

**In the High Court at Calcutta
Constitutional Writ Jurisdiction
Original Side**

The Hon'ble Justice Sabyasachi Bhattacharyya

WPO No. 227 of 2024

**Tata Steel Limited and Anr.
Vs.
Union of India and Ors.**

For the petitioners	:	Mr. S.N. Mookherjee, Sr. Adv., Mr. Ratnanko Banerji, Sr. Adv., Ms. Vineeta Meharia, Adv., Mr. Jaydeb Ghorai, Adv., Mr. Dhruv Chadha, Adv., Mr. Diptesh Ghorai, Adv.
For the respondent nos. 1 to 7, 9 and 10	:	Mr. Indrajit Dasgupta, Adv., Mr. Sailendra Kumar Tiwari, Adv., Mr. Madhu Jana, Adv.
For the respondent nos. 8 and 16	:	Mr. Debajyoti Dutta, Adv., Ms. Supriya Dubey, Adv.
Hearing concluded on	:	30.04.2024
Judgment on	:	24.05.2024

Sabyasachi Bhattacharyya, J:-

1. The petitioner no. 1, Tata Steel Limited (TSL) was originally incorporated on August 26, 1907 as Tata Iron and Steel Company Limited (TISCO). Its name was changed to Tata Steel Limited on August 12, 2005 and a fresh certification of incorporation, consequent upon change of name, was issued by the Office of the Registrar of Companies, Maharashtra.

2. The present dispute centers around the competing claims of petitioner no. 1 and the Steel Authority of India Limited (SAIL), a public sector undertaking, to a fund known as the ‘Steel Development Fund’ (for short, “SDF”). TSL claimed waiver of its loans taken against the Steel Development Fund (SDF) which was refused by the respondent-Authorities, leading to the present writ petition. The arguments of the petitioners revolve around the respective rights of TSL, SAIL and the Government of India to the SDF. The parties rely on three important judgments and the interpretation thereof to advance their arguments.
3. The first such judgment is *Ispat Industries Ltd. & Anr. Vs. Union of India & Ors.*, reported at (2000) 4 SCC 137 (hereinafter referred to as “the Ispat Judgment”), the second *Tata Iron & Steel Co. Ltd. vs. Collector of Central Excise, Jamshedpur*, reported at (2002) 8 SCC 338 (for short, “the TISCO Judgment”) and the third a judgment rendered by a learned Single Judge of this Court in WPO 70 of 2006 [*TATA Steel Ltd. & Anr. Vs. Union of India & Ors.*].
4. The *Ispat Judgment* was rendered by the Supreme Court while hearing a Special Leave Petition (SLP) preferred by Ispat Industries Limited, a private sector company operating in the iron and steel industry, claiming benefits from the SDF. Although the Supreme Court ultimately refused to entertain the SLP, a detailed judgment was passed while doing so.
5. The petitioners contend that the Division Bench judgment, from which the SLP was preferred, merged into the Supreme Court judgment despite the SLP not having been entertained. Thus, the findings

rendered by the Division Bench were rendered academic by the observations of the Supreme Court.

6. The Union of India controverts such submission and argues that in view of the refusal of the SLP, it is the Division Bench judgment which still holds the field, as the doctrine of merger is not applicable.
7. It is argued by learned senior counsel appearing for the petitioners that in the *Ispat Judgment*, the Supreme Court held that the SDF has no statutory backing, having been created by administrative orders, and recognized that contributions were made to the said fund by SAIL and TISCO. It was further held that the funds had not passed into the hands of the Government and were for utilization by the member steel plants only, that is the main steel plants, which contributed to the said fund.
8. It is argued that the primary issues were answered by the Supreme Court in the *Ispat Judgment*, thereby rendering nugatory the observations of the Division Bench that the main steel plant owners were not the owners of the SDF but were mere collectors of fund and that Ispat could apply for financial help from SDF if the Central Government decided to formulate a policy to extend SDF to private sector industries. Also, the distinction drawn between the private and public sector by the Division Bench was turned down by the Supreme Court.
9. In the *TISCO Judgment*, it is argued that the Supreme Court held that the corpus constituting the SDF was created from an element of the

price charged by the main steel producers, who were the only legitimate beneficiaries of such funds.

- 10.** The petitioners also rely on the observations of the Learned Single Judge in WPO 70 of 2006 where it was held that the corpus of the SDF is earmarked for the main steel producers and that the TSL has a right over the SDF. It was also held that the Government cannot utilize the SDF corpus for any purpose other than for which the same was created for the main steel producers and the said corpus cannot be transferred to any other fund, including the Consolidated Fund of the Government of India. The SDF was ultimately held to be for the utilization of the member steel producers only and its character could not be changed contrary to the dictum of the *Ispat Judgment* .
- 11.** It is argued that the impugned order dated December 29, 2003, refusing the petitioners' request for waiver of loans was erroneous; since similar waiver was granted to SAIL, a public sector company, the refusal of the benefit of such a scheme to petitioner no. 1 is discriminatory and violative of Article 14 of the Constitution of India.
- 12.** Citing the dire situation of SAIL as the ground to grant waiver of loans to it amounts to rewarding inefficient and poor management on the part of the SAIL and punishing efficient running of the operation by petitioner no. 1. It is argued that the petitioner no. 1 has also made sacrifices in order to revive steel producers in financial distress, such as the Tin Plate Company of India Limited, which was saved by the petitioner no. 1 from BIFR.

13. The petitioners contend that even according to SAIL, petitioner no. 1-TSL and SAIL have common and similar interests and are entitled to the same treatment in law and equity in the matter of the SDF. To substantiate such contention, it is pointed out that SAIL filed an application in WPO 70 of 2006, being GA 581 of 2006, praying for issuance of an order restraining the respondents from utilizing SDF, admitting having commonality with TSL and claiming the same rights to the SDF as TSL. SAIL and TSL jointly made a demand for refund of contributions which is evident from the minutes of the 207th meeting of the Joint Plants Committee (JPC).
14. However, in paragraph 3 of the impugned letter dated February 22, 2004, TSL's request for a No-Objection Certificate (NOC) prior to undertaking certain activities was turned down and the petitioner no. 1 was directed to refund all its dues in respect of the loan sanctioned from the SDF.
15. No reasons have been disclosed in the impugned letter dated February 22, 2024 as to why TSL has been directed to repay outstanding loans along with interest, without mentioning that there is any risk of non-service of loan by TSL for obtaining NOC in future. The conditions imposed for obtaining future NOCs even after outstanding SDF loans with interests are repaid by the TSL is without any rhyme and reason and devoid of application of mind.
16. Learned counsel appearing for the Union of India argues that there can be no doubt that the SDF was created by administrative orders in exercise of statutory powers. In *Union of India vs. K. P. Joseph and*

ors., reported at (1973) 1 SCC 194, it was held that to say that an administrative order can never confer any right would be too wide a proposition and there are administrative orders which confer rights and impose duties.

17. Arguing on the genesis of the SDF, learned counsel appearing for the Union of India contends that Section 3 of the Essential Commodities Act, 1956 (in brief, “the 1956 Act”) provides that if the Central Government is of the opinion that it is necessary or expedient for maintaining or increasing supplies of any essential commodity or for securing their equitable distribution and availability at fair price, it may, by order, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein. Iron and steel, including manufactured products of iron and steel, has been classified as an essential commodity under the Act.
18. In exercise of the powers conferred by Section 3 of the 1956 Act, the Iron and Steel (Control) Order, 1956 was promulgated. Clause 17B of the same provides that for the purpose of giving effect to the provisions of the said Order, the Central Government may by notification in the Official Gazette set up from time to time such committees, bodies or authorities as it may consider necessary, which can carry out such functions as may be specified in the notification under which the body or authority is set up.
19. In accordance with Clause 17B, the JPC was set up by a Notification dated April 7, 1971, with the Iron and Steel Controller as its Chairman and with one representative from each of the main steel

plants in existence at the time, that is, the TISCO, the Indian Iron and Steel Company (IISCO) and certain other subsidiaries and Government entities.

- 20.** By a letter dated June 5, 1978 addressed to the Chairman of the JPC, the approval of the Government of India was given regarding imposition of a development surcharge of Rs. 100/- per tonne in Category II and Category III items of steel (non-priority category). The development fund was to be utilized for the development and rehabilitation of the Steel Industry. The JPC was entrusted with the task of collection of accounting of the surcharge along with the revised price of steel. The money thus collected would be kept in a distinct bank account by the JPC.
- 21.** By another Notification dated December 27, 1978, the Central Government amended the April 7, 1971 Notification and directed that the Committee may also add an element to the ex-works price determined under sub-clause (8) for constituting a fund for modernization, research and development with the object of ensuring the production of iron and steel in the desired categories and grades by the main steel plants. The Committee was to function in accordance with such regulations and directions as may be issued by the Central Government from time to time.
- 22.** By a letter dated September 6, 1979 issued by the Under Secretary to the Government of India to the Iron and Steel Controller and Chairman of JPC, the directions of the Central Government concerning the operations of the SDF were conveyed, where it was

clearly stated that the surcharge paid into the funds by the various producers would lose their identity and would form part of the corpus from which finance would be made available to the various plants in accordance with the criteria and procedure laid down in the regulations as well as subsequent regulations issued by the Central Government.

- 23.** It is argued that the writ petition is hit by *res judicata* and not maintainable. The same issues as involved in the present writ petition were under adjudication in *WPO 70 of 2006*, the order passed in which was never set aside or modified by the Division Bench in appeal and thus the same issues cannot be re-agitated.
- 24.** It is argued by the Union of India that the judgment of the Division Bench in *Ispat's* case was confirmed by the judgment of the Supreme Court by dismissal of the SLP filed against it. The Division Bench had made certain important observations relating to the issue of collectors vis-à-vis remitters and differentiation in treatment of private and public sector plants, which are still valid.
- 25.** Learned counsel appearing for the Union submits that the contention that the judgment of the Division Bench of this Court merged with the Supreme Court in *Ispat's* case is incorrect in view of the law laid down in case of *Kunhayammed and others vs. State of Kerala and another*, reported at (2000) 6 SCC 359. It was held therein that even where the order rejecting an SLP is a speaking order and reasons have been assigned for rejecting the petition, still the order remains one rejecting the prayer for grant of leave to appeal. The petitioner being turned

away at the threshold without being allowed to enter into the appellate jurisdiction of the Supreme Court, the doctrine of merger would not apply. Hence, it is argued that the reliance by the petitioners on the *Ispat Judgment* of the Supreme Court is misplaced.

- 26.** The said proposition, it is contended, was also reiterated in *WPO 70 of 2006* by the coordinate Bench in its order dated August 3, 2022.
- 27.** Learned counsel further argues that the finding of the Division Bench in the *Ispat* matter that the private sector could be treated differentially from the public sector has not been disturbed by the Supreme Court even by implication.
- 28.** The payment of development surcharge to the SDF by steel consumers through the main steel producers was for a specified purpose to achieve defined objectives.
- 29.** By the Notification dated December 27, 1978, the 1971 Notification was amended and Clauses 9A and 9B were introduced which empowered the JPC to add an element to the ex-works price determined under Clause 8 for constituting a fund for modernization, research and development with the object of ensuring the production of iron and steel in the desired categories and grades by the main steel plants. Thus, the objective to give support and benefit being given to the main steel plants through concessional SDF loans was to subserve such purpose.
- 30.** TSL (petitioner no. 1) is a remitter of funds and not its owner, it is argued. The added component remitted to the SDF was not paid by the steel manufacturers but by the steel consumers. As held by the

Division Bench in the Ispat case, collectors can never be treated as contributors or owners.

- 31.** Thus, the question of refund of the money or waiver of the SDF loan account at the behest of petitioner no. 1, does not arise.
- 32.** It is argued by the Union of India that there is no discrimination on account of the public sector and private sector being treated differently. Waiver granted to SAIL was in the larger public interest and the alleged favoured treatment meted out to SAIL was not arbitrary but had sufficient cause, which does not exist in the case of TSL. SAIL absorbed in itself three loss-making concerns, namely IISCO in West Bengal, VISL Bhadrabati in Karnataka and Maharashtra Electro Smelt Limited (MEL) in Maharashtra and unless such waiver was granted 35,000 employees would have been rendered jobless. Moreover, SAIL has spent around Rs. 3000 crores on those units, thus fulfilling a social obligation to the nation. SAIL had a workforce of 1,60,000 and if the remedial measures were not taken, the entire workforce would have been rendered surplus.
- 33.** No such distress or equivalent situation has been cited by the TSL to entitle it to a similar waiver.
- 34.** Waiver on the ground of loss of revenue during control period is frivolous, it is argued, as public policies are made to maximize public good and they may have a favourable or unfavourable impact on different categories of steel producers.
- 35.** The nature of financial assistance from SDF and the right of the lenders to refuse NOC is next addressed by learned counsel for the

Union of India. It is argued that the financial assistance extended to the petitioner no. 1 from SDF was in the nature of loans sanctioned to the petitioner from 1981 to 2000. Thus, the relationship between the JPC on behalf of SDF and TSL became that of lender and borrower.

- 36.** As part of the loan agreements, TSL was mandated to take an NOC from JPC before taking any major corporate action such as raising of capital, mergers/consolidation, dividends, etc. with the objective to secure the loans. TSL's Annual Financial Statement for the financial year 2022-23 shows that the loans taken by TSL from SDF are being reported as non-current secured borrowings with an outstanding amount of 2,751.17 crores. The loan is repayable in 16 equal semi-annual installments after completion of four years from the date of the tranche. Thus, petitioner no. 1 has informed its shareholders that the financial assistance it received from SDF was in the form of loans. Accordingly, the Union of India supports the decision to refuse the waiver as claimed by TSL.
- 37.** Learned counsel arguing on behalf of the JPC contends that TSL is merely a remitter/transferor of funds belonging to the public to SDF and not its owner. It is not even a contributory. Secondly, it is argued that the funds put into SDF lose their identity and cannot be claimed by any remitter as an amount "contributed" by anyone. Such decision of the Central Government has never been challenged till date before any forum.
- 38.** It is next argued on behalf of the JPC that no case has been made out for refund of moneys or waiver of loan to TSL. It is argued that

utilization of SDF does not mean refund or waiver of loan. The arguments on the violation of Article 14 of the Constitution of India are also refuted by the JPC, contending that the petitioner cannot get indirectly what it is not entitled to get directly. It is reiterated that by virtue of the Division Bench judgment in the Ispat case, the public sector and private sector can be treated differently. The arguments of *res judicata* and non-maintainability of the writ petition as made by the Union of India are adopted by the JPC as well.

39. The issues which thus fall for consideration are:

- I. Whether the instant writ petition is barred by the principle of *res judicata*.
- II. Whether petitioner no. 1 is entitled to get a waiver of loan taken from the SDF as a matter of right.
- III. Whether the refusal to grant waiver to petitioner no. 1 from the SDF, despite grant of waiver to the SAIL, is discriminatory and violative of Article 14 of the Constitution of India.
- IV. Whether the respondent-Authorities were justified in directing the petitioner no. 1 to pay all outstanding dues on the loan granted from the SDF and insisting that no further NOC would be issued to the petitioner no. 1 unless the outstanding amounts were repaid.

40. The findings and decision on the said issues are as follows:

41. Issue:

I. Whether the instant writ petition is barred by the principle of res judicata.

Decision:

42. To decide the question of *res judicata*, the reliefs claimed in the present writ petition are to be looked into. The primary relief sought in the present writ petition is setting aside of the letter dated December 29, 2023 by which the petitioners' claim for waiver of the contribution of petitioner no. 1 in the SDF was refused. The petitioners claimed such waiver and also asked for refund of the balance contribution of petitioner no. 1 in the SDF to the petitioners after such waiver of loan.

43. The three primary judgments which are relevant in the context are those of *Ispat*, *TISCO* and *WPO 70 of 2006*. In *Ispat (supra)*, the petitioner, Ispat Industries Limited had sought a declaration that the petitioners and similarly placed other units in the steel industry are eligible and entitled to avail financial assistance from the SDF on an equal footing with the main steel producers. While deciding such question, the Division Bench of this Court had held that Ispat cannot claim parity with the plants/industries in the public sector, which can be treated differently than those in the private sector including the matter of loan advanced from the SDF. In case of public sector industries (SAIL), the Government can waive the interest or even can

write-off the loan itself. It was further observed that if the Government decides to extend any financial help to private sector industries out of the SDF, the representation of the petitioner for loan/financial assistance may be considered along with other similarly situated steel plant industries in private sector. Thus, the Division Bench had distinguished between the private and public sector vis-à-vis extending benefits from the SDF.

- 44.** While dealing with the challenge against the aforesaid judgment of the Division Bench, the Supreme Court returned a finding that the petitioner Ispat was not even born when the SDF was created and that the fund had not passed into the hands of the Government. Importantly, the Supreme Court noted that the main steel units formed the primary units of the JPC and it were only the member steel plants or the main steel plants which were subjected to add an element of their ex-works price and remit the same towards SDF. It was observed that undisputedly, Ispat was not a member of the JPC and did not remit any amount towards the corpus of SDF and the question was if in such circumstances, Ispat could advance a claim or exercise a right on the SDF in any manner. While answering such issue, the Supreme Court concluded that it is quite apparent that from the very nature of the creation of SDF, the manner of remittance of SDF and purpose of its utilization, it is a fund created ultimately for the utilization by the member steel producers only.
- 45.** Thus, a salient feature of the Supreme Court's judgment in *Ispat (supra)* was that it was only the member steel producers, including

both TISCO and SAIL, which were entitled to utilization of the said fund, negating the claim of Ispat, which was not one of the main steel producers.

46. Thus, upon a composite reading of the issues involved in the said matter and the decisions rendered thereon, it is clear that the issues which have fallen for consideration in the instant writ petition were not directly or substantially in issue and, as such, the *Ispat Judgment's* ratio does not operate as *res judicata* in the present case.
47. The next germane judgment is that of *TISCO*. The consideration in the said case was entirely different from the present context. The Collector of Central Excise had opined in the said matter that the remittances to SDF by the member plants were subject to excise duty. While adjudicating the issue, the conflicting views of the CEGAT, Delhi and that of the Calcutta Bench of CEGAT were taken into consideration. The Delhi Bench held that as the manufacturers were compelled by law to collect this charge over and above the price without right to appropriate it for themselves and with the duty of making it over to a third party that is JPC, the charges could not be regarded as part of the consideration for the sale price of the goods. It was held that these charges could not be added for determining the assessable value.
48. The Calcutta Branch had differed and held that this addition was nothing but an element of price and that therefore, the same had to be added for determining the assessable value for payment of excise duty.

- 49.** In view of such conflicting decisions, the question was referred to a Larger Bench of CEGAT which held that the normal price was a price at which the goods were ordinarily sold by the assessee to the buyer and that if any part of the amount paid by the buyer to the assessee was not to be appropriated by the assessee then consequently that part cannot be termed as value of the goods. The Supreme Court held the view of the Delhi Bench of CEGAT to be incorrect and approved of the decision taken by the CEGAT Calcutta, observing that what was added was an “element of price”. Neither the JPC nor SPC could have made any compulsory exaction from the purchaser but could only regulate prices as the powers which then derived were only those which were conferred on them by the Notification which established them. It was held by the Supreme Court that, in other words, the ex-works price could be increased by an adding of element to it. Thus, what was being added was to the price. It was further observed that the ultimate beneficiaries of these amounts are the steel plants themselves.
- 50.** Hence, the subject matter of decision in the *TISCO Judgment* has no bearing on the dispute raised in the present case. The issues were entirely in a different context, as to chargeability of the remittances by main steel plants to the SDF by proceeding on the premises that they were taxes. Hence, the *TISCO Judgment* also does not operate as *res judicata* in the present case.
- 51.** Insofar as WPO 70 of 2006 was concerned, however, there are certain overlaps between the contentions in the present case and the said

case. For example, in the said case, the petitioners had also claimed return and refund of the balance of contribution lying in the SDF on account of the petitioners and waiver of the outstanding loans taken from the SDF fund by the petitioners along with outstanding interest. The learned Single Judge of this Court, while deciding the issue, came to the conclusion that from the purpose and nature of creation of the said SDF and following the dictum of the Supreme Court in *ISPAT industry (supra)*, it is already settled that the SDF funds ultimately is for the utilization by the Members Steel Producers only which, *inter alia*, include SAIL and Tata Steel. It was further observed that in view of the reservation of the authority of the Central Government in the 1994 notification to give orders and directions for the management and operation of the corpus of the SDF, the argument of the petitioners on the issue of violation of Article 14 of the Constitution as against his client by treating SAIL as a privileged entity could not stand in law and such stand was rejected.

- 52.** However, the learned Single Judge held that in the event the first petitioner(Tata Steel Limited) applies for receiving any assistance of whatsoever nature from the corpus of the SDF, the same shall be considered by the appropriate authority of the Central Government in the light of the dictum of the Supreme Court in *ISPAT industry (supra)* upon giving an opportunity of hearing to the first petitioner in accordance with law and then come to a reasonable conclusion thereupon and take a reasoned decision.

- 53.** Thus, the coordinate Bench in *WPO 70 of 2006*, by its order dated August 3, 2022, left it open for the petitioners to apply for receiving “any assistance of whatsoever nature” from the corpus of the SDF.
- 54.** As such, it cannot be said that the said judgment operates as a bar to TSL’s present challenge against a subsequent consideration pursuant to the order passed in *WPO 70 of 2006* and consequential rejection of the petitioners’ plea of waiver of loans. The cause of action of the present writ petition arose pursuant to the decision in *WPO 70 of 2006* and subsequent thereto, thus furnishing a fresh cause of action to the petitioners.
- 55.** Hence, this Court is of the firm opinion that the present writ petition is not barred by the principle of *res judicata*. Accordingly, the first issue is decided in favour of the petitioners.

56. Issue:

II. Whether petitioner no. 1 is entitled to get a waiver of loan taken from the SDF as a matter of right.

57. Decision:

- 58.** Before entering into the issue on merits, it has to be noticed that in all the judgments referred to by the parties, be it *Ispat (supra)*, *TISCO (supra)* or *WPO 70 OF 2006*, certain findings were made by the Courts on the nature of the SDF which might be germane in the present consideration.

- 59.** Thus, it has to be ascertained first as to whether in the *Ispat Judgment*, the decision of the Supreme Court operates as *ratio decidendi* or the Division Bench judgment against which the Supreme Court was moved prevails in its entirety.
- 60.** The respondents have argued that in view of the Special Leave Petition (SLP) under Article 136 of the Constitution having been dismissed by the Supreme Court in the *Ispat Judgment*, refusing the leave to appeal, there was no merger of the Division Bench judgment with that of the Supreme Court and as such, it is the ratio of the Division Bench which should prevail. If such contention is accepted, the finding of the Division Bench distinguishing between private sector and public sector steel plants would preclude the present petitioners from claiming parity with the public sector plants, which would prevent the petitioners from urging the ground of discrimination and violation of Article 14 of the Constitution on the ground of waiver of loans being granted to SAIL, a public sector enterprise, but refused to petitioner no. 1.
- 61.** A thorough consideration of the Supreme Court judgment reveals that although in the last paragraph thereof the Supreme Court observed that leave to appeal was refused and the Special Leave Petition was dismissed, nonetheless, the Supreme Court returned elaborate findings and decided several issues on merits while doing so.
- 62.** Judicial discipline demands that, within the purview of Article 141 of the Constitution of India, an elaborate and reasoned judgment of the Supreme Court is binding on the High Courts. In the present case, a

somewhat unique situation has arisen as the Supreme Court, in the same breath, dismissed the SLP against the Division Bench judgment of this Court but made certain observations upon deciding issues on merit which, in principle, conflict with the observations of the Division Bench.

63. The interplay of two principles of interpretation come into play in such context-the doctrine of *stare decisis* and merger. In order to properly appreciate the case at hand, we are to understand the difference between the two. Whereas the principle of *stare decisis* is premised on the doctrine of Comity of Courts and judicial discipline, particularly in the light of Article 141 of the Constitution which makes decisions of the Supreme Court binding on all courts in the country, the said concept does not have an exact parallel in the doctrine of merger.
64. There can be different situations where the two doctrines overlap or can stand on their independent footings. Three situations can be conceived of when a judgment of a Division Bench of the High Court is challenged before the Supreme Court.
65. The first is that the SLP is dismissed *in limine* at the outset, in which case there cannot arise any question of merger whatsoever. In view of no ratio having been laid down, the doctrine of *stare decisis* does not also come into play in such cases.
66. The second situation is where the judgment of the Division Bench is set aside or substantially modified by the Supreme Court, in which case there is a complete merger, as the impugned judgment of the Division Bench is completely subsumed in the superior court's

judgment and the text of the latter supplants the former. Thus, in such cases, merger is complete and it is the superior court's judgment which is to be followed to the hilt. In such a scenario, it is the judgment of the superior court which holds complete sway as a binding precedent, not only among the parties to the particular litigation but also as in general, since the ratio decided by the Supreme Court becomes the law of the land.

- 67.** However, a third and more complex situation may occur where the SLP itself is dismissed but the Supreme Court returns detailed findings upon considering issues on merits. In such cases, there is partial merger. The only harmonious solution to such a situation would be that in areas of conflict between the two judgments the decision and ratio laid down by the superior court prevails. However, in areas where there is no such conflict, the findings of both the courts may co-exist and prevail independently. If the reasoned decision on certain issue/issues of the Division Bench of the High Court is, by necessary implication, modified or reversed by the Supreme Court by deciding the same issue/issues upon giving a reasoned judgment in a way which is contrary to and is mutually exclusive with the findings/conclusions on the same point by the High Court, the Supreme Court's decision on such issue shall be final and binding insofar as the said issue/issues is/are concerned.
- 68.** The instant case presents such a situation insofar as the *Ispat Judgment* is concerned. For example, the Division Bench judgment concluded, as quoted in the Supreme Court's judgment, that there is a

distinction between steel plants/industries in the private and public sectors inasmuch as the right to the SDF is concerned. It was held that whereas in case of public sector industries the Government can waive an interest or even can write-off the loan itself, the said privilege was not available to private sector operators unless specifically extended by the Central Government.

- 69.** However, conspicuously, the Supreme Court on a detailed consideration of the said issue came to the conclusion in paragraph no.13 of its judgment that it is quite apparent that from the very nature of the creation of SDF, the manner of remittance to SDF and purpose of its utilization, *it is a fund created ultimately for the utilization by the member steel producers only* (emphasis supplied).
- 70.** Thus, the line of distinction between public and private sector producers was effaced by the Supreme Court in its judgment by necessary implication since there are both public sector and private sector steel producers among the member steel producers who, according to the Supreme Court, are solely and equally entitled to utilization of the SDF benefits.
- 71.** Hence, as per the Supreme Court judgment, if a public sector steel plant is not a member of the SDF, despite being a public sector operator, it would not be entitled to utilize the SDF corpus. On the other hand, even if a private sector steel plant is a member steel producer, it would be entitled to avail and utilize the benefits of the SDF. Thus, insofar as the line of distinction between public and private sector producers vis-à-vis the SDF is concerned, the said line

of distinction iterated by the Division Bench was, for all practical purposes, overruled by the Supreme Court.

- 72.** Thus, following the ratio of merger as discussed above, insofar as such the said issue is concerned, the judgment of the Supreme Court partially subsumes that of the Division Bench and the superior court's ratio has to prevail.
- 73.** Even if there was no merger since the SLP was ultimately dismissed, the effect of the deemed overruling on the above issue would inevitably be that the *ratio decidendi* of the superior court prevails on the strength of the doctrine of *stare decisis* insofar as that issue is concerned.
- 74.** Merger, in a sense, is a lesser concept, one of convenience confined to a particular case between the parties, whereas *stare decisis* is a seminal doctrine which holds the fabric of the justice delivery system together. Hence, in a conflict between the two, the universal doctrine of *stare decisis* as embodied in Article 141 of the Constitution has its way over the lesser concept of merger, which merely enables parties to ascertain the operative decision which will be binding on them.
- 75.** Thus, even if there was no complete merger of the Division Bench judgment in the decision of the Supreme Court due to the ultimate dismissal of the SLP and refusal of leave to appeal, on the strength of *stare decisis*, in a conflict zone between two judgments, it is the *ratio decidendi* laid down by the Supreme Court and not the Division Bench of this Court which must prevail.

- 76.** Seen from such perspective, the finding of the Supreme Court that only the member steel producers are entitled to utilization of SDF holds good and is binding on the parties. As an essential corollary, the public versus private sector conundrum is not a valid test to ascertain the entitlement of the member steel producers *inter se* to avail the benefits of the SDF.
- 77.** The respondents have cited *Kunhayammed (supra)* in the above context. In paragraph 42 of the said decision the Supreme Court has defined “to merge” to mean: to sink or disappear in something else; become absorbed or extinguished; to be combined or be swallowed up.
- 78.** In its conclusions, however, the Supreme Court notably observed that the doctrine of merger is not a doctrine of universal or unlimited application but will depend on the nature of jurisdiction exercised by the superior forum and the content or subject-matter of challenge laid or capable of being laid shall be determinative of the applicability of merger. The superior jurisdiction should be capable of reversing, modifying or affirming the order put in issue before it. Under Article 136 of the Constitution the Supreme Court may reverse, modify or affirm the judgment-decree or order appealed against while exercising its appellate jurisdiction and not while exercising the discretionary jurisdiction disposing of petition for special leave to appeal. It was held that the doctrine of merger can therefore be applied to the former and not to the latter.

- 79.** It was also observed that an order refusing the special leave to appeal may be a non-speaking order or a speaking one, in either of which cases it does not attract the doctrine of merger.
- 80.** However, despite having held so, the Supreme Court went on to hold that if the order refusing leave to appeal is a speaking order, that is, gives reasons for refusing the grant of leave, then the order has two implications. Firstly, the statement of law contained in the order is a declaration by law by the Supreme Court within the meaning Article 141 of the Constitution. Secondly, other than the declaration of law, whatever is stated in the order are the findings recorded by the Supreme Court which would bind the parties thereto and also the court, tribunal or authority in any proceedings subsequent thereto by way of judicial discipline, the Supreme Court being the Apex Court of the country. In the same breath, it was cautioned that this does not amount to saying that the order of the court, tribunal or authority below has stood merged in the order of the Supreme Court rejecting the Special Leave Petition or that the order of the Supreme Court is the only order binding as *res judicata* in subsequent proceedings between the parties.
- 81.** Reconciling the two contradictory concepts, the Supreme Court thus reiterated that the statement of law contained in the order of the Supreme Court, if it is a speaking order, is a declaration of law by the Supreme Court within the meaning of Article 141 and the other findings are binding as *res judicata* on the parties and on the court below as a matter of judicial discipline, since the Supreme Court is the

Apex Court of the country, irrespective to the fact that Special Leave Petition was dismissed.

82. In fine, the Supreme Court's decision in the *Ispat judgment* that all member steel producers are equally entitled to utilization of the SDF is the binding *ratio decidendi* which emerges on such issue.
83. Moving on to the nature of the SDF, we are to look into the brief history of the matter.
84. The genesis of the formation of SDF is Section 3 of the Essential Commodities Act, 1956 (in brief, "the EC Act").
85. The EC Act provides that the Central Government may regulate or prohibit production, supply and distribution of essential commodities.
86. Clause 2(vi) of the said Act includes iron and steel, including manufactured products of iron and steel, within the definition of 'essential commodities'.
87. The Iron and Steel (Control) Order, 1956 (hereinafter referred to as, "the Control Order") was promulgated under the powers conferred by Section 3 of the EC Act. Section 17B thereof provides that the Central Government may by Official Gazette Notification set up committees, bodies or authorities to carry out functions specified in the concerned Notifications.
88. Pursuant to Clause 17B of the Control Order, a Notification was issued on April 7, 1971 whereby a JPC was formed, with the Iron and Steel Controller as its Chairman and one representative from each of the main steel plants, including, the TISCO (which later became the

petitioner, TSL) and the Government Steel Plants as well as one representative from the Ministry of Railways.

89. A conspicuous development thereafter was the Notification dated June 5, 1978, whereby the Government of India approved the Chairman of the JPC to impose Rs. 100 per tonne of Category II and III Steel Category (non-priority category) as surcharge. By the same Notification, the JPC was entrusted with the task of collecting and accounting for development surcharge and revised price of steel. The collection was to be kept separately in a distinct bank account by the JPC. The development fund was to be utilised for development and rehabilitation of the steel industry.
90. By a December 27, 1978 Notification, the Notification dated April 17, 1971 was amended and the JPC was empowered to add an element to ex-works price determined under sub-clause (8) for constituting a fund for modernisation, research and development with the object of ensuring production of iron and steel in the desired categories and grades of main steel plants.
91. In the operation of the fund, the JPC was to perform functions in accordance with and subject to regulations and directions issued by the Central Government from time to time.
92. In a letter issued by the Under Secretary to the Government of India addressed to the Chairman, JPC dated September 6, 1979, directions were given regarding operations of the Steel Development Fund (SDF), thus, coining the name of the fund. As per the said letter, the surcharge paid into the fund by various producers will lose their

identity and form part of corpus from which finance is to be made available to various plants according to the criteria and procedure laid down in regulations to be issued by the Central Government.

- 93.** By other Notifications, including that dated October 8, 1979, the JPC was directed to perform functions in accordance with and subject to the regulations/directions of the Central Government.
- 94.** By a Notification dated April 21, 1994, the collection of development surcharge was ultimately abolished and the JPC was observed to be responsible for management and operation of the corpus of SDF and interest received and accrued thereon in accordance with and subject to orders/directions of the Central Government.
- 95.** The above developments mark the different stages of the evaluation of SDF and have a direct bearing on the issues under consideration.
- 96.** To decide the issue as to whether the petitioner no. 1 is entitled to get a waiver of loan from the SDF as a matter right, the true nature of the SDF and the conflicting interplay between the powers of the JPC and rights of the main steel plants vis-à-vis the SDF are required to be ascertained.
- 97.** As it transpires from the above discussions, the initial purpose of formation of the SDF was its utilisation for the purpose of development and rehabilitation of the steel industry. By the December 27, 1978 Notification, the constitution of a fund was contemplated for modernisation, research and development with the object of ensuring production of iron and steel in the desired categories and grades of main steel plants.

- 98.** Thus, the predominant purpose of the SDF from its inception had been the development and rehabilitation of the steel industry and modernisation, research and development with the object of ensuring production of iron and steel in the desired categories and grades by the main steel plants, including petitioner no.1.
- 99.** The collection of development surcharge was abolished by the Notification dated April 21, 1994, virtually bringing to a stop further contribution by the main steel plants. However, the responsibility of the JPC was retained for management and operation of the corpus of SDF and the interest received and accrued thereon, although subject to orders and directions of the Central Government. In the letter dated September 6, 1979 issued by the Under Secretary of the Central Government to the JPC Chairman, there was a clear directive that the surcharge paid into the SDF by various producers would lose their identity and form a part of the corpus from which finance was to be made available to the various plants according to the criteria and procedure laid down by the Central Government.
- 100.** Hence, from a bare perusal of the scopes of the different Notifications and directives of the Government, two features emanate - First, the purpose of the SDF has all along been the development and rehabilitation of the steel industry with the object of ensuring production of iron and steel by the main steel plants and for ancillary purposes, as much as the modernisation, research and development of the steel industry and modernisation, research and development with the object of ensuring production of iron and steel in the desired

categories and grades by the main steel plants. The focal point all along had been the main steel plants and the purpose of the fund, the modernisation and development as well as rehabilitation of the steel industry in the context of ensuring production of iron and steel in the desired categories and grades. Such purpose of the fund was never altered.

101. Secondly, no individual rights were retained by the main steel producers vis-à-vis the ratio in which they had contributed for formation of the SDF. In this context, the letter dated September 6, 1979 issued by the Under Secretary is of paramount importance. The said letter was never challenged before any forum. As per the directives contained therein, the surcharge paid into the funds by various producers would lose their identity and form part of the corpus. Thus, on a composite reading of the Notifications and the directives of the Central Government, the second aspect which becomes clear is that, individual rights were not retained by the main steel producers in the SDF in proportion to their respective contributions thereto.

102. What is, thus, elicited from the above discussion is that the SDF retained its character as an independent fund, to be controlled and managed by the JPC for the purposes for which it was created, to be utilized by the main steel producers.

103. A further corollary thereof is that the Central Government never became the owner of the funds and could not have unbridled power in

handling or use of the funds. Utilization of the SDF must be circumscribed by the purposes of the fund.

- 104.** In the *Ispat Judgment*, the rights of a third-party steel producer, which was not a main steel plant, came up for consideration and it was categorically held by the Supreme Court that the SDF had not passed into the hands of the Government but remained for utilisation of the member steel plants, although the control and management of the funds were retained by the Government.
- 105.** By the expression “utilisation of members”, by necessary implication, the observation of the Division Bench giving unfettered powers on the Central Government to decide as to the beneficiaries thereunder, with the skewed bias in favour of public enterprises, was overruled. Thus, the utilisation had to be only for the member steel plants, irrespective of whether they belong to the public or the private sector as per the Supreme Court judgment.
- 106.** In the *TISCO Judgment*, although the question which fell for consideration was somewhat different, focusing on the excise duty aspect of the matter, the nature of the SDF was dealt with therein in extenso. Certain salient features of the *TISCO Judgment* were that the amount charged on ex-works prices for SDF contributions was an addition to price and although a compulsory levy, not a tax. One important aspect which emanated from the said judgment and is relevant in the present context is that the proposition that the member steel plants were the beneficiaries of the SDF was reiterated.

- 107.** Hence, both in the *Ispat* and the *TISCO Judgment*, amid the proliferation of issues decided, the consistent finding of the Supreme Court was that the member steel plants are the beneficiaries and are entitled to the SDF and none others.
- 108.** In *WPO 70 of 2022*, the same proposition was reiterated by a learned Single Judge of this court. However, the learned Single Judge refuted the Article 14 arguments of the petitioners on the premise that control and management lay with the Government.
- 109.** The said aspect will be dealt with while considering the next issue.
- 110.** For the present purpose, however, it would suffice to say that as per the June 5, 1978 Notification of the Central Government, one of the declared purposes of SDF was the “rehabilitation” of the steel industry. Read in conjunction with the other purpose of ensuring production of iron and steel in the desired categories and for development of the steel industry, grant of waiver of loans given to the member plants from the SDF corpus is a valid consideration both under the Notifications and in view of the judgments cited by the parties. Hence, insofar as the issue of waiver is concerned, all member steel plants are entitled to the same equally among themselves, irrespective of whether they belong to the public or the private sector. However, a question arises as to whether such waiver can be claimed as a matter of right by the member steel plants.
- 111.** For consideration of such facet of the matter, we are to look to the observations in the judgments which have been discussed above. Upon careful consideration of the said judgments, I agree with the

ratio of the coordinate Bench in *WPO 70 of 2006*, where it was held that although the TSL has a right over the corpus of the SDF and the Government cannot utilise it for any other purpose than for which it was created and that the SDF is ear-marked for the main steel plants, at the same time, it has been consistently held by the Supreme Court that the main steel plants are merely beneficiaries of the said funds and can utilise the funds only for the purposes as enumerated in the relevant Notifications.

- 112.** However, neither the Government nor the main steel plants have any ownership of the funds. Also, in terms of the directive of the Central Government through the Under Secretary to the Chairman of the JPC dated September 6, 1979, the surcharge paid into the funds have lost their independent identity and form a part of the corpus of the SDF. Hence, although the SDF retains its distinct identity as an independent fund, the individual contributions of the main steel plants therein have been merged in the SDF as a composite whole. Hence, none of the main steel plants can claim any right to either a refund or waiver as a matter of right in proportion to their contributions.
- 113.** The arguments of the petitioners in support an unfettered right to get such waiver is also diluted by the very fact that the main steel plants, including the petitioner no. 1 took loans from the SDF, thereby implicitly admitting that they were not the owners of the funds. An owner of a fund cannot, under any circumstance, take a loan from its own funds. By taking the loans on certain advantageous

considerations, the petitioner no. 1 had acceded to the established factual position that it is only a beneficiary to the funds and does not have any ownership to the funds, either in its entirety or in the ratio of its contributions.

114. Insofar as the loans are concerned, the petitioner no. 1, like any borrower, is bound by the terms and conditions of the loan and cannot, as a matter of right, seek waiver. Hence, the second issue is decided against the petitioners by holding that the petitioner no. 1 is not entitled to get a waiver of loan as a matter of right, although waiver is one of the valid purposes for rehabilitation of the main steel plants.

115. Issue:

III. Whether the refusal to grant waiver to petitioner no. 1 from the SDF, despite grant of waiver to the SAIL, is discriminatory and violative of Article 14 of the Constitution of India.

116. Decision:

117. At the outset, it is reiterated that the judgment of the coordinate Bench of this Court in *WPO 70 of 2006* dated August 3, 2022 does not operate as *res judicata* insofar as the issue of discrimination is concerned. In the said judgment, the Court itself had granted liberty to the first petitioner to apply for receiving “any assistance of whatever nature” from the corpus of the SDF, thereby leaving it open for the petitioner no. 1 to claim waiver of loan as well under the yardsticks as enumerated above.

- 118.** The Learned Single Judge turned down the ground of violation of Article 14 on the premise that the respondent-Authorities did not treat SAIL as a privileged entity as such, holding in the same breath that authority was reserved with the Central Government in terms of the 1994 Notification to pass orders and directions for management and operation of the corpus of the SDF.
- 119.** Taking the issue one step further, it has to be observed that although the Central Government reserved authority in such regard, such authority has to be exercised by the Government on reasonable considerations, which cannot be arbitrary in nature. It is by now clichéd that the government and all public functionaries must discharge their public functions impartially and in a reasonable and transparent manner.
- 120.** The distinction between public and private sector producers sought to be drawn by the Division Bench in the *Ispat Judgment* was implicitly overruled by the Supreme Court, which clearly restricted the benefits of the SDF to the main steel producers/member steel producers, irrespective of whether they belong to the public or the private sector.
- 121.** Seen in such context, we are to consider as to whether the exercise by the Central Government of extending the benefit of waiver of loan to SAIL and refusing the same benefit to the petitioners was discriminatory.
- 122.** The respondent-Authorities, in their affidavit-in-opposition as well as in the written reasons furnished for refusal of the request of the first

petitioner for waiver of loan, have reiterated that SAIL was in financial doldrums when the waiver was granted to it.

123. In its refusal, the Central Government and the JPC have stated that SAIL had to absorb the losses of three steel plants, for which waiver of loan was given to it. It was also mentioned that SAIL was in dire straits, being a sick steel plant in view of having offered its funds and services for the upliftment of several other steel plants. Hence, the premise of grant of waiver to SAIL was that SAIL was a sick steel plant and had absorbed the debts of three other steel plants. The grant of loan waiver to SAIL at the expense of the SDF, having not been challenged by the petitioners at any point of time, cannot now be reopened. The respondent-Authorities have made out sufficient grounds for advancing the benefit of waiver of loan to SAIL on account of SAIL being in financial distress and, thus, being entitled to such waiver scheme.

124. Similar circumstances, however, are conspicuously absent in case of the first petitioner herein.

125. In its several waiver applications, the first petitioner has claimed such waiver as a matter of right. In fact, it has been stressed by the petitioners that the SAIL, being a sick industry, was rewarded for its inefficiency whereas the TSL, being a vibrant operator in the sphere of iron and steel industry and having contributed to the development of the iron and steel industry of the Nation, is entitled to waiver as a matter of right. The very insistence of inefficiency of SAIL affords the ground and justification for the waiver scheme being extended to SAIL.

In its entire application for availing the benefit of waiver of loan, the petitioners have not made out a single case of distress or being in financial doldrums, which could have justified the requirement of such waiver scheme.

126. SAIL, it is reiterated, was not granted waiver as a public sector industry as opposed to the private sector but on the declared ground that it was in distress and sick, having absorbed the losses of other steel plants, and required the said waiver to retain its buoyancy. In stark contrast, the first petitioner, by its own admission, is neither a sick industry nor is in financial doldrums but is in a vibrant condition, contributing to the thriving iron and steel industry. Such assertion hits at the very basis of any justification to grant the benefit of waiver to it as opposed to the waiver being granted to SAIL on the ground of financial distress.

127. The logic of 'reward of inefficiency' is not applicable in the present context, since the waiver granted to SAIL was not a 'reward' of any sort or incentive for inefficiency but was in consonance of the original purposes of the SDF, one of which was to rehabilitate the steel industry and to contribute to its development in the chosen categories and grades.

128. Of course, if the petitioner no. 1 is actually in financial doldrums or distress, affecting its contribution to the development of the steel industry, it is always open to the petitioner no. 1 to apply for a similar scheme of a waiver of loan for its rehabilitation. However, till now, by

its own admission, the petitioner no. 1 is in sound financial and industrial health and does not require the waiver claimed by it.

129. The very premise of its claim to waiver being an entitlement of sorts, which claim has been turned down while deciding the previous issue, the first petitioner cannot get waiver on the pleadings made in its very application for such scheme.

130. Thus, there was no unreasonableness or arbitrariness in the respondent-Authorities' decision to refuse the waiver of loans as sought by the petitioners.

131. In view of SAIL and the petitioner no. 1 standing on entirely different footings at the junctures when waiver was claimed by them respectively, there is no discrimination in the acts of the Central Government or the JPC in granting waiver to SAIL and refusing the same to the petitioners at different points of time. Thus, this Court does not find any contravention of the letter and spirit of Article 14 of the Constitution of India in such refusal. This issue is decided accordingly against the petitioners.

132. Issue:

IV. Whether the respondent-Authorities were justified in directing the petitioner no. 1 to pay all outstanding dues on the loan granted from the SDF and insisting that no further NOC would be issued to the petitioner no. 1 unless the outstanding amounts were repaid.

133. Decision:

134. Moving on to the last issue, the respondent-Authorities have directed the petitioner no. 1 to pay all outstanding dues on the loan and have insisted on the same for grant of further NOCs. I do not find any fault on the part of the respondent-Authorities in so insisting, since the same is in consonance with the terms of the loan agreement between the parties. The claim of petitioner no. 1 to waiver, although justified under the purpose of the SDF to rehabilitate the steel industry, is not justified in the facts of the case vis-à-vis the condition of petitioner no.1. Thus, the claim of petitioner no. 1 has to be seen in the perspective of the loan agreement between the first petitioner and the JPC. In terms of the loan agreement, petitioner no. 1 is to repay its dues and service its loan account regularly according to the terms and conditions of the loan agreement. Having not done so, the JPC and the Central Government are absolutely justified in insisting upon prior clearance of the due installments of the loan dues by petitioner no. 1 prior to giving further NOCs to the petitioner. Hence, the last issue is decided against the petitioners, holding that the petitioners are to clear their due installments of the outstanding loan amount in terms of the loan agreement in order to avail the benefit of further NOCs from the respondent-Authorities.

135. Conclusion:

136. In view of the above observations, WPO No. 227 of 2024 is dismissed on contest without any order as to costs.

- 137.** However, it is made clear that nothing in this Order shall preclude the first petitioner from approaching the respondent-Authorities for a waiver of the SDF loan in future, in the event the petitioners are able to establish that sufficient grounds of financial distress are made out by the petitioner no. 1 for availing such benefit. In the event of such a scenario developing in future and the petitioner no. 1 applying for waiver of loan, such request shall be considered in accordance with law by the respondent-Authorities and if the petitioners are able to satisfy the respondent-Authorities as to petitioner no. 1 being in financial doldrums or otherwise in distress and a loan waiver is necessary for the purpose of lending buoyancy to petitioner no. 1 in the interest of development and proper functioning of the steel industry in the declared categories and grades, nothing in this order shall prevent the respondent-Authorities from granting such waiver to petitioner no. 1, without being influenced in any manner by the previous rejections and/or the observations made in this judgment.
- 138.** Urgent certified server copies, if applied for, be issued to the parties upon compliance of due formalities.

(Sabyasachi Bhattacharyya, J.)