IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

INTERIM APPLICATION NO.542 OF 2019
IN
COMMERCIAL ARBITRATION PETITION NO.1558 OF 2019
WITH
INTERIM APPLICATION (L) NO.16520 OF 2024
IN
COMMERCIAL ARBITRATION PETITION NO.1558 OF 2019

Aashna Yatin Khanna ....Applicant

IN THE MATTER BETWEEN

JSW Steel Ltd. ....Petitioner

Versus

1. Delta Iron & Steel Co. Pvt. Ltd.
2. Yatin Steels India Pvt. Ltd.
3. ARK Industries Pvt. Ltd. ....Respondents

WITH
INTERIM APPLICATION NO.1537 OF 2026
IN
COMMERCIAL ARBITRATION PETITION NO.1558 OF 2019

M/s. Karu Metals Private Limited ....Applicant

IN THE MATTER BETWEEN

JSW Steel Ltd. ....Petitioner

Versus

1. Delta Iron & Steel Co. Pvt. Ltd.
2. Yatin Steels India Pvt. Ltd.
3. ARK Industries Pvt. Ltd. ....Respondents

AND

Aashna Yatin Khanna ....Applicant/Intervener

WITH
COURT RECEIVER'S REPORT NO.102 OF 2025
IN
COMMERCIAL ARBITRATION PETITION NO.1558 OF 2019
WITH
INTERIM APPLICATION (L) NO.20975 OF 2024

JSW Steel Ltd. ....Petitioner
Versus
1. Delta Iron & Steel Co. Pvt. Ltd.
2. Yatin Steels India Pvt. Ltd.
3. ARK Industries Pvt. Ltd. ....Respondents

Mr. Vishal Muglikar, *a/w Chaula Solanki, H.H. Nagi, Niranjan Pradhan, i/b Nagi & Associates for the Applicant/Intervenor.*

Ms. Ankita Singhania, *a/w Siddharth Srivastava, Yasmeen Sabir, Jahnvi Pandey, i/b Link Legal for Original Petitioner.*

Mr. A.K. Singh, *a/w Piyush A. Singh, K.A. Singh for Applicant in IA/1537/26.*

Mr. Deepak S. Bhalerao, *2nd Asst. to Court Receiver.*

CORAM: SOMASEKHAR SUNDARESAN, J.
RESERVED ON : AUGUST 24, 2026
PRONOUNCED ON: AUGUST 27, 2026

JUDGEMENT :

Context and Factual Background:

1. This judgement will dispose of two interim applications filed in Commercial Arbitration Petition No.1558 of 2019 ("***Section 9 Petition***") filed to

deal with the aftermath of an *ex parte* interim order dated August 23, 2019 ("***Interim Order***") obtained by the original Petitioner, JSW Steel Ltd. ("***JSW***").

2. Interim Application (L) No. 16520 of 2024 ("***IA 16520***") is an interim application filed by one Ms. Aashna Khanna ("***Aashna***"), the proprietress of Aashna Steel Traders, who had earlier filed Interim Application No. 542 of 2019 ("***IA 542***") seeking release of eleven steel coils seized by the Court Receiver ("***Subject Coils***"), eight of which are stored in the warehouse of Karu Metals Private Limited ("***Karu***"), which in turn has also filed Interim Application (L) No. 19882 of 2023 which is now registered as Interim Application No. 1537 of 2026 ("***IA 1537***") complaining that no one is paying for the usage of the warehouse space of Karu.

3. The Section 9 Petition was filed by JSW against Delta Iron and Steel Co. Pvt. Ltd. ("***Delta***"), Yatin Steels India Pvt. Ltd. ("***Yatin***") and ARK Industries Pvt. Ltd. (collectively, "***Respondents***"), in connection with JSW's claim of not having been paid for hot rolled steel coils supplied by JSW under a Franchise Agreement dated July 1, 2018 between JSW and Delta. The Interim Order led to the Court Receiver attaching, sealing and taking possession of 160 coils stored in multiple warehouses including seven Subject Coils stored in the warehouse of Karu.

4. The Arbitral Tribunal was constituted and the Section 9 Petition was disposed of on June 13, 2022. However, more recently, the arbitration proceedings themselves came to be withdrawn by JSW on November 11, 2025. It is stated on behalf of JSW that Delta and Yatin had been referred to Corporate Insolvency Resolution Process ("***CIRP***") under the Insolvency and Bankruptcy Code, 2016 ("***IBC***"). It is common ground that JSW had indeed filed its claims in the CIRP, which were dealt with under the provisions of the IBC.

5. Interim measures under Section 9 are evidently *interim* in nature and must abide by the outcome of the arbitration proceedings. With the arbitration proceedings withdrawn and coming to an end, the very basis for holding on to the steel coils has come to an end. However, this matter has continued to languish because even before the arbitration proceedings were terminated, the parties have had skirmishes in this Court about the identity of the Subject Coils and their release (much akin to numerous other disputes by various other parties which led to the release of coils attached by the Court Receiver).

6. By an order dated August 14, 2024, the Learned Court Receiver was requested by a Learned Single Judge to examine the identity of the Subject Coils since there appeared to be a vast difference between the details of the coils listed in Court Receiver's Report No. 87 of 2024 and the coils mentioned

in IA 16520. This led to the Court Receiver holding multiple meetings and filing Court Receiver Report No. 102 of 2025 ("***CRR 102***") on February 26, 2025, setting out all the contentions of the respective parties and seeking directions of the Court.

7. Nine months later, the arbitration proceedings themselves came to be withdrawn. This renders continued possession of the Subject Coils untenable. However, the disputes over multiple Interim Applications that preceded the withdrawal of the arbitration proceedings by JSW have informed its approach to the captioned proceedings, with contentions being made about how the Subject Coils must be released to JSW.

8. Such a contention has to be stated to be rejected. An attachment of property under Section 9 of the Act is permissible to preserve and protect the subject matter of arbitration. JSW's claim was a money claim, with a contention that it has not been paid for the coils supplied to the Original Respondents. In aid of such claim the Interim Order was passed. Indeed, 160 hot rolled steel coils came to be attached and multiple Interim Applications by multiple parties led to the attached coils being released. Some of these orders recorded JSW having no objections to the release while other orders have dealt with the contentions raised on JSW's behalf in detail and rejected them.

9. By the time Aashna's application was considered, the Section 9 Petition had been disposed of, which led to directions to the Court Receiver to examine Aashna's contentions and to file a report. To cut a long story short, the factual facets of the matter have culminated in CRR 102. While this judgement will deal with the competing contentions about CRR 102, at the threshold, one must remember that a party that has ceased to pursue arbitration proceedings and that too in pursuit of a money claim, cannot expect the assets attached in aid of those very arbitration proceedings to continue.

10. In any case, contentions of an identical nature raised in earlier interim applications have been judicially dealt with in detail in the past and I will allude to them subsequently. Suffice it to say that the very locus for maintaining any objections to release of attachment of assets that had been effected in aid of arbitration, stands undermined when the Petitioner has withdrawn those very arbitration proceedings.

11. JSW's claim in arbitration was for payment of money for goods supplied to the Original Respondents. JSW's own written submissions unequivocally submit[1] that it is "the original manufacturer" of the Subject Coils which were sold to the Original Respondent under the Franchise Agreement, and JSW was "never paid for the same". This is the basis of contending that the Subject Coils belong to JSW and must be returned to JSW or at the least not be released to

1 Paragraph 36 of Written Submissions in response to IA 16520

Aashna. However, even if JSW had won a final arbitral award in its favour before the CIRP commenced, the decretal amount would have only amounted to an unsecured debt in its hands, entitling it to stand in queue before the Committee of Creditors and such debt would have been subjected to the very same resolution process in its treatment of an unsecured creditor. What has transpired in the instant case is that a security interest over the coils (assuming they belonged to the Original Respondents to begin with) was created under the Section 9 jurisdiction. When the arbitration came to an end without adjudication, so too must the attachment come to an end.

12. JSW's contentions about Aashna not having proven its title to the coils is academic, regardless of the vociferousness with which they have been presented once JSW has withdrawn its arbitration in aid of which the attachment was effected. The custody of the Subject Coils with the Court Receiver is inextricably linked to the arbitration and its outcome, and with the termination of the arbitration, the attachment must necessarily come to an end. JSW would make copious submissions on title to the Subject Coils even while in the same breath, contending that Aashna cannot expect the Section 9 Court to rule on its title to the Subject Coils.

13. For the reasons set out above, there is grave doubt about JSW having any locus after November 11, 2025 to have any say in the matter. However, it

must be remembered that when a Section 9 Petitioner expects attachment of assets in aid of its arbitration proceedings, such Petitioner has to foot the bill for expenses in this regard, even if the arbitration was terminated only because it was forced to abandon the proceedings by operation of law. A Section 9 Petitioner cannot expect a free ride without paying for the receivership and the expenses incurred and costs inflicted because of the receivership.

14. This is where Karu's Interim Application comes in – JSW contends that it is simply not liable to pay warehousing charges of Karu and this facet is being dealt with later in this judgement. Acts of the Court must prejudice no one, and if the Subject Coils have been attached at the request of a Section 9 Petitioner in aid of an arbitration that is no longer being pursued by such Petitioner, no prejudice should be caused to Karu, the warehouse keeper, who has bailment of the goods and must be paid for the storage, failing which, remedial measures must be taken, particularly bearing in mind that the Section 9 jurisdiction is an equitable jurisdiction.

CRR 102 and its Contents:

15. CRR 102 is a comprehensive summary of what each side has contended before the Learned Court Receiver and compiles their submissions and documents relied upon. It is not, and rightly so, a finding of fact on ownership. Returning a finding on ownership is a judicial activity that cannot

be undertaken by a Court Receiver. The report is essentially filed pursuant to the Order dated August 14, 2024 passed by the Learned Single Judge and was filed prior to the arbitration proceedings being terminated.

16. The Subject Coils and their location are identified – eight Subject Coils are kept at Paramshakti Steel Ltd. ("***Paramshakti***") and three Subject Coils are kept at Rishabh Digha Steel & Allied Products Ltd. ("***Rishabh Digha***"). CRR 102 sets out the six invoices relied upon by Aashna to evidence acquisition of the Subject Coils by Aashna from Aeon Creations Private Limited ("***Aeon***"); confirmation letters to this effect from Aashna to Karu and also from Rishabh Digha, the warehouse to which JSW had delivered the coils sold to Delta; Aeon's letter to the warehouses; and a certificate from ICICI Bank indicating the payments made for the same.

17. The objections raised by JSW are set out in CRR 102, which are primarily about JSW being an unpaid seller of the Subject Coils, evidently manufactured by JSW; the correspondence among the parties being without acknowledgment; the invoices not having specific references to and identification of the Subject Coils for them to be worthy of proving Aashna's title to the Subject Coils; and an alleged mismatch in the identity of some Subject Coils.

18. CRR 102 seeks directions from this Court as to whom possession should be given of the Subject Coils.

19. All representatives of all parties had confirmed to the Court Receiver that they had presented everything they had to base their contentions on, and that nothing remained. I have carefully gone through Exhibit C (site reports), Exhibit D (meeting notes) and Exhibit F (Note dated August 23, 2024 which extracts from the Transaction Audit Report to raise doubts on invoices) appended to CRR 102. It is apparent that the various coils attached by the Court Receiver were those identified by JSW as falling within the ambit of the Interim Order. The Subject Coils listed in Aashna's IA 542 were indeed confirmed as having been attached.

20. The variation indicated by the Learned Single Judge has been worked out by the Court Receiver. Seven Subject Coils were matched with the site report made on August 25, 2019, which dealt with 33 coils attached at Karu; three Subject Coils were matched with the site report of August 24, 2019, which dealt with 59 coils attached at Rishabh Digha; and possession of one of the Subject Coils had been taken only on November 10, 2022, when the Subject Coils were moved from Karu's warehouse to Paramshakti, such move having been provided for in an order passed by a Learned Single Judge of this Court on October 20, 2022 on the premise that Aashna would pay for the

warehouse charges for the coils to be stored at an independent warehouse rather than be released to JSW pending arbitration.

21. JSW's allegations about Aeon's invoices being untrustworthy in the context of allegations made by GST authorities are based on the Transaction Audit Report, filed in the course of the CIRP.

22. Aashna's contention that all the eleven Subject Coils were in the possession of the Court Receiver right since August 24, 2019 and August 25, 2019 would need correction – the eighth Subject Coil was only identified on July 19, 2022 and as stated above, possession was taken on November 10, 2022, when Subject Coils were moved to Paramshakti. Therefore, until that date, the warehousing with Karu was not attributable to the Court Receiver's custody and therefore, Karu's claim for warehousing charges for the eighth coil in terms of these proceedings cannot be imposed on JSW but would be payable by Aashna. Of course, in respect of all the other ten Subject Coils, the Subject Coils were attached in August 2019 by the Court Receiver at JSW's behest and pursuant to the Interim Order, and the costs for such custody of ten Subject Coils has to be borne by JSW. The continuance of storage of the coils stored at any warehouse by the Court Receiver was to the account of JSW.

23. Indeed, when the Section 9 Court was inclined to release the custody to JSW pending arbitration although with the receivership continuing, Aashna had pleaded that the Subject Coils may be moved to Paramshakti and that Aashna would undertake all costs for such shifting and the warehousing charges. This would of course be prospective from November 2022.

24. It is not appropriate for the Section 9 Court to continue expending judicial time on an attachment in aid of an arbitration which itself has been withdrawn, by the party that obtained the Interim Order under Section 9 of the Act. However, the Interim Order having been passed and the external impact on third parties when the Interim Order was alive, it must be remembered that acts of Court must prejudice none. Therefore, it is necessary to deal with the competing contentions of the parties and issue appropriate directions in this equitable jurisdiction, to bring matters to a fair close.

Contentions of the Parties:

25. Against this backdrop, the two Interim Applications must be considered in the light of the submissions made by the respective Learned Advocates. I have heard Mr. Vishal Muglikar, Learned Advocate on behalf of Aashna, Mr. A.K.Singh, Learned Advocate on behalf of Karu, and Ms. Ankita Singhania, Learned Advocate on behalf of JSW. With their assistance and the copious written submissions tendered by them, I have examined the record including

CRR 102, with particular regard to the Court having to ensure that actions taken pursuant to the Interim Order and other orders are wound down, without prejudicing any person.

26. Aashna would contend that it is a stranger to the dealings between JSW and Delta since the Subject Coils had been acquired by her from Aeon for value. If those coils had been originally acquired by Delta from JSW, for which JSW had remained unpaid, Aashna would contend, JSW cannot chase the coils in Aashna's hands. The Interim Order only required attachment of coils belonging to JSW that were in the Respondents' possession while the Subject Coils were in Aashna's possession, for which it relies on the documents referred to above and recorded in CRR 102.

27. Aashna would point to multiple other such affected parties to whom the Section 9 Court has released coils wrongly attached by the Court Receiver based on mere identification by JSW as coils manufactured by it. These include a release of 126 coils to one Vanit Gupta, two coils to AJS Impex, 21 coils to Kothari Steel Syndicate; and five coils to UC Metals by various orders of this Court. Aashna too wrote to the Court Receiver on September 23, 2019 and was told on September 30, 2019 to move an application before the Court, which led to filing of IA 542 in November 2019. Eight of these coils are now at

Paramshakti after the shift in November 2022 and three are stored in Rishabh Digha.

28. Mr. Muglikar, Learned Advocate for Aashna would compare invoices JSW has produced with its note tendered to the Court Receiver in August 2024 with the list of invoices in Exhibit B to the Section 9 Petition to point out that the Subject Coils are not listed in Section 9 Petition. Therefore, based on JSW's own statement that the attachment made under Section 9 would only cover the coils referred to in Exhibit B to the Section 9 Petition, he would submit that the Subject Coils must be removed from attachment and handed over to Aashna.

29. Mr. Muglikar would submit that interim relief under Section 9 being only in aid of final relief, the main proceedings having been terminated in November 2025, there is no basis at all for continuation of the attachment. Adopting the principles of Order XXXIX Rule 4 of the Code of Civil Procedure, 1908, the Learned Advocate would point out that the forum to approach to have the Interim Order vacated or modified is the Section 9 Court. Mr. Muglikar would also submit that a party that has obtained an interim order and then abandoned its claim in aid of which the Interim Order was obtained must compensate and effect restitution of any victim injured by the interim order. While he would allude to depreciation, legal costs, loss of business and

reputation damage, he would concede that Aashna has made no pleading about the damages suffered and costs incurred in its Interim Application. However, he would seek leave to file an application towards pleading of quantified damages in this regard.

30. Ms. Singhania would strongly object to the maintainability of the applications filed by Karu and Aashna. She would cite case law on the need for privity to an arbitration agreement for invoking the protection under Section 9, to contend that Karu and Aashna being third parties cannot maintain their Interim Applications.

31. While Ms. Singhania would concede that the arbitration proceedings have indeed been terminated, she would contend that JSW was compelled to terminate the proceedings because the CIRP of the Respondents culminated in successful resolution. In response to a query on the status and outcome of the claim made in the CIRP, she would submit that as an operational creditor, JSW received nothing in the approved resolution plan. Even the arbitrator's fees had only been paid by JSW and not by the Respondents. According to Ms. Singhania, even after resolution of a corporate debtor is completed under the IBC, JSW's claims would survive. Therefore, she would contend that the cause of action has not come to an end and pray that the title to the Subject Coils be declared as belonging to JSW and therefore be released to JSW.

32. Ms. Singhania would also reiterate all the discrepancies listed in the submissions made by JSW before the Court Receiver, asking this Court to declare that JSW has title to the Subject Coils even while contending in the same breath that the Section 9 Court cannot adjudicate upon the facts pleaded by Aashna and Karu because JSW has disputed such facts. She would submit that even Karu's own invoice was raised on Aashna and JSW cannot be expected to pay for warehousing charges when Aashna has undertaken in 2022 to pay warehousing charges to enable the transfer of the coils to Paramshakti.

33. Mr. A.K.Singh, on behalf of Karu would submit that no invoice had been raised during the time the Subject Coils were in Karu's custody and only a proforma invoice had been raised on Aashna, since the Subject Coils had been received on Aashna's account and there was a dispute over who would pay for the storage. The Subject Coils have been moved to Paramshakti under Court orders while Karu remains unpaid. When asked under whose possession the Subject Coils were received by Karu, he would submit that the storage was on Aashna's account.

34. At the hearing, Mr. Muglikar, Learned Advocate for Aashna would also tender across the bar a bank account statement of ICICI Bank to show that JSW's contention that ICICI Bank's system-generated certificate, not being

dated and signed is unworthy of acceptance. Ms. Singhania would object to the bank statement being seen by this Court. The opposition to production of the bank statement which demonstrates every transaction certified by ICICI Bank points to an anxiety of clarity being opposed. However, in my view, the bank statement is even unnecessary because it is well known that bank certificates and bank statements are system-generated and are not physically signed by any named official for their veracity to be brought under cloud, much less on the basis of doubts raised by a Section 9 Petitioner who no longer is in pursuit of the very arbitration in relation to which the Petition was filed and the Interim Order was obtained. The transaction entries certified have dates and that is what is certified by the system generated certificates.

Analysis and Findings:

35. At the threshold, I have set out how the continuation of "interim" measures after arbitration has come to an end, is untenable. The Section 9 Petition already has a clear-cut and long litigation history pursuant to the *ex parte* Interim Order issued in favour of JSW. Evidently, JSW and the Respondents had a Franchise Agreement which led to supply of coils by JSW to Delta, for which JSW continues to assert today, even after withdrawing the arbitration proceedings, that it is an unpaid seller.

36. It is clear that pursuant to the Interim Order, 160 coils including the Subject Coils were attached because they were identified by JSW as being coils referred to in the Section 9 Petition. Admittedly, the supply of the Subject Coils by JSW was delivered to Delta by sending it to the warehouse of Rishabh Digha, but it is clear that seven Subject Coils when attached were in the custody of Karu. JSW presumes that they were moved by Delta to Karu, but Aashna has produced documentary support to indicate that it is a buyer of the Subject Coils from Aeon and that it had no notice of JSW having been an unpaid seller in its supply to Delta.

37. It is noteworthy that there has already been an extensive judicial determination of precisely the type of contentions being made on JSW's behalf now. Such judicial findings are found in an order dated October 22, 2019 passed in Commercial Notice of Motion (L) No. 2044 of 2019 ("***Vanit Gupta Judgement***"). It is unfortunate that now, seven years later, and that too, after the arbitration has even come to an end, JSW would re-agitate the same issues all over again in the adjudication of a residual Court Receiver Report.

38. More importantly, with the termination of the arbitration, whatever be the reason for it, and in fact, more so because of the particular cause of termination in this case, the cause of action as an unpaid seller has firmly come to an end. When a party transacts with a body corporate as a result of

which it has a money claim, it is an operational creditor of such corporate debtor. When the corporate debtor is referred to a CIRP, that debt claim is subjected to the process under the IBC. The duly approved resolution plan may lead to some or no receipt, depending on the terms of the approved resolution plan. With it, a *quietus* arises in law.

39. Ms. Singhania's contention that the cause of action would survive although the resolved corporate debtor has resumed operations with a clean slate, is simply untenable. Even such a perception of survival of the cause of action because JSW has received nothing in the resolution is addressed by the fact that it is JSW that withdrew from the arbitration. Such a situation is a clear consequence of the legal framework in which business has to take place in India.

40. Now, when one examines ***Vanit Gupta***, the Learned Single Judge (*G.S. Kulkarni J*) clearly held that JSW's statutory lien as an unpaid seller did not survive delivery of the goods since JSW did not retain possession until paid. Analysing Section 47 and Section 49 of the Sale of Goods Act, 1930 ("***SG Act***") along with provisions of the Franchise Agreement, which contained the arbitration agreement, the Learned Single Judge held that JSW had no lien, with no rights having been reserved. Applying Section 30(2) of the SG Act, it was held that a buyer in possession having further sold the goods to a person

who has taken the goods in good faith without notice of the original seller's lien, passes title as if such lien did not exist.

41. More significantly, the Learned Single Judge dealt with the various discrepancies in coil numbers pressed into service by JSW, and held that JSW attempted to create confusion, and further held that not only the Respondents but also the warehouse keepers and cutters had recognised such third party's ownership. Holding that the material sought to be relied upon by JSW was vague and weak, the Learned Single Judge held that it inspired no confidence. The Court directed the Court Receiver to forthwith release and de-seal the coils and hand over possession to the non-party Applicant.

42. The following extracts are noteworthy:

> *38. Having noted the contractual provisions as also the relevant provisions of the Sale of Goods Act, at the outset **it needs to be emphasised that here is a case where the seller-petitioner did not retain the possession of the goods**. If this be so then the question for consideration is whether nonetheless any lien of the petitioner under Clause 12 of the contract can be said to exist.*
>
> *39. **Section 47 of the Act is clearly provides that the lien of an unpaid seller of the goods, who is in possession of these goods, would be to retain possession until payment or tender of the price as provided for in sub-clauses (a), (b) and (c) or sub-section (2) of Section 47. In the present case even this statutory lien cannot be recognized as the petitioner has parted with the possession of the goods by making delivery of the goods to the respondents.***
>
> *40. The **legal position which would emerge is that once the goods having been delivered to the respondents and even assuming that the price/consideration had***

Aarti Palkar

__remain unpaid, the consequence as postulated by Section 49 of the Sale of Goods Act takes effect, namely that the petitioner-unpaid seller of goods, would lose its lien once the delivery of goods is effected to the respondents__. More particularly when there is __nothing on record to indicate that the petitioner had reserved its rights of disposal of the goods by the respondents/buyers__. By delivery of possession, __there is also an automatic consequence which would take place in terms of Section 49 of the Sale of Goods Act, namely that once these goods are delivered to the respondents, it would amount to petitioner waiving its rights under Clause 12 and its sub-clauses under the franchise agreement__.

****

53. Having considered the record and the position in law, I am convinced to hold that the case of the applicant that the goods as claimed by the applicant to be bonafide purchased by them, being wrongfully sealed is required to be accepted. __In my opinion, the petitioner has attempted to create a confusion by referring to some discrepancies in coil numbers etc__. However, on prima facie consideration of the documents of title to the goods coupled with other documents of delivery, GST payment etc. as pointed out on behalf of the applicant and respondent no. 1, would clearly indicate that __not only the respondents but also the warehouse keepers and cutters have recognized the ownership of these goods to be of applicant. Even otherwise the material as relied upon by Mr. Kamdar learned senior counsel for the petitioner to contend that the sealed goods as claimed by the applicant belonged to the petitioner is substantially vague and weak__. The contention of Mr. Kamdar in __merely pointing out discrepancies in the coil numbers do not inspire any confidence to hold that these goods as claimed by the applicant belong to the petitioner.__

__[Emphasis Supplied]__

43. On the matter of identification of the Subject Coils and the sufficiency of documented material, JSW's submissions being made now are materially the same. These have already been judicially dealt with in ***Vanit Gupta***.

Subsequently, in another order dated April 5, 2022 (nearly two and half years later), the same approach and judicial analysis informed the decision of another Learned Single Judge (*N.J. Jamadar, J*), who by an order dated April 5, 2022 in Interim Application No. 93 of 2019 ("***Kothari Steel***"), reiterated that there had been no reservation of the right of disposal by JSW if the goods were not paid for. Property was held to have passed to the purchaser from the Respondent as a bona fide purchaser for value without notice of any lien. Similar objections raised by JSW on the ground of date of tax receipts and coil weight discrepancy were rejected. The very same maintainability argument too was repelled in reliance upon principles under Order XXXIX Rule 4 of the CPC.

44. Both ***Vanit Gupta*** and ***Kothari Steel*** were rendered when arbitration was alive. Now, after arbitration has died a natural death upon resolution under the IBC, the very same arguments that have already been rejected, are still being made. In ***Vanit Gupta***, the 60 coils released were within Exhibit B of the Section 9 Petition while in this case, it is apparent that the Subject Coils are not identifiable within Exhibit B of the Section 9 Petition. Yet, JSW has instructed its advocates to continue to make the same submissions about discrepancies in data relating to the Subject Coils in documents relied upon by Aashna. JSW has simply not addressed the contention that the Subject Coils fell outside Exhibit B of the Section 9 Petition, rendering them incapable of

being attached. JSW has focused on creating doubt about the submissions of Aashna. JSW had itself conceded before a Learned Single Judge which is recorded in an order dated September 18, 2019, that the coils not covered in Exhibit B were not liable to be attached.

45. JSW's contentions about Aeon being in the habit of making dubious invoices has no probative value beyond creating some potential for some doubt. This is as vague and subjective as the Learned Single Judge found other submissions to be in ***Vanit Gupta***. The ability to raise such grounds vanished the day the arbitration proceedings were withdrawn.

46. JSW would also contend that one of Aashna's letters to Karu is dated April 27, 2019 while JSW's invoices to Delta indicate dispatch of the goods on April 26, 2019. In other words, the coil was in transit to Rishabh Digha one day before Aashna's letter to Karu. This again takes JSW's case nowhere apart from being a vague assertion. This is not a criminal case for consideration of a standard of proof beyond reasonable doubt but one where commercial conduct of parties has to be considered. The goods in question are hot rolled steel coils, effectively a commodity backed by warehouse receipts, that can be transacted and negotiated by parties. Potentially goods that are imminently due for delivery could be sold onward. However, this is not an analysis required to be made at this stage. The question to ask is no longer whether

title of Aashna is proved one way or the other, but whether JSW can at all raise any doubt about Aashna's title any more, its own cause of action of being an unpaid seller no longer being alive. I have no hesitation in holding that there is no scope left for JSW to have a say in the matter of title, because the very cause of action as a purported unpaid seller has come to an end with the resolution of Delta and the termination of arbitration.

47. The following extracts from ***Firm Ashok Traders***[2] are noteworthy for the scope of the Section 9 jurisdiction and the need for its umbilical cord to remain connected to a real arbitration. Indeed, this judgement was rendered in the context of invoking Section 9 of the Act before commencement of arbitration, to emphasise the need for a manifest intent to arbitrate. However, the principle essentially is that the link of the Section 9 jurisdiction to an actual and real arbitration, whether invoked or manifestly intended to be invoked, is vital:

> *17. There are two other factors which are weighing heavily with us and which we proceed to record. As per the law laid down by this Court in Sundaram Finance Ltd. an application under section 9 seeking interim relief is maintainable even before commencement of arbitral proceedings. What does that mean? In Sundaram Finance Ltd. (supra) itself the Court has said:*
>
> > *It is true that when an application under section 9 is filed before the commencement of the arbitral proceedings, there has to be manifest intention on the part of the applicant to take recourse to the arbitral proceedings.*

2 Firm Ashok Traders and anr. vs. Gurmukh Das Saluja and ors. - ***2004 (3) SCC 155***

Section 9 permits application being filed in the court before the commencement of the arbitral proceedings but the provision does not give any indication of how much before. The word "before" means, inter alia, "ahead of; in presence or sight of; under the consideration or cognizance of". The two events sought to be interconnected by use of the term "before" must have proximity of relationship by reference to occurrence; the later event proximately following the preceding event as a foreseeable or "within-sight" certainty. *The party invoking section 9 may not have actually commenced the arbitral proceedings but* ***must be able to satisfy the court that the arbitral proceedings are actually contemplated or manifestly intended as Sundaram Finance Ltd. (supra) puts it and are positively going to commence within a reasonable time.*** *What is a reasonable time will depend on the facts and circumstances of each case and the nature of interim relief sought for would itself give an indication thereof. The distance of time must not be such as would destroy the proximity of relationship of the two events between which it exists and elapses. The purpose of enacting Section 9, read in the light of the Model Law and UNCITRAL Rules is to provide "interim measures of protection". The order passed by the court should fall within the meaning of the expression "an interim measure of protection" as distinguished from an all-time or permanent protection.*

18. Under the A&C Act, 1996, unlike the predecessor Act of 1940, the Arbitral Tribunal is empowered by section 17 of the Act to make orders amounting to interim measures. The need for section 9, in spite of section 17 having been enacted, is that section 17 would operate only during the existence of the Arbitral Tribunal and its being functional. During that period, the power conferred on the Arbitral Tribunal under section 17 and the power conferred on the court under section 9 may overlap to some extent but so far as the period pre- and post- the arbitral proceedings is concerned, the party requiring an interim measure of protection shall have to approach only the court. ***The party having succeeded in securing an interim measure of protection before arbitral proceedings cannot afford to sit and sleep over the relief, conveniently forgetting the "proximately contemplated" or "manifestly intended" arbitral proceedings itself. If arbitral proceedings are not commenced within a*** *__reasonable time of an order under section 9, the relationship between the order under section 9 and the arbitral proceedings would stand snapped and the relief allowed to the party shall cease to be an order made "before" i.e. in contemplation of arbitral proceedings.__ The court, approached by a party with an application under section 9, is justified in asking the party and being told how and when the party approaching the court proposes to commence the arbitral proceedings. Rather, the scheme in which section 9 is placed obligates the court to do so. The court may also while passing an order under section 9 put the party on terms and may recall the order if the party commits breach of the terms.*

__[Emphasis Supplied]__

48. In the instant case, admittedly the arbitration was commenced unlike in ***Firm Ashok Traders***, but it is no longer possible to conduct arbitration. There is no cause of action left. The contention that the cause of action is still alive is untenable because the counter-party to the arbitration agreement i.e. Delta has been reset to a clean slate. No arbitration agreement subsists and the arbitration that was underway has been brought to an end. Therefore, there is no basis for the Interim Order to continue even for a day more.

49. This raises the next question as to who should foot the bill for storage of the Subject Coils in compliance with the Interim Order for the period during which the Interim Order has been in operation. It is well settled that the party in carriage of proceedings at whose behest the Court Receiver was appointed must foot the bill. It is JSW for whose aid and benefit the Interim Order was passed. If JSW has been unable to continue the arbitration because of

operation of law, it cannot be said that third parties who have had to go out of pocket in order to comply with the Interim Order have to be left without a remedy. The costs of storage of the Subject Coils during the life of the Interim Order must necessarily be borne by JSW.

Storage Charges for Seven Subject Coils:

50. Going by CRR 102, it is clear that seven Subject Coils matched with the site report made on August 25, 2019 and identified in Paragraph 3 of the Learned Single Judge's Order dated October 20, 2022[3], had occupied warehouse space at Karu until November 10, 2022, when the Subject Coils were moved to Paramshakti. These coils were retained at Karu's warehouse only because of the need to comply with the Interim Order. JSW has to necessarily foot Karu's bill for storage of these seven Subject Coils at Karu's warehouse from the date on which the Interim Order was implemented to seal them, until November 10, 2022, when they were moved out.

51. The payment for storage of these seven Subject Coils for the period after Paramshakti started storing the Subject Coils is payable by JSW to Paramshakti. Indeed, JSW has attempted to pass off the entire liability before and after November 10, 2022 to Aashna by its reading of the Order dated October 20, 2022 passed by a Learned Single Judge, but in my view no logical

3 The Order dated October 20, 2022 has internal para referencing errors and therefore the paragraph number referred to here is the actual paragraph that identifies the coils and reasonable reading of that Order indicates an assumption by Aashna of a retrospective obligation to pay.

Storage Charges for the Eighth Subject Coil:

52. The eighth Subject Coil was not attached until November 10, 2022 because there was confusion over the identity of the coil. This coil was identified in Paragraph 4 of the Order dated October 20, 2022[4]. In fact, this Order was necessitated because Karu had sold the warehouse and had to hand over free and vacant possession of the warehouse to the purchaser. It was at the time of shifting of the coils to Paramshakti that the possession and attachment of the eighth coil took place. Until this date, storage of this coil at Karu's warehouse is to be paid for by Aashna since it is the case of both Karu and Aashna that this coil was stored at Karu's warehouse at Aashna's behest.

53. Aashna's undertaking to this Court is recorded in the Order dated October 20, 2022, namely that Aashna would pay for the storage of the coils at Paramshakti. However, this is without prejudice to the rights and contentions of the parties. The rights and contentions of JSW relate to a claimed right over them as security for a money claim in the arbitration. The rights and contentions of Aashna consistently have been that the Subject Coils belonged to Aashna as a third-party purchaser down the line. The arbitration that was

4 The Order dated October 20, 2022 has internal para referencing errors and therefore the paragraph number referred to here is the actual paragraph that identifies the coils initiated could have decided this issue. Today, there is no scope to adjudicate and resolve this dispute because even the cause of action has come to an end. Therefore, now that JSW has been declared as having no right at all to hold on to the coils, the costs for storage of all eight coils stored at Paramshakti pursuant to the Order dated October 20, 2022 shall be borne by JSW.

54. It is noteworthy that a Learned Single Judge was pleased to allow the shifting from Karu to Paramshakti by the Order dated October 20, 2022, since both the warehouses are at Taloja. The Learned Single Judge was not inclined to send the coils to JSW's warehouse in Raigad which was far, even if JSW were to only act as an agent of the Court Receiver. If the Court had been inclined to let JSW store all eight coils and Aashna insisted on storage at Paramshakti, one could contend that it was at Aashna's behest that the storage was directed to be kept at Paramshakti, and it must pay for its choice. However, this is not so – JSW's request to move the coils to its own premises was rejected by the Court and storage at Paramshakti as proposed by Aashna was selected. Therefore, the shifting having been done for convenience, JSW would not have been able to stop incurring warehousing charges. The storage at Paramshakti was meant to be in continuation of the attachment directed in the Interim Order. The liability for storage is pursuant to the Interim Order and that has to be borne by JSW at whose behest the Court Receiver was appointed.

55. Therefore, while it is not for JSW to *pay Karu* for storage of the eighth Subject Coil, JSW would indeed have to *pay Paramshakti* for storage of all eight Subject Coils with effect from November 10, 2022.

Remaining Three Subject Coils:

56. The costs of storage of the remaining three Subject Coils stored at Rishabh Digha shall have to be paid for by JSW for the entire period of their storage.

57. At this juncture, I must note that Karu had not billed for the storage until after the shift of the eight Subject Coils. JSW contends that even the bill so raised by Karu was raised on Aashna, making it clear that the merchant too believed it would be Aashna that would pay. Karu contends that it issued a proforma in Aashna's name in view of the dispute over who would pay, resulting in a delay in clearing out its warehouse. That facet of the controversy is redundant in view of the declaration made in this Order. The obligation to pay for the storage to implement the benefits of the Interim Order has to be borne by JSW at whose behest the Court Receiver came to be appointed. Acts of the Court cannot prejudice any person. The warehouse keepers cannot be asked to bear costs incurred for compliance with the Court's Interim Order. The Interim Order cannot be continued any further since the arbitration itself has come to an end and even the cause of action has expired.

58. The law on how to deal with an interim order and the costs it inflicts in its wake is well settled. A Constitution Bench of the Supreme Court, in ***Indore Development*** Authority[5], has cited a wealth of case law in this regard and reiterated as to who should foot the bill for the aftermath of an interim order. The following passages are noteworthy:

> *320. The **maxim actus curiae neminem gravabit is founded upon the principle due to court proceedings or acts of court, no party should suffer**. If any **interim orders are made during the pendency of the litigation, they are subject to the final decision** in the matter. **In case the matter is dismissed as without merit, the interim order is automatically dissolved. In case the matter has been filed without any merit, the maxim is attracted commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong**. No person ought to have the advantage of his own wrong. In case litigation has been filed frivolously or without any basis, iniquitously in order to delay and by that it is delayed, there is no equity in favour of such a person. Such cases are required to be decided on merits. In Mrutunjay Pani v. Narmada Bala Sasmal [Mrutunjay Pani v. Narmada Bala Sasmal, AIR 1961 SC 1353] , this Court observed that : (AIR p. 1355, para 5)*
>
> > *"5. ... The same principle is comprised in the Latin maxim commodum ex injuria sua nemo habere debet, that is, convenience cannot accrue to a party from his own wrong. To put it in other words, no one can be allowed to benefit from his own wrongful act."*
>
> *324. In Mahadeo Savlaram Shelke v. Pune Municipal Corpn. [Mahadeo Savlaram Shelke v. Pune Municipal Corpn., (1995) 3 SCC 33] , **it has been observed that the Court can under its inherent jurisdiction ex debito justitiae has a duty to mitigate the damage suffered by the defendants by the act of the court**. Such action is necessary to*

5 *Indore Development Authority vs. Manoharlal & Ors.* ***(2020) 8 SCC 129***

*put a check on abuse of process of the court. In Amarjeet Singh v. Devi Ratan [Amarjeet Singh v. Devi Ratan, (2010) 1 SCC 417 : (2010) 1 SCC (L&S) 1108] , and Ram Krishna Verma [Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620] , it was observed that **<u>no person can suffer from the act of court and unfair advantage of the interim order must be neutralised</u>**. In Amarjeet Singh [Amarjeet Singh v. Devi Ratan, (2010) 1 SCC 417 : (2010) 1 SCC (L&S) 1108] , this Court observed : (SCC pp. 422-23, paras 17-18)*

> *"17. No litigant can derive any benefit from mere pendency of the case in a court of law, as the interim order always merges in the final order to be passed in the case, and if the writ petition is ultimately dismissed, the interim order stands nullified automatically. A party cannot be allowed to take any benefit of its own wrongs by getting an interim order and thereafter blame the court. The fact that the writ is found, ultimately, devoid of any merit, shows that a frivolous writ petition had been filed. The maxim actus curiae neminem gravabit, which means that the act of the court shall prejudice no one, becomes applicable in such a case. **<u>In such a fact situation, the court is under an obligation to undo the wrong done to a party by the act of the court. Thus, any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised, as the institution of litigation cannot be permitted to confer any advantage on a suitor from delayed action by the act of the court</u>**. (Vide Shiv Shankar v. U.P. SRTC [Shiv Shankar v. U.P. SRTC, 1995 Supp (2) SCC 726 : 1995 SCC (L&S) 1018] , GTC Industries Ltd. v. Union of India [GTC Industries Ltd. v. Union of India, (1998) 3 SCC 376] and Jaipur Municipal Corpn. v. C.L. Mishra [Jaipur Municipal Corpn. v. C.L. Mishra, (2005) 8 SCC 423] .)*

*18. In Ram Krishna Verma v. State of U.P. [Ram Krishna Verma v. State of U.P., (1992) 2 SCC 620] , this Court examined a similar issue while placing reliance upon its earlier judgment in Grindlays Bank Ltd. v. CIT [Grindlays Bank Ltd. v. CIT, (1980) 2 SCC 191 : 1980 SCC (Tax) 230] and **<u>held that no person can suffer from the</u>***

act of the court and in case an interim order has been passed, and the petitioner takes advantage thereof, and ultimately the petition is found to be without any merit and is dismissed, the interest of justice requires that any undeserved or unfair advantage gained by a party invoking the jurisdiction of the court must be neutralised."

[Emphasis Supplied]

59. Indore Development Authority also endorsed the earlier view of the Supreme Court in ***South Eastern Coalfields***[6], which reads thus:

26. In our opinion, the principle of restitution takes care of this submission. The word "restitution" in its etymological sense means restoring to a party on the modification, variation or reversal of a decree or order, what has been lost to him in execution of decree or order of the court or in direct consequence of a decree or order (see Zafar Khan v. Board of Revenue, U.P. [1984 Supp SCC 505 : AIR 1985 SC 39]) In law, the term "restitution" is used in three senses: (i) return or restoration of some specific thing to its rightful owner or status; (ii) compensation for benefits derived from a wrong done to another; and (iii) compensation or reparation for the loss caused to another. (See Black's Law Dictionary, 7th Edn., p. 1315). The Law of Contracts by John D. Calamari & Joseph M. Perillo has been quoted by Black to say that "restitution" is an ambiguous term, sometimes referring to the disgorging of something which has been taken and at times referring to compensation for injury done:

> *"Often, the result under either meaning of the term would be the same. … Unjust impoverishment as well as unjust enrichment is a ground for restitution. If the defendant is guilty of a non-tortious misrepresentation, the measure of recovery is not rigid but, as in other cases of restitution, such factors as relative fault, the agreed-upon risks, and the fairness of alternative risk allocations not agreed upon and not attributable to the fault of either party need to be weighed."*

6 *South Eastern Coalfields Ltd. v. State of M.P. and ors.* – **(2003) 8 SCC 648**

The principle of restitution has been statutorily recognized in Section 144 of the Code of Civil Procedure, 1908. Section 144 CPC speaks not only of a decree being varied, reversed, set aside or modified but also includes an order on a par with a decree*. The* ***scope of the provision is wide enough so as to include therein almost all the kinds of variation, reversal, setting aside or modification of a decree or order. The interim order passed by the court merges into a final decision****. The validity of an interim order, passed in favour of a party, stands reversed in the event of a final decision going against the party successful at the interim stage.* ***Unless otherwise ordered by the court, the successful party at the end would be justified with all expediency in demanding compensation and being placed in the same situation in which it would have been if the interim order would not have been passed against it.*** *The* ***successful party can demand (a) the delivery of benefit earned by the opposite party under the interim order of the court, or (b) to make restitution for what it has lost; and it is the duty of the court to do so unless it feels that in the facts and on the circumstances of the case, the restitution far from meeting the ends of justice, would rather defeat the same****. Undoing the effect of an interim order by resorting to principles of restitution is an obligation of the party, who has gained by the interim order of the court, so as to* ***wipe out the effect of the interim order passed which, in view of the reasoning adopted by the court at the stage of final decision, the court earlier would not or ought not to have passed****. There is nothing wrong in an effort being made to restore the parties to the same position in which they would have been if the interim order would not have existed.*

27. ***Section 144 CPC is not the fountain source of restitution, it is rather a statutory recognition of a pre-existing rule of justice, equity and fair play. That is why it is often held that even away from Section 144 the court has inherent jurisdiction to order restitution so as to do complete justice between the parties****. In Jai Berham v. Kedar Nath Marwari [(1922) 49 IA 351 : AIR 1922 PC 269] Their Lordships of the Privy Council said: (AIR p. 271)*

"It is the duty of the court under Section 144 of the Civil Procedure Code to

'place the parties in the position which they would have occupied, but for such decree or such part thereof as has been varied or reversed'. Nor indeed does this duty or jurisdiction arise merely under the said section. ***It is inherent in the general jurisdiction of the court to act rightly and fairly according to the circumstances towards all parties involved."***

Cairns, L.C. said in Rodger v. Comptoir D'Escompte de Paris [(1871) 3 PC 465 : 7 Moo PCC NS 314 : 17 ER 120] : (ER p. 125)

*"[****O]ne of the first and highest duties of all courts is to take care that the act of the court does no injury to any of the suitors, and when the expression, 'the act of the court' is used, it does not mean merely the act of the primary court, or of any intermediate court of appeal, but the act of the court as a whole, from the lowest court which entertains jurisdiction over the matter up to the highest court which finally disposes of the case****."*

This is also on the principle that a wrong order should not be perpetuated by keeping it alive and respecting it (A. Arunagiri Nadar v. S.P. Rathinasami [(1971) 1 MLJ 220]). In the exercise of such inherent power the courts have applied the principles of restitution to myriad situations not strictly falling within the terms of Section 144.

28. ***That no one shall suffer by an act of the court is not a rule confined to an erroneous act of the court; the "act of the court" embraces within its sweep all such acts as to which the court may form an opinion in any legal proceedings that the court would not have so acted had it been correctly apprised of the facts and the law****. The factor attracting applicability of restitution is not the act of the court being wrongful or a mistake or error committed by the court;* ***the test is whether on account of an act of the party persuading the court to pass an order held at the end as not sustainable, has resulted in one party gaining an advantage which it would not have otherwise earned, or the other party has suffered an impoverishment which it would not have suffered but for the order of the court and the act of such party****. The quantum of restitution, depending on the facts and circumstances of a given case, may take into consideration not only what the party excluded would have made but also what the* *party under obligation has or might reasonably have made. **There is nothing wrong in the parties demanding being placed in the same position in which they would have been had the court not intervened by its interim order when at the end of the proceedings the court pronounces its judicial verdict which does not match with and countenance its own interim verdict**. Whenever called upon to adjudicate, the court would act in conjunction with what is real and substantial justice. **The injury, if any, caused by the act of the court shall be undone and the gain which the party would have earned unless it was interdicted by the order of the court would be restored to or conferred on the party by suitably commanding the party liable to do so. Any opinion to the contrary would lead to unjust if not disastrous consequences. Litigation may turn into a fruitful industry**. Though litigation is not gambling yet there is an element of chance in every litigation. **Unscrupulous litigants may feel encouraged to approach the courts, persuading the court to pass interlocutory orders favourable to them by making out a prima facie case when the issues are yet to be heard and determined on merits and if the concept of restitution is excluded from application to interim orders, then the litigant would stand to gain by swallowing the benefits yielding out of the interim order even though the battle has been lost at the end. This cannot be countenanced.** We are, therefore, of the opinion that the successful party finally held entitled to a relief assessable in terms of money at the end of the litigation, is entitled to be compensated by award of interest at a suitable reasonable rate for the period for which the interim order of the court withholding the release of money had remained in operation.*

[Emphasis Supplied]

60. Applying the principles outlined above, indeed a case is made out for restitution owing to the adverse impact of the Interim Order. Indeed, the passing of the Interim Order has inflicted injury on Aashna and Karu although arguably one may not be able to say that JSW gained much in the process.

However, this being a commercial dispute, it is even more important to bear in mind that a litigant has to shoulder the burden of the commercial impact of a wrongful attachment effected at its request. JSW convinced the Section 9 Court that the Interim Order deserves to be passed. It is now found that the Subject Coils ought not to have been attached. The Arbitral Tribunal was constituted only in June 2022. Thereafter the arbitration was withdrawn in November 2025, although because of operation of the IBC. Even before withdrawal, upon commencement of the CIRP, continuation of any security interest whether through a Section 9 Order or otherwise became untenable. The law in this regard has been articulated by a Division Bench of which I was a member, in ***Siti Networks***[7]. The claim in the arbitration was an unsecured operational debt. The protective measure envisaged when litigation against the corporate debtor would have still been possible, has to give way to the new developments. The Subject Coils would have had to belong to Delta for the security interest to be relevant. In this case, they belonged to a third party, and the only forum to decide whether they could at all be said to belong to Delta was the Arbitral Tribunal, which became impossible when the arbitration proceedings themselves came to an end in November 2025.

61. However, even after the arbitration ended and even after the cause of action was extinguished, instead of winding things up, JSW has chosen to keep

*7 Siti Networks Ltd. v. Rajiv Suri, **2024 SCC OnLine Bom 3550*** agitating the same old issues, citing discrepancies and seeking to raise doubts about Aashna's contentions even after losing its own right to have any further say in the matter. JSW has continued to instruct its advocates to pray for the Subject Coils to be released to JSW and later, that if they are not released to JSW they should not be released to Aashna either. Moreover, one cannot forget that the position applicable to similar facts had been clearly declared way back in October 2019 by a Learned Single Judge and then again by another Learned Single Judge in 2022.

62. However, Aashna has not pleaded any quantification of the losses suffered by it that Mr. Muglikar contends should be awarded. Whether the price of steel has changed adversely and how that compares with the depreciation of the Subject Coils, the reasons for Aashna not having pursued IA 542 with due dispatch with a dismissal for want of prosecution and restoration, are all matters of evidence. Therefore, Aashna is granted liberty to initiate appropriate proceedings to claim such restitution.

63. However, this being a commercial dispute, costs have to follow the event, particularly bearing in mind the unreasonable approach to litigation adopted by JSW. Towards this end, a statement of costs was called for from each of the parties.

64. I have carefully examined the statements tendered by the parties. Karu Metals claims to have spent Rs. 3 lakhs towards legal costs while Aashna claims to have spent nearly Rs. 5 lakhs in this regard. JSW claims to have spent over Rs. 1.37 crores, of which, it appears that nearly Rs. 10 lakhs has been spent after November 2025, when the very purpose of the attachment under Section 9 became inexorably absent.

65. Along with the statement of costs, Aashna has made claims towards loss of opportunity and loss of reputation apart from legal costs and warehousing charges. I am afraid it would not be possible to award such claims in a summary manner. So also, JSW has introduced elements of what it spent on paying the arbitrator's fees (Rs. 24 lakhs) in the statement of costs called for by this Court, and this is totally irrelevant for these proceedings. What is to be considered is the costs incurred by the parties in these Section 9 proceedings and that too in the context of the untenable continuation of attachment. What JSW has spent on fees of the Court Receiver is a mere Rs. 81,100 and the defence of an untenable attachment has been continued for a prolonged period.

66. Therefore, considering that JSW has invested nearly Rs. 10 lakhs in legal costs after the arbitration itself was terminated, and considering that Karu and Aashna have had to suffer legal costs, in my view, taking the totality

of circumstances into account and bearing in mind the number of times the case has had to be listed, and factoring in the reasonableness of the submissions made, it would be reasonable to direct JSW to pay costs in the sum of Rs. 1,50,000 to Karu and Rs. 2,50,000 payable to Aashna within a period of four weeks from today. I have tempered the costs payable and discounted the same bearing in mind the pace at which earlier applications and proceedings before the Court Receiver were dealt with by Aashna and the delay in raising invoices by Karu. I have also factored in the equities arising out of JSW having borne arbitrator's fees all by itself and its submission that it received nothing in the approved resolution plan.

67. While Aashna has pointed to the law on restitution and in its submissions, alluded to depreciation of the coils and the damages suffered, there is no pleading on the assessment of damages, for restitution to be dealt with. That apart, the jurisdiction in question is Section 9 of the Act, and it would not be possible to conduct a trial to assess damages in such a summary jurisdiction. Aashna and Karu will have liberty to initiate appropriate proceedings to claim damages and make out their respective cases for the same, if so advised.

68. To summarise the findings and principles emerging from them:

A] The jurisdiction under Section 9 is inextricably linked to arbitration proceedings. The protective and preservative measures under Section 9 of the Act are necessarily in aid of arbitration. If the arbitration proceedings terminate, the interim measures must necessarily come to an end. There can be no scope for protective measures already granted, being able to continue in the absence of any scope whatsoever for the arbitration to take place. Therefore, the Interim Order is hereby vacated;

B] The contention that the Interim Applications by Karu and Aashna are not maintainable has to be stated to be rejected. These are third parties affected by the Interim Order and they could obviously not have been heard before the passing of the Interim Order. They had no option but to come back to the Section 9 Court to explain how the Interim Order could not have attached what is theirs, and how it is causing undue hardship. The maintainability of such applications referable to the principles underlying Order XXXIX Rule 4 has been squarely ruled upon in these very proceedings. For JSW to trespass on further judicial time in adjudicating the same issue of maintainability, citing inability of third parties to invoke arbitration, is wholly inappropriate;

C] Aashna's status as a purchaser without notice of any lien is clear from the record. This facet of the matter has been squarely dealt with in **Vanit Gupta** and **Kothari Steel.** That principle would apply in this case too. In any case, it is unnecessary to examine this angle after the arbitration itself has come to an end;

D] It is apparent that the Subject Coils are not identifiable within Exhibit B of the Section 9 Petition. JSW had conceded before a Learned Single Judge as recorded in an order dated September 18, 2019 that coils falling outside Exhibit B cannot be attached and must be released;

E] Four distinct allocations are appropriate for storage costs – Karu is entitled to storage costs for seven coils until November 10, 2022 which is payable by JSW; Karu is entitled to storage costs for the eighth coil until November 10, 2022, which is payable by Aashna; Paramshakti is entitled to storage costs for eight coils from November 10, 2022 which is payable by JSW; and Rishabh Digha is entitled to storage costs for the three coils all through the period commencing from their attachment pursuant to the Interim Order, and until release;

F] Aashna's liability to pay for storage as a without-prejudice *pro tem* measure undertaken and recorded in the Order dated October 20, 2022 is not retrospective in its operation and can never cover past dues owed by JSW to Karu. In any case, in view of the final disposal of the matter and the declarations made in this judgement, the allocation of storage costs is as set out in the preceding sub-paragraph;

G] That a corporate debtor who is resolved under the IBC starts with a clean slate, is now well declared in numerous judgements. Causes of action against the corporate debtor prior to resolution would come to an end with the assessment and determination of claims under the resolution process. A creditor may recover some or none or all of the debt claimed from and owed to it by the corporate debtor. Regardless of how much is recovered, there would be no residual cause of action to agitate. Arbitration agreements governing such discharged causes of action would not be available to give any continued life to the Section 9 jurisdiction;

H] A party that has obtained interim relief under Section 9 in the form of a Court Receiver being appointed to preserve assets pending arbitration, must pay the costs and expenses relating to the Court Receiver's activities and bear the consequences of the implications of such activities. This would include warehouse charges for storage of assets that are made *custodia legis* pursuant to the interim protective measures obtained by the Section 9 Petitioner; and

I] Aashna and Karu will have liberty to initiate appropriate proceedings to claim damages and make out their case for the same, in an appropriate forum, as advised. Damages cannot be tried in these Section 9 proceedings. Moreover, no quantification of damages in a claim for restitution is even pleaded. Based on the declarations made in this Order, this issue can also raised in proceedings that may be initiated by Aashna and Karu.

69. Therefore, the following Order and directions are passed in disposal of all the captioned Interim Applications and the pending Court Receiver Reports in connection with the Section 9 Petition:

A] The Interim Order is hereby recalled and any and every attachment pursuant to the same shall stand released. The Court Receiver shall intimate the release of the attachment in respect of any pending coils to every warehouse where any coils attached due to the Interim Order, may be stored;

B] As regards the Subject Coils, costs of storage shall be paid by JSW as declared above. Each of Karu, Paramshakti and Rishabh Digha shall issue invoices for such storage and deliver the same to the Court Receiver. The Court Receiver shall verify the invoices for the period of storage between the date on which attachment was effected in the premises of the respective warehouse, and the date of release of the coils in line with the declarations made in this Order.

Within a week of receipt of the invoices, the Court Receiver shall issue a communication to JSW to pay such invoices. Within four weeks of receipt of such invoices, JSW shall make payment of the same to the respective warehouses along with interest on the storage charges payable at the rate of 12% per annum for the period of the storage;

C] Should any other coils remain under attachment, JSW shall pay the costs of storage to such warehouse keepers in whose premises the coils are stored. The same procedure as above shall apply for the raising of invoices, their verification and payment of such invoices.

70. With the aforesaid directions, nothing would survive in CRR 102. Costs of the report shall be paid by the Petitioner, JSW within a period of one week from this Order. The Court Receiver stands discharged without the need for passing accounts. JSW shall bear the Court Receiver's charges, in accordance with the Rules.

71. All actions required to be taken pursuant to this order shall be taken upon receipt of a downloaded copy as available on this Court's website.

[SOMASEKHAR SUNDARESAN, J.]