

THE HIGH COURT OF DELHI AT NEW DELHI

Judgment reserved on: November 30, 2018

Judgment delivered on: February 06, 2019

+ LPA 579/2018

M/S LAKSHMI ENERGY & FOOD LTD

..... Appellant

Through: Mr. Kapil Sibal, Sr. Adv. and
Mr. Vivek K. Tankha, Sr. Adv.
with Mr. Amitabh Chaturvedi,
Mr. Vivek Chib, Mr. Prashant
Sivarajan, Mr. Himesh Thakur
& Mr. Kaushal Sharma, Adv.

versus

RESERVE BANK OF INDIA & ORS

..... Respondents

Through: Mr. H.S. Parihar with Mr. K.S.
Parihar, Adv. for R-1/RBI.
Mr. Rajesh Kr. Gautam with
Mr. Aakash Sehrawat, Adv. for
R-2/PNB.
Mr. Ramji Srinivasan, Sr. Adv.
with Mr. Diwakar Maheshwari,
Mr. Aditya Vikram Singh &
Ms. Syloma Mohapatra, Adv.
for R-3/ICICI Bank.
Mr. Sumit Nagpal, Adv. for R-
4/Axis Bank.
Mr. Rama Subba Raju, Adv. for
R-5/Syndicate Bank.

CORAM:

HON'BLE THE CHIEF JUSTICE

HON'BLE MR. JUSTICE V. KAMESWAR RAO

J U D G M E N T

V. KAMESWAR RAO, J

1. Present appeal has been filed challenging the judgment dated 24th September, 2018 passed by the learned Single Judge dismissing the petition being W.P.(C) 5555/2018 filed by the appellant herein (Lakshmi Energy).

2. The case of the appellant in the writ petition was primarily for appropriate writ / order / direction directing the Reserve Bank of India to ensure compliance / implementation of its Guidelines / Circulars dated 30th January, 2014, 26th February, 2014 and 5th May, 2017, vis-à-vis the Joint Lenders Restructuring Agreement (JLRA) dated 27th June, 2015.

FACTS

3. The facts as averred in the appeal are that the appellant Lakshmi Energy, a Company incorporated under Companies Act, 1956 is involved in the business of processing paddy and exporting rice. In the year 2010, it had availed of certain financial assistance from a Consortium of Banks comprising of respondent nos. 2 to 5 herein with respondent no.2 (Punjab National Bank, hereinafter referred to as PNB) being the lead banker. Sometime in 2014 on account of non-conducive market conditions in the paddy / rice industry which adversely affected

the appellant's business, the drawing power of the appellant suffered heavily and the appellant company informed the consortium of banks accordingly. However, the account was not an NPA at that point of time.

4. Meanwhile, the Reserve Bank of India in exercise of its powers under the Banking Regulations Act, 1949 ('Act of 1949' in short) issued Guidelines on 30th January, 2014 by way of which it introduced the framework of identifying stressed assets and prescribed detailed steps that had to be taken by banks in order to re-vitalize such stressed assets. These Guidelines were further supplemented by another set of Guidelines issued on 26th February, 2014. The rationale behind the said Guidelines was to arrive at an early and feasible solution in order to "preserve the economic value of the underlying assets as well as the lenders loans". According to the appellant on a conjoint reading of the said circulars, the following salient features are noted:-

- 1. Banks are to mandatorily constitute a Joint Lender's Forum, i.e., JLF as soon as a loan account of any borrower is classified as SMA-2 or on the request of a borrower to that effect.*
- 2. As soon as the aforesaid is done, JLF is to arrive at a suitable Corrective Action Plan, i.e., CAP in a time bound manner, which as per the said Guidelines can be either "rectification", "restructuring" or "recovery".*

3. *If the JLF chooses to opt for “restructuring” then a detailed Techno-Economic Viability (TEV) study has to be carried out in a time bound manner and if “restructuring” is thereafter found viable then a “restructuring package” has to be finalized in a time bound manner.*

4. *However, in accounts with exposure of more than Rs.5000 million, the said Guidelines further stipulate that the TEV Study will be subject to evaluation by an Independent Evaluation Committee, i.e., IEC (Constituted by RBI & IBA) before restructuring package is finalized by the JLF.*

5. *Once a Restructuring Agreement is executed, the same shall be complied with by both the lender as well as the borrower.”*

5. It was the case of the appellant that in the light of the prevalent market conditions and its consequent impact on the appellant’s business the appellant approached the Consortium of banks with a request to constitute a Joint Lenders Forum (JLF) in terms of the aforesaid circulars and accordingly restructure the financial assistance it had availed from the banks. On 19th March, 2015 the JLF in its meeting considered the appellant’s request and formally adopted “restructuring” as the Corrective Action Plan (CAP). It was further decided that a Techno Economic Viability (TEV) study had to be conducted in terms of the extent RBI Regulations and M/s. Dunn and Bradstreet (D&B) was appointed for the task.

6. It was the case of the appellant that D&B submitted its

TEV report (D&B TEV Report) on 27th March, 2015 wherein it not only recommended “restructuring” as the CAP but also laid out a detailed blueprint for the next 10 financial years, wherein the lenders work to infuse working capital in terms of the TEV report into the appellant’s business on a proportionate basis and the same had to be repaid by the appellant company over a period of 10 years following a moratorium of two years. In terms of the said report and proposal contained therein the cut-off date was fixed as 1st October, 2014 on which date the term loan outstanding was ₹32 Crores and cash credit outstanding was ₹860.88 Crores. The restructuring plan involved converting the drawing power shortfall of ₹436 Crores into a working capital term loan bearing an interest @ 10.75% per annum. 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 the aforementioned moratorium (a period of 24 months from the cut-off date). The proposal also included another Working Capital Term Loan (WICTL-II). The interest on cash credit facility was also proposed to be converted into a term loan.

7. Since the total exposure of the appellant company was

more than ₹500 Crores in terms of the RBI Guidelines the TEV study had to be subjected to an independent evaluation by an Independent Evaluation Committee (IEC) constituted by the Reserve Bank of India / Indian Bank's Association. *The minutes of the meeting of the IEC, held on 11th May, 2015 record that "after detailed deliberations and justification given by the Company restructuring with additional working capital limit of ₹75 Crores as proposed in the package was approved".*

8. On 23rd June, 2015, the JLF in its meeting approved the restructuring proposal and consequently on 27th June, 2015 A Joint Lenders Restructuring Agreement (JLRA) was executed between the appellant company and respondent Banks. On the same date the Consortium of respondent Banks also entered into an Inter-Credit Agreement. Prior to that each of the members of the Consortium issued sanction letters for sanctioning the restructuring package in terms of the CAP. It is stated that ₹75 Crores in terms of the approved restructuring package was released in the month of June-Jul/2015.

9. It was the appellant company's case that the Approved JLF Package, incorporating the D&B TEV report had assessed

the company's working capital requirements for the next 10 years and therefore the lending banks were obligated to release working capital limits in compliance thereof which is represented as follows:

	2015- 2016	2016- 2017	2017- 2018	2018- 2019	2019- 2020	2020- 2021	2021- 2022	2022- 2023	2023- 2024	2024- 2025
Addl. Working Capital to be released by banks (in crores)	205.80	66.00	19.60	72.20	48.60	38.60	44.60	47.00	5.00	5.00

10. According to the appellant company in terms of the said restructuring package the Consortium members were liable to release ₹205.8 Crores for the fiscal year 2015-16, however apart from the aforesaid ₹75 Crores, the remaining ₹130.8 Cores were never released, despite the appellant company making several requests to that effect. According to the appellant release of aforesaid amounts was necessary for it to meet the cash flow projections as envisaged under the restructuring scheme.

11. It was the appellant's case that on account of non-adherence to the Approved Restructuring Package on part of the lender banks, the appellant company was unable to optimally run

its business which was already suffering on account of recessionary market conditions and the stressed financial condition. Consequently, the appellant company's efforts and ability to meet the projected cash flow as envisaged in the approved JLF package was severely impeded and jeopardised.

12. It was the case of the appellant that on 1st December, 2015, following several representations and requests made by the appellant company for the release of the remainder of the working capital in terms of the approved JLF package, Punjab National Bank, (PNB) formally sanctioned the release of ad-hoc facilities of ₹59.68 Crores against furnishing of further additional third-party ad-hoc securities commensurate with the said amount. However, only ₹30 Crores were released out of the said sanctioned amount. It was the appellant's case that since the ad-hoc limit was merged with the approved JLF package, it was entitled to release of remainder of total sum envisaged for the fiscal year 2015-16 by the other banks according to their pro-rata share. Despite several letters sent to respondent banks repeatedly requesting release of additional working capital no further limits / funds were released.

13. The moratorium period envisaged in the restructuring package was to get over by December, 2016, however, on account of non-release of funds / limits by respondent banks, the appellant company could not operate its business efficiently and therefore, the projected cash flows were not met. The appellant Company therefore requested for convening an urgent JLF meeting to resolve the issue.

14. On June 13, 2016, RBI issued a circular whereby it introduced a scheme for Sustainable Structuring of Stressed Assets (S4A Scheme), wherein a framework was laid down for deep restructuring of large accounts which were facing several financial difficulties.

15. It was the appellant's case that in the JLF meeting convened on 22nd December, 2016, the appellant company raised the issue of non-release of additional working capital and the respondent banks on the other hand raised other issues including allegations of financial indiscipline on part of the appellant. The appellant company ultimately suggested that the present case was fit for invocation of the S4A Scheme of RBI. Consequently, in the JLF meeting held on 21st June, 2017, the JLF formally adopted S4A Scheme and appointed PNB Investment Services

Limited (PNBISL) to carry out a detailed TEV Study. The date of 21st June, 2017 was also adopted as a reference date for the purpose of implementation of the S4A scheme, which was to be finalized within 90 days thereof and to be implemented within a further period of 90 days.

16. PNBISL conducted and submitted the detailed TEV Study report in the month of December, 2017. In the JLF meeting held on 12th January, 2018, it was decided that only upon a satisfactory Forensic Audit Report, a proposal would be moved before the RBI seeking approval for implementation of the S4A Scheme.

17. On 18th January, 2018, appellant company received a demand notice from ICICI Bank, respondent no.3 in terms of Section 13 (2) of the SARFAESI Act, 2002. In the JLF meeting held on 9th February, 2018, AXIS Bank and ICICI Bank withdrew their consent to proceed with the S4A Scheme.

18. On 12th February, 2018 RBI issued a circular whereby earlier schemes issued for the purpose of re-vitalizing distressed assets were withdrawn. ICICI Bank meanwhile is also stated to have approached the National Company Law Tribunal, Chandigarh Bench under Section 7 of the Insolvency and

Bankruptcy Code (IBC) having completely abandoned the restructuring process.

19. It was in this context that the appellant company filed the subject writ petition being W.P(C) 5555/2018 inter alia seeking implementation / compliance of RBI circulars dated 30th October, 2014, 26th February, 2014 and 5th May, 2017, vis-a-vis JLRA dated 27th June, 2015. The Learned single judge has dismissed the writ petition.

APPEAL

20. Challenging the impugned order, it is the appellant company's case that the learned Single Judge has erred in concluding that the Projected Cash Flow Statements and Working Capital Assessment as contained in the D&B TEV report was not a part of the "Approved JLF package" and therefore it was not entitled to any additional working capital over and above ₹75 Crores. It is further stated that Clause 2.6.1 of the JLRA has been completely misconstrued inasmuch as the respondent banks' stand that the Approved JLF Package is limited to Schedule – X of the JLRA and therefore did not envisage provision of fund based working capital beyond ₹75 Crores, being a complete

afterthought was raised for the first time only before the learned Single Judge. It is stated that the respondent banks had never disputed or objected to the appellant company's request for enhancement of fund based working capital and on the contrary PNB had sanctioned its pro-rata share of ₹59.68 Crores in accordance with the figures envisaged in D&B TEV report (out of which ₹30 Crores had already been disbursed). It is stated that the appellant company had also written several letters to PNB, the lead Bank seeking sanction and release of additional working capital limits, however, the same were never responded to. A bare perusal of the said clause indicates that the respondent banks were obligated to extend working capital requirements in accordance with the Approved JLF package which had been assessed in the D&B TEV report by way of Annexure 2 and 3 and Assessment of Working Capital Limits, wherein fund based working capital limits were to be enhanced every year. It is stated that the learned Single Judge's finding that "Approved JLF Package" did not include enhancement of working capital limits in accordance with the aforementioned Annexures is contrary to the finding that the appellant company did in fact need additional

working capital to meet the position as set out in D&B TEV Report wherein a technical consultant, having conducted a detail study and analysis, had opined that Banks' loan could be repaid only if the company could achieve higher cash flows, which in turn could be achieved only following release of enhanced working capital. It is therefore, stated that the learned Single Judge has substituted his own view for that of a technical consultant.

21. The appellant Company has relied on definition of "Restructuring Documents" as contained in the JLRA to contend that restructuring in the present case included the restructuring as contemplated in the JLRA as well as the Approved JLF Package. The said definition reads as under:

***"Restructuring Documents"** means this Agreement, Trust and Retention Account Agreement, as amended / modified from time to time, in order to effectuate the restructuring contemplated in this Agreement and under the Approved JLF Package"*

22. Further, the term "Approved JLF Package" is stated to have been defined in Recital F to the JLRA wherein it has been categorically defined to mean and include the restructuring package as mentioned in the D&B TEV report. The said Recital

reads as follows:

“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 and 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 Lender / 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”)

23. It is the appellant’s case that upon a conjoint reading of the aforesaid clauses it becomes clear that the restructuring package (proposal) as contained in the D&B TEV report is an integral part of the restructuring under the JLRA. It is stated that the learned Single Judge’s conclusion that the proposed enhancement of working capital limits as contained in the D&B TEV report could not be read to mean that the respondent banks had committed to provide additional funding is contrary to the terms and conditions of the JLRA itself as also the finding that

the appellant company was in fact in need of additional working capital to meet the cash flow projections as envisaged in the said Report. It is stated that the D&B TEV report had categorically stated that ₹75 Crores was a part of the immediate requirement of the appellant company and that respondent banks had, at all relevant points of time acted consistent with the package contemplated in the said Report.

24. It is stated that Annexures 2 and 3 of the D&B TEV report showed that fund based working capital for FY 2015-16 was supposed to be enhanced to ₹592.86 Crores and from the minutes of the JLF meeting held on 22nd December, 2016, it is clear that the respondent banks had also acted in terms of the said projections. Reliance was placed on the relevant portion of the minutes from the said meeting as under:-

“3. Lead Bank informed that post restructure in March, 2015, ₹75 Crores as interim enhanced Working Capital Facility for 2015-16, as recommended by the IEC was released by the consortium banks in June-Sept 2015. The regular assessment done in Oct 2015 was also adopted in JLF dated Oct 2015 with the prorata share as follows:

	<i>Limits sanct as on</i>	<i>% Share</i>	<i>Sanc Limits</i>	<i><u>Proposed enhanced</u></i>	<i>Sanctioned Limits as</i>
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	31.03.2015		on 30.09.2015	<u>Limits</u> <u>(2015-16)</u>	on Date
PNB	176.55	46.63%	210.77	<u>270.45</u>	240.77*
Synd Bank	117.70	30.42%	140.52	<u>180.30</u>	140.52
ICICI Bank	61.30	15.84%	68.47	<u>93.88</u>	68.47
Axis Bank	3.139	6.11%	37.47	<u>48.07</u>	37.47
Total	386.93	100%	457.23	<u>592.70</u>	487.23

**Pending sanction by other lenders PNB has restricted the enhanced limits to the extent of ₹240.77 Cr.”*

25. It is stated that the learned Single Judge has further failed to appreciate that PNB / Lead Bank, having sanctioned an amount of ₹59.68 Crores as its pro-rata share of enhanced working capital requirements for FY 2015-16, and having released ₹30 Crores therefrom, a right had crystallized in favour of the appellant company towards the remaining sum of ₹29.68 Crores which had been withheld unlawfully. It is therefore their case that once working capital had been approved and sanctioned by the Banks in their favour a right had crystallized in favour of the appellant. Therefore, if even after sanction the banks failed to disburse the said funds the said right accrued in favour of the appellant ought to have been enforced by the learned Single Judge.

26. It is further stated that the stand adopted by PNB and ICICI Bank that the said sanction of additional working capital

limits was a separate transaction altogether is factually incorrect inasmuch as the said stand was taken only during the course of oral arguments and not in any of the pleadings filed by them. Moreover, treating the said transactions as a separate one would in fact be a violation of extent RBI Circulars which stipulated that the decisions of the JLF were binding on all constituent members. It is stated that a perusal of the minutes of the JLF meeting dated 22nd December, 2016 would show that a decision to enhance working capital limits for FY 2015-16 was taken by the JLF in October, 2015 itself and therefore the said decision cannot be termed as being independent of JLF. Further, even from PNBs sanction letter dated 5th December, 2015 it can be seen that the same had been expressly subjected to terms and conditions stipulated in D&B TEV report. It is therefore the appellant's case that when the respondent banks had themselves sanctioned the aforesaid enhanced working capital limits in terms of the D&B TEV report, it was not open for them to later argue that the said Report was not a part of the Approved JLF Package.

27. The appellant has also drawn a reference to e-mail dated 7th December, 2015 issued by PNB / Lead Bank wherein other

members of the JLF were informed that it had sanctioned its pro-rata share of the Consortium and further requested them to inform the status of their respective sanctions. Moreover, when the appellant had raised the issue of delay in sanction of enhanced working capital limits in the JLF meeting on 22nd December, 2016, none of the respondent Banks disputed their obligation to provide such enhancements nor was it stated that the restructuring scheme did not envisage sanction of working capital limits beyond ₹75 Crores. The reason for such delay was instead ascribed to the purported red flagging of the appellant's account by respondent no.3, which was also admittedly later abandoned.

28. It is stated that the learned Single Judge's interpretation of clause 2.6.1 of the JLRA that additional funding was at sole discretion of the Banks even if the Banks had agreed to sanction additional funding and refuse to release the said funds later is erroneous inasmuch as the Banks have already exercised the discretion envisaged in Clause 2.6.1 and approve enhancement of working capital limits.

29. It is stated that the learned Single Judge has completely misread the appellant company's letter dated 7th June, 2015 to

conclude that the agreed restructuring did not include provision of any additional fund beyond ₹75 Crores. It is stated that the said amount was only required to be released in order to meet the appellant company's immediate requirements to meet demands of the pressing creditors. It was on account of non-disbursal of the said amount despite approval of IEC that the appellant company had written the said letter requesting that the said amount be released immediately. It was nowhere stated in the said letter that the Approved JLF Package was limited to provision of ₹75 Crores only. In fact, the appellant company had on 22nd September, 2015 along with supporting "Credit Monitoring Assessment" CMA data requested that enhanced working capital be released for FY 2015-16 thereby demonstrating the understanding that the Approved JLF Package included enhancement of working capital limits in the subsequent years. It is their case that the aforesaid letter has been read completely out of context inasmuch as several other letters written by the appellant company requesting sanction and release of enhanced working capital have not been considered by the learned Single Judge.

30. It is stated that a TEV Study plays an important role in the framework established to deal with stressed assets by the RBI vide Circulars dated 30th January, 2014 and 26th February, 2014. Reliance is placed on the following Clauses from the Circular dated 26th February, 2014:

“4.3 Restructuring by JLF

4.3.1 If the JLF decides to restructure an account independent of CDR mechanism, the JLF should carry out the detailed Techno-Economic Viability (TEV) study, and if found viable, finalise the restructuring package within 30 days from the date of signing off the final CAP as mentioned in paragraph 3.3 above.

4.3.3. For accounts with AE of Rs.5000 million and above, the above-mentioned TEV study and restructuring package will have to be subjected to an evaluation by an Independent Evaluation Committee (IEC) of experts fulfilling certain eligibility conditions. The IEC will look into the viability aspects after ensuring that the terms of restructuring are fair to the lenders. The IEC will be required to give their recommendation in these cases to the JLF within a period of 30 days. Thereafter, considering the view of IEC if the JLF decides to go ahead with the restructuring, the restructuring package including all terms and conditions as mutually agreed upon between the lenders and borrower, would have to be approved by all the lenders and communicated to the borrower within next 15 days for implementation.”

31. It is the appellant's case that a reading of the aforesaid paras clearly indicates that a TEV Study is a mandatory aspect of restructuring by JLF and the same has to be a part of the

consequent restructuring agreement arrived at thereafter. It is stated that the learned Single Judge has failed to appreciate that the D&B TEV Report had not only been approved by the JLF in its meeting held on 27th March, 2015 but also by the IEC in the meeting held on 11th May, 2015 and hence the same could not be viewed to be independent of the JLRA. It is therefore, stated that the D&B TEV Report is an integral part of the restructuring scheme and the same is even borne out of the term and conditions of the JLRA itself.

32. It is further the appellant's case that even if the JLRA was silent on provision / enhancement of additional working capital in subsequent years, consistent conduct of respondent Banks as well as the documents executed by them clearly show that they have acted in terms of the D&B TEV Report, especially Annexures 2 and 3 of the Report and therefore, the Banks cannot now be permitted to resile from the same especially since the appellant company has now acted to its own detriment pursuant to the promises made by the Banks. It is their case that after the finalization of the D&B TEV Report but prior to approval of the same by the IEC and execution of the JLRA the respondent

Banks had restructured the appellant company's loan accounts in their respective books of accounts before 30th March, 2015 and 31st March, 2015 on the basis of the restructuring package envisaged in the D&B TEV Report. Attention is drawn to the following sequence of events:

<u>DATE</u>	<u>EVENT</u>
19.03.2015	<i>JLF in its meeting appointed D&B as the TEV Consultant.</i>
27.03.2015	<i>D&B TEV Report is finalized and submitted to JLF wherein a "restructuring scheme" was proposed.</i>
27.03.2015	<i>On the same day, the JLF approved the aforesaid D&B TEV Report in its entirety which included the Annexure-2 (Balance Sheet) and Annexure – 3 (Projected Cash Flow Statement) and (Assessment of Working Capital Limits) showing enhancement of fund based working capital which later on became the basis of the consequent JLRA executed between the parties.</i>
30.03.2015	<i>PNB and Syndicate Banks issued Sanction Letters in terms of the restructuring package as proposed in the D&B TEV Report.</i>
30.03.2015	<i>On the same day, PNB and Syndicate Bank, restructured the Appellant Company's loan account as WCTL, TL, FITL etc., as proposed in the D&B TEV Report.</i>
10.04.2015	<i>ICICI Bank also issued a Sanction Letter as per the restructuring scheme proposed in D&B TEV</i>

	<i>Report.</i>
<i>11.05.2015</i>	<i>IEC approved the D&B TEV Report in its entirety.</i>
<i>25.06.2015</i>	<i>Axis Bank issued a Sanction Letter as per the Restructuring scheme proposed in D&B TEV Report.</i>
<i>27.06.2015</i>	<i>Joint Lenders Restructuring Agreement executed.</i>

33. It is stated that the learned Single Judge has misinterpreted the minutes of the meeting of the IEC held on 11th May, 2015 inasmuch as in the said meeting the IEC had approved the D&B TEV Report in its entirety and in the absence of a categorical reservation expressed by the IEC regarding Annexures 2 and 3 of the Report, it could not be concluded that the restructuring scheme included provision of additional working capital to the tune of ₹75 Cr. only. It is their case that the release of ₹75 Cr. as an “immediate requirement” has been misread to mean as the “only requirement” for working capital facilities.

34. It is the appellant’s case that the respondent Banks have acted in direct contravention of their obligations under the JLRA as well as the Circulars issued by the RBI by failing to disburse funds to the appellant company. It is stated that RBI’s Circular

dated 5th May, 2017 mandates that the terms of restructuring package have to be complied with without any additional conditionalities and it was in this context that the appellant had filed the subject writ petition seeking implementation / compliance of the extant RBI Circulars. Reliance is placed on ***Sardar Associates and Others vs. Punjab & Sind Bank (2009) 8 SCC 257*** and ***Gujarat State Financial Corporation vs. M/s. Lotus Hotels Pvt. Ltd. (1983) 3 SCC 379***. It is their case that specific performance of JLRA is distinct from specific performance of any other agreement since a JLRA is executed under the aegis of RBI's Circular issued under Sections 21, 35A and 35AB of the Banking Regulation Act, 1949. Therefore, in the facts of the present case specific performance of the subject JLRA would effectively mean directing the respondent Banks to comply with Circulars issued by the RBI in exercise of its regulatory power under the Act of 1949.

35. It is stated that negation of the aforesaid plea by the learned Single Judge on the ground that there had been a fundamental change in finances of the appellant company severely and adversely affecting its ability to service its debts is

totally misconceived. It is their case that the learned Single Judge has completely overlooked the fact that the appellant company had failed to adhere with the repayment schedule only on account of the respondent Banks' default in sanctioning necessary working capital which hindered the appellant company's ability to meet cash flow statements as envisaged in the D&B TEV Report.

36. It is also stated that in light of the fact that the contents of the PNBISL TEV Report had specifically been admitted by PNB and ICICI Bank in their respective counter affidavits before the learned Single Judge, there was no occasion to discredit and refuse to rely on the said Report on the ground that the findings / observations contained therein were not informed or backed by specific analysis. Relevant extract of the said Report is as follows:

“The Company complied with all the conditions of restructuring scheme including payment of interest till 30-09-2016. But WC limits were not released by Banks as per TEV report / approved restructuring scheme. Consequently, the restructuring scheme could not be taken forward after 01.10.2016 and the Company could not achieve its projections as per TEV report. Amounts payable to Banks became overdue and loan accounts of Company have been classified as Non-performing Assets by the lending banks”

37. It is further the appellant's case that in terms of Clauses 7.3.1 and 7.3.2 of the JLRA the respondent Banks were mandated to raise issues pertaining to an "event of default" in the manner prescribed therein prior to initiating any recovery proceedings. It is stated that the learned Single Judge has arrived at the finding that there had been non-compliance of the said provisions, however, still the action of respondent Banks in exiting the JLF and initiating independent recovery proceedings has been condoned. Reference is drawn to the Circular dated 5th May, 2017 to state that majority decision of the JLF would be binding on all the lenders and the only exit option available to any lender would be by way of substitution only.

38. It is stated that the learned Single Judge has relied on the draft minutes of the meeting of the JLF held on 8th February, 2017 wherein the respondent Banks had purportedly taken a decision to change CAP from "restructuring" to "recovery" thereby proceeding to initiate recovery proceedings. It is their case that the said minutes of the meeting were strongly disputed / objected to, inasmuch as the said document was introduced for the first time only before the learned Single Judge and was never

communicated / informed to the appellant prior to the institution of the writ petition. Further, admittedly the said minutes were only “draft” minutes and the respondent Banks have failed to produce any material / documents to show that the same were eventually finalized thereby giving them a basis to initiate recovery proceedings. In fact, from a perusal of the said draft minutes it is seen that no formal decision to change CAP was taken and the same was merely discussed. The relevant portion reads as under:

“Under these circumstances JLF resolved that, in the absence of any proposal for resolution, the CAP may be changed to recovery mode and the necessary notices under SARFAESI may be issued. ICICI Bank informed that they are exploring the possibility of restructuring under S4A and mandate for change of CAP shall be subject to approval by their higher authority.”

39. It is the appellant’s case that in the absence of specific documents / material showing that the aforesaid proposal to change CAP to recovery mode was eventually approved, it could not be concluded that the JLF had changed the CAP accordingly. It is stated that on 24th April, 2017 the JLF had ratified the minutes of its last meeting held on 22nd December, 2016 thereby implying that there was no meeting convened by the JLF between

22nd December, 2016 and 24th April, 2017. Moreover, the meeting held on 8th February, 2017 was attended by low ranking officers and as such they were not competent to take any decision with regard to changing the CAP.

40. Attention is drawn to the fact that in the meeting held on 21st June, 2017 the JLF had formally invoked S4A Scheme thereby waiving and abandoning its right to initiate recovery proceedings following the purported decision taken in the meeting held on 8th February, 2017. The appellant therefore states that the learned Single Judge's decision to uphold the action of the respondent banks in initiating recovery proceedings is completely unjustified and misconceived.

41. The appellant has sought to distinguish the Judgment of the Supreme Court *Innoventive Industries Ltd. v. ICICI Bank and Anr. 2018 1 SCC 407* by contending that Section 238 of IBC cannot override Section 35AA and 35AB of the Act of 1949, which was introduced after the enactment of IBC, 2016. The learned Single Judge had relied on the said judgment to state that in view of Section 238 of IBC, insolvency proceedings once initiated cannot be interdicted. It is their case that Section 238

will have no application in respect of laws which have been enacted and brought into force by the Parliament after the enactment of IBC, 2016. Reliance is placed on ***Shri Ram Narain v. The Simla Banking and Industrial Company Ltd. AIR 1956 SC 614.***

42. The appellant further states that the RBI issue Circulars under Sections 21, 35A and 35AB of the Act of 1949 by virtue of which it dictates the Banking Policy of the country which inter alia includes the manner in which loans have to be advanced by banking companies in larger public interest. With regard to revitalization of stressed accounts, the RBI had issued Circulars dated 30th January, 2014, 26th February, 2014 and 5th May, 2017. The Circular dated 5th May, 2017 states as under:

“4. In this context, it is reiterated that lenders must scrupulously adhere to the timelines prescribed in the Framework for finalizing and implementing the CAP. To facilitate timely decision making, it has been decided that, henceforth, the decisions agreed upon by a minimum of 60 percent of creditors by value and 50 per cent of creditors by number in the JLF would be considered as the basis for deciding the CAP, and will be binding on all lenders, subject to the exit (by substitution) option available in the Framework. Lenders shall ensure that their representatives in the JLF are equipped with appropriate mandates, and that decisions taken at

the JLF are implemented by the lenders within the timelines.

.....

5. *It shall be noted that*

(i)

(ii) *any bank which does not support the majority decision on the CAP may exit subject to substitution within the stipulated time line, failing which it shall abide by the decision of the JLF.*

(iii) *the bank shall implement the JLF decision without any additional conditionalities;*

6. *Any non-adherence to these instructions and timelines specified under the Framework shall attract monetary penalties on the concerned banks under the provisions of the Banking Regulation Act 1949.”*

43. It is therefore the appellant's case that the duties and obligations of the respondent banks under the restructuring package / JLRA dated 27th June, 2015 are not merely contractual in nature but are instead statutory in character. The JLRA, having been executed under the aegis of the extant RBI Circulars, raised certain legitimate expectations on part of the appellant company that the respondent banks would comply with the same. It is stated that implementation / compliance of the aforesaid Circulars is not only important vis-à-vis the stressed assets in particular, but

is also critical in view of larger public policy involved and affects the fiscal health of the nation at large.

44. The appellant states that the learned Single Judge has erred in arriving at the finding that the appellant company could have obtained credit facilities from outside the JLF. It is stated that in terms of various clauses of the JLRA the appellant company was precluded from obtaining multi-banking credit facilities from outside the JLF. In fact, faced with delays / failure on part of the respondent banks in disbursing necessary amounts, the appellant had made a specific request to the JLF to permit multi-banking facilities, the same was however denied.

45. The appellant also alleges malafides on part of the respondent banks inasmuch as the S4A Scheme, in terms of RBI Circulars dated 13th June, 2016 and 10th November, 2016, had to be invoked and implemented within a period of 180 days, however, the respondent banks failed to adhere to the said timeline and admittedly delayed the appointment of a TEV consultant as well as a forensic auditor, thereby defeating the very purpose of invocation of S4A Scheme. Attention is also drawn to the fact that the JLF had in its meetings held on 12th

January, 2018 and 23rd January, 2018 resolved to approach the RBI to seek appropriate extension of time for consideration and implementation of the S4A Scheme. However, contrary to the said assurances the respondent banks later backed out and withdrew their consent for invocation of the Scheme.

46. The appellant finally states that the learned single Judge has examined the pleas taken by the appellant on a narrow and constricted view / interpretation of the JLRA dated 27th June, 2015 thereby treating the said Agreement as merely a commercial contract lacking any statutory flavor. There has therefore been a failure to appreciate the nexus between the statutory directions issued from time to time by the RBI and the consequent restructuring agreement arrived at between the parties. The appellant has therefore challenged the impugned judgment on the ground that even though it has been held that Circulars issued by the RBI are binding on banking companies, implementations / compliance of the same has not been directed especially in light of the finding that respondent banks had delayed the release of working capital which had admittedly been sanctioned by the JLF, thereby also clearly violating the statutory duty cast on

members of the JLF under the subject RBI Circulars.

47. PNB / Lead Bank (PNB) in its counter-affidavit has only stated that the learned Single Judge has rightly arrived at a conclusion that the sanction of a sum of ₹59.68 Crores was a separate transaction and not a part of the Approved JLF Package. Additionally, the following documents with regard to the said transaction have been placed on record:

1. Extract of the meeting of Board of Directors of appellant held on 6th November, 2015.
2. Letter dated 2nd December, 2015 of the appellant Company addressed to the answering respondent Bank.
3. Letter dated 2nd December, 2015 of the appellant Company addressed to the answering respondent Bank.
4. Undertaking dated 2nd December, 2015 given by appellant company to the answering respondent Bank.
5. Deed of Hypothecation of goods and Book debts to secure cash credit facility dated 2nd December, 2015 executed and given by the appellant company to the

answering respondent Bank.

6. Agreement of Hypothecation of current assets dated 2nd December, 2015 executed and given by appellant Company to the answering respondent Bank.

7. Agreement of Guarantee dated 2nd December, 2015 executed and given by appellant Company to the answering respondent Bank.

8. Agreement of 2nd Charge of Hypothecation of moveable assets forming part of fixed / blocked assets dated 2nd December, 2015 executed and given by appellant Company to the answering respondent Bank.

SUBMISSIONS:-

48. Mr. Kapil Sibal, learned Sr. Counsel appearing on behalf of the appellant submitted that the main issue arising out of the present appeal is that respondent Banks failed to release Fund Based Working Capital (FBWC) to the appellant Company as envisaged in the Approved JLF Package that forms a part of the “Restructuring” that was done by the Banks pursuant to statutory framework introduced by RBI vide its Circulars dated 30th

January, 2014, 26th February, 2014 and 5th May, 2017. It was on account of this failure to release Working Capital in terms of the said Package that the Banks failed to comply with mandatory directives of the RBI which cast a statutory duty on the Banks to implement the Restructuring Package in a time bound manner.

49. Mr. Sibal would submit that the respondent Bank's contention that the JLRA did not envision provision of working capital beyond ₹75 Crores and that Annexures – 2 and 3 of the D&B TEV Report were not a part of the Approved JLF Package is completely misconceived and untenable inasmuch as the JLF itself in its meeting held on 19th March, 2015 had commissioned D&B to carry out the TEV Study, having adopted "Restructuring" as the CAP. It was only after a detailed assessment of working capital requirements of the appellant Company that the said TEV Report had recommended enhancement of working capital for each subsequent financial year (Annexures 2 and 3). The said Report was adopted in its entirety in the meeting held on 26th March, 2015.

50. He would also draw attention to the fact that the subsequent sanction letter issued by PNB to the appellant on 30th

March, 2015 was categorically subject to the aforesaid TEV Report as were the sanction letters issued by the other Banks, later on. He points out that the said sanction letters were issued prior to the execution of the JLRA. Even the IEC, comprising of senior RBI officials, had approved the said TEV Report in its entirety without expressing any reservations with regard to the subject Annexures.

51. Drawing attention to the definition of “Restructuring Documents” he would submit that restructuring envisaged in the present case, comprised of restructuring contained in the JLRA as well as the one envisaged under the Approved JLF Package. It is therefore submitted that the usage of the term “Approved JLF Package” (which has been defined in Recital F to the JLRA to mean D&B TEV Report) is distinct from the phrase “this agreement” which two phrases have in fact been used separately in the JLRA itself.

52. Attention is further drawn to clause 2.6.1 of JLRA wherein the respondent Banks have undertaken to extend working capital limits as per the “Approved JLF Package” in terms of the projections contained in D&B TEV Report.

Mr. Sibal would submit that the said Clause uses the phrase “Approved JLF Package” instead of “this agreement” and therefore the respondent banks’ contention that they were not obligated to provide working capital in excess of ₹75 Crores is contrary to the language of Clause 2.6.1 itself. He would refer to the several letters written by the appellant to the respondent Banks seeking release of additional working capital limits which had never been denied / disputed by the Banks to submit that their present contention is merely an afterthought.

53. Mr. Sibal would submit that the sanction of ₹59.68 Crores by PNB is not a separate transaction but is in fact its pro-rata share of the enhanced working capital limits envisaged in the D&B TEV Report. He would submit that the said stance adopted by the respondent Banks, which had never been taken before the learned Single Judge, is false and misconceived inasmuch as after the issuance of the said sanction letter dated 5th December, 2015, PNB, vide letter dated 7th December, 2015, informed the other Banks that it had sanctioned “it’s share in the Consortium” and requested the status of sanction by the other Banks. The Permissible Banking Finance (PBF) note appended to the said

letter categorically states that working capital limits of ₹592.7 Crores had been sanctioned “as already accepted in the TEV Study submitted at the time of restructuring”.

54. Mr. Sibal would also submit that failure on the part of the Banks to release working capital limits was discussed in the following JLF meetings wherein none of the Banks disputed the appellant’s request on the ground that has now been adopted by them. He would specifically refer to the JLF meetings held on 24th May, 2016 (read with letter dated 30th May, 2016) and 22nd December, 2016. He would also point out that PNB in its counter-affidavit before the learned Single Judge had categorically admitted that the sanction letter dated 5th December, 2015 was a part of the “Approved JLF Package”.

55. According to him, the said stand has been adopted by the respondent Banks to overcome the conclusion arrived in the PNBISL TEV Report which reads as follows:

“The company complied with all the conditions of restructuring scheme including payment of interest till 30-09-2016. But WC limits were not released by banks as per TEV Report / Approved Restructuring Scheme. Consequently, the restructuring scheme could not be taken forward after 01-10-2016 and the company could

not achieve its projections as per TEV Report. Amounts payable to banks became overdue and loan accounts of Company have been classified as Non-Performing Assets by the lending Banks.

The said PNBISL TEV Report was never denied / disputed by the banks.

56. Controverting the respondent Banks' argument that the appellant had committed several defaults in its obligations under the JLRA, he would submit that PNBISL TEV Report categorically concludes that the appellant company had complied with all conditions of restructuring scheme. Moreover, in terms of Clauses 7.3.1 and 7.3.2 of the JLRA, the respondent Banks were obligated to issue a prior notice in case of an event of default. No such notice having been issued, the said argument of the respondents is clearly untenable. He would submit that in any case the said issue involves highly disputed questions of facts and the same would be beyond the scope of Article 226 of the Constitution of India.

57. It is Mr. Sibal's submission that in terms of the scheme of IBC, specifically Section 7 thereof, in the proceedings emanating therefrom, the appellant company would not in fact

have an opportunity to agitate its grievances before the NCLT. The appellant company's accounts, having been restructured under the JLRA governed by RBI Circular dated 5th May, 2017, issued under Section 35AB of the Act of 1949, must be tested for "default" in terms of the procedure laid down in the JLRA (Clauses 7.3.1 and 7.3.2) unlike a situation which is governed by Section 35AA of the said Act which specifically incorporates the definition of "default" from IBC. The respondent Banks' reliance on the definition of "default" as given in Section 3(12) of IBC 2016 would therefore be completely misconceived. According to him, resorting to IBC proceedings would be in grave violation of the procedure given in the JLRA.

58. He would further submit that Section 238 of IBC cannot override Section 35AB of the Act of 1949 and the Circulars issued thereunder inasmuch as Section 238 seeks to override such laws that stood in force as on date of enactment of IBC, whereas Section 35AB had been introduced in the year 2017, i.e., after the enactment of IBC, 2016. Reliance is placed on *Shri Ram Narain (Supra)* and *Ajoy Kumar Banerjee v. Union of India and Ors. (1984) 3 SCC 127*. Reiterating the stand

already adopted regarding reliance placed by the learned Single Judge on *Innoventive (supra)*, Mr. Sibal would further submit that the Supreme Court therein merely declared supremacy of IBC over Maharashtra Relief Undertaking Act, 1958 which is admittedly hit by Section 238 unlike Section 35AB in the present case. Moreover, the appellant herein had at the very first instance raised dispute with the RBI vide letters dated 20th January, 2017 and 17th March, 2017 with regard to failure to release additional funds, which is quite unlike the situation in *Innoventive (Supra)*.

59. Mr. Sibal would refer to the judgment of the Supreme Court in *Arcelor Mittal India Pvt. Ltd. v. Satish Kumar Gupta, Civil Appeal No. 9402-9405 of 2018* to submit that the entertainment of writ petitions by a “Resolution Applicant” at a stage after the petition has been admitted by the NCLT and an IRP has been appointed must indeed be discouraged. However, in the present case it is the corporate debtor / borrower which has approached this court and therefore the said Judgment would also have no applicability here. In conclusion Mr. Sibal would submit that since the appellant has raised issues of

default on the part of the Banks which has led to a concomitant violation of a statutory duty, the jurisdiction of this court under Article 226 cannot be ousted to render the appellant remediless. Reliance is placed on *Gujarat State Financial Corporation (supra)*, *Sardar Associates (supra)* and *Mardia Chemicals v. Union of India 2004 (4) SCC 311*.

60. Mr. Rajesh Kr. Gautam, learned counsel appearing for the PNB submits that there is no clause or provision in the JLRA in terms of which the respondent Banks are mandated to sanction working capital limits beyond ₹75 Crores to the appellant without taking into consideration its actual performance. Similarly, there is also no provision which mandates such sanctions in terms of “estimated or projected figures” in terms of D&B TEV Report. He would further submit that provisions of the JLRA read with minutes of the meeting of the JLF dated 26th March, 2015 and the minutes of the IEC meeting dated 11th May, 2015 clearly indicate that there was no obligation to sanction working capital beyond ₹75 Crores. Such sanction beyond the said limit was at the sole discretion of the Banks.

61. It was Mr. Gautam’s submission that the appellant had

vide letter dated 22nd September, 2015 submitted its audited balance sheets as on 31st March, 2015 along with fresh CMA data to PNB, seeking sanction of working capital in terms thereof. The appellant company passed a Board Resolution on 6th November, 2015 “to avail credit facility from PNB” to obtain cash credit hypothecation for execution of fresh document of agreement and furnishing of securities by way of hypothecation, mortgage and charge on fixed assets. Consequently, the appellant executed separate documents such as Deed of Hypothecation of Goods and Book Debts, Current Assets, Guarantee, Second Charge of Hypothecation of Movable Assets etc. on 2nd December, 2015. He would submit that the managing Committee of PNB in the meeting held on 1st December, 2015 had sanctioned cash credit limit of ₹270.45 Cr. (i.e. enhancement of ₹59.68 Cr. from existing ₹210.77 Cr.). According to him, it is therefore clear that the said sanction of ₹59.68 Cr. was a separate transaction on a separate request made on 22nd September, 2015 and was on execution of separate documents.

62. He further submitted that PNB had released only ₹30

standard category for which purpose he shall hold discussion with the individual lenders.....”

- In the Meeting held on 24.04.2017 in Para 4 it has been recorded:-

“4. Way forward - Various options were discussed at length at the end of which the Company requested to consider the option of S4A as a resolution strategy. Company also circulated a note for reference of the JLF. After discussion it was explained to the Company that it should establish the eligibility criteria for S4A as per guidelines and should come back with a detailed working / request. Some of these guidelines are explained to the Company are as follows:-

- *Eligibility criteria as per scheme*
- *Technical Validity to be established*
- *Sacrifice of the Company shall not be less than that of the Banks*
- *Immediate transfer of equity*
- *The Company was informed that the Banks shall not be taking any additional fresh exposure and the funds if any shall have to be brought in by the promoters from their own sources.*
- *The process shall be subject to the approval of Overseeing Committees set up by the IBA.*
- *Forensic Audit as per Scheme*
- *Any other conditions as per the guidelines.*

Meanwhile the Company was also advised to co-operative with the Stock Auditor appointed by the Lead Bank and get the Stock Audit / other audits completed within any further delay. The Company

was also advised to submit all the necessary information viz., financial, stock statements etc. immediately so that a resolution strategy is put in place in good time. Meanwhile the bankers shall also take up internally regarding the S4A option which shall be again discussed in the meeting proposed to be held in the first week of June, 2017, after the Company submits a formal proposal accompanied by the requisite documents. It was also decided to for a core committee of Bankers with a representative from the Company to coordinate the matter.

The Company was advised to ensure that all the sale proceeds are routed through the designated TRA account.”

64. It is further submitted that the S4A Scheme could not be implemented on account of the appellant company failing to meet the eligibility criteria. In the JLF meeting held on 21st June, 2015 a Core Committee was constituted for the implementation of S4A Scheme including for appointment of a Forensic Auditor. On 30th December, 2017 PNBISL TEV Report, Stock Audit Report and the progress of Forensic Audit were considered. On 12th January, 2018 the JLF agreed to approach the RBI for condonation of delay in implementation of S4A Scheme subject to Forensic Audit Report being satisfactory. In the meeting held on 23rd January, 2018 the issue of delay in finalization of Forensic Audit Report was again

considered and the appellant company was directed to furnish all relevant data to the auditors by 24th January, 2018 and the auditors were to submit a draft report by 25th January, 2018. The issue of non-payment of up-front fee of the auditors by the appellant company was also brought up. In the meeting held on 9th February, 2018 it was recorded that the Forensic Audit Report had already been circulated and therefore High Risk and Medium Risk Point of the report were discussed. In the meeting held on 22nd March, 2018 the Banks decided to share the auditor's fee among themselves as the company had declined to pay the balance fee. Axis Bank and ICICI Bank, having already conveyed their respective mandate for withdrawal from the S4A Scheme (meeting held on 9th February, 2018), and on account of limitation for the said scheme nearing expiry coupled with the appellant company's non-cooperation, jointly decided to file joint suit against the company and guarantors before the DRT.

65. Mr. Gautam would submit that the appellant company's argument that the respondent Banks were bound to sanction working capital beyond ₹75 Crores in terms of the JLRA, was raised only after the Forensic Audit Report highlighted certain

High Risk and Medium Risk Points; ICICI Bank filed a case before NCLT and the consortium decided to file a joint suit before the DRT. Moreover, the said argument was also never raised in any of the meetings of the JLF.

66. In conclusion Mr. Gautam submits that the appellant company has not approached this Court with clean hands inasmuch as even though it was aware about the Forensic Audit Report being against it the same has not been mentioned anywhere in the writ petition. Following the production of the said audit report by PNB, the appellant company in its rejoinder merely adopted the stand that the same was irrelevant. He would also submit that without prejudice to his case even if there was an actual violation of the terms of the JLRA the appellant company could not invoke the writ jurisdiction of this Court for the enforcement of the said terms. Reliance is placed on *State of U.P. and Others v. Bridge and Roof & Company Ltd. 1996 (6) SCC 22*; *Kerala State Electricity Board and Anr. V. KUrien E. Kalathil & Ors. 2000 (6) SCC 293*; *Binny Ltd and Anr. v. V. Sadasivam and Ors. reported in 2005 (6) SCC 657* and *State of Kerala and Ors. vs. M.K. Jose reported in 2015 (9)*

SCC 433.

67. Finally, he would submit that in terms of the law laid down by the Supreme Court, a corporate debtor cannot seek stay of proceedings initiated under IBC 2016 and remedy against proceedings initiated under SARFAESI Act would lie with the borrower only in terms of the Section 17 of the Act.

68. Mr. Ramji Srinivasan, learned Senior Counsel appearing for the respondent No.3 would, in addition to supporting the stance adopted by Respondent No. 2, submit that the appellant company was in continuous default on almost all its payment / repayment obligations due to which the JLF package failed:

- a. Default on interest payment and repayment;
- b. Default in routing transactions through Trust and Retention Account (TRA);
- c. Default in payment of Promoters' Contribution of ₹18.44 Cr. (out of which only ₹12.49 Crores was paid much later).

69. He would refer to Clause 2.6 of the JLRA to submit that release of additional funds was subject to the discretion of the

lending Banks. Further, by virtue of Clause 5.1 (t) of the JLRA the repayment / payment obligations of the appellant company were unconditional and thus upon non-payment of prescribed amounts the appellant committed default. Further, according to him, from a bare perusal of the JLRA, in order to construe and interpret the obligations thereunder, reference cannot be made to any document beyond the JLRA and Restructuring Documents as approved.

70. Mr. Srinivasan would draw our attention to the decision in *Indian Oil Corporation Ltd. v. Sanjeev Kumar 2015 SCC Online Del. 6503* to submit that the impugned judgment, having factored in all the contentions and submissions made by all the parties, could not be said to be implausible or unreasoned and therefore the question of entertaining the present appeal to disturb any finding arrived at therein does not arise. Since it is not the appellant's case that the findings of the learned Single Judge are perverse or patently illegal, the present appeal would be beyond the scope of interference and thus deserves to be dismissed at the threshold. It is his submission that the subject writ petition had been filed by the Appellant with the sole aim

of derailing the proceedings initiated against it under IBC, 2016, despite the law laid down by the Supreme Court in *Chitra Sharma and Ors. vs Union of India, W.P. (C) 744/2017*, and *Arcelor Mittal (supra)*.

71. He would submit that following the acceptance of the appellant company's request to adopt "Restructuring" as the CAP by the JLF and execution of JLRA in pursuance thereof, the appellant, instead of complying with the obligations arising thereunder, began to default in repayment of principal amount and interest dues. The appellant's account was reported as a "Red Flag Account" by ICICI Bank and in the meeting of the JLF held on 22nd December, 2016 wherein issue of financial indiscipline was also raised. It was therefore decided that ICICI Bank would not undertake any additional exposure with respect to the appellant company.

72. Vide letter dated 2nd February, 2017, the appellant company was informed that its account maintained with ICICI Bank was declared as an NPA as on 31st December, 2016 and related information with regard to outstanding dues was also conveyed. In the JLF meeting held on 8th February, 2017, the

CAP was changed from “Restructuring” to “Recovery” following which respondent nos. 2, 4 and 5 issued notices under Section 13 (2) of SARFAESI Act to the appellant company. However, only as a matter of goodwill gesture, in the meeting held on 24th April, 2017, the lenders agreed to implement any viable proposal for resolution of the appellant’s debt in terms of S4A Scheme of the RBI subject to satisfactory Forensic Audit Report. The proposal of S4A Scheme was considered in light of the appellant’s financial indiscipline which had resulted into a substantial portion of the debt becoming unsustainable. It was only on account of non-closure of the Forensic Audit Report within 180 days that ICICI Bank withdrew its consent for the S4A Scheme on 23rd January, 2018. Subsequently, the appellant was also issued a recall notice whereby it was requested to pay a sum of ₹1,77,77,60,053.15/- within 7 days from receipt of said notice and not to alienate or dispose of any of its properties and assets. The said notice, having been received by the appellant on 8th January, 2018, and failure to repay in terms thereof led to the appellant being in further default.

73. Accordingly, it was on 18th January, 2018 that ICICI

Bank issued notice under Section 13 (2) of SARFAESI Act. In the JLF meeting held on 9th February, 2018, the draft Forensic Audit Report which had already been circulated was considered and on it highlighting several counts of high and medium levels of unusual indication on transactions and operations of the appellant company, ICICI Bank elected to initiate proceedings under Section 7 of IBC. Even respondent no.4 had stated its intention to withdraw from the S4A Scheme in the same meeting. Mr. Srinivasan would point out that the minutes of the said meeting categorically record that “all other member Banks agreed to proceed with CIRP proceedings”.

74. As regards the appellant’s contention that the learned Single Judge erred in arriving at the finding that enhancement of working capital limits in every subsequent year as shown in the D&B TEV Report does not figure in the JLRA, Mr. Srinivasan would submit that the only additional working capital agreed to and recorded in the JLRA was a sum of ₹75 Crores and the same was also accepted by the IEC. According to him, there has been a deliberate misreading of the “Approved JLF Package” by the appellant whereby it is claiming additional capital of over

₹529 Crores over 10 years including immediate release of ₹136 Crores. While referring to Para 2.5 of Article II of the JLRA Mr. Srinivasan would submit that that it is only the JLRA and other Financing Documents that constitute the entire agreement between the parties, subject to terms and conditions mentioned in Schedule III and Schedule XI of the JLRA. Further, details of “Facilities” as agreed to be provided by the respondent Banks is defined to mean “Facility A to I” in Schedule III. The working capital limit agreed to be provided by the Banks is defined at “Facility H” which in turn referred to Schedule X in JLRA.

75. It is submitted that the expression “Approved JLF Package” as defined in recital ‘F’ of the JLRA is clear to the effect that the scheme of restructuring is for the “Existing Facilities” and would mean to be the package as was finally approved in the JLF meeting held on 23rd June, 2015. Mr. Srinivasan would refer to the appellant’s letter dated 7th June, 2015 to support the view that agreed restructuring did not include provision of any additional working capital beyond ₹75 Crores. None of the documents executed by the respondent

Banks record any commitment to provide additional funding and clause 2.6.1 of the JLRA expressly provides that the same would be at the Bank's sole discretion.

76. Mr. Srinivasan would point out that the appellant has also defaulted with respect to several other stipulations contained in the JLRA namely, (i) upfront promoter's contribution of ₹18.44 Crores; (ii) requirement to route all trading transactions through TRA; and (iii) regular payment of monthly interests as per respective due dates mentioned in the payment schedule in the JLRA. Even though the respondent Banks had given liberal extensions to the appellant to regularize its accounts, it continued to default and, in such circumstances, it cannot demand additional funding as a matter of right.

77. According to Mr. Srinivasan it would be incorrect to state that the Banks have taken an unlawful step in initiating recovery proceedings against the appellant. He would refer to minutes of the JLF meeting held on 8th February, 2017, where the CAP was changed from "restructuring" to "recovery" and the meeting held on 22nd March, 2018 where all the Banks agreed to initiate CIRP proceedings. He would submit that the appellant's

contention that the decision to initiate “recovery” was abandoned by the Banks once the decision to implement S4A scheme was taken is highly misplaced inasmuch as the same was proposed to be invoked only as a goodwill gesture and further, subject to the Forensic Audit Report being satisfactory.

78. As regards the appellant’s reliance on the conclusion of the PNBISL TEV Report that it had complied with all the conditions but it was the Banks that had not released working capital limits in accordance with the approved restructuring scheme, Mr. Srinivasan would refer to the observations of the learned Single Judge that the said conclusion was a mere observation and not an informed finding and the respondent Banks were under no obligation to provide any additional working capital to the appellant. It would be incorrect to state that the learned Single Judge has substituted his view for that of a technical consultant and in fact he has merely observed that the aforesaid conclusion was not backed by any substantive material or discussion contained in the said TEV Report. In any case, the Forensic Audit Report has made several adverse comments against the appellant with respect to sustainability of

its debts.

79. Mr. Srinivasan submits that the case of *Innoventive Industries (Supra)* is squarely applicable to the facts of the present case inasmuch as the Clause 5.1 (t) of the JLRA is identically worded as a subject clause that was considered in the said case. Merely because the appellant herein had raised the issue of non-provision of additional funds right at the threshold, it would not mean that its unconditional obligation to pay dues had been rendered ineffective. Further the appellant's argument that Section 238 of IBC would not override Sections 35AA and 35AB of the Act of 1949 simply because the same were enacted after enactment of IBC, is based on a principle of interpretation of statutes, however the said principle has consistently been held to be subject to the exception that a general provision cannot derogate a special one. Reliance is laid on *Yakub Abdul Razak Memon v. State of Maharashtra, 2013, 13 SCC 1*.

80. It is Mr. Srinivasan's submission that a TEV Study Report can never be a conclusive or legally binding document for the purposes of restructuring. In this regard, he would refer to Clause 3.3.3 of the RBI Circular dated 30th January, 2014,

which reads as follows:

“For accounts with AE above Rs.5000 million, the abovementioned TEV Study and restructuring package will have to be subjected to an evaluation by an Independent Evaluation Committee (IEC) of experts fulfilling certain eligibility conditions. The IEC will look into the viability aspects after ensuring that the terms of restructuring are fair to the lenders.”

81. As regards the appellant's contention that sanction of additional package by PNB vide letter dated 5th December, 2015 formed a part of the JLRA, Mr. Srinivasan would submit that had the same additional facility formed the part of the package, there would not have been requirement of any further “sanction” and “creation of separate additional securities” and the said facility would have found a mention in the JLRA package itself. The very fact that the appellant executed separate bilateral documents with PNB and provided additional securities confirmed that the said facility was not a part of the restructuring package. He would refer to Inter Creditor Agreement dated 27th June, 2015 which clearly states that all credit decision and additional facilities would be subject to decision of the respective lender's competent authority.

82. It is submitted that the provisions of the amendments

incorporated in the Banking Regulations, 1949 merely empower the Central Government and the RBI to issue directions for resolution of stressed assets and the same does not create any entitlement or rights in the hands of the borrower (appellant herein), who is admittedly a defaulter. Reference is drawn to ***Ankit Patni v. State Bank of India, Company Appeal (AT) (Insol.) No. 369/2018***. Moreover, proceedings under IBC are in the nature of judicially monitored resolution of stressed assets, and according to Mr. Srinivasan, if the appellant does indeed want resolution of its debts, it should not adopt malafide ways of evading from the rigours of IBC and the time bound resolution process prescribed therein.

83. In conclusion, Mr. Srinivasan would submit that the impugned judgment wherein the learned Single Judge has in fact considered all contentions of the appellant herein and adjudicated all the issues raised is neither perverse nor patently illegal.

84. In rejoinder Mr. Sibal would reiterate that the PNB sanction dated 5th December, 2015 is in fact not a separate transaction and that the projections contained in the D&B TEV

Report formed an integral part of the “Approved JLF Package”. He would also submit that in Section 7 proceedings, the appellant would have no scope to raise the existence of any “dispute” unlike the case of an “operation creditor”. The appellant has therefore approached this Court under Article 226 seeking relief against violation of statutory circulars issued by the RBI. The said circulars having statutory force and are fully binding in nature.

85. Having heard the learned counsel for the parties, the issue which arises for consideration is whether the learned Single Judge was justified in dismissing the writ petition. The answer to this issue lies in the fact, whether the JLRA did provide for working capital beyond ₹75 Crores.

86. The submissions of Mr. Sibal as noted above can be summed up as below: -

- (i) That the Banks have failed to comply with mandatory directions of RBI, issued vide circulars dated January 30, 2014, February 26, 2014 and May 05, 2017, which casts a statutory duty on the Banks to implement the

Restructuring Package in a time bound manner;

- (ii) That, the stand of the Banks that the JLRA did not envisage provision of capital beyond ₹75 Crores and that Annexures 2 and 3 of the D&BTEV Report were not part of the “Approved JLF Package” is completely misconceived inasmuch as the JLF itself in its meeting held on 19th March, 2015 had commissioned D&B to carry out the TEV Study, having adopted “Restructuring” as the CAP. The TEV recommended the enhancement of working capital which was adopted in its entirety in the meeting held on 26th March, 2015; sanction letter issued by the PNB to the appellant on 30th March, 2015; IEC comprising of Senior RBI officials had approved the TEV report in its entirety without expressing any reservation with regard to the subject Annexures.
- (iii) The restructuring envisaged comprised of “Restructuring” contained in the JLRA as well as the one envisaged under the “Approved JLF Package”. So, the Approved JLF Package is distinct from the phrase “this agreement” which phrase has been used separately in the JLRA itself.

- (iv) As per Clause 2.6.1 of the JLRA, the Banks have undertaken to extend working capital limits as per “Approved JLF Package” in terms of the projections contained in D&BTEV Report.
- (v) Restructuring was to be done in terms of the “Approved JLF Package” instead of “this agreement” and therefore the respondents Banks’ contention that they are not obliged to provide capital over and above ₹75 Crores is contrary to language of clause 2.6.1.
- (vi) The sanction of ₹59.68 Crores is not a separate transaction, but in fact, it was PNB’s pro-rata share of enhanced working capital as per TEV report and it is also clear from the letter dated 7th December, 2015 to other Banks saying “its share in the consortium”, and the Permissible Banking Finance note appended to the said letter which categorically states that the working capital limits of ₹592.7 Crores had been sanctioned “as already accepted in the TEV study submitted at the time of restructuring”.

- (vii) The failure on the part of the Banks to release working capital limits was discussed in the JLF meeting, wherein none of the Banks disputed the request on the ground JLRA did not envisage provision of working capital beyond ₹75 Crores. Reference is made to the counter-affidavit of the PNB, wherein it is admitted that the sanction letter dated 5th December, 2015 was part of the “Approved JLF Package”.
- (viii) That the stand adopted by the Banks was to overcome PNBISL TEV Report of December, 2017, wherein it is stated that the Company has cleared all the conditions of restructuring including payment of interest till 30th September, 2016. But working capital limits were not released by the Banks as per D&B TEV report / Approved Restructuring Scheme. Consequently, the restructuring scheme could not be taken forward after 1st October, 2016 and the company could not achieve the projections as per the D&B TEV Report. Amounts payable to banks became overdue and loan accounts of company had been classified as NPA’s by the lending

Banks.

- (ix) He denied that the company had committed several defaults. He also relied on Clauses 7.3.1 and 7.3.2 of the JLRA which obligated the Banks to issue notice in the case of default. No such notice was issued to the Appellant.
- (x) The appellant would not have an opportunity to agitate its grievances before the NCLT. The company accounts having been restructured under the JLRA in terms of Circular dated 5th May, 2017, issued under Section 35AB, must be tested for “default” in terms of procedure laid down in the JLRA, unlike a situation governed by Section 35AA of the Act. So, resorting to the IBC proceedings would be in grave violation of the procedure given in the JLRA.
- (xi) Section 238 of the IBC cannot override Section 35AB of the Act of 1949 and the Circulars issued thereunder inasmuch as Section 238 seeks to override such laws that stood in force on the date of enactment of IBC, whereas

Section 35AB was introduced in the year 2017.

- (xii) Reliance placed by the Id. Single Judge on the Judgement of the Supreme Court on *Innoventive (Supra)* is misconceived, inasmuch as the Supreme Court had only declared supremacy of the IBC over Maharashtra Relief Undertaking Act, 1958 which is admittedly hit by Section 238 unlike Section 35AB in the present case.
- (xiii) He refers to the Judgment of the Supreme Court in *Arcelor Mittal India Pvt. Ltd. (supra)* to submit that the entertainment of the writ petition by a Resolution application at a stage after the petition has been admitted by the NCLT and an IRP has been appointed must be discouraged. However, in the present case, it is the corporate debtor / borrower which approached this court and therefore the said judgment has no application.

87. We are not in agreement with the arguments put forth by Mr. Sibal. In fact, the submissions made by Mr. Sibal are similar to the ones made by him before the learned Single Judge. The learned Single Judge has dealt with these

submissions, inasmuch as there is nothing on record to show that the Banks were under obligation to release capital beyond ₹75 Crores. The said conclusion was arrived at by the learned Single Judge in paras 49, 51 to 53 and 61 to 76. The said paragraphs, we reproduce as under: -

“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.

XXXXX

XXXXX

XXXXX

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 millon shall be restructured as follows:

- 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.*
- 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.*
- 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 (WCTL)-I

- Irregularity of INR 4,360 million considering all fund based limits is proposed to be converted into WCTL-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 WCTL- 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 (WCTL – I)	4,360.00
Total WCTL – I	4,360.00

- Interest Rate on WCTL -I is proposed at 10.75% through the restructuring tenure.
- Moratorium on Principal repayment is proposed to be 24 months (upto 30th September, 2016) from Cut-off Date.
- The interest moratorium is proposed to be 24 months from cut-off date and is proposed to be funded and converted into FITL.
- Repayment of WCTL 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	
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	

	00		0								
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

- *Moratorium on Principal repayment is proposed to be 24 months (upto 30th September, 2016) from Cut-off Date.*
- *Interest Rate on WCTL - II is proposed at 10.75% through the restructuring tenure.*
- *The interest moratorium is proposed to be 24 months from cut-off date and is proposed to be funded and converted into FITL.*
- *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)

- *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.*
- *The rate of interest on working capital post restructuring is proposed to be 10.75%.*
- *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
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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)

- 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.
- Interest on FITL is proposed to be charged at 10.75% annually.
- Interest on FITL shall be paid as and when due.
- Principal repayment moratorium up to quarter ended December 2016.
- 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 P&L	0.00	49.12	93.30	95.92	89.90	80.28	69.92	57.86	38.20	17.92	1.29

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 / Disbursement			13.20								
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	2015E	2016E	2017E	2018E	2019E	Projected 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 ₹386.93 C + ₹75.00 Cr as additional proposed”. None of the sanction letters had any reference of any further funding in addition to ₹75 crores.*

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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 plain. 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)

<i>Lender</i>	<i>O/s Principal</i>
<i>Punjab National Bank</i>	32.0
<i>Total</i>	32.0

Working capital dues

(Rs in Crore)

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

“SCHEDULE III

PART A

Details of Facilities

Particulars of facility A – Term Loans

(Rs in Crore)

<i>Bank</i>	<i>TL</i>
<i>PNB</i>	<i>32.00</i>
<i>ICICI Bank</i>	<i>-</i>
<i>Syndicate Bank</i>	<i>-</i>
<i>Total</i>	<i>32.00</i>

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

(Rs in Crore)

<i>Bank</i>	<i>WCTL-I</i>
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<i>PNB</i>	<i>228.11</i>
<i>ICICI Bank</i>	<i>64.97</i>
<i>Syndicate Bank</i>	<i>117.09</i>
<i>Axis Bank</i>	<i>29.79</i>
<i>Total</i>	<i>439.96</i>

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

(Rs in Crore)

<i>Bank</i>	<i>WCTL-II</i>
<i>PNB</i>	<i>24.50</i>
<i>ICICI Bank</i>	<i>-</i>
<i>Syndicate Bank</i>	<i>-</i>
<i>Axis Bank</i>	<i>-</i>
<i>Total</i>	<i>24.50</i>

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

(Rs in Crore)

<i>Bank</i>	<i>FITL – I</i>
<i>PNB</i>	<i>49.40</i>
<i>ICICI Bank</i>	<i>12.47</i>
<i>Syndicate Bank</i>	<i>25.38</i>
<i>Axis Bank</i>	<i>6.46</i>
<i>Total</i>	<i>93.71</i>

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

(Rs in Crore)

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

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

(Rs in Crore)

Bank	FITL – III
<i>PNB</i>	<i>7.67</i>
<i>ICICI Bank</i>	-
<i>Syndicate Bank</i>	-
<i>Axis Bank</i>	-
Total	7.67

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

(Rs in Crore)

Bank	FITL – IV
<i>PNB</i>	<i>3.77</i>
<i>ICICI Bank</i>	-
<i>Syndicate Bank</i>	-
<i>Axis Bank</i>	-
Total	3.77

Particulars of facility H- fund Based working Capital facilities

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

Particulars of facility I – Non Fund Based Working Capital facilities

(Workable within fund based)

(Rupees in crores)

<i>Bank</i>	<i>NFB</i>
<i>PNB</i>	<i>-</i>
<i>ICICI Bank*</i>	<i>9.70</i>
<i>Syndicate Bank</i>	<i>-</i>
<i>Axis bank</i>	<i>5</i>
<i>Total</i>	<i>14.70</i>

(*Derivate)

PARTICULARS OF FACILITY J (FCNR – B LOAN)

(Rupees in crores)

<i>Bank</i>	<i>NFB</i>
<i>PNB</i>	<i>-</i>
<i>ICICI Bank</i>	<i>64.96</i>
<i>Syndicate Bank</i>	<i>-</i>

<i>Axis bank</i>	-
Total	64.96

Total Particulars of all the facilities

(Rs in Crore)

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

“SCHEDULE X

PART A

**Particulars of facility H-Fund Based Working Capital
facilities**

(Rupees in crores)

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

*ICIII

ICICI Bank has sanctioned single limit with additional facilities.

PART B
Terms and Conditions of Facility H

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.”

88. A reading of the aforesaid conclusion of the learned Single Judge reflects the following position: -

(i) 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 ₹386.93 C + ₹75.00 Cr as additional proposed”.

(ii) 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”).

(iii) 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.

(iv) 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.

(v) 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 also expressly approved by the IEC.

(vi) 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.

(vii) 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.

(viii) 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.

89. Suffice it to state, we agree with the conclusion arrived at by the learned Single Judge. The aforesaid shows that the Banks had never committed to infuse working capital in favour of the appellant over and above ₹75 Crores. During the course of his submissions Mr. Sibal had relied upon the action of the PNB in sanctioning a sum of ₹59.68 Crores (out of which it had also disbursed ₹30 Crores), that there was an obligation on the Banks to release capital beyond ₹75 Crores. It was the stand of the PNB that the sanction of ₹59.68 Crores was part of a different transaction. Mr. Sibal had relied upon a communication dated December 07, 2015 said to have been sent by the PNB to the other Banks calling upon other Banks to sanction their share of the amount.

90. It is a conceded case that other Banks had neither sanctioned, nor released any money in favour of the appellant herein. So, PNB is right in contending that the sanction of sum of ₹59.68 Crores was part of a separate transaction as, new agreements like Deed of Hypothecation of Goods and Book Debts etc. were signed and new securities were furnished. In any case, only an amount of ₹30 Crores was disbursed out of the said amount and it is PNB's stand, that the rest could not be released as, the appellant itself had failed to provide additional security for the enhanced limit. That even otherwise, the fact that it was at the asking of the appellant, that the process of implementation of S4A Scheme in its favour was initiated, the issue of contribution of capital over and above ₹75 Crores had seemingly been given up by the appellant or in other words had not been insisted upon.

91. Had the appellant really wanted implementation and enforcement of obligations arising out of the JLRA, it should have taken appropriate steps at the relevant time, before having requested for implementation of the S4A Scheme, or even consenting to the same. Present action, in our opinion, is highly

belated, at least as regards seeking specific performance of the JLRA. Moreover, the CAP having been changed from “restructuring”, to “recovery”, granting the appellant’s prayers would necessarily mean overlooking the appellant’s own action in abandoning its efforts under the JLRA, and moving on to the S4A Scheme, and thereby turning the clock back on a process, which, under the current legal and economic scenario in the country, is mandated to be extremely time bound and forward moving. We therefore agree with the conclusion as drawn by the learned Single Judge in paras 78 to 81 of the impugned order which read as under:

“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.).

92. That apart, we note the writ petition was filed by the appellant on 21st May, 2018 much after the ICICI Bank approached the NCLT, Chandigarh on 9th March, 2018. So, it is clear that the writ petition was filed as an afterthought, only with a view to possibly interdict the proceedings already initiated by ICICI.

93. Insofar as the plea of Mr. Sibal that Section 35AB of the Banking Regulation Act, 1949 will override Section 238 of the IBC is concerned, the same is inconsequential and not necessary to be gone into in view of our conclusion above that there was no obligation on the part of the Banks to release capital over and above ₹75 Crores. It would be futile to dwell on the precursory position. Moreover, the fact that the circulars on which reliance was placed by the appellants have since been withdrawn, cannot be overlooked.

94. That apart, we cannot overlook the fact that the account maintained with the ICICI Bank was declared as NPA on 31st December, 2016. The respondents 2, 4 and 5 issued notices under Section 13(2) of the SARFAESI Act to the appellant Company. A recall notice was sent to the appellant to pay a

sum of ₹1,77,77,60,053.15/- which the appellant had failed to pay. Merely because the amendments incorporated in the Banking Regulations Act, 1949 empower the Central Government and the RBI to issue directions for resolution of stressed assets, the same does not create any entitlement or right in the hands of the borrower, who is admittedly a defaulter. Moreover, proceedings having been initiated by the ICICI Bank, which are in the nature of judicially monitored resolution of stressed assets, nothing precludes the appellant from seeking resolution before the NCLT in those proceedings. This appeal necessarily has to be rejected. Ordered accordingly. No costs.

CM. No. 42534/2018

Dismissed as infructuous.

V. KAMESWAR RAO, J

CHIEF JUSTICE

FEBRUARY 06, 2019/jg