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Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta

-Teeshaa.Thanki

Essar Steel took four years, nineteen appeals, and one hastily drafted Amendment Act to answer a question the Insolvency and Bankruptcy Code had never quite settled: once a company cannot pay its debts, whose money is it? The Supreme Court's answer in Committee of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta¹ comes down firmly on the side of the Committee of Creditors, and in the process draws a hard line around how far a resolution plan can go in treating creditors unequally.

The facts read like a case study in how slowly resolution can move even under a Code built for speed. The NCLT, Ahmedabad admitted Essar Steel into corporate insolvency resolution in August 2017 on petitions by Standard Chartered Bank and the State Bank of India. Two rounds of resolution plans followed, both ArcelorMittal and Numetal being found ineligible under Section 29-A before this Court's earlier judgment in ArcelorMittal India² gave them a narrow window to cure their defaults. ArcelorMittal alone did so, and its revised plan, offering an upfront payment eventually fixed at Rs. 42,000 crores, was approved by 92.24% of the Committee of Creditors in October 2018. The distribution of that sum among financial creditors, though, was left to the Committee's own discretion, and that is where the real dispute began. Standard Chartered Bank, recognised as a secured creditor only in September 2018 and only against a pledge of shares in an offshore subsidiary valued at barely Rs. 25 crores, ended up receiving about 1.74% of its claim while other secured financial creditors received close to 75%. The NCLT tried to soften this by ordering an 85:15 split favouring operational creditors; the NCLAT went considerably further, holding that financial and operational creditors, secured and unsecured alike, all deserved equal treatment, and redrew the entire distribution to give everyone 60.7% of their admitted claims regardless of security. It also struck down the Committee's sub-committee structure, allowed previously undecided claims to be reopened after approval, and directed that profits earned during the resolution process be shared among all creditors. Parliament responded within a month, passing the Insolvency and Bankruptcy Code (Amendment) Act, 2019,³ which inserted an Explanation confirming that a distribution need only be

fair and equitable rather than equal, and expressly allowed the Committee to weigh the value of security interests when judging a plan's feasibility, applying the change retrospectively to pending proceedings, including this one.

Three questions came before the Court. Could the Committee of Creditors lawfully pay secured and unsecured, financial and operational creditors different amounts, or did equitable treatment require identical treatment? Was the 2019 Amendment, and its retrospective reach, constitutionally valid given that it was passed while this very dispute was pending? And how far could the NCLT and NCLAT go in reworking a plan the Committee had already approved by the requisite majority?

The Court set aside the NCLAT judgment in almost its entirety. It held that equitable treatment protects creditors within a class from being treated unequally among themselves, not creditors across classes from being treated differently from each other. Financial and operational creditors bear different risks, negotiate on different terms, and are given different roles under the Code for a reason; secured and unsecured creditors bargained for different protections long before insolvency arrived, and the Code cannot quietly erase that bargain once the borrower defaults. Building on its earlier ruling in *K. Sashidhar*,⁴ the Court extended the doctrine of the Committee's non-justiciable commercial wisdom from the decision to approve or reject a plan to the manner in which its proceeds are shared out, so long as operational creditors receive at least the liquidation-value floor guaranteed under Section 30(2)(b) of the Code.⁵ On the constitutional challenge, the Amendment survived almost intact. The Court accepted that Explanation 1 and the expanded feasibility test in Section 30(4) merely codified what commercial wisdom already permitted, and that an amendment cannot be struck down for improper motive so long as the legislature had the competence to enact it, applying it to a pending case being no different from an ordinary appellate continuation. The one casualty was the word "mandatorily" in the amended timeline provision: requiring the entire resolution process to close within 330 days, counting the delay caused by litigation before the very tribunals hearing the case, was struck down as arbitrary and an unreasonable restriction on the corporate debtor's business under Articles 14 and 19(1)(g) of the Constitution, while the 330-day outer limit itself was left standing, extendable only in exceptional circumstances.

There is a good deal to admire in this. The judgment gives lenders something the Code had struggled to promise since *K. Sashidhar* first raised the question: predictability. If secured status can be diluted after the fact whenever a tribunal decides a plan looks unfair, no bank prices credit on the strength of its security again, and the very incentive the Code relies on, financial creditors accepting risk on a corporate debtor in exchange for negotiated protection, collapses. Reading down "mandatorily" rather than striking the whole timeline provision also shows a fairly careful hand, keeping the Code's central promise of speed intact while acknowledging that delay caused by the tribunals themselves cannot fairly be charged to the parties before them.

But the reasoning is not without its gaps. The Court's justification for treating

financial creditors as inherently better placed to assess risk sits oddly with Standard Chartered Bank's own claim, never actually resolved on merits, that its collateral had been undervalued by roughly twenty times its assessed figure. If a secured creditor's outcome turns entirely on a valuation exercise the Court declines to test, calling that outcome the product of considered commercial wisdom understates how much of it may simply be strategic negotiation among the majority. The retrospective application of an Amendment passed one month after, and arguably in direct response to, the very NCLAT judgment under appeal is upheld through the appeal-as-continuation doctrine, and while the Court is right that motive alone cannot invalidate competent legislation, timing this close to a live dispute deserved a slightly harder look than a paragraph on colourable legislation gives it. And by making the Committee's distribution decisions almost entirely non-justiciable, the judgment leaves a genuinely coerced minority creditor, one who did not merely lose a vote but was cut out through opaque or arbitrary reasoning, with very little room to be heard.

Essar Steel did not invent the difference between a secured and an unsecured creditor; the market priced that difference in long before insolvency arrived. What this judgment does is refuse to let the Code erase it in the name of a formula that only looks fairer on paper. Equity, the Court insists, is not an instruction to divide the pie evenly. It is a promise that each creditor gets what its own bargain, not its sympathy, was owed.

Citations

1. *Comm. of Creditors of Essar Steel India Ltd. v. Satish Kumar Gupta*, AIR Online 2019 SC 1494 (India).
2. *ArcelorMittal India Pvt. Ltd. v. Satish Kumar Gupta*, (2019) 2 S.C.C. 1 (India).
3. *The Insolvency and Bankruptcy Code (Amendment) Act, No. 26 of 2019*, § 4, 6 (India) (amending §§ 12, 30 of the *Insolvency and Bankruptcy Code, 2016*).
4. *K. Sashidhar v. Indian Overseas Bank*, (2019) SCC OnLine SC 257 (India).
5. *The Insolvency and Bankruptcy Code, 2016*, § 30(2)(b) (India).