respondent's objections, though substantial, are in the nature of substantive defences that must be adjudicated by the Arbitral Tribunal.

25.11. It is, however, necessary to note that the observations and findings of this Court are prima facie in nature and are limited to the purpose of determining whether the

appointment of an arbitrator is warranted. These observations shall not bind the Arbitral Tribunal, which will be at liberty to examine all questions of law and fact, including the effect of the Resolution Plan on the specific claims, the applicability of the Clean Slate doctrine, and the questions of accord and satisfaction, waiver and estoppel.

25.12. It is further clarified that the Respondent shall be at liberty to raise all defences available to it before the Arbitral Tribunal, including but not limited to: (a) the effect of the Clean Slate doctrine on the Petitioner's claims; (b) the contention that the Petitioner's claims were or ought to have been raised during the CIRP process; (c) the defence of accord and satisfaction, waiver or estoppel; and (d) any other defence available in law. The Arbitral Tribunal shall consider and adjudicate upon all such defences on their merits.

25.13. **Accordingly, I answer Point No.(vi) by holding that Live and subsisting arbitrable disputes, prima facie, survive between the parties so as to warrant exercise of**

jurisdiction under Section 11(6) of the Act. The present petition deserves to be allowed by appointment of a Sole Arbitrator. The appointment is, however, subject to the clarification that the Arbitral Tribunal shall be at liberty to examine all questions of law and fact, and the Respondent shall be at liberty to raise all available defences.

26. **Answer to Point No.(vii): What Order?**

26.1. In view of the analysis and findings on Points (i) through (vi), I pass the the following

ORDER

i. The Civil Miscellaneous Petition No.243 of 2023 is ***allowed***.

ii. Shri Justice Ajit J.Gunjal, former judge of this Court is appointed as a Sole Arbitrator to adjudicate the disputes between the Petitioner and the Respondent arising out of or in connection with the Conditions of Contract dated 09.07.2018.

iii. The Arbitration shall be conducted under the aegis of the Arbitration and Conciliation Centre, Bengaluru.

iv. The Arbitral Tribunal shall be at liberty to examine all questions of law and fact, including but not limited to: (i) the effect of the approval of the Resolution Plan under Section 31(1) of the Insolvency and Bankruptcy Code, 2016 on the specific claims sought to be raised by the Petitioner; (ii) the applicability and effect of the Clean Slate doctrine on the Petitioner's claims; (iii) the questions of accord and satisfaction, waiver, estoppel and extinguishment by operation of law; and (iv) any other defence available to the Respondent in law.

v. The Respondent shall be at liberty to raise all defences available to it before the Arbitral Tribunal, including the defence that the Petitioner's claims have been extinguished by virtue of the CIRP process and the approval of the Resolution Plan.

vi. The observations and findings of this Court in the present order are prima facie in nature, limited to the purpose of determining whether the appointment of an arbitrator is warranted, and shall not bind the Arbitral Tribunal in any manner.

vii. It is clarified that the Respondent's contention regarding the asymmetric effect of the Clean Slate doctrine and the equitable concerns raised by the Respondent are preserved for consideration by the Arbitral Tribunal, which shall deal with them on their merits.

27. After **pronouncement** of the order today i.e., on 26.02.2026, both the counsels submit that if the

matter is referred to mediation, they would endeavor to arrive at an amicable settlement.

28. In view of the said submission, the Registry is directed to forward the file to the Karnataka Mediation Center. The Director, Karnataka Mediation Center, is directed to appoint a suitable Mediator to try and mediate the dispute between the parties.

29. Since the order is passed in the presence of both the counsels, they shall appear before the Director, Karnataka Mediation Center, without requirement of any notice on **10.03.2026** at **02.30 p.m**.

30. In the event of the mediation proceedings not being successful, the Director, Karnataka Mediation Center, is directed to inform the Director, Karnataka Bangalore International Arbitration and Conciliation Center about the same so as to enable the Director, Arbitration Center to take necessary action.

SD/-
(SURAJ GOVINDARAJ)
JUDGE

PRS, List No.: 2 Sl No.: 75