

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P.(S) No. 6348 of 2017

1. Bimla Kumari, daughter of Ram Naresh Prasad
2. Smt. Gita Giri, wife of late Anil Chandra Giri
3. Chintamani Mahto, son of late Bhukhal Mahto
4. Somra Hadi, son of Lali Hadi
5. Kashinath Chaubey, son of late Rampujan Chaubey
6. Sunaina Devi, widow of late S.N.P. Sharma
7. Purni Devi, widow of late Kamal Singh
8. Sitwa Devi, widow of Chandel Singh
9. Maliy Devi, widow of Somar Rabidas
10. Aghani Devi, widow of late Rupchand Manjhi
11. Urmila Devi, widow of late Chatradhari Mahto
12. Shyam Lal Kumar Hembram, son of late Ruplal Hembram
13. Shiv Charan Mahto, son of Nuno Chand Mahto
14. Vikram Prasad Singh, son of Late Laxmi Singh
15. Arun Deo Yadav, son of late kaulu Yadav
16. Md. Moinuddin, son of Md. Ismail
17. Mathura Hazam, son of late Arjun Thakur
18. Satan Turi, son of late Hubli Turi
19. Jagdanand Prasad Singh, son of late Ambika Prasad Singh
20. Suresh Prasad Singh, son of late Rambriksh Singh
21. Chhotu Ram, son of Late Giriya Ram
22. Birendra Jha, son of late Ram Shekhar Jha
23. Lakhan Mahto, son of Rewa Mahto
24. Banshidhar Mishra, son of Ramanand Mishra
25. Kul Bahadur Thapa, son of late Bhim Bahadur Thapa
26. Mrs. Manju Kumari, wife of Shree Ramadhar Pandey
27. Birendra Kumar Sinha, son of late Kamla Prasad
28. Jagannath Ojha, son of late Dwarika Nath Ojha
29. Parsuram Choubey, son of Lalchand Choubey
30. Sarvdeo Singh, son of late Medani Singh
31. Bhikhan Mahto, son of late Jailal Mahto
32. Jamiruddin Ansari, son of late Bashi Miya
33. Beni Mahto, son of late Alam Mahto
34. Atwari, wife of Ramdhan Manjhi
35. Smt. Sabitri, wife of Satan Turi
36. Sashinath Mishra, son of late Ram Brige Mishra
37. Babu Ram, son of Girija Ram
38. Gangaram Mahto, son of late Charku Mahto
39. Sobhi Mahto, son of late Birsha Mahto
40. Saroja Nand Jha, son of late Kamal Narayan Jha
41. Mrs. Gurdip Singh, widow of late Jagir Singh
42. Sri kant Singh, son of late Ram Swarup Singh
43. Panwa Devi, widow of late Dineshwar Mahto
44. Shiristhi Mahto, son of Jagdish Mahto
45. Kameshwar Prasad, son of late Dukhi Prasad
46. Hema Singh, widow of late Chando Singh
47. Nilu Kumar Sharma, son of Badri Mistry
48. Md. Habibullah, son of late Md. Khalil

49. Safiruddin Ansari, son of late Habib Ansari
50. Sudama Saw, son of Bhirgu Raj Saw
51. Jugal Kishor Sharma, son of late Prashu Ram Sharma
52. Keshor Turi, son of late Thakur Turi
53. Ghanshyam Singh, son of late Bhagatu Singh
54. Manik Chand Mahto, son of late Sukhlal Mahto
55. Asiruddin, son of late Md. Idrish
56. Ghanshyam Mistry, son of
57. Sitaram Mahto, son of late Ruplal Mahto
58. Kamla Kanu, son of late Mahant Kanu
59. Jayant Giri, son of late Sukhilal Giri
60. Jiwlal Prasad, son of Pati Prasad
61. Jhagru Singh, son of Shree Phool Chand Singh
62. Lalan Yadav, son of late Ramyasoda Yadav
63. Bharat Ram, late Meghu Ram
64. Smt. Kavita Devi, widow of late Krishna Singh
65. Pradip Rajak, son of Late Shambhu Rajak
66. Rupa Devi, widow of late Raj Kumar Yadav
67. Jageshwar Mahto, son of Shree Bhola Mahto
68. Narayan Turi, son of Sri Chaman Turi
69. Fatik Bharti, son of late Mahadeo Bharti
70. Daso Singh, son of late Nand Lal Singh
71. Sukar Singh, son of late Bishu Singh
72. Nem Narayan Turi, son of Sanichar Turi

All are posted at S.R.U./, Bokaro, Sector – IV, P.O. & P.S. – Sector IV, District – Bokaro (Jharkhand) -827004

--- --- **Petitioners**

Versus

1. Union of India through the Ministry of Steel, New Delhi, PIN Code 110011
2. Ministry of Corporate Affairs through its Secretary, Government of India, having its office at Udyog Bhawan, New Delhi – 110011
3. Dy. Secretary to the Government of India, Ministry of Steel, Udyog Bhawan, New Delhi – 110011
4. Steel Authority of India Ltd. through its Chairman – cum – Managing Director, having its registered office at Ispat Bhawan, Lodhi Road, New Delhi – 110003.
5. The Executive Director, SAIL Refractory Unit, Indira Gandhi Marg, Sector – 4, Bokaro Steel City - 827004

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With

W.P.(S) No. 6154 of 2017

1. Rama Shankar Ram, son of Ram Chabila Ram
2. Md. Shakil Ahmad, son of Md. Rashid
3. Yogesh Narayan Chaturvedi, son of late Yagra Narayan Chaturvedi
4. Kamal Nayan Kumar Singh, son of late Ram Khelawan Singh
5. Gopal Pandit, son of late Nagina Pandit
6. Shyamu Kumar Ojha, son of Late Rakhil Chandra Ojha
7. Ramdhani Goswami, son of late Saudagar Goswami
8. Ashok Kumar Sharma, son of late Nageshwar Sharma
9. Chandrashwar Rai, son of late Ganesh Rai
10. Pradeep Kumar Singh, son of late Prafullo Kumar Singh

11. Mahesh Kumar Bhagat, son of late Sudhu Bhagat
12. Vidya Sagar Gope, son of late Prahlad Chandra Gope
13. Ram Naresh Singh, son of late Sakaldeep Singh
14. Mahesh Narayan Choudhary, son of late Lalmuni Choudhary
15. Rana Pratap, son of late Ryagi Ram
16. Devendra Mahto, son of late Hari Dayal Mahto
17. Gita Kachhap, daughter of late Bandhu Oraon
18. Ram Pyare Ram, son of late Guljar Ram
19. Keshav Mahto, son of late Bhagatu Mahto
20. Dinesh Prasad, son of Sri Falku Prasad
21. Md. Sajruddin, son of Md. Mahiyuddin
22. Singhasan Rajbhar, son of Sri Gopi Rajbhar
23. Jagdish Prasad, son of late Kashi Prasad
24. Md. Babujan, son of late Alijan
25. Abha Devi, son of Sri Tridev Singh
26. Vandana Kujur, widow of late Chamra Kujur
27. Bijay kumar Mukherjee, @ B.K. Mukherjee son of late Sudhir Kumar Mukherjee
28. Budhan Ram, son of Hulas Ram
29. Chandra Deep Bhagt @ Chandradeep son of late Sudhu Bhagat
30. Nita Devi, widow of late Shuibu Ram
31. Shiv Lal Das @ Shiv lal son of Devendra Nath Das
32. Gabriel Ekka, son of late Rapel Ekka
33. Suresh Rai, son of late Rampad Rai
34. Radhe Shyam Pandey, son of late Ram Nagina Pandey
35. Rama Kant Ram, son of late Ram Dutt Sharma
36. Jekerius Kerketta, son of Patras Kerketta
37. Kumar Rahul, son of late Shivji Tiwari
38. Gopal Choudhary, son of late Manmohan Choudhary
39. Jagat Singh Bisht, son of late Mohan Singh Bisht
40. Radhia Devi, widow of late Dulal Pramanik
41. Chandrahas, son of Nandji Singh
42. Satish Kumar Singh, son of Barmeshwar Singh
43. Md. Sarfuddin Ansari, son of Late Rahimuddin
44. Shambhu Nath Jha, son of Satish Chandra Jha
45. Pradeep Kumar Jha, son of late Sarju Jha
46. Om Shankar Singh, son of Sri Anandji Singh
47. Jagdish Chhura, son of late Nagar Chhura
48. Radhe Shyam Laha, son of Late Bansi Laha
49. Yushu Das Sagar, son of Peter Sagar
50. Bhola Prasad, son of late Bhukha Mahto
51. Ravishankar Ojha, son of late Vrinda Prasad Ojha

All are posted at S.R.U./Bokaro, Sector – IV, P.O. & P.S. – Sector IV,
District – Bokaro (Jharkhand) – 827004.

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Versus

1. Union of India through the Ministry of Steel, New Delhi, having its office at Udyog Bhawan, New Delhi P.O + P.S. New Delhi, New Delhi – 110011
2. Ministry of Corporate Affairs through its Secretary, Government of India, having its office at Udyog Bhawan, New Delhi P.O + P.S. New Delhi, New Delhi – 110011

3. Dy. Secretary to the Government of India, Ministry of Steel, Udyog Bhawan, New Delhi having its office at Udyog Bhawan, New Delhi P.O. + P.S. New Delhi, New Delhi – 110011
4. Steel Authority of India Ltd. through its Chairman – cum – Managing Director, having its registered office at Ispat Bhawan, Lodhi Road, P.O + P.S. New Delhi, New Delhi – 110003
5. The Executive Director, SAIL Refractory Unit, Indira Gandhi Marg, Sector – 4, Bokaro Steel City – P.O + P.S. Bokaro Steel City, District Bokaro 827004

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With

W.P.(S) No. 7020 of 2017

1. Bimleshwar Narayan Singh, son of late Basudeo Charan Singh
2. Shree Bhagwan Tiwary, son of late Jamuna Tiwari
3. Bindeshwar Singh, son of late Mahendra Singh
4. Bhagirath Kewat, son of Late Amrit Lal Kewat
5. Rameshwar Singh, son of late Jagu Singh
6. Sujeet Kumar Mukhopadhyaya, son of late Rabi Mukherjee
7. Bipin Kumar Jha, son of late Upendra Jha
8. Vishal Kumar, son of C.P. Singh
9. Rajesh Kumar Singh, son of Raj Kishor Singh
10. Laxmikant Mondal, son of late Budho Mondal
11. Jiriya, wife of Nand Lal Mahto
12. Tribhuwan Turi, son of late Ganesh Turi
13. Jhupari Devi, wife of Late Sitan Rabidas
14. Kamli Devi, widow of late Ruplal Singh
15. Bhola Manjhi, son of late Durjan Manjhi
16. Mohan Mahto, son of late Hem Lal Mahto
17. Prabodh Kumar Mehta, son of late Ganesh Mehta
18. Md. Nunbabu Ansari, son of late Dil Mohammad Ansari
19. Sudhir Kumar Sinha, son of late Durga Prasad
20. Jayanti Devi, wife of Late Mehlala Kewat
21. Butal Saw, son of late Mahabir Saw
22. Ram Tahal Prasad, son of Shree Somar Saw
23. Tara Manjhi, son of Simanto Manjhi
24. Phulchand Saw, son of
25. Smt. Panwa Devi, widow of late Babulal Singh
26. Bhuneshwar Saw, son of late Ramjee Saw
27. Maharu Thakur, son of late Janki Thakur
28. Shankar Ray, son of late Karam Ray
29. Keshiya, w/o Dukhan Mahto
30. Ambiya, W/o late Beni Singh
31. Vijay kumar Turi, son of late Jailal Turi
32. Paran Mahto, son of late Raghu Mahto
33. K.V. Abraham, son of late Varughese Varughese
34. Kali Prasad Singh, son of late Ramwachan Singh
35. Ishwari Prasad, son of late Muni Prajapati
36. Laxman Singh, son of Bijay Singh
37. Brikodar Giri, son of late Nem Narayan Giri
38. Shiva Saw, son of late Bhakur Saw
39. Lok Nath Mahto, son of late Sukar Mahto
40. Umesh Chand Tiwari @ Umesh Chandra Tiwari, son of late Ramesh Chand Tiwari
41. Md. Anwar Hussain, son of Alauddin Ansari

42. Raj kumar Prasad @ Raj Kumar, son of late Deo Narayan Prasad
 43. Md. Rajak Hussain @ Rajak Hussain, son of late Md. Islam
 44. Rajdeo Prasad Thakur @ R.P. Thakur, son of late Bodhi Prasad
 45. Sudarshan Nath, son of late Gokul Chandra Nath
 46. Ram Ashish Giri, son of Sri Shiv Murat Giri
 47. Mahesh Kumar Malhal, son of late Jailal Mallah
 48. Pukaro Devi, wife of late Parsuram Singh
 49. Manoj Kumar Bhattacharya, son of late Makhan Lal Bhattacharya
- All are posted at S.R.U/Bokaro, Sector – IV, P.O & P.S. – Sector IV,
District – Bokaro (Jharkhand) – 827004

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Versus

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2. Ministry of Corporate Affairs through its Secretary, Government of India, having its office at Udyog Bhawan, New Delhi – 110011
3. Dy. Secretary to the Government of India, Ministry of Steel, Udyog Bhawan, New Delhi – 110011
4. Steel Authority of India Ltd. through its Chairman – cum – Managing Director, having its registered office at Ispat Bhawan, Lodhi Road, New Delhi – 110003
5. The Executive Director, SAIL Refractory Unit, Indira Gandhi Marg, Sector – 4, Bokaro Steel City - 827004

--- --- **Respondents**

With

W.P.(S) No. 7144 of 2017

1. Teju Mahto, son of Sri Meghu Mahto
2. Dasai Manjhi, son of Late Sayam Lal Manjhi
3. Om Prakash, son of Sri Sheo Nath Ram
4. Karamchand Manjhi, son of Late Bishu Manjhi
5. Surendra Kumar Sharma, son of Late Bisundeo Mistry
6. Vishwanath Ram, son of Late Nanku Ram
7. Mohan Sharma, son of Late Jhari Sharma
8. Birbal Manjhi, son of Late Pawan Manjhi
9. Mangar Mahto, son of Late Beni Mahto
10. Jagdish Prasad, son of Late Jagarnath Prasad
11. Srinivas Singh, son of Late Sita Ram Singh
12. Md. Khalil Ansari, son of Late Md. Ali Hussain
13. Bhuneshwar Yadav, son of Late Shri Dipan Gope
14. Raghunandan Ram, son of Shree Ramdash Ram
15. Jalaluddin Ansari, son of Late Nasir Ansari
16. Jiblal Mohali, son of Late Ghasia Mohali
17. Dukhan Mahto, son of Late Rup Lal Mahto
18. Lalan Singh, son of Late Tribeni Singh
19. Jairam Sharma, son of Shree Paramdhan Sharma
20. Bilash Mahto, son of Late Chaito Mahto
21. Govind Prasad Singh, son of Late Ram Lakahn Singh
22. Nand Lal Mahto, son of Sri Veli Mahto
23. Md. Kamaluddin, son of Late Md. Siddik
24. Sibadhar Singh, son of Late Chandrama Singh
25. Maheshwar Mahto, son of Late Laly Mahto
26. Debulal Thakur, son of Late Arjun Thakur
27. Ram Nath Sharma, son of Late Sitaram
28. Janki Devi, wife of Bipat Saw

29. Dineshwar Manjhi, son of Late Lupsa Manjhi
30. Narayan Mahto, son of Late Panchu Mahto
31. Mukund Ram, son of Late Dwarika Ram
32. Smt. Janki Devi, widow of Late Harichand Giri
33. Muktinath Jha, son of Late Arjun Jha
34. Chandeshwar Bhagat, son of late Panchadeo Bhagat
35. Yugal Kishor Mishra, son of Late Awadh Kishor Mishra
36. Mukteshwar Turi, son of Late Thakur Turi
37. Narayan Mahto, son of Late Jagannath Mahto
38. Bhajwa Turi, son of Late Narayan Turi
39. Govind Pandey, son of Late Banwari Pandey
40. Sudhir Giri, son of Late Chatarugun Giri
41. Gyanchand Mahto, son of Late Rewat Lal Mahto
42. Ludhu Mahto, son of Late Lakhna Mahto
43. Indra Bahadur, son of Late Hari Bahadur
44. Subodh Giri, son of Late Hari Giri
45. Kartik Manjhi, son of Late Sahadeo Manjhi
46. Pandit Mahto, son of Late Bhola Mahto
47. Poonam Singh, widow of late Tapenshwar Singh
48. Jirya Devi, wife of Jhagaru Singh
49. Ratni Devi, wife of Banshi Rajak
50. Jaswa Devi, Wife of Dwarika Singh
51. Larni Devi, wife of Balram Turi
52. Binod Kumar Lal, son of Late Parmanand Lal
53. Girdhari Yadav, son of Late Kishun Yadav
54. Md. Islam Nadaf, son of Late Abdul Gafoor Nadaf
55. Gulabi Ranim @ Gulabi, widow of Late Kewaldeo Saw
56. Khiriya Kamin, widow of Late Nahru Ram
57. Smt. Phool Kumari Devi, widow of Late Jagdish Singh
58. Smt. Subhadra Devi, son of Late Laxmi Giri
59. Baswa Devi, wife of Indradeo Mahto
60. Smt. Samina Bibi, widow of Late Samsul Haque
61. Girdhari Mahto, son of Late Moti Mahto
62. Prahlad Bhagat, son of Late Giriwar Bhagat
63. Lalan Pandey, son of Late Ghughuli Pandey
64. Smt. Sohagi Devi, widow of Late Mohan Mahto
65. Dharmendra Kumar Tiwari, son of Late Rambali Tiwari
66. Smt. Sabu Devi, son of Late Aghnu Malah

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2. Ministry of Corporate Affairs through its Secretary, Government of India, having its office at Udyog Bhawan, P.O.+ P.S – New Delhi, New Delhi – 110011
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5. The Executive Director, SAIL Refractory Unit, Indira Gandhi Marg,
Sector – 4, Bokaro Steel City – 827004 P.O.+ P.S – Bokaro Steel
City, District Bokaro --- --- Respondents

With

W.P.(S) No. 7530 of 2017

1. Hublal Modi, son of Late Rewat Modi
2. Om Prakash Singh, son of Late Mahendar Singh
3. Ritu Mahto, son of Late Bodha Mahto
4. Md. Ashin Ansari, son of Late Maniruddin
5. Rambabu Singh, son of Late Surendar Singh
6. Jagdish Giri, son of Late Ram Sewak Giri
7. Rajendra Giri, son of Late Manju Giri
8. Laljit Prasad Yadav, son of Late Punit Yadav
9. Buteshwar Thakur, son of Late Bideshi Thakur
10. Sukumar Karmkar, son of Late P.N. Karmkar
11. Avimannu Paswan, son of Late Jamuna Paswan
12. Siddheshwar Singh, son of Late Jainath Singh
13. Tunu Thakur, son of Maheshwar Thakur
14. Satya Narayan Yadav, son of Late Guneshwar Yadav
15. Dhanjay Prasad Singh, son of Late Kamleshwari Prasadi Singh
16. Bhushan Mukhopadhyay, son of late Budev Mukhopadhyaya
17. Sainath Turi, son of Late Lalku Turi
18. Jitan Mahto, son of Late Sany Mahto
19. Teko Mahto, son of Late Degu Mahto
20. Usaman Ansari, son of Late Nasiruddin Ansari
21. Ashok Gorai, son of Dakhineshwar Gorai
22. Damodar Mahto, son of Late Bhukhan Mahto
23. Shiv Kumar Paswan, son of Late Jitan Paswan
24. Krishn Deo Yadav, son of Late Doma Yadav
25. Amar Nath Rou, son of Late Khagen Rou
26. Sanu Mahto, son of Late Budhan Mahto
27. Nand Kishore Prasad, son of Late Lochan Prasad
28. Rati Mahto, son of Late Somar Mahto
29. Khiru Mahto, son of Late Harkhu Mahto
30. Kishun Mahto, son of Late Deo Mahto
31. Manoj Kumar Sharma, son of Late Bhuneshwar Sharma
32. Harihar Nath Mishra, son of Late Ram Charitra Mishra
33. Surendra Ram, son of Late Aswani Rabidas
34. Subodh Kumar Sinha, son of Late K.P.S. Ambastha
35. Sita Ram Jha, son of Late Hari Prasadi Jha
36. Vijay Kumar Dwivedi, son of Late J.D. Dwivedi
37. Shiv Nath Mishra, son of Late Shri Ram Charitra Mishra
38. Subodh Chandra Chaudhary, son of Late Rupan Choudhary
39. Gunjai, son of Rewat Mahto
40. Rewat Mahto, son of Laxman Mahto
41. Rama Shankar Bhagat, son of Phirangi Bhagat
42. Rambhu Nath Singh, son of Late Harinandan Singh
43. Bajrang Shankar, son of Late Jai Mangal Prasad Singh
44. Harendra Kumar Singh, son of Late Ram Nohar Singh
45. Om Narayan Singh, son of Late Suraj Prasad Singh
46. Arjun Prasad, son of Late Chandeshwar Mahto
47. Sahdew Tiwari, son of Late Basudew Tiwari
48. Sidma Ghashi, son of Late Mitku Ghashi
49. Bahadur Rabidas, son of Late Keshwar Rabidas
50. Lalan Kumar Singh, son of Late Rampati Singh

51. Madan Tiwari, son of Late Harsh Narayan Tiwari
52. Sheo Pukar Singh, Late La Mohar Singh
53. Jainath Giri, son of Late Radha Giri
54. Md. Israil, son of Late Asgar Asraf
55. Sita Ram Manjh, son of Late Matlu Manjhi
56. Krishna Giri, son of Late Raghunandan Giri
57. Yadunandan Prasad, son of Late Tarini Prasad
58. Sita Ram Sah, son of Late Jhabulal Sah
59. Sahadeo Razak, son of Late Shayamlal Razak
60. Ghanshyam Singh, son of Late Janki Singh
61. Shyam Lal Manjhi, son of Late Haradhan Manjhi
62. Sambhu Manjhi, son of Hiramoni
63. Mrs. Shiromani Dang, wife of Mansidh Topno
64. Mukhlal Mahto, son of Late Rohan Mahto
65. Rewat Lal Mahto, son of Late Darbari Mahto
66. Govind Rabidas@ Govind, son of Late Somar Rabidas
67. Prabhu Saran Choubey, son of late Rajdeo Choubey
68. Bhagwati Charan Mahto, son of Govardhan Mahto

All are posted at S.R.U/ Bokaro, Sector – IV, P.O. & P.S. – Sector IV,
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Versus

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3. Dy. Secretary to the Government of India, Ministry of Steel, Udyog Bhawan, New Delhi – 110011
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5. The Executive Director, SAIL Refractory Unit, Indira Gandhi Marg, Sector – 4, Bokaro Steel City - 827004

--- --- **Respondents**

CORAM: Hon'ble Mr. Justice Aparesh Kumar Singh
Hon'ble Mrs. Justice Anubha Rawat Choudhary
Through : Video Conferencing

For the Petitioners : M/s. Ajit Kumar, Sr. Adv., Bhola Nath Ojha, Shristi Sinha, Advocates
For the Resp.-UoI: :Ms. Vibha Bakshi, Sr. Panel Counsel
: Mr. Pratyush Kr., Central Govt. Counsel
For the Resp. – SAIL : M/s Indrajit Sinha, Vijay Kant Dubey, Adv.

C.A.V. on 02.12.2020

Pronounced on 25/03/2021

Per Anubha Rawat Choudhary, J.

Heard the learned counsels for the parties.

2. These writ petitions have been filed for setting aside of the common order dated 23.5.2017 passed in Original Application bearing Nos. O.A/051/00097/15 with MA/051/00054/16, O.A/052/00024/26 with

MA/051/00054/16, O.A/051/00031/15, O.A/051/00063/15 and O.A/051/00062/15 by the learned *Central Administrative Tribunal, Patna Bench, Circuit Bench, Ranchi (hereinafter referred to as 'the Learned Tribunal')* whereby and whereunder Original Applications preferred by the petitioners have been rejected on the ground of limitation and also on merits.

It has also been prayed that after setting aside the order dated 23.5.2017, a direction may be issued to the respondents to give the benefits of notional fixation of revised pay scale w.e.f. 1.7.1998 in terms of the Memorandum of Understanding (MOU) dated 22.3.2007 and to pay all consequential benefits to the petitioners.

The petitioners are further seeking a mandamus upon the respondents to give effect to the Agreement of Merger as published in the Gazette Notification by the Government of India, particularly Clause – 9, which was said to be duly approved by the Government of India.

3. Since identical issues are involved in these cases, the arguments have been advanced from the records of *WPC No. 6154 of 2017*.

4. **The factual background**

(a) *Bharat Refractories Limited (hereinafter referred to as BRL)* was incorporated on 22.07.1974 as a subsidiary of Bokaro Steel Limited. The petitioners were initially appointed in BRL in the year 1974 to 1990.

(b) BRL became a sick unit and was enlisted with *Board for Industrial and Financial Reconstruction (BIFR)* in the year 1992 and State Bank of India was appointed as an operating agency. Thereafter 3 packages were implemented for revival of BRL in the year 1996, 1999 and 2002.

(c) A *Memorandum of Understanding dated 22.03.2007 (hereinafter referred to as MOU)* was executed between the Unions of the Employees and Management of BRL by which the scales S – 1 to S – 11 which were applicable to non-executive employees of *Steel Authority of India Limited (hereinafter referred to as SAIL)* were made effective from 01.07.1998. The same was done in view of the proposed merger of BRL with SAIL. The pay fixation was to be notional w.e.f. 01.07.1998 and actual benefits of revised pay scales were to accrue w.e.f. 01.07.2007. In furtherance to the aforesaid decision, an amount of Rs.10,000/- was paid to the petitioners as an

advance towards pay revision which was to be adjusted from arrears and the same is evident from order dated 30.04.2008 issued by BRL.

(d) Subsequently, Ministry of Steel, Government of India, vide letter dated 02.05.2008 approved the amalgamation of BRL with SAIL and permitted them to initiate the process of amalgamation under Section 396 of the Companies Act, 1956. Consequently, a scheme of amalgamation was drafted, objections were invited and after considering the objections of various stake holders, the Central Government, in exercise of powers under Section 396 published the Amalgamation Order, 2009 in Extraordinary Gazette of India on 28.07.2009. Consequent to the aforesaid amalgamation, *the name of BRL was changed to SAIL Refractory Unit (hereinafter referred to as SRU)*. The grievance of the petitioners is MOU dated 22.03.2007 entered into between the employees Union of BRL and Management of BRL for revision of pay has not been implemented by the respondent SAIL.

5. Arguments of the Petitioners.

- (e) As a result of the aforesaid efforts of revival of BRL, the financial condition of BRL improved and steps for revision of pay were initiated in the interest of the employees which resulted in MOU dated 22.03.2007 for revision of pay.
- (f) In the light of Amalgamation Order, 2009, the petitioners being the employees of BRL, were entitled to pay equality, pay protection (Basic + DA) and pay uniformity as that of the employees of SAIL.
- (g) The grievance of the petitioners is that the respondent SAIL failed to give effect to the Amalgamation Order, 2009, particularly its Clause 9, in its true letter and spirit.
- (h) Petitioners filed representations during the period from 03.09.2009 to 25.10.2014 before SAIL for revision of pay in terms of MOU dated 22.03.2007, but the grievance of the petitioners were not addressed.
- (i) Consequently, the petitioners preferred Original Applications before Central Administrative Tribunal.
- (j) The Original Applications of the petitioners were rejected not only on the ground of limitation, but also on merits vide impugned order dated 23.05.2017.
- (k) The sheet anchor of the case of the petitioners is the MOU dated 22.03.2007.

- (l) It has been submitted that the previous pay scale at BRL with respect to non-executives were in operation w.e.f. 01.07.1993 and BRL had adopted non-executive scales of SAIL i.e., S-1 to S-9 effective from 01.01.1992 and had implemented the same w.e.f. 01.07.1993. The period of applicability of the said pay scale was for 5 years and its applicability had expired on 30.06.1998 and therefore, the pay scale of the employees of BRL was due for revision w.e.f. 01.07.1998, however, no such action was taken towards the same due to poor financial health of the company.
- (m) It is the further case of the petitioners that the Department of Public Enterprises vide communication dated 14.01.1999 conveyed the decision of the Government that the next round of wage negotiations which fell due on and from 01.01.1997 with the workers of Central Public Sector Enterprises could be commenced by the Management of the Enterprises with the Trade Unions/Associations. In pursuant to such decision, an MOU dated 22.03.2007 was executed between Employees Union and Management of BRL for revision of pay scale which was due since 01.07.1998 after delay of almost 9 years and accordingly, BRL adopted all scales applicable to non-executive employees of SAIL from S-1 to S-11 w.e.f. 01.01.1997 and the same was done in view of the proposed merger of BRL and SAIL. The fixation of pay was notional w.e.f 01.07.1998 and actual payments were to commence from 01.07.2007 in the revised scale of pay.
- (n) It is also the case of the petitioners that the arrears of wage revision and DA were to be paid subsequently as and when the company was in a position to pay without hampering the production on account of financial constraints. It is the specific case of the petitioners that as per aforesaid decision communicated vide letter dated 14.01.1999 issued by the Department of Public Enterprises vide communication, a provision was required to be made for additional expenditure on account of pay revision with regard to sick units registered with BIFR, until BIFR approves the revival plan. Consequently, the specific case of the petitioners is that for the purposes of pay revision, the provision regarding the same was to be provided in the revival package of the BRL and the same was required to be approved by BIFR.

- (o) It is submitted that an adhoc provision of Rs.6 crores were made in the accounts of BRL towards revised salary and wages in the year 2007-08, however the same was returned back in the year 2008-09.
- (p) The further case of the petitioners is that the amalgamation of BRL with SAIL was approved vide decision of the Ministry of Steel, Government of India dated 02.05.2008 and Clause 11 of the said scheme provided for specific terms of amalgamation and Clause 11.4 provided that employees of BRL shall not be entitled to any rights, entitlements or benefits in pursuance of MOU dated 22.03.2007. The said scheme was subject to various approvals which ultimately resulted in the Amalgamation Order, 2009 passed by the Government under Section 396 of the Companies Act, 1956 which is binding upon both, BRL and SAIL.
- (q) Amalgamation Order dated 28.07.2009 was made effective from 01.04.2007 as per the terms of Amalgamation Order. Prior to the Amalgamation Order, objections were invited and the employees, ex-employees and representatives of various employees' union of BRL had raised their voice with respect to implementation of MOU dated 22.3.2007 of BRL with its employees in respect of wage revision and it was contended by SAIL at that point of time that the said objections cannot be considered as the employees of BRL were not the shareholders of SAIL. However, the said objections were duly considered by the Central Government and it was specifically mentioned in the recital of the Amalgamation Order, 2009 as follows:
- “AND WHEREAS, the objectors (employees, ex-employees, representatives of the various employees' union of transferor company) had desired that before the Central Government takes a decision in respect of the merger of the 2 (two) companies, that their grievances may be shorted out by the transferor and transferee companies;***
- (i) MOU signed on 22.3.2007 by the transferor company with its employees union in respect of wage revision from 1997, should be made effective;***
- (ii) the advance of Rs.10,000/- paid to the employees of the transferor company in pursuance of the above wage agreement should not be recovered from them.”***
- (r) It has been further recorded in the Amalgamation Order that during the course of hearing, the counsel of SAIL drew the attention of the mandate of the forum, and the employees of the BRL, not being the shareholders of SAIL, their objection cannot be heard or taken into account by the forum. It was also recorded that the matter under

consideration was under Section 396 of the Companies Act and while examining the sustenance or viability of the scheme of amalgamation, the interest of the employees has to be definitely taken into account in larger public interest and that their position is in consonance with various judgments rendered by apex court.

- (s) It is the specific case of the petitioners that the Amalgamation Order, 2009 took into account the various objections raised by the employees of BRL and rightly observed that in the light of the provision of Companies Act, 1956 the amalgamation order cannot go against the public interest which also includes the interest of the employees of BRL. Consequently, the Central Government published the Amalgamation Order, 2009 protecting the interests of the employees of BRL including the petitioners.
- (t) The learned counsel for the petitioners has referred to para 4.22 to 4.37 of the original application filed before the learned tribunal. The learned counsel has relied upon Clause 6 of the Amalgamation Order to submit that all assets of the transferor company i.e., BRL as well as all debts, liabilities, advances, duties and obligations of the transferor company as on the appointed date stood transferred to the transferee company i.e., SAIL and thus, the respondent SAIL was under a legal obligation to revise the pay scale due since 01.07.1998 in terms of the MOU dated 22.03.2007. Further grievance of the petitioners is that the seniority of the petitioners has not been protected as per Clause 9 (ii) of the Amalgamation Order, 2009 rather they have been placed on minimum scale of pay w.e.f. 01.07.2007 irrespective of their seniority in BRL before merger. It has been specifically mentioned in para 4.25 of the original applications that the basic pay of S-1 of BRL was 2100-40-2660 which was revised to Rs.4,000 – Rs.5,000 w.e.f. 01.07.1998 and on 31.03.2007 total Rs.10,400 was paid whereas wage implementation after merger with SAIL was at Rs.8,890 on 01.04.2007 and thus the respective pay has been lowered after merger. Although as per amalgamation order the seniority and pay was to be protected. The grievance of the petitioners as reflected in para 4.26 and 4.27 is that their pay scale in revised pay has not been properly fixed and arrear of pay revision due to notional fixation w.e.f 1.7.98 has neither been

calculated nor paid and their respective pay has been fixed w.e.f 1.7.2007 without giving notional benefit of pay revision w.e.f 1.7.98 and without any pay protection and the specific case of the petitioners is that the petitioners are entitled to the same benefits at par with SAIL employees and their pay is to be refixed after giving notional benefit of revised pay scale w.e.f. 1.7.98. In para 4.32 of the Original Application, it has been stated that the petitioners are being treated differently as compared to the employees of SAIL and for which 6 instances have been given. It has been stated in para 4.34 of the original application that according to MOU dated 22.03.2007, BRL was duty bound to pay the revision of pay scale of non-executive employees which was due to for revision since 1.7.98 and out of which only Rs.10,000/- each was also paid to its employees as advance with an assurance that their arrears will be paid subsequently. BRL vide letter dated 1.5.07 sought government approval for revision of scale of pay of non-executive employees of BRL since 1.7.98, but in absence of clearance from the Ministry of Steel, the process of revision of wages as per MOU dated 22.03.2007 remained incomplete. In para 4.37, it has been mentioned that in the year 2007-08 allocation of Rs.6 crores in the account of erstwhile BRL towards revised salary was made, but not paid, and the same was returned back in the year 2008-09.

(u) The Learned Tribunal vide impugned order has dismissed the application of the Petitioners on the following grounds: -

- i) The MOU dated 22.03.2007 entered between the Union and Management of BRL was signed with an ulterior motive only to gain undue advantage from SAIL. The MOU is a phantom MOU which was never meant to be implemented by the BRL, nor was it within their means to do so.
- ii) Clause 11.4 of the Scheme of Amalgamation specifically excludes the MOU and the Amalgamation Order, 2009 has to be read along with the Scheme.
- iii) An identical matter came before the Bench in OA 21/2013 which was dismissed by the Learned CAT wherein it was noted that the employees of BRL were significantly benefitted upon merger.

- iv) The applicants' attempt to make notional comparison with employees of SAIL was not tenable as the SAIL's obligation as per the amalgamation order was to protect the pay drawn by the employees as on 01.04.2007.
 - v) The original application has been preferred after a delay of 8 years after the so-called MOU and the cause of action in the present case is not a continuous one as the admissibility of the pay revision is itself in question.
- (v) The Learned Tribunal has dismissed the original application on the grounds of limitation as well as merit. The grievance of the petitioners is that the impugned order has been passed without appreciating the facts of the case, Amalgamation Order, 2009 and the relevant law. It is submitted that: -
- i) The MOU dated 22.03.2007 was signed between the union of employees and management of BRL in light of communication dated 14 January, 1999 issued by the Department of Public Enterprises, which provided that wage negotiations may be commenced between the management and the employees for the next round of wage revision. The said notification also provided that the pay revision shall be allowed only when BIFR approves revival plan of such enterprises in which provisions have been made for additional expenditure on account of pay revision.

The scales of pay of the employees of BRL were due for Revision in 1997 and accordingly vide MOU dated 22.03.2007, BRL revised the pay scales of the Petitioners. It is pertinent to mention here that the pay revision was duly approved by the BIFR and the Government vide Amalgamation Order, 2009.

It is relevant to mention here that the Learned tribunal wrongly observed that BRL never intended to implement the said pay revision. In fact, that vide letter dated 01.05.2007, BRL had requested the Central Government for approval of the proposed pay revision. Further, BRL vide its office order dated 30.04.2008 also took a decision to make payment of Rs. 10,000/- to its employees towards the said pay revision and accordingly all the employees of BRL including the Petitioners were paid Rs. 10,000/-. It is to be noted here that the said amount was not recovered from the employees even after passing of the

Amalgamation Order, 2009 and the said amalgamation order duly provided that the employees of BRL were to be given the same pay revisions, which were given to the employees of SAIL in 1997 and 2007.

- ii) The Learned Tribunal failed to consider that the Scheme of Amalgamation is not final and binding and it is the Amalgamation Order which binds all the stakeholders. Objections are called for upon the scheme of amalgamation and only after considering the objections the final amalgamation order is passed which is required to be in public interest including safeguard of the interests of the employees of the transferee company i.e BRL.

At the stage of objections to the scheme of amalgamation, the Central Government deemed it necessary to deal with the grievance of the employees of BRL with respect to the pay revision and implementation of the MOU dated 22.03.2007. Accordingly, the final order of amalgamation was passed and published in the Extraordinary Gazette of India on 28.07.2009.

A bare perusal of the Amalgamation Order, 2009 would clearly reflect that Clause 11.4 of the Scheme of Amalgamation has not been incorporated in the final amalgamation order and further the final order took care of the grievance of the Petitioners with respect to pay revision and duly approved the revisions in the pay scales that were made available to the employees of SAIL in 1997 and 2007.

- iii) The Learned Central Administrative Tribunal wrongly observed that SAIL's obligation as per the amalgamation order was to protect the pay drawn by the employees as on 01.04.2007. In reality, the Amalgamation Order, 2009 clearly provided that the employees of BRL will be absorbed in SAIL on equivalent scales of pay as was prevalent prior to salary/wage revisions effective from 01.01.1997 along with protection of pay since then. The fact that the Petitioners were to be placed at equivalent pay scale as the employees in SAIL before 01.01.1997 clearly indicates that the pay revisions as granted w.e.f 01.01.1997 and subsequent revisions (w.e.f. 01.01.2007) were required to be given to the employees of BRL as well. Therefore, under the said

amalgamation order, SAIL was under an obligation to protect the pay drawn by the employees of BRL since 1997.

- iv) The Learned Tribunal also failed to take into consideration that the cause of action in the instant case is a continuous and recurring one. Although the OA was preferred by the Petitioners after eight years of the MOU, each time the Petitioners were given salary, the same was not in accordance with the amalgamation order. So long as the Petitioners were in service, a fresh cause of action arose every month when they had been paid monthly salary on the basis of a wrong computation made contrary to rules.

The Tribunal misdirected itself when it treated the Petitioners' claim as one time action meaning thereby that it was not a continuing wrong based on a recurring cause of action. The claim to be paid the correct salary computed on the basis of proper pay fixation, is a right which subsists during the entire tenure of service and can be exercised at the time of each payment of the salary when the employee is entitled to salary computed correctly in accordance with the rules.

6. Arguments on behalf of the Respondents – SAIL

A. On the point of Limitation

- a) Section 21 of the Administrative Tribunals Act, 1985 provides for the period of limitation to file a case. In the instant case the limitation prescribed by section 21 (1)(b) of the said Act would be applicable, and therefore the petitioners should have filed the respective original applications within one year and six months from the date of making their first representation dated 03.09.2009, if not from the date of getting their first salary from SAIL.
- b) It is submitted that the case of the petitioners cannot be said to be a case of continuing loss as they were aggrieved by the denial of the purported benefit flowing from the Order of Amalgamation dated 28.07.2009.
- c) The Learned Tribunal by the impugned judgment and order dated 23.05.2017, while dealing with the issue of limitation observed at paragraph 23 thereof that “ ... *We do not agree with the submission made in the OA and MA that it is a continued cause of action because the admissibility of the pay revision itself is in question. A continued cause of action only relates to a situation where the entitlement is not*

disputed, such as pension etc.” The said finding is well founded and does not call for interference by this Hon’ble Court under its supervisory jurisdiction.

- d) Thus, cause of action can be said to have arisen on or about 03.03.2010 and the same cannot be said to be a continuing cause of action. A loss caused to a party does not render a cause of action to continue. In various judgments the Hon’ble Supreme Court it has held that cause of action means a bundle of facts which taken with the law applicable to them gives the plaintiff a right to relief against the defendant. Reliance has been placed on the judgement of *State of Rajasthan and others v. Swaika Properties and another reported in (1985) 3 SCC 217*.
- e) The Supreme Court of India in the case of *Balakrishna Savalram Pujari Waghmare and Others v. Shree Dhyaneshwar Maharaj Sansthan and Anr. (AIR 1959 SC 798)* explained the concept of continuing wrong (in the context of section 23 of the Limitation Act, 1908 corresponding to section 22 of the Limitation act, 1963) and *inter alia* held at paragraph 31 of the reports, that if the wrongful act causes an injury which is complete, there is no continuing wrong even though the damage resulting from the act may continue. It further held that if a wrongful act is of such a character that the injury caused by it itself continues, then the act constitutes a continuing wrong. Lastly, the Supreme Court held that it is necessary to draw a distinction between the injury caused by the wrongful act and what may be described as the effect of the said injury.
- f) The respondents are not oblivious that there are cases wherein it has been held that in a case of wrong fixation of pay, the grievance of fixation may give rise to a recurring cause of action as the wrong continues giving rise to a fresh cause of action every month when the monthly salary is paid on the basis of wrong computation made contrary to the rules and a caveat has been added that so far as recovery of the arrears for the past period is concerned the question of limitation would arise and if such claim for arrears has become time barred, the same would not be recoverable. It is respectfully submitted that those line of cases would not be applicable to the facts of this case as the prayer of the petitioner is based on the implementation of the MoU dated 22.03.2007 and the order of amalgamation dated 28.07.2009.

- g) It is equally well settled that mere filing of repeated representation does not enlarge the period of limitation and would not confer jurisdiction on Court / Tribunal to entertain a plea which is otherwise barred by time.
- h) In view of the above, it has been submitted that the learned Tribunal has rightly dismissed the applications additionally on the ground of it being barred by limitation and the same does not warrant interference by this Hon'ble Court in exercise of its powers under Articles 226 and 227 of the Constitution of India.

B. Submissions on Merits

- a) Thus, they ought to have filed the application before learned Tribunal, at least within one year and six months from the date of their first representation dated 03.09.2009.
- b) The MOU dated 22.03.2007 forms the substratum of the case of the applicants and all other reliefs sought by them are consequential to the grant of relief claimed based on the said MoU.
- c) As per the admitted case of the parties a wage revision of Public Sector Enterprises would be governed in terms of the Policy dated 14 January 1999. Paragraph 2 of the said Policy provides that as regards sick units registered with BIFR, until BIFR approves revival plan of such enterprises in which provisions have been made for additional expenditure on account of pay revision, no revision of pay would be allowed to the employees of such enterprises. The said policy further provides at paragraph 3 that the public enterprises may implement the negotiated wages after confirming to the administrative ministry and the Department of Public Enterprise that the revisions are within the approved parameters.
- d) In view of the above policy, a wage revision purportedly decided by the management and the Workman / employees will not automatically come into force or be implemented unless the conditions in the policy are complied with.
- e) In the instant case, there is no material to show that the MOU dated 22 March 2007 was approved by the administrative ministry and the Department of Public Enterprises, though a request to approve the same was made vide letter dated 01.05.2007 by the Chairman, BRL. Moreover, in the amalgamation order dated 28 July, 2009 the MOU dated 22 March 2007 was neither expressly nor impliedly approved.
- f) The administrative policy holding the field having not been complied with, no legal sanctity can be attached to the MoU to make it enforceable

in law through court or tribunal.

- g) Further, the said MOU noted that the proposal regarding merger of BRL with SAIL is in active consideration of the Ministry of Steel and in the event of the said merger, the terms of the agreement with regard to pay, allowances and other benefits [like medical, canteen, education etc.] shall be applicable as prevailing in SAIL. This clearly indicates that the said MoU itself contemplated that after merger/amalgamation pay, allowances and other benefits [like medical, canteen, education etc.] shall be applicable as prevailing in SAIL and not as per the agreement purportedly recorded in the MoU.
- h) The second prayer made in the Original Application filed in CAT needs to be highlighted:
“The respondents be directed to give effect to the merger agreement as published in the Gazette of India, particularly Clause 9, duly approved by the Government of India.”
- h) From the perusal of the original application as well as the writ petition it would transpire the case of the applicant- petitioner is not that they were not granted uniformity on absorption on equivalent scales of pay. There is complete lack of pleadings or proof to show as to how clause 9 of the order was not complied with.
- i) Moreover clause 9 must be read in its entirety. Not only that, but the entire order of amalgamation must also be read as a whole. The endeavour of the applicants- petitioners to read a sentence of the order in isolation is not just and proper. It is not the case of the applicants- petitioners that they have not been given all the benefits which are available to the employees of the transferee company from the appointed date. So far as wage revision is concerned it is submitted that all the employees of the transferor company including the applicants- petitioners were given protection of pay [Basic + DA] and their pay was fixed in the equivalent scales in Steel Authority of India Limited with effect from the appointed date i.e. 01.04.2007 without disturbing the internal seniority. The pay [Basic + DA] being drawn by the employees of the transferor company was very low and therefore most of the employees in spite of their pay protections had to be placed in the minimum of the basic of the equivalent scale. There is no denial of the fact that the petitioners- applicants were placed in the equivalent pay scale in terms of clause 9 of the order dated 28 July 2009.
- j) It appears that in the written notes of argument the applicant- petitioners have sought to improve their case by stating that the employees of SAIL have been benefitted by 2 different pay revisions between 01 January

1997 to 01 January 2007, whereas the employees of the transferor company have been denied such revision of pay scales. Such a plea does not appear to have been taken before the Central Administrative Tribunal or in the Writ Petition and has otherwise no bearing on the merits of the case. Therefore, new case is sought to be set up in their written notes of arguments, which has to be out rightly rejected.

- k) The question of benefit of pay revision does not arise at all, as the same was not allowed by the Ministry of Corporate Affairs while passing the order of amalgamation dated 28 July 2009. It is deemed to have been refused. Had the order of amalgamation sought to give benefits of pay revision on absorption then the same would have been specifically mentioned. Admittedly, the employees objected to the Scheme of Amalgamation approved by the Ministry of Steel on 02.05.2008 and the draft order of amalgamation dated 25.11.2008, which was revised on 22.01.2009 on various grounds and the first being that the MoU signed on 22.03.2007 should be made effective. The Ministry of Corporate Affairs while passing the order dated 28 July 2009 is silent on the above aspect and therefore the submission that revision of pay must be given to the applicants-petitioners is implied in Clause 9 of the order of amalgamation is completely unfounded. The said plea is liable to be rejected on the settled principle of law that a thing which cannot be achieved directly cannot be permitted to be done indirectly.
- l) In written statement filed by SAIL before the learned Tribunal, a specific stand was taken in para 24 that the objections of the employees of BRL was duly heard by the appropriate authority of Ministry of Corporate Affairs at the stage of scheme of amalgamation. It was also stated that the liabilities of the SAIL, to the extent contained in Amalgamation Order dated 28.07.2009, has been fully complied and there is no liability attached to SAIL to pay revised pay scale since 01.07.1998 to the employees of BRL. In para 25 of the written statement, it was stated by the respondents that all the employees of BRL were given protection of pay (Basic + D.A) and their pay were fixed in SAIL scales w.e.f. the appointed date i.e., 01.04.2007 without disturbing the internal seniority. However, as the pay (Basic + D.A) being drawn was very low, most of the employees, in spite of the protection of pay, were fixed at minimum basic of the scale. It was also asserted that the internal seniority was not disturbed. With regard to the example given in para 4.25 of the original application, it was stated in

the written statement that the example given by the petitioners is hypothetical because it considers notional pay, had their wages been revised from 1.7.98. It has been asserted that the pay (Basic + D.A) being drawn by all the employees immediately prior to the appointed date of merger i.e., 01.04.2007 has been protected. The paragraph 4.26 to 4.33 of the original application was denied by SAIL in para 27 of the written statement. The specific stand has been taken in para 28 in reply to para 4.34 to 4.37 of the original application, that the proposal of wage revision from 1.7.1998 was not fructified due to non-receipt of approval of the same from the concerned Ministry/Department and the provisions in the books of accounts were made on anticipated further expenses .Accordingly, adhoc provision of Rs.6 crores towards revised salary and wages was made in the financial year 2007-2008, which was subsequently returned back in view of the intervening development. It has been specifically asserted in para 29 of the written statement that upon merger, all the terms and conditions of service of SAIL has been extended to the employees of BRL from the appointed date of merger i.e., 01.04.2007 and there was no discrimination whatsoever.

- m) The learned counsel for the respondent SAIL has submitted that the impugned order is a well-reasoned order passed after taking into consideration all the facts and circumstances of this case and accordingly it requires no interference.

7. Findings

- i. The foundational facts of the case have already been mentioned in the aforesaid paragraphs and the same need not be repeated. The summary of the impugned order and the grounds on which the same has been challenged by the petitioners has been mentioned in paragraphs 5 (u) and 5(v) above.
- ii. It is an admitted fact that BRL was sick since long time and it was referred to Board for Industrial and Financial Restructure (BIFR) for rehabilitation in the year 1992, but the said company could not revive even though there were repeated revival packages.
- iii. In such circumstances, vide letter dated 02.05.2008, amalgamation of BRL with SAIL was approved and the two companies-initiated amalgamation proceedings under Section 396 of the Companies Act, 1956.
- iv. The “Scheme of Amalgamation” with proposed terms and conditions included clause 11.4 under specific terms of the scheme. Clause 11.4

of the scheme read as under: -

“ 11.4. The employees of the transferor company shall not be entitled to any rights, entitlements or benefits in pursuance of the memorandum of understanding entered into between the unions and the management of the transferor company on March 22, 2007 or any such arrangements/agreements entered into by the transferor company with any trade union, association of a body of employees including retrospective or prospective wage revision(s) ”

- v. In view of aforesaid clause 11.4 in the scheme of amalgamation it is apparent that the MOU dated 22.03.2007 was also a matter of concern which finalizing the terms of amalgamation.
- vi. The scheme of amalgamation after considering the objections/stand of the various stake holders resulted in approved amalgamation order dated 28.07.2009.
- vii. The preamble of the amalgamation order dated 28.07.2009 clearly mentions about the grievance of the employees, *firstly*, the demand to implement MOU dated 22.03.2007 and *secondly*, regarding advance of Rs.10,000/- paid to the employees of BRL in pursuance of MOU dated 22.03.2007 and it was their demand that the same should not be recovered from them.
- viii. In the said order of amalgamation dated 28.07.2009, the recital also recorded the contention of SAIL that the employees of BRL, not being the shareholder of the company, their objection cannot be heard or taken into account by the Government *and* they also pointed out that the wage revision as per MOU between BRL and its employees was not considered by the Central Government as the company's financial position did not allow the same and the company was continuously in losses and was having negative net worth.
- ix. The definition clause in the Amalgamation Order dated 28.07.2009, interalia, defines the “appointed date” under Clause 2 (b) to mean 1st April, 2007 and the merger is deemed to have taken place w.e.f. 01.04.2007 .
As per Clause 4.1, on and from the appointed date, BRL shall be dissolved without winding up and the whole undertaking including the plants, all assets and liabilities as on the appointed date would stand transferred to and vested in SAIL.
- x. Clause 6 and 9 of the Amalgamation Order dated 28.07.2009, read as under:

“6. SAVINGS OF CONTRACTS:

Subject to other provisions contained in this order, on and from the appointed date, all contracts, deeds, bonds, debentures, agreements and other instruments of whatever nature, to which the Transferor Company is a party, subsisting or having effect immediately before the appointed date shall remain in full force and effect, against or in favour of the transferee company, as the case may be, and may be enforced as fully and as effectually as if, instead of the transferor company, the transferee company had been a party thereto. Any inter se contracts between the transferor company and the transferee company shall stand merged and vest in the transferee company on issue of this order and its notification.”

“9. PROVISIONS REGARDING EXISTING OFFICERS AND OTHER EMPLOYEES OF THE TRANSFEROR COMPANY

All the staff, workmen or employees, in the service of the transferor company, on the date immediately preceding the appointed date shall become the employees of the transferee company on the basis that:

- (i) their service shall have been continuous and shall not have been interrupted by reason of the amalgamation of the transferor company;*
- (ii) every whole-time officer, including whole time Director (employee) or other employees of the transferor company immediately before the appointed date shall become an officer, employee, as the case may be, of the transferee company and upon implementation of the Scheme from the appointed date the scheme, all the conditions of service and employment of the transferee company would be applicable to the employees of the transferor company. In order to bring uniformity, the employees of the transferor company shall be absorbed on equivalent scales of pay, taking scales prior to salary/wage revision effective from January 1, 1997 in the transferee company with protection of pay (Basic + Dearness Allowance). While doing so, care would be taken not to disturb both the transferee company's and the transferor company's internal seniority and to ensure that employees are not lowered by more than one grade and under no circumstances, E-0 scale would become non-executive scale;*
- (iii) section 396 of Companies Act, 1956 casts an obligation on the Central Government to satisfy itself that the scheme for amalgamation or merger is not contrary to public interest. The basic principle of such satisfaction is to observe that the interests of the employees of the transferor company are protected by the scheme of amalgamation which should not be unfair to them;*
- (iv) powers under section 396 can be exercised only if amalgamation is in public interest. The word “public interest” assumes the interest of the employees also. To take into account only the Interest of the shareholders and not to consider the interest of employees is to completely go against the mandate of section 396 of the Companies Act;*

(v) *the amalgamation arrangement should take care of the interest of the employees of the Transferor Company and the service conditions of the employees of the transferor company should not be worse than the existing service conditions by implementing the scheme of amalgamation. From the various judgments of the Supreme Court and various High Courts, it can be concluded that in scheme of amalgamation the interest of employees of transferor company has to be protected. All benefits which are available to the employees of the transferee company shall be available to the employees of the transferor company from the appointed date including those of medical benefits. In the larger interest of the employees, ten thousand rupees which has been given as an advance to the employees of the transferor company in anticipation of revised pay scales, shall not be recovered from them by the transferee company as a good will gesture. The grievances in respect of Voluntary Retirement Scheme (VRS) and medical benefits of the ex-employee of the transferor company may be suitably addressed by the Ministry of Steel.”*

- xi. Apparently, at the stage of scheme of amalgamation, inter alia, the MOU dated 22.03.2007, as well as, the fact that in furtherance to the aforesaid MOU, an amount of Rs.10,000/- was paid to the employees as an advance towards contemplated pay revision which was to be adjusted from arrears, were under consideration.
- xii. In the aforesaid background, the Amalgamation Order was published giving the appointed date as 01.04.2007 and from that date onwards, BRL would become a part of SAIL for all legal and accounting purposes including those of employees’ benefits.
- xiii. The Amalgamation Order dated 28.07.2009 records the aforesaid concern of the employees, ex-employees, representatives of various employee’s union of BRL and records that it was agitated, that the said amount of Rs. 10,000/- should not be recovered from the employees as a result of amalgamation. The Amalgamation Order recorded the aforesaid opposition of SAIL on the aforesaid demand of employees of BRL. The Amalgamation Order also recorded that while examining the sustenance or viability of the scheme of amalgamation, the interest of the employees have to be definitely taken into account in larger public interest.
- xiv. I find that the ultimate order of amalgamation clearly dealt with the saving of contracts, deeds, bonds, debentures, agreements and other instruments of BRL under clause 6. There was a specific clause 9

dealing with the provisions regarding existing officers and other employees of BRL.

- xv. I am of the considered view that clause 6 and 9 of the amalgamation order dated 28.07.2009 operate in different fields and clause 6 has nothing to do with the benefits of the employees of BRL to be given at the time of merger. Thus, the arguments of the learned counsel for the petitioners that the MOU dated 22.03.2007 was saved under clause 6 of the amalgamation order dated 28.07.2009 is devoid of any merits. Otherwise also, admittedly, the MOU dated 22.03.2007 never attained finality. It is the specific case of the petitioners in the original application that, although the process of wage revision was started pursuant to the Department of Public Enterprises communication dated 14.01.1999 which conveyed the decision of the Government that the next round of wage negotiations which fell due on and from 01.01.1997 with the workers of Central Public Sector Enterprises could be commenced by the Management of the Enterprises with the Trade Unions/Associations and further case of the petitioners in the original application was that in absence of clearance from the Ministry of Steel, the process of revision of wages as per MOU dated 22.03.2007 remained incomplete and an amount of Rs.10,000/- was given as advance in anticipation of merger to be adjusted against arrears as and when the wage revision is finalized.
- xvi. Upon perusal of Clause 9 of the amalgamation order dated 28.07.2009, I find that a specific decision was taken that all the benefits which are available to the employees of the SAIL shall be available to the employees of BRL from the appointed date including those of medical benefits and in the larger interest of the employees Rs.10,000/, which has been given as advance to the employees of BRL in anticipation of revised pay scale, shall not be recovered from them by SAIL as a goodwill gesture.
- xvii. I find that the clause -9 of amalgamation order dated 28.07.2009 clearly took care of larger interest of the employees as well as SRU (BRL renamed unit upon merger) and SAIL and while considering this aspect of the matter, specific decision was taken not to recover Rs.10,000/- from the employees of BRL as a goodwill gesture. Upon perusal of the amalgamation order dated 28.07.2009, I find that out of the aforesaid two arguments of the employees of BRL regarding

implementation of MOU dated 22.03.2007, only one of the arguments i.e regarding non-adjustment of the advance amount of Rs.10,000/- paid against proposed wage revision as per MOU dated 22.03.2007 was acceded to and was decided not to be recovered, only as a good gesture. Accordingly, the amalgamation order dated 28.07.2009, by implication and apparently, rejected the plea of implementation of the MOU dated 22.03.2007 by virtue of decision not to recover aforesaid advance of Rs.10,000/- as a goodwill gesture which otherwise was subject to implementation of the MOU dated 22.03.2007 on a future date. Thus, the clause 11.4 of the proposed scheme of amalgamation which had a specific negative covenant regarding implementation of MOU dated 22.03.2007 does not turn into a decision to implement the MOU dated 22.03.2007 by its very absence in amalgamation order dated 28.07.2009. This is because, a corollary or off-shoot of the MOU dated 22.03.2007 i.e recovery of advance of Rs.10,000/- was decided not to be recovered only as a goodwill gesture although it was to be adjusted against any future payment upon implementation of MOU dated 22.03.2007 . The very fact that the amount of Rs.10,000/- was decided to be non-recoverable as a goodwill gesture and not as a matter or right, itself indicates rejection of the plea of the employees of BRL to implement the MOU dated 22.03.2007.

- xviii. In view of the aforesaid, the decision against implementation of the MOU dated 22.03.2007 attained finality by virtue of unchallenged amalgamation order dated 28.07.2009 and part relief to the extent of non-recovery of Rs.10,000/- advance, was given to the employees of BRL. The amalgamation order dated 28.07.2009 was never challenged before any court or tribunal and the petitioners kept on making representations under the misconceived assumption that their MOU 22.03.2007 was approved by the amalgamation order dated 28.07.2009. The claims, if any, arising out of MOU dated 22.03.2007 was closed for all times to come upon coming into force of amalgamation order dated 28.07.2009 and in such circumstances the grievance regarding non-implementation of MOU dated 22.03.2007 cannot be said to be a continuing cause of action. The petitioners have tried to make out a case that as per amalgamation order dated 28.07.2009, a decision was taken to implement the MOU dated 22.03.2007 and inspite of that the respondent SAIL did not give the

benefit of the MOU dated 22.03.2007, but as held above, the claim of the employees of BRL to implement MOU dated 22.03.2007 was rejected vide amalgamation order dated 28.07.2009 and only part relief was given by making advance of Rs. 10,000/- non- refundable as a goodwill gesture.

- xix. In para 25 of the written statement, it was stated by the respondents that all the employees of BRL were given protection of pay (Basic + D.A) and their pay were fixed in SAIL scales w.e.f. the appointed date i.e., 01.04.2007 without disturbing the internal seniority. It has also been clarified that as the pay (Basic + D.A) being drawn by BRL employees was very low, most of the employees, in spite of the protection of pay, were fixed at minimum basic of the scale. It has been asserted that the internal seniority was not disturbed. It was stated in the written statement that the example given by the petitioners is hypothetical because it considers notional pay, had their wages been revised from 1.7.98. The grievance of the petitioners regarding non-implementation of amalgamation order dated 28.07.2009 in letter and spirit has been properly addressed by the respondents in the written statement filed before the tribunal. The respondents have also well explained the allocation of Rs. 6 crores and its return to the ministry.
- xx. In view of the aforesaid, there can be no hesitation in holding that amalgamation order dated 28.07.2009 has been implemented in letter and spirit and the revision of pay pursuant to MOU dated 22.03.2007 was rejected while passing amalgamation order dated 28.07.2009. The petitioners kept on making representations but approached the tribunal after long lapse of time. The cause of action of the petitioners was not a continuing one.

Consideration of Impugned order

- xxi. The learned Tribunal considered the clauses of the scheme of amalgamation relating to the employees of BRL including clause 6 relating to '*debts, liabilities, duties and obligations*'. The learned Tribunal was of the view that the clauses relating to '*debts, liabilities, duties and obligations*' of BRL being vested to SAIL, are clauses of general nature and the term generally refers to physical and financial assets and liabilities. The learned Tribunal was of the view that these words cannot be interpreted to mean that an MOU entered a few days back before the appointed date between BRL and its employees can

become enforceable against SAIL. The learned tribunal was of the view that there are specific provisions relating to employees separately at Clause 9 of the order of amalgamation dated 28.07.2009 which did not provide for implementation of MOU dated 22.03.2007 and thus the matter was closed. The learned Tribunal was also of the view that BRL has been sick for more than 15 years when they entered into the said MOU dated 22.03.2007 revising the pay w.e.f. 01.07.1998 and it was evident that they were financially not in a position to revise the pay from 01.07.1998 and even after signing of MOU, there were two years before the formal order of amalgamation was issued but the same was never implemented. The learned Tribunal also noted that BRL and their employees were fully aware that the Ministry of Steel which was administrative ministry of both BRL and SAIL, was seized of the matter of reviving them and the process of amalgamation with SAIL was on, and therefore in the light of this background, the learned Tribunal agreed with the arguments of SAIL that the MOU dated 22.03.2007 was signed with an ulterior motive to gain undue advantage from SAIL and the said MOU was never meant to be implemented by BRL and its sole purpose was to make out a case for higher pay on merger. The learned Tribunal also recorded that in Clause 11.4 of the scheme of amalgamation there was specific exclusion of MOU dated 22.03.2007.

- xxii. The learned Tribunal rejected the petitioners' attempt to make some notional comparison with other SAIL employees and was of the view that the Scheme of Amalgamation as well as the order of the Ministry of Corporate Affairs was to protect the pay drawn by the employees as on 01.04.2007, and there was no obligation on them to take into cognizance the MOU dated 22.03.2007. The learned Tribunal also rejected the contention of the petitioners regarding continued cause of action because the moot question was admissibility of the pay revision itself and held that the application was filed after eight years.
- xxiii. The impugned order is a well-reasoned order which has been passed upon due consideration of the materials on record. The learned tribunal has rightly dismissed the original applications on limitation as well as on merits. There is no illegality or perversity in the impugned order passed by the learned Tribunal calling for any interference in writ jurisdiction.

8. As a cumulative effect of the aforesaid findings, these writ petitions are dismissed.
9. Pending interlocutory applications are closed.
10. Interim orders, if any, are vacated.

(Aparesh Kumar Singh, J.)

(Aparesh Kumar Singh, J.)

(Anubha Rawat Choudhary, J.)

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