

Case Snippets

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Essar Steel India Limited Vs. Satish Kumar Gupta & Ors. [Supreme court] [15th November, 2019]

The issue saw a keen tussle among the banks and separately between the financial institutions and Essar Steel's operational creditors who alleged that Arcelor Mittal's winning bid did not meet their dues. Essar Steel owes 54,547 crore to its creditors-Financial creditors and operational creditors combined. The company had been put on the block under IBC to recover the unpaid dues. The Ahmedabad bench of National Company Law Tribunal (NCLT) on March 8 accepted the bid submitted by Arcelor Mittal. The operational creditors had opposed the bid on the basis that they were getting notional payment, while 92.5 percent of the financial creditors dues were being paid.

Who are Essar Steel's creditors?

Public sector lenders are Essar Steel's primary financial creditors. Vendors and suppliers are the operational creditors, the most prominent ones being Dakshin Gujrat, Gujrat Energy, Bharat Petroleum, Indian Oil, Gail, ONGC, and the NTPC.

Financial creditors are those who provide long-term capital in form of loans. Operational creditors are usually the suppliers of raw materials etc.

Who are the litigants?

A consortium of banks led by SBI had moved the Supreme Court against a National Company Law Appellate Tribunal (NCLAT) order in the case. The NCLAT had held that Essar Steel's operational creditors be treated on par with financial creditors when settling the claim.



NCLAT Order

The NCLAT, in its order, said financial creditors would get 60.7 percent of their admitted claims of Rs 49,473 crore, about the same as operational creditors. The operational creditors with admitted claim amount of less than Rs 1 Crore would get 100 percent. The tribunal had said that CoC will have no role in the distribution of Rs 42,000 crore and allowed claims of the operational creditors. Arcelor Mittal had told the NCLAT that it would pay Rs 42,000 Crore including a minimum guarantee of Rs 2,500 crore as working capital, for acquiring Essar Steel under the insolvency process.

Supreme Court order

The Supreme court has held that it is the bank's decision to maximise the value of the corporate debtor and added that the CoC should also balance the interests of all stakeholders. The court has added that the NCLT cannot interfere with the commercial decisions taken by the COC and that, if the NCLT finds that legal parameters are not met, it can send it back to COC but not tinker with the plan. Essar Steel owes about Rs 49,000 crore to dozen banks. State Bank of India has among the highest exposure, with over Rs 15,000 crore. Others include ICICI Bank, IDBI Bank and Syndicate Bank. In the case of Essar Steel, the lenders will realise 85 percent of their exposure. The Supreme Court also relaxed the timeline of 330 days prescribed in the IBC. It said that the NCLAT was open to extend the timeline, if required. In July this year, the government made amendments to the IBC, revising the time limit to 330 days, from the earlier 270 days. "The SC has made it clear that 330 days is not mandatory. And it gives room whenever there is a bona fide or exceptional reason to extend the time frame," said Bishnoi. World over, it takes about two-and-a-half years so cases to be settled, he added. The Supreme Court has clarified that **the role of the resolution professional is not adjudicatory but administrative.**

