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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ **W.P.(C) 15218/2022 & CM APPLs. 47104/2022, 47659/2023,
47794/2023 and 13531/2024**

JINDAL INDIA THERMAL POWER LIMITED Petitioner

Through: Mr. Sandeep Sethi, Sr. Advocate,
Mr. Saurabh Kirpal, Sr. Advocate,
Mr. Aditya Sikka, Mr. Himanshu
Gupta, Ms. M. Gupta, Ms. Onshi
Jakhar, Ms. Riya & Mr. Sumer
Dev Seth, Advs.
Email: aditya.sikka@fidelegal.in

versus

PUNJAB NATIONAL BANK & ORS. Respondents

Through: Mr. Sanjay Bajaj with Mr. Rajat
Prakash, Advocates for
respondent
nos. 1, 2 and 6 to 11.
(M): 9872505902
Email: bbls@ymail.com
Mr. Siddharth Sangal with
Ms. Harshita Agrawal, Ms. Ishita
Singh, Ms. Richa Mishra and Mr.
Chirag Sharma, Advocates for R-
2.
(M): 9818299898
Email: sangal.law@gmail.com
Mr. Ayush Agarwal & Ms.
Bhumika Sharma, Advs. for R-3.
M: 9999105064
Email: aayush@pba.net.in
Mr. Rachit Bigghe, Advocate for
respondent no. 4/ICICI Bank.
Mr. Kishan Kumar, Mr. Seemant
K. Garg & Mr. Nitin Pal, Advs.
for Canara Bank.
Mr. Divyam Agarwal & Mr.



Mayank Ratnaparhe, Advs. for R-5.

CORAM:
HON'BLE MS. JUSTICE MINI PUSHKARNA
J U D G M E N T
16.04.2024

MINI PUSHKARNA, J:

1. The present petition has been filed *inter-alia* seeking directions to the respondents (also referred to as “Lenders”) to forthwith release the pledge over the equity shares of the petitioner (also referred to as “Company”) in terms of the Master Resolution Agreement (“MRA”) dated 29th May, 2021, entered between the petitioner and the respondents. The present petition arises from the grievance of the petitioner that despite making full payment of the Resolution Amount of Rs. 2450/- Crores (Rupees Two Thousand Four Hundred and Fifty Crores Only) before the scheduled date of payment, the respondents have refused to release the secured assets of the petitioner.

2. The brief facts of the matter are as follows:

2.1 The petitioner secured certain financing facilities in the form of Term Loan Facilities, Working Capital Loan, Fund Based and Non-Fund Based (“NFB”) Facilities from the respondents under various agreements/facility agreements and instruments (“Financing Facility Agreements”). The respondent no.1/Punjab National Bank (“PNB”) was designated as the lead bank of the consortium of Lenders, comprising of respondent nos. 1 to 13.

2.2 The account of the petitioner was declared as Non Performing Asset (“NPA”) in the year 2016.



2.3 Subsequently, as per guidelines of the Reserve Bank of India, the petitioner approached the respondents for resolution of the debts held by the petitioner. Thereafter, following detailed negotiation and with the consent of all the respondents, parties entered into MRA dated 29th May, 2021, whereby the petitioner was allowed to deposit an amount of Rs. 2450/- Crores (Rupees Two Thousand Four Hundred and Fifty Crores Only) to the respondents/Lenders (“Resolution Amount”). The said Resolution Amount was payable in the form of Rs. 1080/- Crores (Rupees One Thousand and Eighty Crores Only) as upfront payment and Rs. 1370/- Crores (Rupees One Thousand and Three Hundred and Seventy Crores Only) was to be paid within a period of four years.

2.4 The petitioner in terms of the MRA, deposited a sum of Rs. 2450/- Crores, being the Resolution Amount, with the Lenders in tranches and completed the said payment in the month of April, 2022, which was disbursed to the Lenders in the ratio of their proportion. Such payment stands duly acknowledged by the respondents in the communication dated 07th October, 2022 sent by PNB, the consortium leader, in response to a request letter of the petitioner dated 04th October, 2022.

2.5 It is the case of the petitioner that it fulfilled all its obligations under the MRA and has also paid the entire Resolution Amount. However, when the petitioner called upon the respondents to release the pledge over 73.59% of the equity shares, the respondents failed to do the same. Thus, the present writ petition has been filed.

2.6 When the present petition was listed for hearing for the first time on 03rd November, 2022, objection was raised by respondent no. 5/Bank of Baroda as regards the maintainability of the present petition. Further,



it was noted in the said order that a civil suit had been filed on behalf of Bank of Baroda seeking annulment of the MRA before District Court, Tis Hazari. It was further recorded in the said order dated 03rd November, 2022 that the Bank of Baroda had raised objections that the petitioner had deliberately misled the banks to portray a picture of financial distress, with the intention of inducing the consortium into executing MRA at a lower settlement amount. For this purpose, the Bank of Baroda had also issued a Show Cause Notice dated 18th October, 2022 to the petitioner. However, afterwards the aforesaid suit filed by the Bank of Baroda against the petitioner herein was withdrawn.

3. Subsequently, an application bearing *CM APPL. No. 13531/2024*, came to be filed on behalf of the petitioner, wherein following facts have emerged:

3.1 During the pendency of the present petition, the respondents jointly appointed an independent auditor, M/s SKVM and Company for conducting an audit in respect of the petitioner-company.

3.2 Thereupon, Special Audit Report dated 24th February, 2024 was submitted by the auditor, in which no adverse findings were found against the petitioner.

3.3 Pursuant thereto, all the respondents held a Joint Lenders' Meeting ("JLM") on 28th February, 2024, wherein all the member banks unanimously agreed for release of assets to the petitioner, but only after disposal/withdrawal of the present case filed by the petitioner.

3.4 Accordingly, *CM APPL. No. 13531/2024* was filed by the petitioner, wherein the petitioner prayed for permission to withdraw the present petition in terms of the Minutes of the Meeting of the JLM.



3.5 In support of the aforesaid application, an affidavit came to be filed on behalf of respondent nos. 1, 2, 6 to 11, wherein the fact of the JLM dated 28th February, 2024 was detailed and it was stated that the Lenders have agreed to release the assets of the petitioner in terms of the approved One Time Settlement (“OTS”).

3.6 Learned counsel appearing for respondent no.4/ICICI Bank and respondent no.5/Bank of Baroda, submitted that they were willing to comply with the decision taken in the JLM dated 28th February, 2024 and would follow the lead bank, i.e., respondent no.1/PNB.

3.7 However, during the course of hearing, learned counsel appearing for respondent no.3/Axis Bank raised objections regarding release of the secured assets to the petitioner in terms of the JLM dated 28th February, 2024, without execution of a written instrument for transfer of equity shares of the petitioner-company to the respondents-banks, to the tune of 10% of the shareholding, which were to be transferred to the respondents-banks in terms of the MRA.

4. On behalf of the petitioner, the following submissions have been raised:

4.1 The petitioner had fulfilled all its obligations under the MRA promptly by pre-paying the entire Resolution Amount of Rs. 2450/- Crores. In terms of the JLM dated 28th February, 2024, the respondents-Lenders have unanimously agreed to release the assets of the company as per the terms of the approved OTS. Therefore, the assets of the company ought to be released by the respondents-Lenders.

4.2 As per the MRA, the respondents were to release the pledge held over 73.59% of the equity shares of the petitioner. Thereafter, within ten



business days from the release of pledge, the petitioner was to transfer 10% of the said equity shares to the respondents. It is submitted that out of the 73.59% equity shares pledged with the respondents-Lenders, they have agreed to retain 10% equity shares and release the pledge on 63.59% equity shares. The 10% equity shares, retained by the respondents-Lenders, shall then be transferred and distributed amongst the Lenders as per the terms of the OTS.

4.3 It is submitted that, despite the 10% equity shares having been retained by the Lenders and all the terms and conditions of the MRA having been complied with, the respondents-Lenders have failed to release the pledge on the assets of the petitioner-company in terms of the conditions, as set out in the MRA.

4.4 It is further submitted that despite paying the entire Resolution Amount, the petitioner's account is still classified as a Non-Performing Asset ("NPA").

5. The following submissions were made on behalf of respondent no.3/Axis Bank:

5.1 Petitioner-company is an unlisted company and is not listed in the Stock Exchange. Thus, for the purpose of transfer of the 10% equity shares to the respective respondents-Lenders, a Share Purchase Agreement /Share Holder Agreement, has to be entered between the parties.

5.2 The respondents-banks have to safeguard their interests, so that an option is available to the banks to exit and liquidate their share.

5.3 Clause 4.5 of the MRA does not safeguard the interests of the banks, as to how the banks will exit and liquidate their share. The said



clause only gives right of first refusal to the petitioner-company.

5.4 The banks have not agreed unanimously to release the assets of the petitioner. The respondent no.3/Axis Bank has been raising this objection since September, 2022. Even the lead bank, PNB wrote a letter dated 22nd September, 2022 to the petitioner that Axis Bank has proposed to execute a Share Purchase Agreement between the Lenders and the petitioner-company that will provide clear terms and conditions for sale of shares to the investors.

5.5 In the JLM held on 07th November, 2022, the stand of Axis Bank has been clearly recorded, wherein they had stated that in order to protect the rights of the Lenders as minority share holders, as well as to ensure exit at fair value, it is necessary to execute Share Holder Agreement, which will ensure minimisation of loss of public money.

5.6 Clause 7 of the MRA gives power to the lead bank only as an agent. Further, Clause 7.1.1 of the MRA envisages coordination with all the Lenders. Since the lead bank has not acted in coordination, the Banks are not bound to ratify the JLM dated 28th February, 2024.

5.7 It cannot be said that banks have agreed unanimously for release of the assets of the petitioner, as PNB cannot override the objections of the banks.

5.8 The Axis Bank wrote an E-mail dated 29th February, 2024 clearly raising the issue of signing of Share Holders Agreement to protect the interest of the Lenders, post allotment of shares, as minority share holders.

5.9 Even the PNB by its E-mail dated 05th March, 2024 has written that the Share Holder Agreement or modalities for allotment have to be



performed with 10% of Shareholding, which can be deliberated upon.

6. On behalf of respondent no.1/PNB, the following submissions were made:

6.1 PNB has not taken any unilateral decision. The JLM took a unanimous decision, in which all the respondents-Lenders had participated.

6.2 The PNB will call a JLM shortly to discuss the issue of distribution of equity shares. The 10% of the equity shares are being retained in terms of the JLM dated 28th February, 2024 and in the next JLM, the issue, as to how the said 10% equity shares are to be transferred to the banks, will be discussed.

6.3 The NOC has to be received from the all respondents-Lenders for release of assets.

7. In rejoinder, learned Senior Counsels appearing for the petitioner have made the following submissions:

7.1 The MRA between the parties was entered on 29th May, 2021 and final payment as per the MRA was made by 29th April, 2022. Five months after making the final payment under the OTS by the petitioner, issue with regard to entering Share Purchase Agreement was raised for the first time by the Axis Bank, as communicated by letter dated 27th September, 2022 issued by the lead bank. In reply dated 10th October, 2022, the petitioner-company had categorically stated that no Share Purchase Agreement was required to be executed for transfer of 10% equity.

7.2 The respondent-bank is essentially seeking amendment of the MRA, which cannot be done in terms of Clause 19.2 of the MRA.



7.3 Clause 4.5 of the MRA clearly provides the mechanism of transfer of equity shares to the lenders. The said clause also provides that in case, if at any time, any lender decides to sell, in full or in part, the equity shares of the petitioner and exit, such lender shall first offer the equity shares for sale to the petitioner-company on right of first refusal basis.

7.4 The respondents-Lenders appointed a Special Auditor during the pendency of the present petition, who investigated for about nine months, in which the petitioner-company fully cooperated and provided all the documents required by the Special Auditor, which were considered and no adverse finding was found against the petitioner.

7.5 The MRA provided for transfer of 10% equity shares to Lenders within 10 business days, upon release of the pledged shares. However, since as per JLM dated 28th February, 2024, 10% of the equity shares are being retained by the respondents-lenders, therefore, in terms of the MRA the remaining pledged shares are to be released to the petitioner.

7.6 The Axis Bank cannot raise questions which are not contemplated by the MRA, as the MRA did not provide for entering into Share Purchase Agreement for the purpose of transfer of 10% equity shares.

7.7 PNB is authorized to act on behalf of all the banks in terms of the MRA, being the lead financial institution. In terms of Clause 7.1, the respondents/lenders have authorized the PNB to act as their agent and undertake all actions in relation to the implementation of the agreement. Further, in terms of Clause 7.2 of the MRA, all the respondents-Lenders have agreed to be bound by the action of the lead financial institution, i.e., the PNB. Therefore, the respondents-Lenders are bound to release the pledge over the equity shares of the petitioner.



8. I have heard learned counsels for the parties and perused the record.

9. At the outset, it would be useful to refer to the relevant Clauses of the MRA, which are reproduced as below:

“xxx xxx xxx

1. DEFINITIONS AND INTERPRETATION

1.1 Definitions

In this Agreement (including the recitals) except to the extent that the context otherwise requires: (i) the capitalized terms defined by inclusion in quotations and / or parenthesis have the meanings so ascribed; and (ii) the following terms shall have the meanings assigned to them herein below:

xxx xxx xxx

"Applicable Law" shall mean and include all applicable laws statutes, enactments, acts of legislature or parliament, laws, ordinance, rules, bye -laws, secretarial standards, regulations, notifications, guidelines, policies, treaties, rules, judgments, notifications, decrees, government consents, directions, directives, orders or regulations or other governmental or regulatory restrictions or conditions, or any similar form of decision, determination or interpretation by any Governmental Authority having jurisdiction over the matter in question, in each case having the force of law and whether in effect as of the date of this Agreement or thereafter;

xxx xxx xxx

4. THE TERMS OF THE RESOLUTION PLAN

Subject to the terms hereof, the Parties have agreed to the following:

4.1 *The Parties have, as a part of the Resolution Plan, agreed to settle the repayment of the Existing Financing Facilities and all outstanding dues in relation thereto with the Lenders, on the following terms and other terms and conditions provided in this Agreement:*

4.1.1 *the payment of an amount of Indian Rupees Two Thousand Four Hundred and Fifty Crores (INR 2450,00,00,000) (the "Resolution Amount") to the Lenders by the Borrower in the manner provided in Clause 8 of this Agreement, excluding the amount of*



Indian Rupees One Hundred and Fifty Crores only (INR 150,00,00,000/-) which has been cut back and appropriated by the Lenders from 1 November 2019 to 31 August 2020 ("Cut Back Amount");

4.1.2 transfer of 10% (Ten percent) equity shares of the Borrower held by the shareholders of the Borrower to the Lenders in the manner provided in Clause 4.5 of this Agreement; and

4.1.3 replacement by the Borrower of the NFB Facilities within four (4) years from the Effective Date.

As a part of the Resolution Plan, the Lenders have agreed for full and final settlement of the outstanding dues in relation to the Existing Financing Facilities with the payment of the Resolution Amount as mentioned in Clause 4.1.1 and Clause 4.1.2 above along with the interest and charges stipulated in this Agreement and the replacement of the NFB Facilities as mentioned in Clause 4.1.3. Further, the Parties agree that, after the occurrence of the Final Settlement Date, the Lenders shall write off the balance amount of the outstanding monies payable by the Borrower, including interest, penal interest and all other charges payable under the Financing Facility Agreement, after deducting the payment of Resolution Amount as mentioned in Clause 4.1.1 and Clause 4.1.2 above along with the interest and charges stipulated in this Agreement.

4.2. The Parties hereby agree that the Financing Facility Agreements shall be in abeyance till the repayment of the Resolution Amount in terms of this Agreement or the occurrence of a Termination Event. However, the Final Settlement Date for the Existing Financing Facilities under the Financing Facility Agreements shall be deemed to be achieved and the entire dues of the Borrower shall be deemed to be settled only upon the Resolution Amount (including all interest), as required to be paid by the Borrower in terms and conditions of this Agreement, shall have been paid in full by the Borrower to the Lenders, 10% (Ten percent) equity shares of the Borrower held by the shareholders of the Borrower are validly transferred to the Lenders on fully diluted basis (i.e., valid transfer of such shares by the shareholders of the Borrower to the Lenders as per all Applicable Law, including completion of all procedure and steps with respect to effecting such transfer as per Applicable Law) and the NFB Facilities are replaced by the Borrower, in compliance of this Agreement. Upon compliance of the aforesaid term and conditions, in terms of the



Resolution Documents, no further amount shall be payable by the Borrower and the lenders shall not have any Claim or outstanding under the Financing Facility Agreements.

However, notwithstanding anything contained in this Agreement, in case of occurrence of Termination Event, the provisions of Clause 10.4.2 shall apply.

4.2.1 Repayment

The Resolution Amount payable by the Borrower to the Lenders towards settlement of the Existing Financing Facilities shall be paid by the Borrower on the dates and in the manner provided in Clause 8 below.

4.2.2. Interest

The Borrower and each of the Lenders agree that, (i) the interest shall accrue only on the Remaining Resolution Amount at a fixed interest rate of 9% (Nine percent) per annum for the amount payable to the Lenders except for the ECB Lenders; and (ii) the interest for the ECB Lenders shall accrue only on the Remaining Resolution Amount payable to such ECB lenders at a fixed rate of 3M LIBOR +450 bps, starting from the date of repayment of the entire Upfront Amount for a period of four (4) years and shall be paid by the Borrower on a monthly basis on last day of every month.

4.2.3. Additional Loans

(a) Working Capital Loan

The Parties agree that the Borrower shall have the right, without prior approval or intimation to the Lenders, to avail fresh working capital facility ("Working Capital Facility") from one or more banks, financial institutions, non-banking financing companies, companies or any other Person ("Working Capital lenders") on such terms and conditions as agreed between the Borrower and such Working Capital Lenders, subject to a limit of INR 400,00,00,000/- (Indian Rupees Four Hundred Crore only), and to enter into financing documents for availing such Working Capital Facility and to create security for the Working Capital Facility as stipulated in Clause 4.2.4 below. However, it is hereby clarified that the payment of the Resolution Amount by the Borrower shall not be contingent



on the arrangement of the Working Capital Facility by the Borrower.

Notwithstanding anything contained in this Agreement or any other Resolution Documents, the Borrower shall ensure that all Working Capital Lenders have executed the Deed of Adherence as provided under Schedule VI and the Lead Financial Institution shall upon receipt of the Deed of Adherence shall acknowledge the Working Capital Facility.

(b) FGD Loan

The Parties hereby agree that the Borrower shall have the right, without prior approval off intimation to the Lenders, to avail financial assistance for the FGD infrastructure ("FGD Facility") from one or more banks, financial institutions, companies or any other Person ("FGD Lenders") on such terms and conditions as mutually agreed between the Borrower and such FGD Lenders, subject to a limit of INR 480,00,00,000/- (Indian Rupees Four Hundred and Eighty Crore only), and to enter into financing documents for availing such FGD Facility and to create security for the FGD Facility as stipulated in Clause 4.2.4 below.

Notwithstanding anything contained in this Agreement or any other Resolution Documents, the Borrower shall ensure that all FGD Lenders have executed the Deed of Adherence as provided under Schedule VI and the Lead Financial Institution shall upon receipt of the Deed of Adherence shall acknowledge the FGD Facility.

(c) Promoter(s) Debt

The Parties hereby agree that the Borrower shall have the right, without prior approval of / intimation to the Lenders, to avail Promoter(s) Debt in accordance with the terms of this Agreement. In the event funds are issued by a Promoter Group Entity through either subscription of unsecured non - convertible debentures issued by the Borrower or providing



unsecured loans to the Borrower or a mix of both, then such non-convertible debentures and / or loans:

- (i) *shall be considered subordinate to the Resolution Amount and the Existing Financing Facility (in case of Termination Event), as the case may be, to the extent that the principal outstanding amount of such Promoter(s) Debt shall be repaid and interest shall be paid, on a quarterly basis, only after meeting the Borrower's debt service obligations towards the Lenders for that quarter, capex and contingent liability, if any, on a quarterly basis and subject to creation of Debt Service Reserve, which may be due for immediately next quarter and in absence of a Termination Event, in accordance with the provisions mentioned under this Agreement and the TRA Agreement; and*
- (ii) *shall carry a fixed interest of not more than 9% (nine percent) per annum.*

4.2.4. Security

- (a) *The security interest already created under the Existing Security Documents to secure the repayment of Existing Financing Facilities together with all interest, costs, expenses and other monies whatsoever stipulated in this Agreement shall continue to be in full force in favour of the Security Agent and for the benefit of the Lenders, including ECB Lenders and the NFB Lenders, except to the extent modified hereunder:*
 - (i) *a first ranking pari passu charge by way of mortgage and charge over all the immovable properties of the Borrower (including mortgage of leasehold rights in case of leasehold land, if any) and assets of the Project,*



both present and future;

- (ii) *a first ranking pari passu charge on all movable fixed assets of the Borrower, both present and future, including but not limited to plant and machinery, machinery spares, tools, spares and accessories of the Project;*
- (iii) *a first charge by way of assignment of all Project contracts including off-take contracts, documents, insurance policies relating to the power plant, rights, titles, permits / approvals, clearances and all benefits incidental thereto;*
- (iv) *a first charge on all Current Assets of the Borrower including the Current Assets of the Project, both present and future till the time the Borrower avails the Working Capital Facility; and a second charge on all the Current Assets of the Borrower including the Current Assets of the Project, both present and future from the time the Borrower avails the Working Capital Facility;*
- (v) *a first charge on the Trust and Retention Account and all sub-accounts thereunder till the time Borrower avails the Working Capital Facility; and a second charge on the Trust and Retention Account and all subaccounts (except of Debt Service Reserve Account) thereunder from the time the Borrower avails the Working Capital Facility. However, it is clarified that on occurrence of Termination Event, all the monies kept in the Trust and Retention Account and all sub – accounts thereunder shall be appropriated*



on such terms and conditions as mentioned in the TRA Agreement;

- (vi) *Pledge of 73.59% (seventy three decimal five nine percent) equity shares of the Borrower and 66% (sixty six percent) preference shares of the Borrower held by the Promoter Group Entity/ JIPL in favour of the Security Holders in the same proportion as existed prior to invocation of pledge Le. 51% (fifty one percent) of the total equity share capital and 51% (fifty one percent) of the total preference share capital of the Borrower shall be pledged in favour of the Security Agent; 15% (fifteen percent) of the total equity share capital and 15% (fifteen percent) of the total preference share capital of the Borrower shall be pledged in favour of Punjab National Bank; and 7.59% of Demat Pledged Equity Shares shall continue to be pledged exclusively in favour of Bank of Baroda;*
- (vii) *An exclusive first charge on the Debt Service Reserve Account created in terms of the TRA Account and all the monies kept thereunder in terms of this Agreement and the TRA Agreement.*
- (b) *The charge/ assignment / pledge stipulated above shall be shared on a pari passu basis inter se the Lenders except the pledge of shares which shall be shared as noted in sub-clause (vi) of Clause 4.2.4(a) above;*
- (c) *The subsisting mortgages/charges/ securities over the immovable and movable assets of the Borrower shall continue to be in full force and effect for*



the benefit of the Lenders except to the extent amended / modified by this Agreement. The pledge stipulated under sub-clause (vi) of Clause 4.2.4(a) shall be created and perfected simultaneously to the transfer of the Demat Invoked Equity Shares and Physical Invoked Preference Shares, provided however that in any condition, the stipulated pledge should be perfected not later than seven (7) Business Days from the date on which (i) the Demat Invoked Equity Shares are credited into the depository participant account of the Pledgor; and (ii) the Physical Invoked Preference Shares are transferred by the Security Agent / Lenders to the Pledgor to enable the Pledgor to re-pledge those shares.

Further, it is clarified that the security created under the Existing Security Documents is only being modified, to the extent applicable, by the terms of this Agreement. The Parties however agree that, in case of occurrence and declaration of a Termination Event, the provisions of Clause 10.4.2 shall apply.

(d) Permitted Security Interest

(i) Working Capital Lenders

The Lenders hereby agree to cede in favour of Working Capital Lenders, including any new lenders providing non fund based facilities: (A) first charge on the Current Assets of the Borrower mentioned in sub-clause (iv) of Clause 4.2.4(a); (B) first charge on the Trust and Retention Account and sub-accounts thereunder mentioned in sub-clause (v) of Clause 4.2.4(a); and (C) second charge on reciprocal basis with the Lenders on the fixed assets of the Borrower as mentioned in sub-clause (i), (ii) and (iii) of Clause 4.2.4(a). In this regard, it is agreed by the Borrower, that the Borrower shall share a prior intimation with the Lead Financial Institution and shall submit to the Lead Financial Institution



the Deed of Adherence executed by such Working Capital Lender(s) before creating such charge in favour of the Working Capital Lenders.

(ii) **FGD Lenders**

The charge stipulated in sub-clauses (i), (ii) and (iii) of Clause 4.2.4(a) above shall be shared by the Lenders on a pari passu basis with the FGD Lenders. In this regard, it is agreed by the Borrower, that the Borrower shall share a prior intimation with the Lead Financial Institution and shall submit to the Lead Financial Institution the Deed of Adherence executed by such FGD Lenders before creating such charge in favour of the FGD Lenders.

4.2.5. *Notwithstanding anything to the contrary contained in the Financing Facility Agreements, Resolution Documents or any agreement, as per the agreed Resolution Plan, there shall be no corporate guarantee or personal guarantee provided to the Lenders and the Lenders shall not have the right to recompense.*

xxx xxx xxx

4.5 **Transfer of 10% Equity to the Lenders**

As a part of the Resolution Plan, the Borrower agrees that, after the payment of last installment of the Resolution Amount by the Borrower to the Lenders and replacement of the NFB Facilities, JIPL shall transfer 10% (Ten percent) of the equity shares of the Borrower, on fully diluted basis, calculated as on the date on which the entire Resolution Amount along with interest stands paid to the Lenders (as per each Lender's share percentage mentioned in Schedule 11 hereto), out of the equity shares of the Borrower pledged with the Lenders, within 10 (ten) Business Days from the date of release of pledge over such equity shares by the Lenders, to the satisfaction of the Lenders. Further, the Borrower and JIPL also agree that such transfer of 10% (Ten percent) equity shares of the Borrower which are to be transferred to the Lenders, on fully diluted basis, shall be free from all Encumbrances whatsoever.

If at any time, any Lender decides to sell, in full or in part, the equity shares of the Borrower and exit, such Lender shall first offer the equity shares for sale to the JIPL on right of first refusal ("RoFR") basis. Upon receipt of an offer of RoFR from



the Lenders, JIPL shall communicate their decision on acceptance or rejection of such offer within 15 (Fifteen) days ("Acceptance Date") from the date on which such offer was received from the relevant Lender. The Parties agree that JIPL shall exercise its RoFR (i.e., complete the purchase of the relevant equity shares from the relevant Lender) within 30 (Thirty) days from the Acceptance Date, unless otherwise agreed between JIPL and such relevant Lender. In the event the offer of the Lender is not acceptable or the decision is not communicated to the relevant Lender within 15 (Fifteen) days by JIPL, then, the Lender may approach outside buyers for the sale of such equity shares of the Borrower, however, the Lender shall not be permitted to sell the equity shares of the Borrower to an outside party at a price lower than the price at which it was offered by them to JIPL.

xxx xxx xxx

19.2 Amendments

This Agreement may not be amended, modified, waived, discharged or supplemented except by a written instrument executed by each of the Parties.

xxx xxx xxx

19.8 Independent Rights

Each of the rights of the Parties are independent, cumulative and without prejudice to all other rights available to them, and the exercise or non-exercise of any such rights shall not prejudice or constitute a waiver of any other right of the Party, whether under this Agreement or otherwise. Provided that where different rights are created as a result of or on account of a single cause of action, where a Party has achieved complete remedy by pursuing one course of action, such Party shall not be entitled to pursue other causes of action to seek further remedies for the same cause of action.

19.9 Entire Agreement

This Agreement constitutes the entire agreement of and between the Parties relating to the subject matter hereof (including all commercial understandings / covenants including payment of the amounts due to the Lenders in the form of Resolution Amount and interest thereon, replacement of the NFB Facilities and 10% (Ten percent) equity share, on fully diluted basis, transfer of the Borrower) and supersedes any and all prior agreements and arrangements or any nature whatsoever, including letters of intent and term sheets and financing agreements (including Financing Facility Agreements),



communications, negotiations, commitments, letters, either oral or in writing, between the Parties with respect to the subject matter herein. Notwithstanding anything contained under this Agreement or any other Resolution Documents, the Parties agree that in case of Termination Event, the Financing Facility Agreement, including without limitation the Existing Security Documents, shall be enforceable against the Borrower and/or any other person, to the extent as provided under the Financing Facility Agreements.

xxx xxx xxx”

(Emphasis Supplied)

10. Perusal of the aforesaid Clauses clearly show that in terms of the MRA dated 29th May, 2021, the petitioner was allowed to deposit a sum of Rs. 2450/- Crores with the respondents-Lenders. After compliance of the terms and conditions of the MRA by the petitioner, the respondents were to release the pledge held over 73.59% of the equity shares of the petitioner. Further, within a period of ten business days from release of such pledge, the petitioner was to transfer the said equity shares to the respondents, on fully diluted basis, calculated as on the date on which the Resolution Amount along with the interest stood paid to the respondents. It is only when all the terms and conditions of the MRA were fulfilled, the respondents were to release the entire security created by the petitioner as per the MRA.

11. However, during the pendency of the present petition, the respondents held a JLM on 28th February, 2024, wherein it was decided to retain 10% of the equity shares that are to be transferred to the banks in proportion to their share.

12. As regards the transfer of the equity shares in favour of the Lenders/respondents, the stand of respondent nos. 1, 2 and 6 to 11 as



stated in written synopsis dated 8th February, 2023, reads as under:

“xxx xxx xxx

4. That upon receiving the said amount of Rs. 2450 Crores, the modalities with regards to the release of the pledged shares and simultaneously transfer of the share in favour of the Lenders were being discussed between the Petitioner and the Lenders/Respondents. During various meetings, the Petitioner was intimated about desire of the Lenders for execution of the Share Purchase Agreement and the steps for initiating the determination of the valuation of the Equity shares through independent agency and the said assignment was handed over to the Resurgent India and RBSA, in order to protect interest of the Lenders who would be minority shareholders in such scenario. Subsequently, vide letter dated 07.10.2022, the said fact was pointed out by the Respondent No.1 ("Lead Bank") for and on behalf of the consortium and parties have been contemplating for the release of shares, upon the finalization of the modalities for the transfer of shares in favour of the lenders subject to some reservation/clarifications on the process being sought by few of the Lenders.

.....

8. That in continuation to the JLM held on 07.11.2022, certain members were of the view that they were agreeable to comply with the terms and conditions as set out in the MRA subject to the Petitioner's complying with the term of execution of the Share Transfer Agreement. The necessity for execution was felt due to the reasons that the Lenders will become minority shareholders in the company and therefore, execution of such an agreement would protect the rights of the Lenders as the well as ensure exit at a fair value. Therefore, there was necessity to execute the Shareholder Agreement ("SHA").

xxx xxx xxx”

(Emphasis Supplied)

13. Thus, the clear stand of the respondents has been with respect to execution of a Share Purchase Agreement in order to protect the interest of the Lenders, who would be minority share holders in the petitioner company, after transfer of 10% of the equity shares to the respective Lenders in different proportions.

14. In fact, the issue with respect to release of equity shares to the



petitioner company on the basis of execution of a Share Purchase Agreement between the lenders and the company was informed by the lead bank, i.e., respondent no. 1-PNB vide its letter dated 27th September, 2022, which reads as under:

**“PUNJAB NATIONAL BANK
ZONAL SASTRA CENTRE-DELHI
1st Floor, 7 Bhikaji Cama Place, Africa Avenue,
New Delhi-110066 E.Mail ID zs8343@pnb.co.in**

Date: 27/09/2022

To

Mr. Prafull Churasia

Jindal India Thermal Power Limited
Plot No. 2, Pocket C, 2nd Floor
Nelson Mandela Road, Vasant Kunj,
New Delhi- 110070

Reference: Release of Equity Shares: JINDAL INDIA THERMAL POWER LIMITED (JITPL)

In the reference of Company request for Release of Shares vide letter dated May 2022.

We inform you that we have been taken up the matter of release of Equity Shares in last consortium and JLM meetings held in months of May, June, July, August & September 2022 & last was on 08.09.2022 respectively. In some of the meeting representatives of the company were also present.

A brief summary which was discussed in last JLM dated 08.09.2022.

- 1) *UCO bank has informed that they will take up the matter with their Higher Authorities.*
- 2) **Axis Bank has proposed to execute Share Purchase Agreement between Lenders and Company that will provide clear terms and conditions for sale of Shares to the investors.**
- 3) **State Bank of India has conveyed that they are in principally agree for Transfer of Shares as per MRA and also agree to execute a Share Purchase Agreement and request for valuation of Equity Shares.**
- 4) *Bank of Baroda had not attended the last two JLMs but through email dated 15.09.2022, sent its observation that the complications of the undefined clauses mentioned in the MRA may lead to loss to the banks and ultimately loss of public money.*



- 5) We, as a Lend Bank, informed all the lenders that their respective observations and view for execution of Shares & Purchase Agreement between Lenders and Company will be shared with the company. Also informed that valuation of Equity shares are under process and have already given to Resurgent India & RBSA.
This is for information and record please.
Your Sincerely
Zonal Sastra Head”

(Emphasis Supplied)

15. The said issue regarding execution of a Share Purchase Agreement for transfer of 10% equity shares as per the MRA to the Lenders, also finds mention in the Minutes of the JLM held on 7th November, 2022, relevant portion of which reads as under:

“xxx xxx xxx

7) **Axis Bank Limited: They informed that pursuant to transfer of 10% share as per the MRA Lenders will become minority shareholders in the company in order to protect the rights of the Lenders as minority shareholders as well as to ensure exit at fair value. It is necessary to execute shareholder Agreement (SHA). This will also ensure minimization of loss of public money. Therefore, in Axis Bank’s view it is necessary to execute SHA before release of pledged equity shares. Axis Bank is also of the opinion that executed MRA in no way restricts the parties to enter into SHA, which shall include the Lenders rights including the exit clauses.**

.....

In conclusion, PNB has informed that PNB is in the view of release of security as per MRA. The same view was also intimated to the consortium members in the earlier JLMs also. In view of the decision of the consortium lenders as above, the following points are decided.

1. **We need to discuss the execution of SHA with borrower and explore exit route for 10% equity shares.**

2. In view of BOB intimation and agreed by majority of lenders, appointment of Independent Agencies be done to investigate and examine the figures of the Financial Statements for FY 2021, FY 2022 with projected figures and operational factors.

3. The cost of the proposed Independent Agency will be borne by all the lenders pr- rata in the exposure amount.

xxx xxx xxx”

(Emphasis Supplied)



16. The contention raised on behalf of the petitioner that the MRA does not envisage execution of a Share Purchase Agreement, has to be necessarily rejected. This is for the reason that the MRA itself envisages in Clause 4.2 that 10% equity shares of the petitioner-company are to be validly transferred to the Lenders on fully diluted basis. Clause 4.2 of the MRA specifically stipulates that the said 10% equity shares of the petitioner-company shall be validly transferred to the Lenders as per all applicable law, including completion of all procedure and steps, with respect to effectuating such transfer as per applicable law.

17. Thus, it is clear that the MRA itself stipulates that 10% transfer of the equity shares has to be done validly as per law of the land. This Court cannot be oblivious of the fact that the Lenders in the present case being banks hold public money, which has to be safeguarded by all means. The petitioner-company being an unlisted company, the respondent banks, in their capacity as minority share holders of the petitioner-company after transfer of the equity shares to them, have to be given a safe option to exit. Thus, this Court cannot ignore the stand taken by the respondent banks/Lenders in regard to execution of a Share Purchase Agreement.

18. Valid transfer of equity shares in favour of the Lenders, as envisaged in the MRA, as per the applicable law, would include execution of a Share Purchase Agreement.

19. Even the decision taken in the JLM dated 28th February, 2024 refers to the fact that the petitioner-company is under negotiation for release of equity, but no concrete offer in writing has been received. Thus, while deciding to release 63.59% equity to the petitioner-



company, the JLM Meeting dated 28th February, 2024 decided to hold 10% equity shares of the petitioner-company and to discuss the distribution of equity issue in the next JLM. The issue regarding execution of a Share Purchase Agreement has again been categorically mentioned in the JLM Meeting dated 28th February, 2024, which is reproduced as under:

**“PUNJAB NATIONAL BANK
ZONAL SASTRA CENTRE DELHI
1ST FLOOR, 7TH BHIKAJI CAMA PLACE, NEW DELHI-110066
E.MAIL ID zs8343@pnb.co.in**

**JLM in NPA A/C M/s JINDAL INDIA THERMAL POWER LIMITED held
on 28.02.2024 at 11.00 AM through virtual mode.**

MINUTES OF THE MEETING

JLM was held in NPA account M/s Jindal India Thermal Power Limited on 28.02.2024 through virtual mode.

Following members were present during virtual meeting:

Sl. No	Bank	Name Mr/Ms	Designation
1	Punjab National Bank	Rakesh Grover	CGM, HO
2	Punjab National Bank	R.R. Mishra	GM, HO
3	Punjab National Bank	Mukul Sahay	GM
4	Punjab National Bank	Rakesh Malhotra	AGM
5	Punjab National Bank	Akash Deep	Sr. Manager
6	Bank of Baroda	Dinesh Pant	CGM
7	Bank of Baroda	Ajoy Kumar Sharma	AGM
8	Bank of Baroda	Uday Veer Chopra	CM
9	Bank of Baroda	Sumeet Kumar	Manager
10	Bank of Baroda	Saumya Garg	Manager (Legal)
11	State Bank of India	Vijendra Singh Jatav	AGM
12	State Bank of India	Sandep Kumar	CM
13	State Bank of India	S L Meena	CM
14	Axis Bank	Anuradha Singh	Asstt. Vice President/VRM
15	ICICI Bank	Anju sajeev	Sr. RM
16	ICICI Bank	Rushikesh Chavan	RM
17	UCO Bank	Jaswinder Kumari	AGM
18	UCO bank	Harpreet Kaur	Manager
19	Indian Overseas Bank	Rishikesh Ranjan Kumar	AGM
20	Indian Overseas Bank	Mitranjan Kumar Singh	Sr. Manager
21	Union Bank of India	Lakshya Khatri	Sr. Manager
22	LIC of India	Rima Yashwanth	AO
23	Punjab & Sindh Bank	G. Parthiban	AGM
24	Indian Bank	Manisha	Sr. Manager
25	Phoenix ARC	Esha Dere	Dy. Manager
26	Canara Bank	Santosh Thomas	DGM
27	Canara Bank	Prashant Kumar	AGM
28	Canara Bank	Hemu Chand	Sr. Manager

**Agenda:**

1. To discuss the Audit report submitted by M/s SKVM & Co
2. Any other agenda with permission of Chair

Mr. Mukul Sahay, General Manager, Zonal Sastra Centre, Punjab National Bank (Lead Bank) welcomed all the participants. Afterwards detailed agenda wise deliberations were held as under:

Agenda 1. To discuss the Audit report submitted by M/s SKVM & Co

It was informed to the member banks of consortium that Audit report has already been circulated and no adverse remarks found in the report in toto. Lead Bank asked the member banks to place their views about the closure of said report. BOB has agreed with views of PNB regarding no adverse remarks in the report. BOB representative has informed that as company has now shared complete information and justification based on which the report is concluded. Earlier complete information was not provided. After detailed deliberations, all other member banks also unanimously agreed for closure of report. It has been decided that lead bank will submit the said report to Hon'ble High Court. Further PNB has informed that the company shall be withdrawing the writ petition as discussed with the company.

It was discussed in detail that no adverse remarks found in the audit report, Bank(s) may release the assets of the company as per Terms & Conditions of OTS approved. All member banks unanimously agreed for release of assets but only after disposal/withdrawal of case filed by the company in Hon'ble High Court.

Lead bank has informed that party is under negotiation for release of equity also but no concrete offer in writing has still been received. 63.59 % Equity to be released to the company M/s Jindal India Thermal Power Ltd and by holding 10% equity shares with the lenders out of 73.59 % pledged equity shares with consortium as per Terms & Conditions of OTS sanctioned. Further in next JLM likely to be scheduled shortly wherein M/s JITPL will be called upon and to discuss the offer on equity issue. However, Equity shares will be distributed among member banks of consortium as per their share. 10% share of total equity shares pledged with consortium member banks i.e. 6,05,76,655 shares, will be distributed among the member banks. SBI informed that ORT suit filed against the company shall be withdrawn only after completion of all formalities including issuance of equity shares under OTS.

Axis Bank has enquired about Share Purchase Agreement for which lead bank has informed that decision with respect to holding of Equity shares will depend upon individual Bank's commercial



decision.

With regard to some operational issues, consortium member banks also agreed that:

- 1. To discontinue the service of ASM appointed in the account.*
- 2. DASRA will continue till the equity issue be resolved.*

Representative from SBI bank has asked the amount of DASRA lying with PNB. Lead bank has informed that Rs 105 Crore (principle) is lying in DASRA account.

Agenda 2. Any other matter with the permission of the Chair.

No other issue was found for discussion, meeting ended with a vote of thanks."

(Emphasis Supplied)

20. Further, it is also relevant to note the affidavit dated 29th February, 2024 filed by respondent nos. 1, 2, 6 to 11, relevant portion of which is extracted as under:

xxx xxx xxx

- 3. I state that as per the records, the consortium lenders had appointed M/s SKVM & Co., as a Special Auditor to enquire and examine the projections and financials submitted by Petitioner vis-a-vis the settlement arrived in the form of One Time Settlement by the Lenders.*
- 4. I state that M/s SKVM & Co., submitted their final report and in terms of the said report no adverse remarks have been found and the report has been accepted by all the lenders in the Joint Lenders' Meeting dated 28.02.2024.*

*The true copy of the Report submitted by SKVM & Co., is filed herewith as **Annexure R1-1.***

- 5. I state that a Joint Lenders Meeting held on 28.02.2024, decided to place the above said audit report before the court wherein the lenders have agreed with the closure of the issue in terms of the report. The consortium desired lead bank i.e. Punjab National Bank to place on record the report submitted by SKVM & Co., as Minutes of the Meeting of the Joint Lenders held on 28.02.2024 to apprise this Hon'ble Court about the current position in the account. I state that the lenders have unanimously agreed to release the assets of the Petitioner in terms of the terms and conditions of the OTS approved.*



*The true copy of the Minutes of Meeting of Joint Lenders held on 28.02.2024 is filed herewith as **Annexure R1-2**.*

xxx xxx xxx”

21. Reading of the aforesaid clearly shows the understanding of the respondent Lenders/Banks to release the assets of the petitioner, in terms and conditions of the OTS approved. Thus, in terms of the MRA, the entire dues of the petitioner-company shall be deemed to be settled only upon the Resolution Amount being paid by the petitioner-company in full and upon valid transfer of 10% equity shares of the petitioner-company to the Lenders, ‘as per all Applicable Law, including completion of all procedure and steps with respect to effecting such transfer as per Applicable Law’ (See Clause 4.2 of MRA dated 29th May, 2021).

22. Thus, till the 10% equity shares of the petitioner-company are not validly transferred to the Lenders, it cannot be said that the entire dues of the petitioner-company have been settled. Therefore, when it is mentioned in the JLM dated 28th February, 2024, that the banks may release the assets of the company as per the terms and conditions of OTS approved, it has to mean that the assets of the company shall be released by the Lenders after valid transfer of the equity shares in favour of the Lenders. The terms and conditions of the MRA are very categorical to this effect and there is no ambiguity with regard thereto.

23. As regards interpretation of a contract, the terms of a contract have to be read as they are, especially when there is no ambiguity with respect to the said terms. Holding that intention of the parties must be discerned from the context of the contract, Supreme Court in the case of



***Food Corporation of India and Others Versus Abhijit Paul, 2022 SCC
OnLine SC 1605, has held as follows:***

“xxx xxx xxx

20. In *Provash Chandra Dalui v. Biswanath Banerjee*²⁰, noting that the intention of the parties must be discerned from the context of the contract, this Court observed:

“10. ‘Ex praecedentibus et consequentibus optima fit interpretatio.’ The best interpretation is made from the context. Every contract is to be construed with reference to its object and the whole of its terms. The whole context must be considered to ascertain the intention of the parties. It is an accepted principle of construction that the sense and meaning of the parties in any particular part of instrument may be collected ‘ex antecedentibus et consequentibus;’ every part of it may be brought into action in order to collect from the whole one uniform and consistent sense, if that is possible.

...

In construing a contract the court must look at the words used in the contract unless they are such that one may suspect that they do not convey the intention correctly. If the words are clear, there is very little the court can do about it. In the construction of a written instrument it is legitimate in order to ascertain the true meaning of the words used and if that be doubtful it is legitimate to have regard to the circumstances surrounding their creation and the subject matter to which it was designed and intended they should apply.”

(emphasis supplied)

21. In *BESCOM v. E.S. Solar Power Pvt. Ltd.*²¹, this Court held that in case of two possible interpretations of a contractual term, the court must accord primacy to the one that is consistent with the underlying purpose of the contract. It noted:

“17. ... In seeking to construe a clause in a contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the court has to prefer one above the other in accordance with the settled principles. If one meaning is more in accord with what the court considers to be the underlined purpose and intent of the



contract, or part of it, than the other, then the court will choose the former or rather than the latter...

(Emphasis Supplied)

xxx xxx xxx”

24. Likewise, in the case of ***Bangalore Electricity Supply Company Limited Versus E.S. Solar Power Private Limited and Others***, (2021) 6 SCC 718, Supreme Court has held as follows:

“xxx xxx xxx

17. The duty of the court is not to delve deep into the intricacies of human mind to explore the undisclosed intention, but only to take the meaning of words used i.e. to say expressed intentions (Kamla Devi v. Takhatmal Land [Kamla Devi v. Takhatmal Land, (1964) 2 SCR 152 : AIR 1964 SC 859]). In seeking to construe a clause in a contract, there is no scope for adopting either a liberal or a narrow approach, whatever that may mean. The exercise which has to be undertaken is to determine what the words used mean. It can happen that in doing so one is driven to the conclusion that clause is ambiguous, and that it has two possible meanings. In those circumstances, the court has to prefer one above the other in accordance with the settled principles. **If one meaning is more in accord with what the court considers to be the underlined purpose and intent of the contract, or part of it, than the other, then the court will choose the former or rather than the latter.** Ashville Investments Ltd. v. Elmer Contractors Ltd. [Ashville Investments Ltd. v. Elmer Contractors Ltd., 1989 QB 488 : (1988) 3 WLR 867 : (1988) 2 All ER 577 (CA)] **The intention of the parties must be understood from the language they have used, considered in the light of the surrounding circumstances and object of the contract.** Bank of India v. K. Mohandas [Bank of India v. K. Mohandas, (2009) 5 SCC 313 : (2009) 2 SCC (Civ) 524 : (2009) 2 SCC (L&S) 32] . **Every contract is to be considered with reference to its object and the whole of its terms and accordingly the whole context must be considered in endeavouring to collect the intention of the parties, even though the immediate object of inquiry is the meaning of an isolated clause.** Bihar SEB v. Green Rubber Industries [Bihar SEB v. Green Rubber Industries, (1990) 1 SCC 731].

xxx xxx xxx”

(Emphasis Supplied)



25. In the case of *Rajasthan State Industrial Development And Investment Corporation And Another Versus Diamond & Gem Development Corporation Limited And Another*, (2013) 5 SCC 470, Supreme Court has held in categorical terms that a Court is required to determine the ultimate purpose of a Contract primarily by the joint intent of the parties at the time of the contract. Contract is not the intent of a single party, but joint intent of both the parties. Thus, it has been held as follows:

“xxx xxx xxx

IV. Interpretation of the terms of contract

xxx xxx xxx

24. In *DLF Universal Ltd. v. Town and Country Planning Deptt.* [(2010) 14 SCC 1 : (2011) 4 SCC (Civ) 391 : AIR 2011 SC 1463] this Court held : (SCC pp. 14-15, paras 13-15)

“13. It is a settled principle in law that a contract is interpreted according to its purpose. The purpose of a contract is the interests, objectives, values, policy that the contract is designed to actualise. It comprises the joint intent of the parties. Every such contract expresses the autonomy of the contractual parties' private will. It creates reasonable, legally protected expectations between the parties and reliance on its results. Consistent with the character of purposive interpretation, the court is required to determine the ultimate purpose of a contract primarily by the joint intent of the parties at the time the contract so formed. It is not the intent of a single party; it is the joint intent of both the parties and the joint intent of the parties is to be discovered from the entirety of the contract and the circumstances surrounding its formation.

14. As is stated in Anson's Law of Contract:

‘a basic principle of the common law of contract is that the parties are free to determine for themselves what primary obligations they will accept.... Today, the position is seen in a different light. Freedom of contract is generally regarded as a reasonable, social, ideal only to the extent that equality of bargaining power between the contracting parties can be assumed and no injury is done to the interests of the community at large.’



15. The Court assumes:

‘that the parties to the contract are reasonable persons who seek to achieve reasonable results, fairness and efficiency.... In a contract between the joint intent of the parties and the intent of the reasonable person, joint intent trumps, and the Judge should interpret the contract accordingly.’
[Ed. : Anson's Law of Contract; Aharon Barak : Purposive Interpretation in Law, 2005, Princeton University Press.] ”

xxx xxx xxx”

(Emphasis Supplied)

26. Further, this Court also notes that it has been laid time and again that banks while dealing with the public funds have to ensure that the public interest is safeguarded, as the money with the banks is not a private fund, but a public fund. Thus, in the case of ***Ishwar Pal Singh Versus Punjab National Bank and Others, 2020 SCC OnLine Del 2620***, this Court has held as follows:

“xxx xxx xxx

62. Due care, caution and circumspection has been accorded, to the case of the petitioner, as well as to the submissions advanced by him in defence to the allegations against him, by the EO, the DA and the appellate authority, and, in my view, the petitioner could not hope for anything better. The Supreme Court has, in the judgments already cited hereinabove, specifically held that the degree of care and caution, required to be exercised by an official of a Bank, as a person who holds public monies in trust in fiduciary capacity, is much higher than that required to be exercised by other government officials. It is expected, of an official of a bank, especially of a managerial stature, that he takes all precautions to ensure that the affairs of the bank are conducted in such a manner as to minimise losses and maximise returns and, thereby, secure the monies of the investing public, which the bank holds in trust. Commercial - rather, financial - prudence has necessarily to guide the exercise of discretion, of every official of the Bank. Want of due care, by a Bank official, is itself a serious lapse, actionable at law by recourse to disciplinary proceedings, irrespective of whether, as a consequence thereof, actual loss has, or has not, resulted.

xxx xxx xxx”

(Emphasis Supplied)



27. Similarly emphasizing that loans granted by financial institutions/banks are granted from public money generated at the tax payers' expense and such loan retains the character of public money, given in fiduciary capacity as entrustment by the public, Supreme Court in the case of *Authorised Officer, State Bank of Travancore and Another Versus Mathew K.C., 2018 SCC Online SC 55*, has held as follows:

“xxx xxx xxx

*15. It is the solemn duty of the court to apply the correct law without waiting for an objection to be raised by a party, especially when the law stands well settled. Any departure, if permissible, has to be for reasons discussed, of the case falling under a defined exception, duly discussed after noticing the relevant law. In financial matters grant of ex parte interim orders can have a deleterious effect and it is not sufficient to say that the aggrieved has the remedy to move for vacating the interim order. Loans by financial institutions are granted from public money generated at the taxpayer's expense. Such loan does not become the property of the person taking the loan, but retains its character of public money given in a fiduciary capacity as entrustment by the public. Timely repayment also ensures liquidity to facilitate loan to another in need, by circulation of the money and cannot be permitted to be blocked by frivolous litigation by those who can afford the luxury of the same. The caution required, as expressed in *Satyawati Tondon [United Bank of India v. Satyawati Tondon, (2010) 8 SCC 110 : (2010) 3 SCC (Civ) 260]*, has also not been kept in mind before passing the impugned interim order: (SCC pp. 123-24, para 46)*

xxx xxx xxx”

(Emphasis Supplied)

28. This Court also notes the E-mail dated 29th February, 2024 issued by respondent no. 3/Axis Bank, wherein Axis Bank has clearly raised the issue with respect to signing of the Share Holder Agreement in order to protect the interest of the Lenders as minority share holders. The said



Email dated 29th February, 2024 issued by Axis Bank, reads as under:

“xxx xxx xxx

Dear Sir/Madam,

Kindly refer the modifications in the attached draft MoM. Reiterating the modifications here for your reference,

Further, Axis Bank, mentioned that release of assets and pledge of shares is subject to allotment of share as per the OTS proposal post signing of shareholders agreement.

Axis Bank has mentioned time and again they have been insisting on the fact that signing of shareholders agreement is required to protect the interest of lenders (post allotment of shares) as minority shareholders.

xxx xxx xxx”

(Emphasis Supplied)

29. The said issue regarding signing of a Share Holder Agreement to protect the interest of Lenders, was raised by respondent no. 3/Axis Bank by another Email of the same date, i.e., 29th February, 2024, which reads as under:

“xxx xxx xxx

Dear Lenders,

In furtherance to the trailing mail, please note Axis Bank’s observation on the Final Special report (copy attached),

“It is inferred that certain information was not given proactively to lenders as well as their advisors, which could have been vital for assessing the future cash flows of the company and thereby arriving at the acceptable OTS Value. Thus in Axis Bank’s view, this is suppression of facts and hiding of material information which could have been critical in the process of lenders’ decision making on whether to accept or reject the proposed OTS.

Further, as requested in the trailing mail, requesting again to incorporate the suggested changes as mentioned below and share the revised minutes.

Further, Axis Bank, mentioned that release of assets and pledge of shares is subject to allotment of share as per the OTS proposal post signing of shareholders agreements.

Axis Bank has mentioned time and again they have been insisting on the fact that signing of shareholders agreement is required to



protect the interest of lenders (post allotment of shares) as minority shareholders.

xxx xxx xxx”

(Emphasis Supplied)

30. In response to the aforesaid Emails, the lead bank i.e., respondent no. 1/PNB clearly stated that the Share Holder Agreement or modalities for allotment of 10% equity shares to the Lenders/respondent-banks, will be deliberated upon. The Email dated 5th March, 2024 issued by respondent no. 1-PNB reads as under:

“xxx xxx xxx

Sir/Madam

In terms of trailing mail, we would like to point out that minutes were finalised as discussed in JLM held on 28.02.2024 and draft of the same was circulated to all. Since the lenders desired in the meeting that minutes be placed before Hon'ble High Court, therefore the same were forwarded to counsel after seeking revert from all member banks of consortium. The said finalised minutes have already been filed before Hon'ble High Court by bank's approved counsel.

Even otherwise, the shareholder agreement or modalities for allotment have to be performed within 10% of shareholding which remains pledged to Lenders for time being, the same can be deliberated upon in our view.

xxx xxx xxx”

(Emphasis Supplied)

31. Therefore, it is clear that though the petitioner has paid full amount under the OTS, however, its entire dues cannot be said to be settled, till valid transfer of equity shares is done in terms of categorical stipulation as envisaged in the MRA, as per all Applicable Laws, including completion of all procedure and steps with respect to effectuating such transfer as per the Applicable Laws.

32. This Court cannot accept the submission made by learned Senior Counsel for the petitioner that the MRA does not envisage execution of



any Share Purchase Agreement. As noted earlier, the MRA makes categorical provision for valid transfer of the equity shares after completion of due procedures, in terms of the Applicable Laws.

33. It may be noted that Section 56 of the Companies Act, 2013 envisages transfer of securities by a proper instrument of transfer, which shall be duly stamped and executed. Section 56 of the Companies Act, 2013 reads as under:

“56. Transfer and transmission of securities.—(1) A company shall not register a transfer of securities of the company, or the interest of a member in the company in the case of a company having no share capital, other than the transfer between persons both of whose names are entered as holders of beneficial interest in the records of a depository, unless a proper instrument of transfer, in such form as may be prescribed, duly stamped, dated and executed by or on behalf of the transferor and the transferee and specifying the name, address and occupation, if any, of the transferee has been delivered to the company by the transferor or the transferee within a period of sixty days from the date of execution, along with the certificate relating to the securities, or if no such certificate is in existence, along with the letter of allotment of securities:

xxx xxx xxx”

34. Likewise, Rule 11 of The Companies (Share Capital and Debentures) Rules, 2014 provides for instrument of transfer of securities. Thus, Rule 11 reads as under:

“11. Instrument of transfer.—(1) An instrument of transfer of securities held in physical form shall be in Form No. SH.4 and every instrument of transfer with the date of its execution specified thereon shall be delivered to the company within sixty days from the date of such execution.

(2) In the case of a company not having share capital, provisions of sub-rule (1) shall apply as if the references therein to securities were references instead to the interest of the member in the company.

(3) A company shall not register a transfer of partly paid shares, unless the company has given a notice in Form No. SH.5 to the transferee and the transferee has given no objection to the transfer



within two weeks from the date of receipt of notice.”

35. Law regarding the manner of effectuating transfer of title of shares is well settled. Thus, a coordinate bench of this Court in the case of *Shashvat Nakrani Versus Ashneer Grover, 2023 SCC OnLine Del 8005* has held as follows:

“xxx xxx xxx

49. The law regarding the manner of effectuating transfer of title of shares is also no longer res integra and has been the subject matter of numerous judicial pronouncements.

50. In Maneckji Pestonji Bharucha v. Wadilal Sarabhai and Co.⁶, the Privy Council was concerned with a situation where blank transfer Forms had been executed by the registered holders of shares of a company. In that context, it was observed by the Privy Council as under:—

“So soon, therefore, as Arajania, acting for Bharucha, handed Gora the certificates and transfers and Gora accepted them and gave the cheque, the goods became ascertained goods, the sale was complete and the property passed. From that time onward Bharucha and Arajania could only sue Gora on the cheque, or for the price of the shares unpaid in respect that the cheque had not been honoured. They had no longer any jus in re of the certificates and transfers. They had no statutory lien, for they had parted with possession, and, consequently, as they had no contract with Defendants Nos. 2 and 3, they could not sue them for delivery of the shares, whether the Defendants had got good title as against Gora or had not.”

51. The said judgment was cited with approval in Commissioner of Income Tax, Delhi (Central) v. Bharat Nidhi Ltd., ILR (1982) 1 Del 64. In that case, the Court was concerned with the issue whether transfer of shares could be effectuated without delivery of the shares and without execution of a share transfer form. It was held in that case that for the purpose of a valid transfer, there must be a valid transfer form, wherein the shares must be specified by serial numbers. The Court noticed the judgment of this Court in Seth R. Dalmia v. Commissioner of Income Tax - ILR (1971) 1 Del 30 (4), wherein it was held that even execution of blank transfer form would result in transfer of equitable ownership of the shares, and that the transfer would be complete once the name of the transferee is entered in the registers of the company. The relevant observations in Bharat Nidhi (supra) are as under:



“6. Goods are moveable property in terms of Sale of Goods Act. When and at what time a property can pass on to the buyer is laid down in Chapter III. Section 19 provides that where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred; and for the purpose of ascertaining the intention of the parties to the contract regard shall be had to the conduct of the parties. Sub-section (2) of Section 19 elaborates that the rules in Sections 20 to 24 are to be looked at for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer. Section 21 provides that where there is a contract for the sale of specific goods and the seller is bound to do something to the goods for the purpose of putting them into a deliverable state the property does not pass unless such thing is done and the buyer has notice thereof. The Tribunal has however, not referred to Section 21 because according to it Section 20 which provides that if there is an unconditional contract for the sale of specific goods in a deliverable state the property in goods passes to the buyer when the contract is made, and it is immaterial whether the time of payment of the price or time of delivery of the goods, is postponed and opined that the mere fact that the payment was not made on 5-2-1948 or that the delivery of shares was not made does not mean that the property did not pass on to the buyers in February, 1948. This however, omits to notice that in terms of Section 21 unless shares were specified by serial numbers which can be identified it cannot be said to be a contract for sale of specified goods as contemplated by Section 21 of the Act, as they would remain unascertained. See (ILR (1928) 50 All 695 (1) A.W. Domingo v. L.C. De Souza. It is by now well established that only a person who is on the register is in full sense of word the owner of the share. But the title to get on the register consists in possession of a certificate together with transfer signed by the registered holder”. Vide (AIR 1926 PC 38) (2) Maneckji Pestonji Bharucha v. Wadilall Sarabhai & Company. An agreement to transfer shares in a company accompanied with the actual instrument of transfer which has not been completed so far as the transferor could complete it does not amount to a transfer deed sufficient to cause title to pass. By itself it would be nothing more than an enforceable agreement to convey and until the transfer endorsement is signed the shares would be unascertained goods and would not be in a deliverable state. Vide (AIR 1941 Mad 769) (3) Kuppiah Chetty v. Saraswathi Ammal. In what circumstances legal ownership or equitable ownership passes to the buyer has been the subject matter of good deal of case law. But we need not



dilate on this because almost a similar matter raising these very points has been the subject matter of a decision of this court namely ILR (1971) 1 Del 30 (4), Seth R. Dalmia v. Commissioner of Income-Tax, which was very fairly and properly brought to our notice by the counsel for the assessee, Mr. Bishamber Lal himself. In that case also the sale was again by the present assessee Bharat Nidhi and was on the same terms as in the present case. There also no money was paid at the time of entering into agreement in February, 1948 nor were the shares transferred. It was recognised by the assessee that under the Companies Act unless the shares are registered with the company the person who is registered with the company continues to be the owner and the company will not recognise the person as an owner unless registration takes place. Realising this argument had been sought to be raised that even if shares continued to be registered in the name of the vendor (as in the present case undoubtedly the said shares continued to be registered in the name of the assessee), as there was at least an unconditional contract for sale of the beneficial ownership of the shares. The bench accepted that equitable ownership could pass but held that the equitable ownership shares can be transferred by the owner by signing a blank transfer form and handing over the share scrips to the transferee. The bench observed:

“It would, therefore, follow that equitable ownership in shares can be transferred by the owner by signing a blank transfer form and handing over that transfer form alongwith the share scrips to the transferee. So far as the company of which the shares are the subject matter of transfer is concerned, it would not recognise the transferee as the owner of the shares till such time as the transfer is registered and the name of the transferee is entered in its registers as the owner of those shares. It would be only after his name is entered in the registers of the company as owner of the shares that the transferee would acquire legal ownership in the shares.” [R. Dalmia's case (supra.)].

In the present case admittedly there is not even a suggestion that any transfer forms or the share scrips were handed over to Mrs. Jain or Mr. Dalmia by the assessee. The argument, therefore, that equitable ownership in the shares was transferred to the assessee on 5-2-1948 must be repelled. That without the specification of the shares the contract for sale for specific goods as contemplated by Section 21 of the Sale of Goods Act cannot be held to be complete was also accepted by the said Division Bench. We can find no difference at all not only on the points of law but frankly more or less even on the question of facts, between the



instant case and the above case.”

xxx xxx xxx”

(Emphasis Supplied)

36. Likewise, in the case of ***Kiran Devi Poddar Versus Sundaram Clayton Limited and Others, 2022 SCC OnLine Cal 599***, it has been held as follows:

“xxx xxx xxx

20. *In Mathrubhumi Printing and Publishing Co. Ltd. v. Vardhaman Publishers Ltd. reported in 73 CC 80 the Division Bench of the Kerala High Court in discussing the legal effect of Transfer of shares and rights of shareholders' have stated thus:*

“The question, therefore, is: when would the transfer become effectual as between the company and the transferees? The deed of transfer shall not have any effect so as to put the transferee into the position of the transferor until it has been lodged with the company, and it must be not only lodged, but accepted by the company as properly lodged, because if the company finds that it does not comply with the provisions of the Act it is its duty to refuse to receive it (see the decision of the Chancery Division in Nanney v. Morgan, [L.R.] 37 Ch. 346). Until the lodgment, the transfer may be effective between the transferor and the transferee. The transfer, however, becomes complete and the transferee becomes a shareholder in the true and full sense of the term with all the rights of a shareholder, only when the transfer is registered in the company's register. In the same strain is the statutory mandate to the company discernible from Section 108, not to register the transfer of shares unless a proper instrument of transfer duly stamped and executed is delivered to the company. Until such time as registration is granted, the person whose name is found in the register alone need be treated as the shareholder by the company. During the interregnum, that is, from the date of the transfer till the date of lodgment the transferee no doubt, becomes the owner of the beneficial interest though the legal title continues with the transferor. This antecedent right in the transferee is enforceable, so long as no obstacle to it is shown to exist in any of the articles of association of a company or a person with a superior right or title, legal or equitable, does not appear to be there. This in brief is the law stated by the Supreme Court in the decision in Pranlal's case (1975) 45 Comp Cas 43 (SC) and Escort's case (1986) 59 Comp Cas 548. The principles deducible



from the above judicial pronouncements can be stated thus : Until the transfer of the shares is actually registered it should be held that the transferee's title to the share is inchoate, and that the legal title remains vested in the transferor (see Colonial Bank v. Hepworth, [L.R.] 36 Ch. 36 at pg.54). This line of reasoning is reinforced by Article 19 of Table A of Schedule I to the Act which provides that until the name of the transferee is entered in the register of members, the transferor shall be deemed to remain the holder of the shares transferred, thereby clearly stating that the legal title remains vested in the transferor. It is true that delay in the registration involves danger to the transferee if some already existing prior equity may come to light, as in the case in Ireland v. Hart, [1902] 1 Ch. 522, where a husband mortgaged shares of which he was trustee for his wife and, before the mortgagee had become the registered holder of the shares, the wife took proceedings claiming that her equitable title prevailed over that of the mortgagee, a claim which the court upheld; or a second transfer may be passed and registered and thus the first transfer may be defeated (see para 39.07 of Palmer, 23rd edition). The position has been illustrated by Palmer thus:

“The rule on this point is that, as between two persons claiming title to shares in a company like this, which are registered in the name of a third party, priority of title (i.e., equitable title) prevails, unless the claimant second in point of time can show that as between himself and the company, before the company received notice of the claim of the first claimant, he, the second claimant, has acquired the full status of a shareholder; or at any rate that all formalities have been complied with, and that nothing more than some purely ministerial act remains to be done by the company, which as between the company and the second claimant the company could not have refused to do forthwith; so that as between himself and the company he may be said to have acquired, in the words of Lord Selborrie, ‘a present, absolute, unconditional right to have the transfer registered, before the company was informed of the existence of a better title’.”

It, therefore, follows that the equitable right of the transferee gets metamorphosed into the absolute right of a shareholder only when the names of the transferees after the recognition of the transfer, are entered on the register.”

The provision contained in Section 108 of the Act states that “a company shall not register a transfer of shares...unless a proper instrument of transfer duly stamped and executed by or on behalf of the transferor and by or on behalf of the transferee has



been delivered to the company along with the certificate relating to the shares or debentures or if no such certificate is in existence along with the letter of allotment of the shares.”

xxx xxx xxx”

(Emphasis Supplied)

37. There is another aspect of the matter. On perusal of the reliefs sought by the petitioner, it is evidently clear that the petitioner is seeking to enforce specific performance of a private agreement, i.e., the MRA. The present case is admittedly concerned with breach of contract, i.e., the MRA, for which the remedy is filing a suit for specific performance or damages. Thus, the petitioner ought to have invoked the jurisdiction of the civil court to seek specific performance of the MRA. Though the issue of maintainability of the present writ petition has been canvassed by the respondents in their counter affidavits, however, the said issue was not pressed or raised at the time of hearing. Therefore, this Court has proceeded to adjudicate the matter on the basis of submissions raised by the parties.

38. This Court further rejects the contention raised by learned Senior Counsel for the petitioner that the stand of the respondent-banks regarding execution of Share Purchase Agreement or completion of formalities for transfer of equity shares, will entail amendment to the MRA.

39. In view of the aforesaid discussion, it is directed that the respondent-banks shall hold a Joint Lenders Meeting at the earliest to work out the modalities for valid transfer of 10% equity shares of the petitioner-company to the respondent-Lenders, as per the Applicable Laws and after completion of all due procedure.



40. Upon working out the said modalities, requisite steps shall be taken by all the parties, including the petitioner-company and respondent-Lenders, in regard to valid transfer of the equity shares of the petitioner-company in favour of the respective respondent-Lenders in proportion to their shares.

41. Upon completion of the requisite formalities for valid transfer of equity shares, the respondent-banks shall take steps to release the pledge over the balance equity shares of the petitioner and release the security created by the petitioner in favour of respondent no. 1-PNB, being the lead financial institutions. Further, the respondent-banks shall also take steps to upgrade the status of the petitioner's account as standard, from NPA and update the same in the Central Repository of Information on Large Credits ("CRILC").

42. Further, this Court notes that in the JLM dated 28th February, 2024, it has been decided to discontinue the service of Agency for Specialized Monitoring ("ASM"). Further, it has further been decided that the Debt Service Reserve Account ("DASRA"), will continue till the equity issue is resolved. Thus, amount of Rs. 105/- Crores (Rupees One Hundred and Five Crores Only) lying in the DASRA Account, shall continue, till the formalities are concluded for valid transfer of the equity shares to the respondents.

43. The present petition is disposed of in the aforesaid terms.

(MINI PUSHKARNA)
JUDGE

APRIL 16, 2024/au/ak