

IN THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 24.09.2018

+ **W.P.(C) 5555/2018 and C.M. Nos. 21660/2018, 27625-27626/2018, 28418/2018, 32776-32778/2018 & 32780/2018**

M/S LAKSHMI ENERGY AND FOODS LTD. Petitioner

Versus

RESERVE BANK OF INDIA AND ORS. Respondents

Advocates who appeared in this case:

For the Petitioner :Mr Kapil Sibal, Sr Adv with Mr Vivek Chib, Mr Vikramaditya and Mr Asif Ahmed, Mr Amrendra Mehta and Mr Himesh Thakur and Ms Pracheta Kar.

For the Respondents :Mr H.S. Parihar and Mr Kuldeep S. Parihar for R-1/RBI. Mr Rajesh Kumar Gautam and Mr Aakash Sehrawat for R-2/PNB. Mr Ramji Srinivasan, Senior Advocate with Mr Diwakar Maheshwar, Mr Aditya Vikram Singh, Mr Naveen Hegde and Mr Bunmeet Singh for R-3/ICICI Bank. Mr R.S. Raju, Mr M. Chandra Sekhar and Ms Megha for R-5/Syndicate Bank. Mr Sumit Nagpal for Axis Bank.

CORAM

HON'BLE MR JUSTICE VIBHU BAKHRU

JUDGMENT

VIBHU BAKHRU, J

1. The petitioner has filed the present petition, *inter alia*, praying as under:-

“I. Issue an appropriate writ/order/direction thereby directing Reserve Bank of India/Respondent No. 1 herein to ensure implementation/compliance of RBI Guidelines/Circulars dated 30.01.2014, 26.02.2014 and 05.05.2017 vis-a-vis Joint Lenders Restructuring Agreement dated 27.06.2015 invoked and implemented qua the Petitioner Company herein.”

2. The petitioner also impugns the proceedings of the Joint Lenders Forum (hereafter ‘JLF’) dated 09.02.2018 wherein the minutes of the JLF’s meeting held earlier on 23.01.2018 were confirmed.

3. The petitioner is a company incorporated under the Companies Act, 1956 and is engaged, *inter alia*, in the business of processing paddy and exporting rice. The petitioner had availed of certain financial assistance from respondent nos. 2 to 5 (hereafter collectively referred to as ‘the respondent banks’). Respondent no.2 (Punjab National Bank – hereafter ‘PNB’) is the lead banker in respect of the said assistance. The petitioner has failed to repay its dues as demanded by the respondent banks and the same has led some of the respondent banks to institute proceedings under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (hereafter ‘SARFAESI Act’). Respondent no.3 (hereafter ‘ICICI Bank’) had issued a demand notice under Section 13(2) of the SARFAESI Act. But it has filed proceedings under the Insolvency and Bankruptcy Code, 2016 (hereafter ‘IBC’) before the National Company Law Tribunal, Chandigarh (NCLT, Chandigarh). Prior to the said proceedings, the consortium of the respondent banks

had formed a Joint Lenders Forum (JLF) in terms of the Circulars issued by respondent no.1 (hereafter 'RBI'). The JLF had agreed on a Corrective Action Plan (CAP) entailing restructuring the loans and financial assistance granted to the petitioner. The petitioner claims that the respondent banks have failed to perform their obligations in terms of the agreed CAP. Thus, leading to further slippage in the performance of the petitioner and disabling the petitioner from repaying its dues as per the CAP. In this view, the petitioner seeks that RBI be directed to ensure compliance of its Circulars, thereby ensuring implementation of the CAP. As a necessary corollary to the same, the petitioner seeks that the respondent banks be restrained from pursuing their remedies to recover their dues and be compelled to consider an appropriate re-structuring scheme.

Factual Context

4. In the year 2010, the petitioner entered into an agreement with the respondent banks in terms of which they extended financial assistance to the petitioner. The said financial assistance was in the form of fund based facilities (term loan and working capital limits) as well as non-fund based facilities. The petitioner's performance was not as per projections and it was finding it difficult to service of facilities availed from the consortium of the respondent banks.

5. The petitioner also reported that there was a steep fall in the price of paddy and this had eroded its ability to draw further credit from the respondent banks. Thus, in effect, it also denuded the value

of the collateral security against which the working capital was provided to the petitioner. It was reported that the shortfall in the drawing power was to the extent of ₹436 crores.

6. In addition, the petitioner submitted that there were other reasons for drop in performance as well including decline in the import of Basmati rice by Gulf Countries.

7. The petitioner had submitted its stock statement indicating the value of the stocks available at ₹354.36 crores. The Stock Auditor appointed by the consortium of the respondent banks submitted a report on the value of the stocks and the respondent banks accepted his view that the drawing power on the basis of the stocks be fixed at ₹439.91 crores. In the aforesaid backdrop, the petitioner approached the consortium of the respondent banks for re-structuring of the financial assistance granted to it.

8. As noticed above, the drawing power available to the petitioner had dropped significantly (to ₹439.91 crores against an outstanding of approximately ₹863 crores). In view of the above and in conformity with the Circular dated 26.02.2014 issued by the RBI, the respondent banks formed a JLF. The JLF, in its meeting held on 19.03.2015, considered the petitioner's request for implementing and adopting a CAP (Corrective Action Plan) involving financial re-structuring of the loans and assistance. At the meeting held on 19.03.2015, the JLF decided to proceed with the petitioner's request for implementing the CAP and decided to get a Techno Economic Viability (TEV) Study

done by an independent consultant – M/s Dunn and Bradstreet.

9. M/s Dunn and Bradstreet submitted its report dated 27.03.2015 (hereafter 'D&B TEV Report'), which included a re-structuring proposal. In terms of the said proposal, the cut of date was fixed as 01.10.2014. The term loan outstanding as on the cut of date was ₹32 crores and the cash credit outstanding was ₹860.88 crores. The re-structuring involved converting the drawing power shortfall of ₹436 crores into a working capital term loan bearing an interest at the rate of 10.75% p.a. The repayment of the term loan was to be deferred for a period of twenty-four months from the cut of date and the repayment was to be made in 32 quarterly installments. The interest on the said loan was to be converted into a term loan (Funded Interest Term Loan – 'FITL'), the repayment of which would start after a moratorium of twenty-four months. The interest of the term loan would be reduced to 10.75%. Similarly, the said proposal also included another working capital term loan (WICTL-II) with the moratorium of twenty-four months. The interest on cash credit facility was also proposed to be converted into a term loan.

10. On 11.05.2015, the Independent Evaluation Committee (hereafter 'IEC') submitted a report observing that the petitioner had made good profits earlier and, therefore, promoters of the petitioner should also bring in additional funds. It was suggested that the financial re-structuring be done with additional working capital limit of only ₹75 crores.

11. On 23.06.2015, the JLF at its meeting approved the re-structuring proposal. Thereafter, on 27.06.2015, a Joint Lenders' Re-structuring Agreement (hereafter 'JLRA') was entered into between the consortium of the respondent banks and the petitioner. On the same date, the consortium of the respondent banks also entered into an Inter Credit Agreement (ICA). Prior to that, each of the members of the consortium issued sanction letters for sanctioning the re-structuring package in terms of the CAP.

12. On 22.09.2015, the petitioner requested PNB Bank to sanction additional working capital of ₹130 crores. This was in addition to ₹75 crores already provided to the petitioner in terms of the JLRA. The petitioner claims that the said amount was a part of the re-structuring package and disbursement of the same was necessary for the petitioner to meet the projections as envisaged under the re-structuring scheme ('approved JLF package').

13. The petitioner claims that by a letter dated 05.12.2015, PNB issued a sanction letter sanctioning a sum of ₹59.68 crores and thereafter, also released ₹30 crores. The petitioner claims that the balance amount was required to be sanctioned and released by other lenders but none of the respondent banks (other than PNB) released any further working capital.

14. The petitioner sent several letters to the respondent banks repeatedly requesting the respondent banks to release additional working capital. However, admittedly, no further limits/funds were

released.

15. The petitioner had also raised the issue of non-release of additional working capital during the subsequent meetings of the JLF. The respondent banks, on the other hand, raised several other issues including alleging financial indiscipline and accusing the petitioner of not routing the transactions through the designated account (Trust Retention Account – ‘TRA’).

16. At the meeting of the JLF held on 22.12.2016, the petitioner requested that a re-structuring scheme under the RBI Circular dated 13.06.2016 (S4A) be framed, as given the petitioner’s revenue, its debt was unsustainable.

17. The consortium of the respondent banks also agreed that a S4A re-structuring scheme be considered and a forensic audit be conducted. Thereafter, the petitioner defaulted in its repayment obligations. On 31.12.2016, the petitioner’s account was declared as a Non Performing Asset (NPA) by ICICI Bank and PNB. On 08.02.2017, at the meeting of the JLF, the CAP was changed from re-structuring to recovery. This is disputed by the petitioner. Thereafter, the respondent banks issued separate notices under the SARFAESI Act.

18. On 24.04.2017, at the meeting of the JLF, it was proposed that a S4A Scheme be framed. The respondent banks requested the petitioner to submit a detailed request in this regard.

19. At the JLF meeting held on 21.06.2017, the respondent banks

agreed to implement the S4A Scheme and adopted 21.06.2017 as the reference date. The JLF directed that a TEV Study be done by PNB Investment Services Limited (hereafter 'PNBISL'). It was also decided to appoint an auditor to conduct a forensic audit.

20. On 01.12.2017, PNB appointed M/s Haribhakti LLP to conduct a forensic audit. The petitioner claims that the same was highly delayed.

21. PNBISL submitted a report in December, 2017 (hereafter 'PNBISL TEV Report'), which indicated that the debt to the extent of ₹642.10 crores was unsustainable.

22. Thereafter, a draft of the Forensic Audit Report was submitted by M/s Haribhakti LLP, which was circulated and discussed at the meeting held on 09.02.2018. The petitioner was not represented at the said meeting. However, the lenders considered the same and Axis Bank and ICICI Bank withdrew their consent to proceed with the S4A Scheme.

23. On 16.02.2018, ICICI Bank filed an application under Section 7 of the IBC before the NCLT, Chandigarh.

24. Aggrieved by the aforesaid, the petitioner filed the present petition.

Submissions

25. Mr Sibal, learned Senior Counsel appearing for the petitioner

contended that the banks have a public duty to support private enterprises and to act fairly in respect of such obligations. He submitted that the obligations of the banks could not be viewed “through the prism of a private contract”, allowing institutions to terminate the relationships with an enterprise and benefit on account of its own defaults.

26. He contended that the JLF had agreed to a scheme of restructuring (CAP) under the framework of the RBI Circulars and, therefore, the respondent banks could not be permitted to step outside the said Circulars. He submitted that the respondent banks had made a commitment to enhance the working capital but had failed to disburse the additional working capital as required. He referred to the TEV Study prepared by PNBISL in December, 2017 (PNBISL TEV Report) and pointed out that the PNBISL TEV Report clearly concluded that the petitioner had complied with all the conditions of the CAP but the respondent banks had not released the working capital limits as per the approved re-structuring scheme – the CAP. Consequently, the petitioner could not procure paddy to the desired extent, which in turn had adversely affected its production and profitability. Resultantly, the petitioner could not achieve the projections as made in the earlier TEV Study submitted by M/s Dunn and Bradstreet (D&B TEV Report). This in turn resulted in the amounts payable to the respondent banks becoming overdue and the petitioner’s accounts were classified as Non-Performing Assets (NPA) by the respondent banks.

27. He submitted that the PNBISL TEV Report clearly established that the respondent banks were responsible for non-payment of the dues and, therefore, they could not be permitted to take advantage of their own wrong and initiate recovery proceedings. He submitted that in the circumstances, directions were required to be issued to the RBI to ensure compliance with its Circulars and implementation of the restructuring scheme.

28. Mr Ramji Srinivasan, learned Senior Counsel appearing for ICICI Bank contended that the present petition was not maintainable, as the question whether the respondent banks had breached the JLRA involved disputed questions of facts, which this Court would not entertain in these proceedings. Next, he submitted that the RBI Circulars dated 30.01.2014 and 26.02.2014 were withdrawn by virtue of the Circular dated 12.02.2018 and a revised framework for resolution of the stressed assets had been put in place. Therefore, no directions could be issued with regard to implementation of the earlier Circulars.

29. He submitted that the RBI Circular dated 26.02.2014 required the respondent banks to identify the stress in accounts. In the present case, the value of stocks had fallen and, therefore, the petitioner faced difficulty in servicing its debts. He submitted that this was identified as the reason for the stress and was, accordingly, addressed by restructuring the existing facilities – funding the outstanding interest and providing a moratorium of two years for repayment of the dues.

He submitted that there was no obligation on the part of the respondent banks to furnish additional loan.

30. In addition he also submitted that the petitioner had defaulted in its obligations and, therefore, was not entitled to insist that the respondent banks support the restructuring package. He submitted that the petitioner had failed to bring in the upfront Promoter's contribution of ₹18.44 crores and had brought in only ₹12,49,50,000/- and that too in three tranches. The petitioner had also failed to make regular payments of monthly interests on the due dates.

31. He further contended that the Forensic Audit Report, a draft of which was circulated at the JLF meeting held on 09.02.2018, indicated diversion of funds and gross irregularities. He earnestly contended that although the draft Forensic Audit Report had been circulated, the petitioner has suppressed the same in these proceedings and, therefore, was not entitled to any discretionary relief.

32. He also referred to the decisions of the Supreme Court in ***Innoventive Industries Ltd v. ICICI Bank & Anr: (2018) 1 SCC 407*** and ***Chitra Sharma v. Union of India: W.P. (C) 744/2017, decided on 09.08.2018*** in support of his contention that proceedings under the IBC could not be interfered with. Mr Srinivasan also referred to various RBI Circulars, D&B TEV Report and various clauses of the JLRA.

33. The learned counsel appearing for other respondent banks advanced contentions similar to those advanced by Mr Srinivasan.

Reasons and Conclusion

34. At the outset, it is relevant to observe that there is no dispute that the Circulars issued by the RBI are binding on banks. In ***Central Bank of India v. Ravindra & Ors: (2002) 1 SCC 367***, the Supreme Court had observed as under:-

“(5) The power conferred by Section 21 and 35-A of the Bank Regulation Act, 1949 is coupled with duty to act. Reserve Bank of India is the prime banking institution of the country entrusted with a supervisory role over banking and conferred with the authority of issuing binding directions, having statutory force, in the interest of the public in general and preventing banking affairs from deterioration and prejudice as also to secure the proper management of any banking company generally.”

35. Bearing the aforesaid in mind, it would be relevant now to examine the various circulars issued by the RBI which are relevant to the controversy in this petition. The same are briefly referred to hereafter:-

36. On 30.01.2014, the RBI released a circular indicating the Framework for Revitalizing Distressed Assets in the Economy. The same was put up on its website. The said policy Framework was issued in the context of slow down of the Indian economy, which had resulted in number of companies/projects being placed under the stress. This was reflected in an increase in the Non-Performing Assets (NPA) of banks during the recent years. The RBI had issued a

Discussion Paper captioned “Early Recognition of Financial Distress, Prompt Steps for Resolution and Fair Recovery for Lenders: Framework for Revitalizing Distressed Assets in the Economy” inviting comments from various stakeholders. The comments were considered and incorporated in the Framework for Revitalizing Distressed Assets in the Economy released by the RBI. One of the salient features of the said framework was an early formation of lenders’ committee with timelines to agree to a plan for resolution of accounts under stress.

37. Thereafter, on 26.02.2014, the RBI issued a Circular captioned “Framework for Revitalizing Distressed Assets in the Economy – Guidelines on Joint Lenders’ Forum (JLF) and Corrective Action Plan (CAP)”. The said Circular provided for the banks to identify incipient stress in the accounts by creating three sub-categories referred to as Special Mention Accounts (SMA): SMA-0 (Where principal or interest payment is not overdue for more than 30 days); SMA-1 (principal or interest payment is overdue between 31-60 days); and SMA-2 (principal or interest payment overdue between 61-90 days). Any amount overdue beyond 90 days is required to be classified as a Non Performing Asset (NPA). The banks were directed to report credit information including classification of accounts as SMAs to the Central Repository of Information on Large Credits (which was to be setup by the RBI) in respect of borrowers where the exposure of banks was in excess of ₹50 million. The banks were directed to immediately form a JLF in cases where any account was reported by any of the

lenders as SMA-2 and the aggregate exposure of lenders was in excess of ₹1000 million. The JLF was required to explore options to resolve stress in the accounts and to arrive at an early and feasible solution to preserve the economic value of the underlying assets. The RBI further indicated that the CAP would generally include either: (a) Rectification, (b) Restructuring or (c) Recovery. Rectification would entail measures intended to turn around the borrowing entity/company without any change in the conditions of the loan. Restructuring would be restructuring of the financial assets and loans. In the event, rectification or restructuring was not feasible, the JLF was required to resort to a recovery process for recovery of their loans. In the present case, sub-paragraph (b) of Paragraph 3.1 of the said Circular is relevant and is set out below:-

“(b)Restructuring – Consider the possibility of restructuring the account if it is prima facie viable and the borrower is not a willful defaulter, i.e., there is no diversion of funds, fraud or malfeasance, etc. At this stage, commitment from promoters for extending their personal guarantees along with their net worth statement supported by copies of legal titles to assets may be obtained along with a declaration that they would not undertake any transaction that would alienate assets without the permission of the JLF. Any deviation from the commitment by the borrowers affecting the security/recoverability of the loans may be treated as a valid factor for initiating recovery process. For this action to be sustainable, the lenders in the JLF may sign an Inter Creditor Agreement (ICA) and also require the borrower to sign the Debtor Creditor Agreement (DCA) which would provide the legal basis for any restructuring process. The formats

used by the Corporate Debt Restructuring (CDR) mechanism for ICA and DCA could be considered, if necessary with appropriate changes. Further, a 'stand still' clause could be stipulated in the DCA to enable a smooth process of restructuring. The 'stand-still' clause does not mean that the borrower is precluded from making payments to the lenders. The ICA may also stipulate that both secured and unsecured creditors need to agree to the final resolution.”

38. The aforementioned Circular also provided for different processes of restructuring. The banks could either adopt to proceed under the CDR mechanism or the JLF could proceed to do so independent of the same. The said Circular further provided that if the JLF decided to restructure an account independent of the CDR (Corporate Debt Restructuring) mechanism, it was required to carry out a detailed TEV Study and if the same was found viable, the JLF was required to finalize the restructuring package within 30 days from the date of signing of the final CAP.

39. The RBI issued another Circular dated 13.06.2016 captioned “Scheme for Sustainable Structuring of Stressed Assets” – (referred to as ‘S4A’) in various documents – which was directed towards facilitating resolution of large accounts which satisfied three conditions: (i) the project had commenced operations; (ii) the aggregate exposure of all incidental lenders in the account exceeds 500 crores; and (iii) the sustainable debt should not be less than 50% of the current funded liabilities. The S4A Scheme under the aforementioned Circular dated 13.06.2016 could also entail the

lending banks acquiring share holding in the borrowing entity by conversion of debts into equity or preference capital.

40. By the Circular dated 10.11.2016, the RBI introduced certain changes in the guidelines for dealing with the stressed assets, which also included stipulating certain time lines.

41. On 05.05.2017, the RBI issued another Circular in exercise of powers conferred under Section 35-A and 35AB of the Banking Regulation Act, 1949 (hereafter 'the Banking Regulation Act'), whereby the lenders were directed to scrupulously adhere to time lines prescribed in the framework in implementing the CAP. The said Circular also specified that the decisions agreed upon by a minimum of 60% of creditors by value and 50% of creditors in number constituting the JLF would be considered as the basis for deciding the CAP and would be binding on all lenders.

42. At this stage, it is also relevant to mention that Section 35AB of the Banking Regulation Act was introduced by the Banking Regulation (Amendment) Act, 2017, which came into effect on 04.05.2017. In terms of Section 35AB of the Banking Regulation Act, the RBI was authorized to issue directions to banks for resolution of stressed assets. Subsequently, the Ordinance was replaced by the Banking Regulation (Amendment) Act, 2017, which came into effect on 04.05.2017. Section 35AB of the Banking Regulation Act, as introduced by the aforementioned enactment reads as under:-

“35AB. (1) Without prejudice to the provisions of section 35A, the Reserve Bank of may, from time to time, issue directions to any banking company or banking companies for resolution of stressed assets.

(2) The Reserve Bank may specify one or more authorities or committees with such members as the Reserve Bank may appoint or approve for appointment to advise any banking company or banking companies on resolution of stressed assets.”

43. On 12.02.2018, the RBI issued yet another Circular (Resolution of Stressed Assets – Revised Framework) substituting the then existing guidelines by a framework for resolution of stressed assets. In terms of this Circular, specified Circulars issued earlier including, the Circulars dated 26.02.2014 and 05.05.2017, were repealed.

44. The petitioner’s case is founded on an assertion that the respondent banks have failed to comply with the obligations under the Circular dated 26.02.2014. As noticed above, in terms of the said Circular, the respondent banks were required to explore various options to resolve the stress in the accounts and adopt a CAP. In the present case, the JLF was formed and it did explore the possibilities of addressing the stress in the accounts pertaining to the petitioner. The JLF approved a restructuring scheme, which translated into an Inter-Credit Agreement and Debtor-Credit Agreement (hereafter ‘the JLRA’) that were exempted on 27.06.2015. A plain reading of the Circular dated 26.02.2014 indicates that the JLF was required to do so in order to “*provide the legal basis for any restructuring process*”.

45. The case set up by the petitioner, essentially, is that the respondent banks have acted in gross violation of the JLRA inasmuch as they have failed to disburse additional Working Capital Limits, which the petitioner claims was an integral part of the restructuring scheme referred to as the “approved JLF package” in the JLRA. The petitioner further contends that the action of ICICI Bank in instituting proceedings under the IBC is contrary to the Circular dated 05.05.2017 issued by the RBI, which mandates that the majority decision would be binding on all the members of the JLF. Having founded its case on the aforementioned claims, the petitioner contends that the RBI must be directed to ensure compliance of its Circulars *qua* the JLRA.

46. The respondent banks dispute the foundation of the petitioner’s claim. First of all, it is submitted that the Circulars sought to be relied upon by the petitioner have been withdrawn by virtue of the RBI’s Circular dated 12.02.2018 and, therefore, no relief in this regard can be granted to the petitioner. It is further claimed that the respondent banks have not failed in discharging any of their obligations under the “*approved JLF Package*” in terms of the JLRA. On the contrary, they claim that the petitioner has failed to adhere to its obligations under the JLRA inasmuch as: (i) the promoters of the petitioner did not bring their contribution upfront; (ii) the petitioner did not route all its transactions to the TRA; and (iii) the petitioner has defaulted in its repayment obligation under the JLRA.

47. In view of the above, the first and foremost issue to be addressed is whether any directions can be issued with regard to implementation of the Circulars dated 26.02.2014 and 05.05.2017, in view of the RBI's subsequent Circular dated 12.02.2018. As noticed above, the relief claimed by the petitioner is directed towards seeking implementation of the Circulars dated 26.02.2014 and 05.05.2017 for enforcing the obligations of the respondent banks in terms of the JLRA.

48. It is common ground that the JLRA was entered into between the parties to implement the restructuring scheme ("*approved JLF Package*") being the CAP agreed to in terms of the RBI's Circular dated 26.02.2014. It is also not disputed that the JLRA is binding on the parties. In this view, the contention that no relief can be granted to the petitioner for enforcement of the RBI's Circulars dated 26.02.2014 and 05.05.2017 is unmerited. The RBI's Circular dated 12.02.2018 has put in place a revised framework for resolution of stressed assets. All earlier frameworks, which were embodied in specified Circulars issued prior to 12.02.2018, were withdrawn with immediate effect. However, it is obvious that the said Circular would have little effect in respect of resolution schemes that were already translated into binding agreements. The RBI's Circular dated 12.02.2018 cannot be read as terminating the JLRA entered into between the parties. The question whether the petitioner would be entitled to relief on merits is a separate issue. However, the petitioner's relief – which, in effect, seeks enforcement of the JLRA and the '*approved JLF Package*' –

cannot be rejected on the ground that the subsequent Circular dated 12.02.2018 issued by the RBI has repealed the earlier Circulars. Clearly, the Circular dated 12.02.2018 has no effect on the restructuring packages that have already been reduced to binding contracts.

49. The next question to be examined is whether the respondent banks had defaulted in performance of their obligations under the JLRA. According to the petitioner, the CAP (the approved JLF Package) as agreed to between the petitioner and the respondent banks entail an obligation for the respondent banks to provide additional working capital of ₹75 crores in the initial year and further working capital (as projected under the D&B TEV Report) for the subsequent periods.

50. As noticed above, at the meeting held on 19.03.2015, the JLF accepted the petitioner's request to implement a CAP entailing financial restructuring as the only viable option. The JLF decided to engage a consultant, M/s Dunn and Bradstreet, to conduct a TEV analysis so that *"restructuring is completed before 31.03.2015"*. In terms of the aforesaid, M/s Dunn and Bradstreet conducted a TEV study. It identified the reasons for poor performance to be (i) on the interest cost, which results in a narrow margin for meeting other expenses necessary for the company to maintain its market share and be competitive; (ii) inventory loss due to fall in price of paddy and rice resulting in reducing the drawing power of the petitioner to the extent of ₹436 crores and translating to a loss of ₹295 crores (including

moisture loss); and (iii) decline in import of basmati rice by Gulf countries. The said consultant submitted a restructuring proposal taking a cut-off date as 01.10.2014. The total outstanding loan as on the cut-off date was indicated at ₹320 million and the outstanding cash credit was ₹8,638.80 million. The restructuring proposal entailed: (i) restructuring of the then existing term loan of ₹320 million; (ii) conversion of irregularity or ₹4,360 million as a Working Capital Term Loan (WCTL-I); (iii) Working Capital Term Loan-II; (iv) providing Fund Based Working Capital (Cash Credit – ‘CC’) of ₹3,869.20 million; and (v) providing Funded Interest Term Loan (FITL) for funding the interest due on sustainable part of CC on Fund Based Working Capital, (WCTL) and Term Loan (TL).

51. The restructuring proposal as set out in the D&B TEV Report is reproduced below:

“ Restructring proposal

A. Cut-off Date - October 1st , 2014

Term Loan outstanding as on cut-off date is INR 320 million and CC outstanding as on cut-off date is INR 8,638.80 million.

i. Term Loan

The Term Loan outstanding of INR 320 million shall be restructured as follows:

- o The Company proposes 24 months moratorium from the cut-off date for repayment of term loan and repayment to be made in 32 quarterly instalments from the quarter ended December 2016.
- o The Interest moratorium on term loan is proposed for first 24 months from cut-off date and the same be funded (to be converted into FITL). The repayment of FITL to start after 24 months from cut-off date. The Company will pay interest as and when due on FITL.
- o The Company is proposing reduction in term loan Interest rate to 10.75 /o.

(INR Millions)

Particulars	Mar-15	Mar-16	Mar-17	Mar-18	Mar-19	Mar-20	Mar-21	Mar-22	Mar-23	Mar-24	Mar-25
Opening Balance	320.00	320.00	320.00	312.00	296.00	272.00	240.00	208.00	160.00	96.00	32.00
Addition / Disbursement											
Repayment		0.00	8.00	16.00	24.00	32.00	32.00	48.00	64.00	64.00	32.00
Closing Balance	320.00	320.00	312.00	296.00	272.00	240.00	208.00	160.00	96.00	32.00	-
Interest Charged to P&L	0.00	34.49	34.12	24.62	31.07	27.95	24.57	20.84	14.60	7.71	1.29
Interest Converted to FITL - III		34.49	17.25								

ii. Working Capital Term Loan (WTCL)-I

- o Irregularity of INR 4,360 million considering all fund based limits is proposed to be converted into WTCL-I. To assess the irregularity, the Drawing Power is considered at INR 3,869.20 million as on Cut-off date 1st October, 2014. Indicative breakup of WTCL- I shall be as detailed under -

(INR Millions)

Particulars	Value
CC Outstanding	8,636.80
Less: Interest debited after cut-off date	407.60
Less: MPBF/Available DP	3,869.20
DP Shortfall (WTCL – I)	4,360.00
Total WTCL – I	4,360.00

- o Interest Rate on WTCL -I is proposed at 10.75% through the restructuring tenure.
- o Moratorium on Principal repayment is proposed to be 24 months (upto 30th September, 2016) from Cut-off Date.
- o The interest moratorium is proposed to be 24 months from cut-off date and is proposed to be funded and converted into FITL.
- o Repayment of WTCL proposed to be made in 32 quarterly installments commencing from quarter ended December 2016. The detailed repayment is as exhibited under –

(INR Millions)

Particulars	Mar-15	Mar-16	Mar-17	Mar-18	Mar-19	Mar-20	Mar-21	Mar-22	Mar-23	Mar-24	Mar-25
Opening Balance	4,360.00	4,360.00	4,360.00	4,251.00	4,033.00	3,706.00	3,270.00	2,834.00	2,180.00	1,308.00	

	0									
Addition / Disbursement										
Repayment		0.00	109.00	218.00	327.00	436.00	436.00	654.00	872.00	872.00
Closing Balance	4,360.00	4,360.00	4,251.00	4,033.00	3,706.00	3,270.00	2,834.00	2,180.00	1,308.00	436.00
Interest Charged to P&L		469.99	464.33	442.35	414.55	370.11	322.28	266.67	175.86	82.
Interest Converted to FITL - I		469.99	234.99							

iii. Working Capital Term Loan (WCTL) – II

- o Moratorium on Principal repayment is proposed to be 24 months (upto 30th September, 2016) from Cut-off Date.
- o Interest Rate on WCTL - II is proposed at 10.75% through the restructuring tenure.
- o The interest moratorium is proposed to be 24 months from cut-off date and is proposed to be funded and converted into FITL.
- o Repayment of WCTL–II is proposed to be made in 32 quarterly instalments commencing from quarter ended December 2016. The detailed repayment is as exhibited under -

(INR Millions)

Particulars	Mar-15	Mar-16	Mar-17	Mar-18	Mar-19	Mar-20	Mar-21	Mar-22	Mar-23	Mar-24	Mar-25
Opening Balance		245.00	245.00	238.88	226.63	208.25	183.75	159.25	122.50	73.50	24.50
Addition / Disbursement											
Repayment	0.00	0.00	6.13	12.25	18.38	24.50	24.50	36.75	49.00	49.00	24.50
Closing Balance	-	245.00	238.88	226.63	208.25	183.75	159.25	122.50	73.50	24.50	-
Interest Charged to P&L	0.00	24.50	26.09	24.86	23.29	20.79	18.11	14.98	9.88	4.63	0.33
Interest Converted to FITL - IV		24.50	13.20								

iv. Fund Based Working Capital (CC)

- o The total outstanding working capital as on the cut-off date is INR 8,636 million and drawing power is arrived at INR 3,869.20 million.
- o The rate of interest on working capital post restructuring is proposed to be 10.75%.
- o Assessment of Fund Based Requirement for the restructuring period is as given in table below:

(INR Million)

Particulars	Mar-15	Mar-16	Mar-17	Mar-18	Mar-19	Mar-20	Mar-21	Mar-22	Mar-23	Mar-24	Mar-25
Opening Balance	3,869.20	3,869.20	3,869.20	3,869.20	3,869.20	3,869.20	3,869.20	3,869.20	3,869.20	3,869.20	3,869.20
Addition / Disbursement											
Repayment											
Interest Rate	10.75%	10.75%	10.75%	10.75%	10.75%	10.75%	10.75%	10.75%	10.75%	10.75%	10.75%
Interest Charged to P&L		415.94	415.94	415.94	415.94	415.94	415.94	415.94	415.94	415.94	415.94
Interest Converted to FITL - II		415.94	207.97								

v. Funded Interest Term Loan (FITL)

- o Interest on sustainable part CC / fund based working capital, WCTL and TL is proposed to be funded for 24 months from cut-off date and converted to FITL.
- o Interest on FITL is proposed to be charged at 10.75% annually.
- o Interest on FITL shall be paid as and when due.
- o Principal repayment moratorium up to quarter ended December 2016.
- o Repayment in 32 quarterly instalments commencing from quarter ended December 2016.

The detailed repayment schedule of FITL – I (on WCTL – I) is as under –

(INR Million)

Particulars	Mar-15	Mar-16	Mar-17	Mar-18	Mar-19	Mar-20	Mar-21	Mar-22	Mar-23	Mar-24	Mar-25
Opening Balance	240.34	240.34	710.33	921.71	874.50	803.67	709.24	614.81	473.16	284.30	95.43
Addition / Disbursement		469.99	234.99								
Repayment		0.00	23.61	47.22	70.82	94.43	94.43	141.65	188.86	188.86	95.44
Closing Balance	240.34	710.33	921.71	874.50	803.67	709.24	614.81	473.16	284.30	95.43	-0.00
Interest Charged to	0.00	49.12	93.30	95.92	89.90	80.28	69.9	57.86	38.20	17.92	1.29

P&L							2				
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The detailed repayment schedule of FITL – II (on Working Capital) is as under –

(INR Million)

Particulars	Mar-15	Mar-16	Mar-17	Mar-18	Mar-19	Mar-20	Mar-21	Mar-22	Mar-23	Mar-24	Mar-25
Opening Balance	213.28	213.28	629.22	816.26	774.41	711.62	627.90	544.19	418.61	251.18	83.75
Addition / Disbursement		415.94	207.97								
Repayment		0.00	20.93	41.86	62.79	83.72	83.72	125.57	167.43	167.43	83.72
Closing Balance	213.28	629.22	816.26	774.41	711.62	627.90	544.19	418.61	251.18	83.75	0.03
Interest Charged to P&L	0.00	43.54	82.61	84.95	79.60	71.07	61.88	51.21	33.77	15.79	1.12

The detailed repayment schedule of FITL – III (on Term Loan) is as under –

(INR Million)

Particulars	Mar-15	Mar-16	Mar-17	Mar-18	Mar-19	Mar-20	Mar-21	Mar-22	Mar-23	Mar-24	Mar-25
Opening Balance	25	25.00	59.49	74.82	70.98	65.23	57.56	49.88	38.37	23.02	7.67
Addition / Disbursement		34.49	17.25								
Repayment		0.00	1.92	3.84	5.76	7.67	7.67	11.51	15.35	15.35	7.67
Closing Balance	25.00	59.49	74.82	70.98	65.23	57.56	49.88	38.37	23.02	7.67	0.00
Interest Charged to P&L		3.88	7.47	5.91	7.45	6.70	5.89	5.00	3.51	1.85	0.31

The detailed repayment schedule of FITL – IV (on WCTL - II) is as under –

(INR Million)

Particulars	Mar-15	Mar-16	Mar-17	Mar-18	Mar-19	Mar-20	Mar-21	Mar-22	Mar-23	Mar-24	Mar-25
Opening Balance		24.50	24.50	36.76	34.87	32.05	28.28	24.51	18.85	11.31	3.77
Addition /			13.20								

Disbursement												
Repayment	0.00	0.00	0.94	1.89	2.83	3.77	3.77	5.66	7.54	7.54	3.77	
Closing Balance	-	24.50	36.76	34.87	32.05	28.28	24.51	18.85	11.31	3.77	-	
Interest Charged to P&L	0.00	1.09	3.60	3.82	3.58	3.20	2.79	2.30	1.52	0.70	0.05	

52. It is apparent from the above that restructuring proposal did not include induction of any immediate funds. However, the D&B TEV Report also contained a tabular statement depicting the projected Financial highlights of the petitioner. This statement was not a part of the restructuring proposal as set out hereinbefore. The said table is reproduced below:-

“The below table depicts the projected financial highlight of the LEFL.

Particulars	Projected										
	2015E	2016E	2017E	2018E	2019E	2020E	2021E	2022E	2023E	2024E	2025E
Net Sales	7,158.96	10,703.08	11,952.14	13,427.87	15,876.83	18,253.04	20,047.94	21,070.31	22,142.14	22,169.94	22,199.21
% Growth	-55.89%	49.51%	11.67%	12.35%	18.24%	14.97%	9.83%	5.10%	5.09%	0.13%	0.13%
EBITDA	-1,921.10	1,193.97	1,457.79	2,074.56	2,213.22	2,606.44	2,888.87	3,014.12	3,132.04	3,085.71	3,036.13
EBITDA Margin	-26.83%	11.16%	12.20%	15.45%	13.94%	14.28%	14.41%	14.31%	14.15%	13.92%	13.68%
Net Profit	(3,390.52)	(352.00)	(228.15)	295.26	389.62	759.50	1,266.48	1,442.54	1,626.37	1,708.96	1,767.27
Net Profit Margin	-47.36%	-3.29%	-1.91%	2.20%	2.45%	4.16%	6.32%	6.85%	7.35%	7.71%	7.96%
Break-Even Sales	-1,739.91	16,512.72	15,549.41	11,003.71	12,138.67	10,978.15	7,277.59	6,413.62	5,510.33	4,436.25	3,546.94
Break-Even Capacity	-7%	89%	83%	57%	64%	58%	38%	34%	29%	23%	19%
Share Capital (Incl. Promoters'											

Contribution)	132.98	132.98	132.98	132.98	132.98	132.98	132.98	132.98	132.98	132.98	132.98
Reserves and Surplus	3,743.56	3,391.57	3,163.42	3,458.68	3,848.30	4,607.80	5,874.28	7,316.82	8,943.19	10,652.15	12,419.42
Total Net Worth (TNW)	3,876.54	3,524.55	3,296.40	3,591.66	3,981.28	4,740.78	6,007.26	7,449.80	9,076.17	10,785.13	12,552.40
Secured Loan	9,777.92	12,195.78	13,238.72	13,093.79	13,304.64	13,108.35	12,812.06	12,235.24	11,340.73	9,981.41	9,303.43
Unsecured Loan	190.00	190.00	190.00	190.00	190.00	190.00	190.00	190.00	190.00	190.00	190.00
Debt-Equity Ratio	2.57	3.51	4.07	3.70	3.39	2.81	2.16	1.67	1.27	0.94	0.76
Total Outside Liabilities (TOL)	10,830.60	13,164.72	14,083.63	13,809.19	13,887.52	13,565.37	13,265.20	12,697.13	11,809.04	10,454.06	9,778.53
TOL/ TNW	2.79	3.74	4.27	3.84	3.49	2.86	2.21	1.70	1.30	0.97	0.78
Cash / Bank Balance	93.50	245.07	384.57	624.43	698.21	1,093.03	1,429.04	1,619.99	1,639.75	1,938.43	3,044.13

53. The D&B TEV Report was submitted on 27.03.2015. Thereafter, the respondent banks (other than Axis Bank) issued sanction letters for restructuring of the existing facilities. PNB and Syndicate Bank issued their respective sanction letters on 30.03.2015; ICICI Bank issued its sanction letter dated 10.04.2015 and Axis Bank issued its sanction letter on 25.06.2015. The sanction letter issued by PNB also indicated a reference to ₹75 crores as additional working capital limit. The same was in reference to the condition requiring the petitioner to secure a working capital limit of ₹461.93 crores the breakup of which was indicated as “*Current DP of Rs.386.93 C + Rs.75.00 Cr as additional proposed*”. None of the sanction letters had any reference of any further funding in addition to ₹75 crores.

54. It is relevant to state that the sanction letter dated 30.03.2015 issued by PNB also made a specific reference to additional working

capital to the extent of ₹34.22 crores. The relevant extract of the said letter is set out below:-

“27. Proposal of sanction of additional capital to the extent of Rs. 34.22 Cr is required to be sent to the competent authority after compliance of following:

- a. This facility shall be available subject to the other consortium members also agreeing to the same and sanctioning their share of the proposed facility.
- b. The Company before drawing the facility shall first try to recover the existing debtors especially the dues from Associate/group Companies and shall also utilize funds made available by way of induction of promoters contribution/refund of interest etc. towards the payment to critical creditors.
- c. There shall be no increase in the debtors consisting of the Associate/Group Companies.
- d. Before seeking disbursement of the additional facility, the company to ensure that all other accounts including those of its associates, where the company has stood as guarantor or has given its Post Dated Cheques as a comfort to bank are regular.
- e. This shall be only an interim measure and shall be available till the fresh appraisal is done based on the March, 2015 financials.
- f. The facility shall be disbursed only after getting the package vetted by the IEC and all compliance of additional terms, if any proposed, by the IEC.”

55. The petitioner responded to the aforesaid sanction letter by a letter dated 07.06.2015, *inter alia*, pointing out that the proportionate share of PNB in the proposed additional working capital of ₹75 crores was envisaged to be ₹36.83 crores as per the final report but had been incorrectly mentioned as ₹34.22 crores. The petitioner also provided the status of the compliances and further impressed upon PNB the

urgency for disbursal of additional working capital of ₹75 crores. The petitioner expressly stated that *“the restructuring package will not be complete without the funding of Rs.75 crores as per the approved package and TEV study”*. In addition, the petitioner also stated that *“the credit facilities were restructured as per approved package by respective lenders on 31.03.2015 barring the release of additional working capital limit of Rs.75 Cr (PNB share Rs.36.83 Cr.) which is stipulated to be released only after the package is vetted by the IEC against the company’s request to release before 31.03.2015.”*

56. The aforesaid letter also supports the view that the agreed restructuring did not include provision of any additional working capital other than ₹75 crores, which was subject to the approval of the IEC.

57. In terms of Paragraph 4.3.3 of the RBI’s Circular dated 26.02.2014, the restructuring package was evaluated by an IEC. The IEC approved the restructuring with additional working capital limit of ₹75 crores. The relevant extract of the Minutes of the Meeting of the IEC held on 11.05.2015 is set out below:-

“IEC members also laid emphasis on the fact that the present situation where company is in a difficult position and has taken recourse to restructuring can at best be a one off situation and all steps need to be taken that such situation does not arise again. After detailed deliberations and justification given by the Company, Restructuring with additional working capital limits of Rs.75.0 Crore as proposed in the package was approved by IEC.”

58. Thereafter, on 27.06.2015, the petitioner and the respondent banks entered into the JLRA (Joint Lenders Restructuring Agreement).

59. At the meeting held on 23.06.2015, the restructuring package was approved by the JLF. Perusal of the said minutes indicate that Axis Bank had desired to opt out of the restructuring package but since majority of the lenders (92% share by net value and 75% share in number) agreed to the restructuring package, the same was also accepted as binding on Axis Bank. The Managing Director of the petitioner had requested PNB to get the joint documents (JLRA and ICA) executed at the earliest and the representative of PNB had assured that the joint documents would be executed at the earliest. The draft of such documents had already been circulated to the respondent banks. Pending execution of the documents, it was decided that the respondent banks would implement the package on the basis of bilateral documents (including the sanction letter referred to above). At the material time, all the respondent banks except Axis Bank had already issued sanction letters.

60. As noticed above, none of the documents executed by the respondent banks record any express commitment to provide additional funding. As noticed above, the sanction letters issued by the respondent banks also do not indicate any such additional funding (other than ₹75 crores). In this view, it is difficult to accept that there is any agreement between the parties in terms of which the respondent

banks are committed to provide additional funding in the subsequent year. The fact that the D&B TEV Report included a table depicting projected financial highlights, which in turn projected increase in secured loans cannot be read as a commitment on the part of the respondent banks to provide additional funding.

61. In any view of the matter, the parties had reduced their agreement in writing by entering into the JLRA. Thus, the question whether the respondent banks had any commitment to provide additional funding must be examined on the basis of the express terms of the JLRA.

62. The term “approved JLF Package” is defined under Article 1 of the JLRA to have the same meaning as given to the said term in recital ‘F’ of the JLRA. Recital ‘F’ of the JLRA reads as under:-

“F. At the request of the Borrower and in consideration of the Borrower’s commitment to improve its operations, the request of the Borrower was referred to the joint lenders forum (hereinafter referred to as the “**JLF**”), a non-statutory voluntary mechanism for the efficient restructuring of corporate debt. Pursuant thereto, the Lenders at their meeting held on March 19, 2015 agreed for restructuring of Existing Loans as corrective action plan. Pursuant thereto Dun & Bradstreet (**D&B**) was requested to draw a Techno Economic Viability Report (the “**TEV Report**”) on the restructuring of Existing Loans and it submitted its TEV Report on March 27, 2015 along with the final restructuring package and after perusal of the said report, the Lenders /Lead Bank have agreed to restructure the Existing Loan subject to the terms and conditions as decided by the JLF, in its meeting dated March 27, 2015 and finally approved in

JLF dated June 23, 2015 (hereinafter referred to as the “Approved JLF Package”).”

63. Paragraph 2.5 of Article II of the JLRA provides for restructuring and reads as under:-

“2.5 RESTRUCTURING

Each of the Lenders and the Borrower hereby agree that the Existing Loans shall hereby stand reconstituted and or restructured as mentioned herein below

On and from the Effective Date the provisions of the Existing Financing Documents and Existing Security Documents relating to each of the Lenders shall continue to be binding in so far they not inconsistent with the provisions of the Restructuring Documents and the Security Documents in relation thereto.

It is agreed that the reasonable determination by the Lenders as to whether provision of the Existing Financing Documents and Existing Security Documents is inconsistent with the terms of the Restructuring Documents shall be binding on the Borrower.

Subject to the aforesaid, on and from the Effective Date, this Agreement and the other Financing Documents constitute the entire agreement between the parties on the term and conditions mentioned in Schedule III to Schedule XI”

64. The last sentence of Paragraph 2.5 of the JLRA makes it amply clear that the JLRA and other financing documents constituted the entire agreement between the parties on the terms and conditions as mentioned in Schedule III to Schedule XI. Schedule III provides the details of all ‘Facilities’ agreed to be provided by the respondent banks.

65. The expression ‘Facilities’ is defined in the JLRA to mean collectively ‘Facility A, Facility B, Facility C, Facility D, Facility E, Facility F, Facility G, Facility H and Facility I. Schedule II sets out the particulars of existing loans and Part A of Schedule III sets out details of all Facilities. Schedule IV to Schedule XI includes details of separate facilities. The working capital limit agreed to be provided by the respondent banks was referred to as Facility H in the JLRA. Facility ‘H’ is defined in the JLRA as under:-

“Facility **H**” means the revised Fund based working capital limits including Cash Credit/LOCSTL/EPC/PCFC/PSCFC Facility (FBWC) to be extended to the Borrower by continuation of regular portion of existing fund based working capital limits, more specifically defined in Schedule X.”

66. The particulars of working capital facility were set out in Schedule X. Part B of the said Schedule included the terms and conditions of such facility.

67. Part A of the Schedules II and III and Schedule X to the JLRA are relevant and are set out below:

“SCHEDULE II

Particulars of Existing Lenders and Existing Loan

A. Existing Loans

Secured term loans

(Rs in Crore)

Lender	O/s Principal
Punjab National Bank	32.0
Total	32.0

Working capital dues

(Rs in Crore)

Lenders		Sanctioned Limits	
	FB	NFB	Total
Punjab National Bank	360.00	25.00	385.00
Syndicate Bank	240.00	-	240.00
ICICI Bank	125.00	-	125.00
Axis Bank	64.00	5.00 within FB	64.00
Total	789.00	25.00	814.00

“SCHEDULE III

PART A

Details of Facilities

Particulars of facility A – Term Loans

(Rs in Crore)

Bank	TL
PNB	32.00
ICICI Bank	-
Syndicate Bank	-

Total	32.00
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Particulars of facility B – Working Capital Term Loan – I (WCTL – I)

(Rs in Crore)

Bank	WCTL-I
PNB	228.11
ICICI Bank	64.97
Syndicate Bank	117.09
Axis Bank	29.79
Total	439.96

Particulars of facility C – Working Capital Term Loan – II (WCTL – II)

(Rs in Crore)

Bank	WCTL-II
PNB	24.50
ICICI Bank	-
Syndicate Bank	-
Axis Bank	-
Total	24.50

Particulars of facility D – Funded Interest Term Loan – I (FITL – I)

(Rs in Crore)

Bank	FITL – I
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PNB	49.40
ICICI Bank	12.47
Syndicate Bank	25.38
Axis Bank	6.46
Total	93.71

Particulars of Facility E – Funded Interest Term Loan – II (FITL – II)

(Rs in Crore)

Bank	FITL – II
PNB	38.20
ICICI Bank (sanctioned only one (FITL))	14.09
Syndicate Bank	25.48
Axis Bank	6.79
Total	84.56

Particulars of Facility F – Funded Interest Term Loan – III (FITL – III)

(Rs in Crore)

Bank	FITL – III
PNB	7.67
ICICI Bank	-
Syndicate Bank	-
Axis Bank	-
Total	7.67

Particulars of Facility G – Funded Interest Term Loan – IV (FITL – IV)

(Rs in Crore)

Bank	FITL – IV
PNB	3.77
ICICI Bank	-
Syndicate Bank	-
Axis Bank	-
Total	3.77

Particulars of facility H- fund Based working Capital facilities

Bank	FBWC-I	FBWC-II	Total FBWC
PNB	176.55	34.22	210.77
ICICI Bank	57.35	11.12	68.47
Syndicate Bank	117.70	22.80	140.52
Axis bank	31.39	6.08	37.47
Total	382.99	74.24	457.23

Particulars of facility I – Non Fund Based Working Capital facilities

(Workable within fund based)

(Rupees in crores)

Bank	NFB
PNB	-

ICICI Bank*	9.70
Syndicate Bank	-
Axis bank	5
Total	14.70

(*Derivate)

PARTICULARS OF FACILITY J (FCNR – B LOAN)

(Rupees in crores)

Bank	NFB
PNB	-
ICICI Bank	64.96
Syndicate Bank	-
Axis bank	-
Total	64.96

Total Particulars of all the facilities

(Rs in Crore)

Bank	TL	WCTL-I	WCTL-II	FITL-I	FITL-II	FITL-III	FITL-IV NFB	FB	Total
PNB	32.00	228.11	24.50	49.40	38.20	7.67	3.77 4.51 210.77		598.93
ICICI Bank	-	64.97	-	12.47	14.09	-	- 9.70	68.47	169.69
Syndicate Bank	-	117.09	-	25.38	25.48	-	- -	140.52	308.47
Axis bank	-	29.79	-	6.46	6.79	-	*5.00 37.47		80.51

“SCHEDULE X

PART A Particulars of facility H-Fund Based Working Capital facilities

(Rupees in crores)

Bank	FBWC-1	FBWC-2	TOTAL FBWC
PNB	176.55	34.22	210.77
ICICI Bank	57.35	11.12	68.47
Syndicate Bank	117.70	22.82	140.52
Axis Bank	31.39	6.08	37.47
Total	382.99	74.24	457.23

*ICIII

ICICI Bank has sanctioned single limit with additional facilities.

PART B Terms and Conditions of Facility H

(a) Facility H shall carry an interest rate of Base Rate+ 0.50% payable monthly.

Lenders shall have right to reset interest rate every year from the date of approval. Interest would be payable monthly, on the last date of each month or as and when levied. However interest on existing working capital facilities for a period of two years from cut of date will be funded as FITL-2,

(b) The repayment of the same shall be on demand. The Facility H shall be utilised for funding the working capital requirements of the Borrower without reference/restriction to any particular division of the Borrower.

(c) Drawing power shall be calculated based on the stock statement received from the Borrower

(d) Cover period for book debt is 90 days with margin of 25% and uniform margin of 25% against all components of inventory.

(e) All other conditions as mentioned in Article XII

All other terms and conditions (which are not enumerated/specifically mentioned in the JLRA) will be applicable as per sanction letter issued by respective lenders.”

68. As is apparent from the relevant extracts of the Schedules to the JLRA, as set out above, there is no reference to provision of additional working capital limits in the subsequent years.

69. As noticed above, the expression “approved JLF Package” has been explained in recital ‘F’ of the JLRA. A plain reading of the recital ‘F’ of the JLRA indicates that the approved JLF Package is the scheme of restructuring of *existing loans*, as decided by the JLF in its meeting dated 27.03.2015 and as approved by the JLF on 23.06.2015. A perusal of the Minutes of the said Meeting do not refer to any additional capital other than ₹75 crores which was expressly approved by the IEC.

70. In view of the above, this Court finds it difficult to accept that the Approved JLF Package included a commitment to provide additional working capital other than ₹75 crores as expressly mentioned. The sanction letters issued by the respondent banks (three of which were issued prior to entering into the JLRA) are in terms of the agreed restructuring package and none of the said letters referred to providing any additional funding other than ₹75 crores.

71. The petitioner relies on Paragraph 2.6.1 of the JLRA in support of its claims that the respondent banks were obliged to provide additional working capital. Paragraph 2.6.1 of the JLRA reads as under:-

“2.6.1 Additional Working Capital Limits

To meet the working capital requirements of the Borrower, the Lenders agree that the working capital limits shall be extended as per the Approved JLF Package and the same shall be re assessed depending on the need of the Borrower. The Lenders may at their sole discretion, agree to sanction additional working capital limits in proportion to their respective exposure.—”

72. Paragraph 2.6.1 of the JLRA must be read in its context. It is apparent that the respondent banks had agreed to provide working capital limits as per the approved JLF package and the details of such facilities were expressly mentioned in Schedule III to the JLRA. Insofar as any additional working capital is concerned, it was expressly provided that the same would be at the sole discretion of the lenders.

73. In terms of paragraph 2.6.1 of the JLRA, the respondent banks were required to reassess the working capital limits. However, that does not mean that they were obliged to provide additional funding. The decision whether to provide additional funding would depend on various factors including the confidence in the business and the management. Funding an ongoing business is a dynamic process and requires to be re-evaluated and reassessed. Whilst the respondent banks had agreed to reassess the same, they had also made it expressly clear that additional funding would be at their discretion.

74. It also evident from the Minutes of the Meeting of the JLF held on 22.12.2016 that the decision to process the petitioner's request for additional funding was delayed on account of ICICI bank red flagging the account. Concededly, this was not justified because the reasons for the same were already factored in at the time of approving the restructuring package. Thus, the contention that the respondent banks had unduly delayed the process is perhaps justified. But the same does not lead to the conclusion that the respondent banks were obliged to provide additional funding. As noticed above, the JLRA made it

expressly clear that any additional funding would be at the discretion of the respondent banks.

75. In view of the above, this Court is unable to accept that any directions are required to be issued to the RBI for implementing the Circulars to enforce the JLRA. As noticed above, the additional funding was always to be at the discretion of the respondent banks. It is also relevant to note that Article 4 of the JLRA also provides for prepayment of the facilities. The petitioner was expressly permitted to re-finance the Facilities on terms and conditions not more onerous than the terms and conditions of the Facilities being prepaid. The petitioner could also seek funding from other sources.

76. The petitioner has relied heavily on the PNBISL TEV Report wherein it was observed that the petitioner had complied with all the conditions but the working capital limits were not released by the respondent banks as per the approved restructuring scheme and consequently, the restructuring scheme could not be taken forward after 01.10.2016 and the petitioner could not achieve its projection as per the D&B TEV Report. It was contended that the said report established that the respondent banks had in fact failed to comply with the obligations under the JLRA. In addition, the petitioner also relied upon the communications with PNB wherein PNB, had, in fact, sanctioned additional working capital pro rata to their share. However, this Court is unable to accept that the aforesaid documents establish that the respondent banks were obliged to issue additional working capital in terms of the JLRA. This is so because the

provisions of the JLRA do not support this view. It also appears that the statement that the projections could not be achieved due to non provision of working capital is a mere observation and not an informed finding. The PNBISL TEV Report also does not indicate any analysis of the effect of non provision of the additional working capital and, therefore, the observation that the petitioner could not achieve the financial projections due to lack of additional funding is not supported by any reasons/analysis.

77. Having stated the above, there is no reason not to believe that the petitioner did require additional working capital for meeting the projections as set out in the D&B TEV Report. PNB had also agreed to enhance the working capital and had sanctioned a sum of ₹59.68 crores. It had also disbursed ₹30 crores. However, it is contended on behalf of PNB that the same was a separate transaction. Be that as it may, even if it is accepted that PNB had released additional working capital based on the assessment of the petitioner's requirement for such capital in terms of the projections set out in the D&B TEV Report, it is difficult to accept that the same was part of its obligations under the JLRA.

78. Even if it is accepted (which this Court does not) that the respondent banks were obliged to provide additional working capital as claimed by the petitioner and have defaulted in their obligation, the relief as sought for by the petitioner cannot be granted. The petitioner seeks enforcement of the Circulars dated 26.02.2014 and 05.05.2017. This is in the context of the JLRA and, essentially, the petitioner seeks

specific enforcement of the JLRA, which entails (i) restraining ICICI Bank from proceeding under the IBC; and (ii) direction to provide additional working capital.

79. This Court is unable to accept that any such directions for providing additional working capital to the respondent banks can be issued by this Court or the RBI. As noticed above, in terms of the Circular dated 26.02.2014, the respondent banks were obliged to form the JLF for exploring the CAP. In the present case, even if the respondent banks are directed to once again examine an appropriate CAP, it is apparent that the result would be different. The respondent banks had already agreed to change the CAP to Recovery instead of Restructuring in a meeting held on 08.02.2017. Although, the petitioner has raised several disputes in relation to the minutes of the aforesaid meeting, it is apparent that the consensus amongst the respondent banks is to proceed with recovery. This is also reflected in their stand in these proceedings.

80. Clearly, a specific performance of the JLRA cannot be granted. The events that have unfolded subsequent to the parties entering into the JLRA indicate that the fundamental assumptions on which the approved JLF package was founded, no longer holds good. In the JLF meeting held on 22.12.2016, the respondent banks have noticed that the revenue being generated by the petitioner was insufficient to support the existing level of debt. The respondent banks were thus of the view that the petitioner's case could be considered under the S4A Scheme subject to the viability being established. At the said meeting,

the Managing Director of the petitioner company also agreed that there was no perceptible improvement in the earnings from the milling/trading operations due to the shortage of the working capital. He conceded that the petitioner company's finances were not strong enough to sustain the existing level of debt and agreed that a S4A scheme may be considered. At the meeting of the JLF held subsequently, on 24.04.2017, the petitioner company requested the respondent banks to consider the option of S4A as a resolution strategy. The petitioner company also circulated a note for the reference of the JLF. At the said meeting, the whether a S4A scheme could be sanctioned was discussed and the petitioner company was called upon to establish its eligibility for such a scheme. Thereafter, at the meeting held on 21.06.2017, the JLF agreed to implement the S4A Scheme and adopted 21.06.2017 as a reference date. PNBISL was also directed to conduct a TEV Study for the said purposes. However, there was a delay in completion of the TEV Study and the S4A Scheme could not be implemented within the period of 180 days as required.

81. There is much controversy with regard to the proceedings for a S4A Scheme. The petitioner claims that the respondent banks had no intention to adopt any S4A scheme and had intentionally delayed the implementation of the same. It was finally abandoned by them on grounds, which the petitioner claims are untrue. The respondent banks, on the other hand claim that the S4A scheme was subject to a forensic audit and the draft Forensic Audit Report contained adverse

observations against the petitioner and, thus, the petitioner was disentitled for any such scheme. The petitioner company counters the same by challenging the observations made in the draft Forensic Audit Report. It is not necessary for this Court to examine this controversy. However, it is clear from the minutes of various meetings that it is conceded position that the existing indebtedness of the petitioner company cannot be serviced by the revenue being generated by the petitioner company. The approved JLF Package (the JLRA), which the petitioner now seeks enforcement of (albeit by issuance of directions to the RBI) was premised on restructuring the financial facilities by converting the outstanding interest as loans and a moratorium in payment of interest. Undisputedly, the said scheme is not feasible where the revenue generated is insufficient to service the same. This is accepted by the petitioner and is evidenced from its agreement to accept the S4A Scheme (where the level of sustainable debt is not less than 50% of the total debt can be adopted.).

82. The PNBISL TEV Report suggests an S4A scheme which provides for conversion of debt into Equity and Convertible Debentures. It is material to note that the additional funding is limited only to ₹24 crores and it does not provide for infusion of additional working capital beyond that amount.

83. It was also contended on behalf of the respondent banks that the petitioner had defaulted in performance of its obligations under the JLRA and, therefore, the same could not be implemented. The respondent banks claim that the petitioner had defaulted in its

obligations to route all transactions through the TRA; to pay interest and repayments; and the promoters' contribution upfront. All the aforesaid contentions are disputed by the petitioner. It is claimed that there was no default in interest payment in terms of the JLRA and subsequent defaults were the result of the failure of the respondent banks to release the additional working capital. The petitioner also contends that there is no default in routing transactions to the TRA, as the necessary sub accounts had not been opened. It is stated that the petitioner purchases paddy from farmers in remote areas and, therefore, for routing transactions through the TRA it was necessary to have sub accounts. It is contended that since no sub accounts were opened, the petitioner company could not route the transactions to the TRA. It is also contended that there was no default in infusing the promoters contribution and in fact the same was brought even prior to entering into the JLRA.

84. In terms of sub-paragraph 7.3.1 of the JLRA, the lenders were required to inform the JLF about the event of default and the action proposed to be taken by such lenders. In terms of sub-paragraph 7.3.2, occurrence of an event of default would result in the principal and approved interests on the facilities being due and payable forthwith. *Prima facie*, it does not appear that any such notice of default had been issued and, therefore, the contention that the respondent banks ought not to be permitted to raise any such issue in these proceedings appears merited.

85. However, this Court is not called upon to adjudicate any of the aforesaid contentions. These are plainly disputed questions of facts and it is also apposite to examine the same in these proceedings. In this view, this Court is refraining from commenting upon the same and has considered this matter on the assumption that there is no default on the part of the petitioner in complying with its obligations under the JLRA.

86. In view of the above, the relief as sought for by the petitioner cannot be granted. First of all, for the reason that this Court finds it difficult to accept that the respondent banks were obliged to provide additional working capital in terms of the JLRA. The respondent banks cannot be compelled to provide additional funds, as the decision whether to do so rests exclusively with them. Secondly, it is not possible to grant specific performance of the JLRA – which, essentially, is the nature of the relief sought by the petitioner, albeit couched as seeking a direction to the RBI for implementing its circulars vis-à-vis the JLRA –by directing grant of additional working capital. This is so as the fundamental parameters on which the JLRA is based has changed in view of the petitioner's debt exceeding the sustainable levels.

87. The decision in the case of **Gujarat State Financial Corporation v. M/s Lotus Hotels Pvt. Ltd.: (1983) 3 SCC 379** is of little assistance to the petitioner in seeking the aforesaid reliefs. In that case, Gujarat State Financial Corporation had sanctioned a loan of ₹29.93 lakhs on certain conditions. The respondent had accepted

those conditions. However, the Gujarat State Financial Corporation did not disburse the amount in view of certain allegations made against the respondent. It was found that the action of the respondent would amount to breach of the corporations solemn promise and the court repelled the contention that in such cases the parties must be relegated to other remedies. In that context, the Court held as under:-

“It is too late in the day to contend that the instrumentality of the State which would be 'other authority' under Article 12 of the Constitution can commit breach of a solemn under-taking on which other side has acted and then contend that the party suffering by the breach of contract may sue for damages but cannot compel specific performance of the contract.”

88. The court further held that the principles of promissory estoppel would come into play and the Gujarat State could be compelled to provide the funding that it promised. Accordingly, the Supreme Court upheld the decision of the High Court directing the corporation to disburse the loan. In the present case, this Court is unable to find that there is any obligation on the part of the respondent banks to infuse additional working capital in terms of the JLRA. The respondent banks had not issued any letter sanctioning additional working capital as discussed earlier. The JLRA also does not oblige the respondent banks to disburse additional working capital. And, even if it is accepted that the respondent banks had an obligation to provide additional working capital, no such directions to provide additional funding can be granted, as there is a fundamental change in the

financials of the petitioner company and the petitioner company is admittedly, not in a position to service its existing loans.

89. The contention that since the respondent banks have not disbursed additional working capital, they should be restrained from proceeding under the SARFAESI Act or the IBC, is not merited. This is so because there is no dispute that the petitioner company owes substantial amount to the respondent banks and as financial creditors they are entitled to seek remedies under the IBC.

90. The Supreme Court in ***Innoventive Industries Limited v. ICICI Bank and Another*** (*supra*) had explained that the IBC is an exhaustive code on the subject matter of insolvency. It was also noticed that Section 238 of IBC contained an non-obstante provision and it was expressly provided that “*..the provisions of IBC would have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law*”.

91. It is relevant to note that in that case, the appellant (therein) had also raised a plea that the appellant had failed to pay the amount due because of the failure on the part of the creditors to disburse the amounts under the Master Reconstruction Agreement (MRA). The Supreme Court rejected the aforesaid contention by referring to Clause 20(t) of the MRA, which expressly provided that the obligations under the MRA constituted direct unconditional and general obligations of the borrower. The court held that in terms of the aforesaid clause, the

obligation of the appellant therein was unconditional and did not depend upon infusion of funds by the creditors.

“63. Even otherwise, Shri Salve took us through MRA in great detail. Dr. Singhvi did likewise to buttress his point of view that having promised to infuse funds into the appellant, not a single naya paisa was ever disbursed. According to us, one particular clause in MRA is determinative on the merits of this case, even if we were to go into the same. Under Article V entitled “Representations and Warranties”, Clause 20(t) states as follows:

“(t) NATURE OF OBLIGATIONS.

The obligations under this Agreement and the other Restructuring Documents constitute direct, unconditional and general obligations of the Borrower and the Reconstituted Facilities, rank at least *pari passu* as to priority of payment to all other unsubordinated indebtedness of the Borrower other than any priority established under applicable law.”

64. The obligation of the corporate debtor was, therefore, unconditional and did not depend upon infusing of funds by the creditors into the appellant Company. Also, the argument taken for the first time before us that no debt was in fact due under the MRA as it has not fallen due (owing to the default of the secured creditor) is not something that can be countenanced at this stage of the proceedings. In this view of the matter, we are of the considered view that the Tribunal and the Appellate Tribunal were right in admitting the application filed by the financial creditor ICICI Bank Ltd.”

92. Clause 5.1(t) of the JLRA, is identically worded as Clause 20(t) of the MRA referred to by the Supreme Court in its decision. Thus, the view expressed by the Supreme Court would be applicable in this case as well.

93. Mr Sibal had contended that the decision in the case of *Innoventive Industries Limited (supra)* was not applicable in this case for two reasons. First, that the petitioner has raised the issue of failure on the part of the respondent banks to disburse the amount in terms of the obligations under the JLRA at the threshold and unlike in the case of *Innovative Industries Limited (supra)*, there is no delay on the part of the petitioner in raising such plea. Second, he submitted that the decision was rendered prior to the issuance of the Banking Regulations (Amendment) Ordinance, 2017, which expressly authorized the RBI to issue directions to banks regarding resolution of stressed assets.

94. The said contentions are unpersuasive. First of all, the question whether the petitioner can challenge the demand raised by the respondent banks on the ground that they had failed to disburse the amount due is required to be canvassed before the NCLT. The said contention cannot be a ground for this Court to interdict proceedings under the IBC.

95. Secondly, the decision in *Innoventive Industries Limited (supra)* rested on the interpretation of Clause 20(t) of the MRA, which is

identically worded as Clause 5.1(t) of the JLRA. Therefore, the petitioner's obligation for repayment is unconditional.

96. Lastly, it is relevant to bear in mind the context in which the restructuring package was approved. The petitioner was finding it difficult to repay its debts. The cash credit facility accorded to the petitioner had already become irregular on account of reduction in the value of the underlying security. The restructuring package, as noticed above, was essentially to defer repayment of interest and loans. The indebtedness of the petitioner towards the respondent banks was never in dispute. Admittedly, the petitioner was obliged to repay the loan and the interest thereon. The fact that the petitioner's claim for additional assistance was denied does not absolve the petitioner from its liability to repay the amounts borrowed along with interest. If the petitioner is able to establish that there is an obligation on the part of the respondent banks to disburse additional funds and the same has been breached, the petitioner may be entitled to claim damages. However, it cannot repudiate its liability to repay its loans.

97. In view of the above the present petition is dismissed. All the pending applications are also disposed of.

98. In view of the order passed by this Court on 22.05.2018 directing *status quo* to be maintained with regard to proceedings initiated before the NCLT, Chandigarh, it is directed that the period from 22.05.2018 till date be excluded from considering the time lines set for proceedings under the IBC.

99. It is also clarified that the NCLT shall consider the application before it independently and uninfluenced by any observations or findings of this Court in the petition. Thus, all contentions of the parties are reserved and the petitioner is not precluded from raising any contention including the ones considered in this petition before the NCLT.

SEPTEMBER 24, 2018
RK/pkv/MK

VIBHU BAKHRU, J



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