



NCLAT rejected Prashant Ruia's plea challenging ArcelorMittal's eligibility to bid for Essar Steel (Photo: Bloomberg)

NCLAT order gives ArcelorMittal the all-clear to bid for Essar Steel

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- ArcelorMittal's eligibility as a resolution applicant 'cannot be re-agitated again and again', said NCLAT
- The bankruptcy appeals court also ruled that operational creditors of Essar Steel were to be treated on a par with financial creditors at the time of settling claims

A bankruptcy appeals court on Thursday dismissed a plea challenging ArcelorMittal's eligibility to buy Essar Steel India Ltd, clearing the way for the world's largest steelmaker to establish a meaningful presence in India after months of legal battles.

In the judgement, the National Company Law Appellate Tribunal (NCLAT) also ruled that operational creditors of Essar Steel were to be treated on a par with financial creditors at the time of settling claims. The ruling is likely to have a far-reaching impact and could

significantly improve recoveries for operational creditors, who were so far considered to be a notch below financial creditors.

“Instead of rejecting the resolution plan submitted by ArcelorMittal India Pvt. Ltd, we modify the plan to safeguard the rights of the operational creditors and other financial creditors," said NCLAT chairperson Justice S.J. Mukhopadhaya.

The appellate tribunal ruled that lenders and operational creditors would get 60.7% of their outstanding claims and proportionately share the ₹42,000 crore that ArcelorMittal has offered to pay for the debt-laden firm, which in rupee terms entails a payment of ₹30,030 crore to financial creditors and ₹11,969 crore to operational creditors.

Interestingly, the Indian currency gained on Thursday, partly because of the court ruling. The sale of Essar Steel is expected to involve about \$6 billion of inflows into the forex markets. The rupee ended at 68.51 a dollar—a level last seen on 3 April—up 0.53% from the previous close of 68.90.

Essar Steel's financial creditors mainly comprise state-run banks, while its operational creditors are largely its vendors and suppliers.

NCLAT asked the committee of creditors to take the help of a reputed chartered accountant firm or legal firm to calculate the exact amount to be distributed among each operational creditor.

Thursday's judgement has two parts. In the first part, the court rejected Prashant Ruia's plea challenging ArcelorMittal's eligibility to bid for Essar Steel under Section 29A of the Insolvency and Bankruptcy Code (IBC). Under Section 29A, bidders cannot be connected to other defaulting entities. The appellate tribunal said that since settled by the Supreme Court on 4 October 2018, ArcelorMittal's eligibility as a resolution applicant “cannot be re-agitated again and again". In the second part, the appellate tribunal dealt with the distribution of resources among creditors.

“In the resolution plan, 0% (zero per cent) of their (operational creditor) debt has been proposed to be paid, whereas the financial creditors have been proposed to be paid 92.5% of their dues and claims of some of the operational creditors have been notionally assessed at Re. 1/- by the resolution professional without any basis," said the judgement.

This judgement has significant implications on the status of operational creditors, as this class of creditors has now been placed at the same level as financial creditors or lenders who form the committee of creditors (CoC). Operational creditors are not part of CoCs.

NCLAT has stuck to its stand of ensuring equal treatment among similarly placed creditors, thus ensuring that payments are made to financial creditors proportionately, according to Karan Kalra, head of the financial services segment at law firm Nishith Desai Associates.

“More pertinently, the ruling does not provide that the same or proportionate payments need to be made to financial and operational creditors alike, but provides that these payments should be made in an ‘equitable’ manner, thus upholding the well-established principles of equity and fairness and applying them to the distribution waterfall,” said Kalra. As a result, the onus is now on specific creditors to demonstrate if they deserve differential treatment, he said.

An Essar Steel spokesperson said that it appears the new facts regarding ineligibility under Section 29A, which emerged only after the previous judgement of the Supreme Court, had not been given due consideration.

“We are awaiting the detailed order and will decide our course of action thereafter,” said the spokesperson.

An ArcelorMittal spokesperson said in a statement: “We note today’s ruling by the NCLAT. We need to review the full written order to understand any implications on completion of the transaction.”

In May, Justice Mukhopadhaya had said at an event in Mumbai that both financial and operational creditors must be treated with fairness in resolution plans to take over bankrupt firms. “Operational creditors cannot be discriminated against and financial creditors cannot act like selfish cells. These cells are what cause cancer,” he said.

The Essar Steel case pertains to a 10 million tonnes per annum steel mill in Gujarat that became insolvent in August 2017, with dues of over ₹54,000 crore. The highest bidder for the asset is global steel giant ArcelorMittal, which has offered a resolution plan with a cash payout of ₹42,000 crore to be distributed among a clutch of financial and operational creditors.