

ArcelorMittal's \$6bn takeover of Essar Steel has last hurdle removed

India's Supreme Court upholds key provision of bankruptcy code on priority claims



ArcelorMittal's plans to take over Essar were thrown into disarray in July, when the National Company Law Tribunal unexpectedly took issue with bankruptcy code provisions dictating the distribution of proceeds from the sale © Bloomberg

Amy Kazmin in New Delhi NOVEMBER 15 2019

India's Supreme Court has removed the last legal hurdle for ArcelorMittal's \$6bn takeover of debt-ridden Essar Steel, upholding key provisions of the three-year-old bankruptcy code in a critical test of the country's new debt resolution process.

In its highly-anticipated ruling, the court upheld the [bankruptcy code](#) provision for financial creditors' claims to have priority over unsecured, operational creditors — a principle common in western countries.

The bitter infighting among Essar Steel's creditors, collectively owed \$7bn, over distribution of the proceeds from [ArcelorMittal's](#) acquisition had upended the takeover process last summer.

The ruling on Friday paves the way for the deal's [completion](#), giving Lakshmi Mittal, ArcelorMittal's India-born chairman and chief executive, a long-sought foothold in a large economy where demand for [industrial metal](#) is projected to boom.

Analysts say many [legal precedents](#) set in the long-running battle over Essar should also make dealing with future cases faster and easier.

"It's a huge boost to the [financial system](#)," said Amit Tandon, founder and managing director of Institutional Investor Advisory Services. "Now you can say that the bankruptcy code is a truly effective legislation."

Touted as one of the [biggest reforms](#) of Prime Minister Narendra Modi's government, the bankruptcy code was intended to strengthen the hands of India's state-dominated banking system in dealing with politically influential defaulters, long accustomed to forbearance and debt rollovers.

But pushing indebted companies through the new resolution process proved slower and [more painful](#) than expected, as powerful tycoons — and rival creditor groups — challenged every aspect of the new bankruptcy law in court.

The battle over whether financial creditors should have precedence over operational creditors was seen as particularly critical for India's ability to deal with its huge backlog of stressed assets.

"This is an important step in the direction of developing a mature insolvency process," said Aurodeep Nandi, India economist at Nomura. "For a long time, India's insolvency situation was like the Hotel California: you could check out any time you like but you could just never leave.

"The process of leaving hasn't been easy and India is now reforming it."

The Essar Group, a business empire built by brothers Shashi and Ravi Ruia, was one of 12 huge debt defaulters that India's central bank had ordered to be put into bankruptcy proceedings back in 2017.

Last year, Essar's heavily-indebted steel arm, whose assets include the prized Hazira steel facility, one of the world's largest steel plants, was auctioned to ArcelorMittal, which was eager to establish a presence in India, but which had struggled to set up its own greenfield projects.

But ArcelorMittal's plans to take over Essar were thrown into disarray in July, when the National Company Law Tribunal unexpectedly took issue with bankruptcy code provisions dictating the distribution of proceeds from the sale.

India's bankruptcy law adopts the common western practice giving top priority to the claims of banks and other secured creditors, who sit together in a creditors' committee to decide how monies recovered should be distributed.

But the NCLT judge, who had little expertise in bankruptcy or commercial law, ordered that all of a troubled company's creditors — not just its bankers — be treated equally, infuriating both banks and foreign distressed debt funds that had already bought up much of Essar's debt.

In its ruling on Friday, the Supreme Court set aside the NCLT order, saying the court could not interfere with commercial decisions made by the creditors' committee, a huge relief to banks. ArcelorMittal has also expressed its satisfaction.

"We are very pleased with the judgment that our resolution plan has been approved," a company spokesman said. "We look forward to the closing of the acquisition soon."

