

IN THE NATIONAL COMPANY LAW TRIBUNAL, NEW DELHI
PRINCIPAL BENCH

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, C.A. No. 288(PB)/2019, C.A. No. 287(PB)/2019, C.A. No. 289(PB)/2019, C.A. No. 295(PB)/2019, C.A. No. 179(PB)/2019, C.A. No. 437(PB)/2019, C.A. No. 1008(PB)/2018, C.A. No. 729(PB)/2018, C.A. No. 935(PB)/2018, C.A. No. 1009(PB)/2018, C.A. No. 1010(PB)/2018, C.A. No. 1011(PB)/2018, C.A. No. 1116(PB)/2018, C.A. No. 1247(PB)/2018 & C.A. No. 537(PB)/2018 in C.P. (IB)-202(PB)/2017

IN THE MATTER OF:

PUNJAB NATIONAL BANK

.... PETITIONER

v.

BHUSHAN POWER & STEEL LIMITED

.... RESPONDENT

ORDER UNDER SECTION 30(6) & 31(1) OF THE INSOLVENCY AND BANKRUPTCY CODE, 2016 READ WITH REGULATION 39 (4) OF THE INSOLVENCY AND BANKRUPTCY BOARD OF INDIA (INSOLVENCY RESOLUTION PROCESS FOR CORPORATE PERSONS) REGULATION, 2016

JUDGMENT DELIVERED ON 05.09.2019

CORAM:

**CHIEF JUSTICE (RTD.) M.M. KUMAR
HON'BLE PRESIDENT**

**SH. S.K. MOHAPATRA,
HON'BLE MEMBER (T)**

PRESENT:

For the Resolution Professional: Mr. Abhinav Vashisth, Senior Advocate with Ms. Misha, Ms. Priya Singh, Ms. Charu Bansal, Mr. Shreyas, Mr. Anoop Rawat, Mr. Saurab Panda, & Mr. Shantanu Chaturvedi, Advocates

For the CoC:

Mr. Ramji Srinivasan, Senior Advocate with Mr. Bishwajit Dubey, Ms. Srideepa Bhattarcharya, Mr. Nikhil Ramdev, Ms. Sylona Mohapatra, Mr. Spandan Biswal, Mr. Surbhi Khattar, Mr. Bhupendra Verma, Advocates

For the JSW-H1 Resolution:
Applicant

Mr. Rajiv Nayar, Senior Advocate with Mr. Manmeet Singh, Ms. Anjali A. Ms. Nishtha Chaturvedi, Advocates

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For the Ex-Management:
Promoters

Mr. Mukul Rohatgi, Mr. A.S. Chandhiok,
Mr. U.K. Chaudhary, Senior Counsels with
Mr. Dhruv Gupta, Mr. Arvind Kumar Gupta,
Ms. Purni Marwaha & Ms. Heena George,
Advocates

For the Operational Creditors:

Mr. A.S. Chadha, Senior Advocate with Mr.
Nikhil Palli, Mr. Pranav Chadha, Mr. Arjun
Asthana, Ms. Sreenita Ghosh, Mr. Manu Beri,
Mr. Varun Verma, Mr. Sahil Monga, Advocates

M.M.KUMAR, PRESIDENT

JUDGMENT

This order shall inter alia, dispose of the following CA's:

(i) C.A. No. 254(PB)/2019 filed by Resolution Professional (for brevity 'RP') under Section 30(6) & 31(1) of the Insolvency and Bankruptcy Code, 2016 (for brevity 'the Code') read with Regulation 39 (4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 (for brevity 'Regulations, 2016) with a principal prayer of accepting the resolution plan approved by the Committee of Creditors (for brevity 'CoC') submitted by JSW Steel Limited who is regarded as 'H1 Resolution Applicant' (for brevity 'JSW'). A further relief has also been sought to grant various concessions as envisaged in the resolution plan and approved by the CoC. These concessions have been duly extracted under List B of Section 1.12 of Part B of the resolution plan.

(ii) C.A. No. 286(PB)/2019 filed by the Ex-Management of the Corporate Debtor prays for supply of copies of resolution plan, amendment submitted till date (application was filed on 20.02.2019) for issuance of direction to the Resolution Professional

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to provide all documents which have been furnished to Members of Committee of Creditors till date along with the valuation report.

(iii) The applications filed by the Operational Creditors namely CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018 under Section 60(5) of the Code.

(iv) The other application filed by Mr. Sanjay Singal being C.A. No. 327(PB)/2019 seeking directions for placing the settlement proposal before the CoC.

BACKDROP LEADING TO PRESENTATION OF THE
RESOLUTION PLAN BY JSW (SECTION 31 (1))

2. Facts necessary for disposal of the controversy raised in the present proceedings may first be noticed. The Punjab National Bank filed C.P. No. (IB)-202(PB)/2017 in respect of Bhushan Power and Steel Limited under Section 7 of the Code. After issuance of notice and considering the reply of the Corporate Debtor we admitted the petition on 26.07.2017. As a consequence, the CIR process commenced and to facilitate the process moratorium in terms of Section 14 was imposed. In pursuance of Section 15 of the Code the Interim RP invited claims on 28.07.2017 from all stakeholders including financial creditors of the Corporate Debtor.

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It is pertinent to mention that Interim RP received various claims, in which admitted claims were for an amount of INR 4,72,04,51,78,073.88/- (Rupees Forty Seven Thousand Two Hundred and Four Crores Fifty One Lakhs Seventy Eight Thousand and Seventy Three and Eighty Eight Paise) in respect of the Financial Creditors and further claims received from Operational Creditors were for an amount of INR 6,21,37,61,735/- (Rupees Six Hundred and Twenty One Crores Thirty Seven Lakhs Sixty One Thousand Seven Hundred and Thirty Five). No claims were received from workmen/employees and other creditors. A true copy of list of claims admitted by the Resolution Professional has been placed on record. The RP has convened 24 meetings of the CoC upto 10.10.2018.

3. It is asserted that RP issued an advertisement which was published on 21.09.2017 and invited prospective resolution applicants to put forward their resolution plans in respect of the Corporate Debtor. A copy thereof has been placed on record. In response to the publication thirteen (13) potential resolution applicants expressed their interest to submit the resolution plans for the Corporate Debtor. A Virtual Data Room (VDR) was set up wherein relevant documents, data and information in relation to the


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Corporate Debtor and the ongoing CIR process were provided to potential resolution applicants. The RP claims that he prepared an Information Memorandum in accordance with the provisions of the Code and uploaded the same on the VDR, for ready reference.

4. The RP has further disclosed that in obedience to Regulation 35 of the CIRP Regulations, he appointed two registered valuers, namely (i) Duff and Phelps India Private Limited, and (ii) Price Waterhouse Co. LLP, to ascertain the liquidation value & fair value of the Corporate Debtor.

5. Eventually Tata Steel Limited and JSW Steel Limited submitted their resolution plans.

LIBERTY HOUSE PETITION AND ORDER PASSED BY THE
ADJUDICATING AUTHORITY-NCLT

6. The CoC refused even to open the resolution plan submitted by the Liberty House Group Pte. Ltd (for brevity 'Liberty House'). The reason for rejection of Resolution Plan as conveyed by the RP on 22.02.2018 to the Liberty House was that its resolution plan had been filed after the deadline set up by CoC which had expired on 08.02.2018. However, the last date conveyed to Liberty House was based on unamended provisions of Section 25 (2)(h) read with Regulation 39 (1) which permitted the RP to fix the time while

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inviting resolution plans and the same was thirty days prior to time fixed in Section 12 of the Code. According to the RP that was the last date for submission of the resolution plan.

7. Being aggrieved against the decision of the CoC dated 22.02.2018, Liberty House approached this Tribunal by filing an application being C.A No.152(PB)/2018. After examining the rival contentions of the parties, this Tribunal passed an order dated 23.04.2018 (Annexure A-3) granting relief to the Liberty House. The operative part of the order reads as under:-

- “(a) The period spend on this litigation stands excluded. The whole process may now be concluded before 23.06.2018.
- (b) The Resolution Professional shall place the unopened sealed cover apparently containing the resolution plan of the Liberty House before the next meeting of the CoC.
- (c) The Resolution Plan of the Liberty House shall not be rejected on the ground of delay emanating from process document or any other document internally circulated by the RP or the CoC. The rejection shall be on some substantive ground as against flimsy one.
- (d) Since resolution plan is under consideration and yet to be decided by CoC and as there is still considerable time

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left for completion of resolution process, it is expected that CoC will take appropriate commercial decision in terms of the Code, Rules and Regulations in order to achieve the object of the Code as quoted above.”

PROCEEDINGS BEFORE THE APPELLATE TRIBUNAL FROM
23.04.2018 TO 04.02.2019

8. The aforesaid order dated 23.04.2018 (Annexure A-3) passed by this Tribunal in C.A. No.152(PB)/2018 filed by Liberty House was challenged by the Tata Steel Limited before the Hon’ble Appellate Tribunal in Company Appeal (Insolvency) No. 198/2018. The Hon’ble Appellate Tribunal has passed series of interim orders, (Annexure-4 to 6). In the order dated 09.05.2018, the Hon’ble Appellate Tribunal observed that

‘during the pendency of the appeal, the ‘Committee of Creditors’ may consider the Resolution Plan submitted by all the Resolution Applicants which will be subject to the decision of this appeal. While considering so, they should give reason for rejecting one or other Resolution Plan and also record the suggestions, if any, given by the Board of Directors or the ‘Operational Creditor’ or their representative. While accepting the Resolution Plan, the ‘Committee of Creditors’ will consider whether the Resolution Applicant(s) have made any provision with regard to other creditors

such as ‘secured creditors’, ‘unsecured creditors’, ‘employees’ and

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'Government dues'. *Though the 'Committee of Creditors' may approve the same with prior permission of this Appellate Tribunal, but not place the same before the Adjudicating Authority and keep it in a sealed cover.*

It is made clear, as we have passed an interim order of stay, the total period, during which appeal will remain pending before this Appellate Tribunal, will be excluded for the purpose of counting the total period of Corporate Insolvency Resolution Process.

The proceedings continued and on 24.05.2018, the Hon'ble Appellate Tribunal issued direction to CoC and stated that the Committee of Creditors and others would follow interim order dated 09.05.2018 and the Committee of Creditors on approval of one or other resolution plan would keep it in seal cover for presentation before the Hon'ble Appellate Tribunal.

In view of the interim order further proceeding were to remain stayed and the Appellate Tribunal was to exclude such period from counting the total period for Corporate Insolvency Resolution Process. The interim order dated 09.05.2018 was thus clarified to the extent above and I.A. No. 671 of 2018 was disposed of.

It is obvious that proceedings before the Adjudicating Authority were stayed. However on 12.07.2018 the Hon'ble

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Appellate Tribunal directed that in the meantime, it was left open to the Committee of Creditors to pass appropriate order in terms of Section 30(4) of the Code and if any plan was to be approved, then it was to be placed before the Adjudicating Authority for appropriate order under Section 31 of the Code and the Adjudicating Authority was permitted to pass appropriate order. Interim orders passed earlier was modified to the extent above. However, before any substantial progress could be made CoC was directed by the Appellate Tribunal to do certain things vide order dated 01.08.2018 and held that

‘3. In the meantime, to ensure that all parties get opportunities to submit ‘revised financial offers’ without altering the basic standard like viability and feasibility as shown in the original ‘resolution plans’, we give opportunity to ‘Tata Steel Ltd.’ and ‘Liberty House Group Pvt. Ltd.’, if they so choose, to file ‘revised financial offer(s)’ subject to the decision of the appeal by 6th August, 2018.

4. It was left open to the ‘Committee of Creditors’ to go through the viability, feasibility and matrix of the ‘resolution plans’ taking into consideration ‘revised financial offers’ and decide the same in accordance with law but was to keep its decision in sealed cover.’

Again, order dated 06.08.2018 was issued by the Hon'ble Appellate Tribunal

'As the Interlocutory Application is the conditional one, we are not inclined to pass any specific order, particularly, as the matter is also pending before the Hon'ble Supreme Court. However, on the oral request of the learned counsel for the appellant, we allow the 'Appellant' and the other 'Resolution Applicants' to file additional unconditional 'resolution plans' by 13th August, 2018 improving the 'financial offer' without compromising the basic para-meters of the 'resolution plans' already submitted by them. In such case additional plans will be treated to be the part of their respective 'original resolution plans'.

I.A. No. 1154 stands disposed of.

Dasti service is permitted.'

9. The appeal was finally disposed of by the Hon'ble Appellate Tribunal vide its order dated 04.02.2019. The following directions have been issued by the Hon'ble Appellate Tribunal and the same reads as under:-

'47. For the reasons aforesaid, while we are not inclined to interfere with the substantive part of the impugned order dated 23rd April, 2018, set aside part of the order whereby adverse

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observation has been made against Mr. Mahender Kumar Khandelwal ('Resolution Professional').

48. The case is remitted to the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, for passing appropriate order under Section 31. The 'Resolution Professional' will immediately place the 'approved Resolution Plan' before the Adjudicating Authority for its order.

49. The Adjudicating Authority at the time of consideration of the approved 'Resolution Plan' of 'JSW Steel' will only ensure that all the stakeholders, particularly the 'Operational Creditors' are treated similarly. It should ensure that no discrimination is being made between the 'Financial Creditors' or the 'Operational Creditors' as held by this Appellate Tribunal in "**Binani Industries Limited**".

50. In case, the Adjudicating Authority is of the opinion that the discrimination has been made between the 'Financial Creditors' and the 'Operational Creditors', it may give opportunity to the 'JSW Steel' to improve its plan and thereby, by substituting the approved 'Resolution Plan' with such improvement.

Let the period of pendency of this appeal i.e. from 7th May, 2018 till date be excluded for the purpose of counting of the period of 270 days.



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51. As we have noticed the rival contentions of the parties in this appeal, the parties cannot re-agitate such submission again before the Adjudicating Authority at the time of the approval of the 'Resolution Plan.'

EVENTS SUBSEQUENT TO THE ORDER PASSED ON THE APPLICATION FILED BY THE LIBERTY HOUSE

10. 'JSW' had submitted its 'Resolution Plan' on 8th February, 2018 before we passed any order on Liberty House petition on 23.04.2018. They submitted an 'improved financial offer' on 26th July, 2018. Apart from improving the offers for various creditors, the 'improved financial offer' also provided for infusion of substantial upfront equity for improving the operation of the 'Corporate Debtor'. 'TSL' objected to the 'improved financial offer' before the 'RP' and the 'CoC' on 26th July, 2018. The 'CoC' in its meeting held on 27th July, 2018 to give equal opportunity to all the three 'Resolution Applicants' namely— 'TSL', 'Liberty House' and 'JSW' allowed them to submit 'improved financial offers' by 31st July, 2018. 'TSL' instead of filing an 'improved financial offer', filed an I.A. No. 1096 of 2018 before the Hon'ble Appellate Tribunal to restrain the 'RP' and the 'CoC' from considering the 'improved financial offers'.

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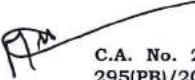
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11. It was argued by TSL before the Hon'ble Appellate Tribunal that the 'revised financial offers' cannot be allowed to be submitted even for maximization of the assets of the 'Corporate Debtor' and the Appellate Tribunal vide its order dated 01.08.2018 (as quoted in preceding para No. 8) observed that the issue was to be decided at the time of disposal of the appeal and left it for that stage.

12. However, instead of submitting an 'improved financial offer', 'TSL' chose to file a statutory appeal before the Hon'ble Supreme Court challenging the order dated 1st August, 2018 passed by the Hon'ble Appellate Tribunal. The 'TSL' simultaneously also approached the Hon'ble Appellate Tribunal on 3rd August, 2018 by way of mentioning and sought extension of the timeline for submission of 'revised financial offers'. The Hon'ble Appellate Tribunal orally observed that 'TSL' may file an application showing its intention to file a 'revised financial offer' and for modification of the order dated 1st August, 2018. Thereafter the 'TSL' filed an I.A. No. 1154 of 2018 on 3rd August, 2018 before the Hon'ble Appellate Tribunal seeking extension of two weeks' time for submitting its 'revised financial offer'.

13. Hon'ble the Supreme Court in the meantime dismissed the appeal preferred by 'TSL' on 10th August, 2018. In view of the order

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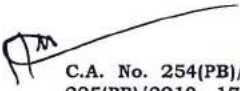
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of the Hon'ble Appellate Tribunal dated 6th August, 2018, 'JSW' also submitted its 'improved financial offer' on 13th August, 2018. 'JSW' further improved its financial offer increasing the amounts for payment to the different groups of creditors. It has significantly increased upfront equity for improving the operations of the 'Corporate Debtor'. TSL and the Liberty House also submitted their respective 'revised financial offers'.

14. During the pendency of appeal before the Hon'ble Appellate Tribunal and in compliance of directions issued by the Hon'ble Appellate Tribunal vide its order dated 09.05.2018 RP sent emails dated 04.06.2018 to all the Operational Creditors of the Corporate Debtor. The Operational Creditors were requested to appoint a nominee to whom access to the resolution plans submitted by the Resolution Applicants was to be given; and further request was made to take responsibility regarding collecting the suggestions from the other Operational Creditors and communicating the same to the RP for onward submission to the CoC. Access of the resolution plans to Jaldhi Overseas PTE Ltd. (for brevity 'Jaldhi') who has largest share amongst the Operational Creditors and whose claims have been admitted, was also provided by the RP. Another e-mail dated 08.06.2018 was also sent to Jaldhi regarding

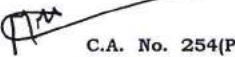
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the date of venue of 14th meeting of CoC which was to be held on 11.06.2018. Its officers were also called to attend the said meeting and their suggestions were invited on the resolution plans submitted by the resolution plan applicants.

15. Directors and all the Operational Creditors of the Corporate Debtor were also called to inspect, view and record their suggestions on the resolution plans on 24th and 26th July, 2018. The suggestions received from them were intimated by the RP to the CoC from time to time.


16. The RP had received revised resolution plans before 13.08.2018 which was the final deadline fixed. In the 18th meeting of the CoC (Exhibit 1) held on 14 August, 2018 the aforesaid resolution plans submitted by JSW, Liberty House and TSL were evaluated extensively by the CoC with the consultation of representatives of operational creditors, the individual of resolution applicants and the directors of the Corporate Debtor on the evaluation criteria set forth in the Process Document. The plan submitted by 'JSW' emerged as the highest evaluated plan after discussion by CoC on the basis of the evaluation matrix formulated in accordance with Section 25(2) (h) of the Code r/w Regulation 36A of the CIRP Regulations and negotiations were then held with JSW

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being the highest bidder. The CoC vide its additional affidavit dated 16 August 2018 submitted the scores of the resolution plans to the Appellate Tribunal under a sealed cover.

17. On 03.10.2018 RP received consolidated resolution plan of JSW which was submitted pursuant to negotiation between the 'Core Committee' comprising of small group of lenders formed on the basis of decision taken in the 9th CoC meeting held on 21.02.2018. It was then circulated by him to the members of the CoC on 05.10.2018 and uploaded on the VDR. RP vide its email dated 07.10.2018 along with the notice and agenda, called for a meeting of CoC which was to be held on 10.10.2018 for consideration and approval of the Consolidated Resolution Plan. In meeting of CoC (Exhibit 2) held on 10.10.2018 the consolidated resolution plan was considered wherein further negotiations were held with JSW regarding modifications as per the requirements of Fourth Amendment Regulations, 2018 made in the CIRP Regulations. Pursuant to the negotiations, JSW submitted the addendum letter dated 10.10.2018 whereby amending and clarifying certain terms of the Consolidated Resolution Plan to ensure compliance with the amended CIRP Regulations of making payment to Operational Creditors ahead of Financial Creditors. The



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suggestions regarding Consolidated Resolution Plan was also inscribed from the operational creditors and same was forwarded to the CoC vide email dated 10.10.2018.

18. Vide e-mail dated 14.10.2018 confirmation was sent by the RP to all the members of the CoC that Consolidated Resolution Plan of JSW fulfilled and conformed to the statutory requirements stipulated in Section 30 (4) of the Code. In the said meeting of CoC, authorization to the Select Group of Members to finalize the draft of the Letter of Intent (LOI) was also put up for e-voting. The RP received a *post facto* approval for the consolidated resolution plan through an e-mail dated 16.10.2018 from one of the members of CoC i.e. Indian Bank. Thereafter the CoC approved the amended Consolidated Resolution Plan by the requisite majority as stipulated under the Code. A copy of the results of voting [Annexure-8 (Colly)] was placed before the Appellate Tribunal by the RP vide affidavit dated 21.10.2018.

19. The RP further disclosed that he issued an e-mail dated 05.02.2018 to JSW for submission of Proposal Performance Guarantee in accordance with Clause 1.10.1 r/w Clause 2.3.6 of the Process Document. Pursuant thereto, JSW, the Successful Resolution Applicant submitted the Proposal Performance

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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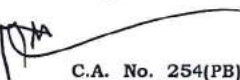
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Guarantee on 11.02.2019 for an amount of Rs. 100 crores in accordance with Clause 1.10.1 of the Process Document. After finalization of the draft of LOI (Annexure-11), the Successful Resolution Applicant was issued a letter of intent. The aforesaid Consolidated Resolution Plan of Successful Resolution Applicant-JSW along with the voting pattern has been placed before us for seeking our acceptance and approval in terms of the Code and CIRP Regulations.

20. The RP states that he has verified the contents of the Approved Resolution Plan and has confirmed that the Approved Resolution Plan comply with the requirements as envisaged under Regulation 38 (as then existed) of the CIRP Regulations in as much the amount due to the Operational Creditors was to be given priority in payment over Financial Creditors. It also claimed compliance with Section 30 of the Code.

21. The RP has further disclosed that in obedience to Regulation 35 of the CIRP Regulations, he appointed two registered valuers, namely (i) Duff and Phelps India Private Limited, and (ii) Price Waterhouse Co. LLP, to ascertain the liquidation value of the Corporate Debtor. Both aforesaid valuers determined the liquidation value of the Corporate Debtor at Rs. 9707 crores and

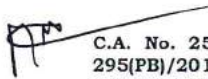

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Rs. 9320 crores respectively. As per RP the liquidation value of the Corporate Debtor by averaging the above two values is stated to be Rs. 9,513.63 crores.

22. The RP has then prepared a table at page 17 of the application which contains details relating to various compliances made by him in respect of the Code and CIRP Regulations. The said table is set out verbatim:-

SECTION/ REGULATION	REQUIREMENT	CLAUSE OF THE RESOLUTION PLAN
Section 29A of the Code	The disqualification under Section 29A of the Code should not apply.	Annexure 12 of the Approved Resolution Plan
Section 30(2)(a) of the Code	The Resolution Plan provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the Corporate Debtor.	Clause 1.2 of the Part B of the Approved Resolution Plan
Section 30(2)(b) of the Code	The Resolution Plan provides for the repayment of the debts of operational creditors in such manner as may be specified by the Board which shall not be	Clause 1.4, 1.5, 1.6 and 1.7 of Part B of the Approved Resolution Plan

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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	less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53	
Section 30(2)(c) of the Code	The Resolution Plan provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan;	Clause 1.13(iii) of Part B read with Clause 2(A) of Part A of the Approved Resolution Plan
Section 30(2)(d) of the Code	The Resolution Plan provides for the implementation and supervision of the resolution plan;	Clause 4 of Part A read with Schedule 2 of the Approved Resolution Plan
Section 30(2)(e) of the Code	The Resolution Plan does not contravene any of the provisions of the law for the time being in force;	Clause 1.13(vi) of Part B of the Approved Resolution Plan
Section 38(1A) of the Code	The Resolution Plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.	Clause 1.9 of Part B of the Approved Resolution Plan
Section 38(2)(a) of the Code	The Resolution Plan shall provide the term of the plan and its implementation	Schedule 2 of the Approved Resolution Plan

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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	schedule	
Section 38(3)(a) of the Code	The Resolution Plan shall demonstrate that it addresses the cause of default.	Section 3 of Part A of the Approved Resolution Plan under the head “Business Plan/Financial Projections”
Section 38(3)(b) of the Code	The Resolution Plan shall be feasible and viable.	The CoC in its 18 th meeting dated 14 August 2018 considered the resolution plan of JSW Steel and recorded that the resolution plan is feasible and viable.
Section 38(3)(c) of the Code	The Resolution Plan shall have provisions for its effective implementation.	Schedule 2 of the Approved Resolution Plan providing for Steps for Implementation of Resolution Plan
Section 38(3)(d) of the Code	The Resolution Plan shall have provisions for approvals required and the timeline for the same	Section 13 of Part A of the Approved Resolution Plan
Section 38(3)(e) of the Code	The Resolution Plan shall provide that the resolution applicant has the capability to implement the resolution plan	Section 1 of Part A read with Schedule 3 and Annexure 1 of the Approved Resolution Plan and Net-Worth Certificate of the

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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		Successful Resolution Plan
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23. The RP has also highlighted that under List-B of Section 1.12 of Part B of the CoC approved resolution plan, the Resolution Applicant has sought certain reliefs and concessions and submissions have been made that this Tribunal may approve and direct the grant of the reliefs and concessions envisaged in the CoC approved resolution plan (Exhibit 3).

24. The RP has then (at pgs. 19-24) highlighted salient features of the CoC approved resolution plan, which are subject of consideration in these proceedings.

25. Notice of the application being C.A. No. 254(PB)/2019 filed under Section 30 (6) read with Section 31(1) of the Code was issued on 05.03.2019 and three days time was granted to file reply by the Non-Applicant/Respondents.

26. Replies have been filed by the Ex-Management namely Mr. Sanjay Singhal and Ms. Aarti Singhal, Operational Creditors Jaldhi, Jai Mahakaal Logistics, Medi Carrier etc., CoC and JSW-the successful resolution applicant.

27. Rejoinders have also been filed.

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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28. The arguments commenced on 18.03.2019 and as per the direction issued by the Hon'ble Appellate Tribunal, we started hearing on day to day basis. When the matter came up for hearing on 28.03.2019, on behalf of the Ex-Management/Erstwhile Promoters as well as Operational Creditors reliance was placed on the judgment of Hon'ble the Supreme Court rendered in the case of Vijay Kumar Jain v. Standard Chartered Bank (Civil Appeal No. 8430/2018), decided on 31.01.2019. It was urged that without any prejudice to their rights they can atleast be given a copy at that stage. In other words, the argument was that their rights on account of non supply of a copy of the resolution plan at the earlier stages may not be prejudiced if a copy is supplied. The following order was passed on 28.03.2019

“Mr. U. K. Chaudhary and other learned counsel have placed reliance on the judgment of the Supreme Court in the case of Vijay Kumar Jain Vs Standard Chartered Bank & Ors. (civil appeal no. 8430 of 2018) decided on 31.01.2019.

On behalf of the erstwhile promoters and Operational Creditors it has been argued that the copy of the Resolution Plan has not been furnished at any stage, and at least a copy of the resolution plan be furnished at this stage without prejudice to their right with regard to the non-supply at the earlier stages.

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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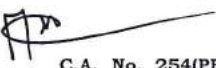
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Before resuming argument today, we put it to learned counsel for the Resolution Professional and Committee of Creditors whether at this stage they would be prepared to furnish a copy of the Resolution plan to the OCs and the erstwhile promoters. Learned counsel for the RP as well as for the Committee of Creditors have requested for a day's time.

List on 29th March 2019.”

29. In pursuance of the aforesaid order Mr. Srinivasan, learned senior counsel, for the CoC, Mr. Abhinav Vashisht, learned senior counsel for RP and Mr. Rajiv Nayyar, learned senior counsel for JSW-H-1 Applicant showed inclination to supply the copies. However, Mr. Nayyar stated that it was not possible to share the proprietary information which constitutes a separate part of the resolution plan. Accordingly, on 29.03.2019 after noticing the order dated 28.03.2019 we passed the following orders:-

“2. Mr. Srinivasan, learned senior counsel for the CoC after obtaining instruction from Ms. Srideepa, has stated that a copy of the resolution plan shall be handed over to the erstwhile promoter and the court appointed representative of the operational creditor in good-faith so that hearing may be concluded in a time bound manner. It has also been stated that the resolution plan is not required to be furnished to the operational creditor who do not


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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cross the threshold of 10 % and therefore, copy shall be given only to the court appointed representative namely Mr. A.S Chadha, learned senior counsel for operational creditor. It is needless to say that furnishing of the resolution plan is not to constitute any admission on the part of the CoC. The approval of the plan by the CoC was in a manner complied with the law existing on the date of approval and it shall not give rise to any future claim/objections from any other stakeholder on the ground that they were not provided a copy of the resolution plan.

3. However, Mr. Rajiv Nayyar, learned senior counsel for the successful resolution plan applicant has stated that it would not be possible to share the proprietary information which constitutes a separate part of the resolution plan.

4. Having heard learned counsels, we are of the view that a copy of the resolution plan shall be handed over to the erstwhile promoters and the court appointed representative of the Operational creditor namely Mr. A.S Chadha and Mr. Sumant Batra as agreed by the learned counsel for the RP, CoC and learned counsel for the resolution plan applicant. It is made clear that the furnishing of resolution plan would not foreclose the rights of the erstwhile promoters or the operational creditor to raise any challenge before any forum in accordance with law.



C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018


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5. We expect the learned counsels for the parties to peruse the resolution plan and address arguments on that basis in addition to other arguments.

6. The matter shall be heard on 01.04.2019.”

ARGUMENTS ON BEHALF OF RESOLUTION PROFESSIONAL

30. Mr. Abhinav Vashisht, learned Senior Counsel appearing for the RP has taken us through the resolution plan and has highlighted its various features. Learned counsel has drawn our attention to the averments made in para 40 of the application which discloses the liquidation value of the Corporate Debtor on the basis of average reached between the two valuation reports as Rs. 9,513.63 crores. According to the learned counsel Section 29A of the Code has no application. A mandatory disclosure in the form of balance sheet and cash flow statement according to the plan have been made. There is comprehensive certificate issued by the RP in Form-H which shows that the provisions of Section 30 (2) (a) to (e) have been religiously complied with as the resolution plan provide for payment of Insolvency Resolution cost in the manner specified by the Regulation in priority to the repayment of other debts of the Corporate Debtor, repayment of debts of Operational Creditors in such manner as specified by the Regulation which is not to be less


 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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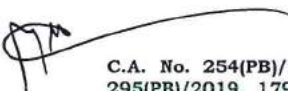
than the amount to be paid to the Operational Creditors in the event of liquidation of the Corporate Debtor under Section 53 of the Code. It provides for the management of the affairs of the Corporate Debtor after approval of the resolution plan and its implementation under the supervision. According to the learned counsel the resolution plan does not contravene any of the provisions of law for the time being in force. In that regard our attention has been drawn to clauses 1.2, 1.4, 1.5, 1.6, 1.7, 1.13 (iii) and 1.13 (vi) respectively. The status of claims under the caption **'TREATMENT OF CLAIMS'** in para 2 of the Executive Summary has also been highlighted. The mandatory contents of the resolution plan as given in para 1 under the caption **'PART B. FINANCIAL PROPOSAL'** have also been shown to us with the emphasis that the Operational Creditors other than workmen have been treated fairly and attempt has been made to pay them 50% of their admitted claims with a maximum cap of 350 crores. Para 1.4 has been read out to us which shows that total claim filed by the Operational Creditors (excluding workmen) aggregated to INR 2323.32 crores as on 18.09.2018 as per the data room. The claims aggregating to INR 770.35 crores (now 733 crores) have been verified and admitted by the RP. In that regard our attention has been drawn to para 42(h) of the application. Mr.


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Vashisht submitted that there is detail provided in respect of the contingent liabilities in clause 2.2 (f) under the caption **'Treatment of Creditors'** and the same is to be excluded from the list of Operational Creditors. In other words, Operational Creditors are to be a category different than the 'Identified Contingent Creditors'. Our attention was also drawn to 'Source of Funds' as given in Schedule-3 page 61 of the resolution plan and it was highlighted that the H-1 applicant has undertaken Equity Commitment: Fund Infusion to the extent of INR 7200 crores. In respect of payment to Financial Creditors Replacement bank guarantees/counter guarantees issued in relation to the Bank Guarantees. The H-1 applicant has agreed for uses of funds and have disclosed total sources of funds in Schedule-3.

31. Mr. Vashisht has then submitted that the Adjudicating Authority-NCLT may pass order for reliefs, concessions and entitlements as detailed in List-B under caption **'Specific Orders to be obtained from the NCLT for Reliefs, Concessions and Entitlements'**. It is highlighted that the resolution plan was approved on 03.10.2018 but even the consolidated resolution plan as submitted on 10.10.2018 was approved on 16.10.2018 by the CoC. Our attention has been drawn to the order passed by the


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Hon'ble Appellate Tribunal dated 09.05.2018, 24.05.2018, 12.07.2018, 20.07.2018 & 01.08.2018. Mr. Vashisht emphasised on the directions issued in the order dated 20.07.2018 which are to the following effect:-

"Taking into consideration the nature of the case and time schedule, we pass the following order:-

a) The 'Committee of Creditors' will call for urgent meeting to take up the 'resolution plan' for discussion and approval. The 'Resolution Professional' after consulting the 'Committee of Creditors' will intimate Mr. Sumant Batra, advocate who is the representative of the 'Operational Creditor' and all the 'Resolution Applicants' and 'suspended Board of Directors' to remain present on the date of consideration of the 'resolution plans'. If necessary, the meeting may continue on consecutive dates taking into consideration the nature and urgency of the case and best out of the three 'resolution plans' which are in consonance of Section 30(2) are viable, feasible and fulfil other matrix may be accepted by the majority vote of shares of the 'Committee of Creditors'. They may intimate to all the parties by Speed Post, e-mail or telephonically. All the parties will remain in-touch with the 'Resolution Professional' to know the date of meeting.

b) While approving such 'resolution plan(s)', the 'Committee of

Creditors' may also indicate which is the second best 'resolution

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plan', that may also be approved if first successful approved plan is not approved by the Adjudicating Authority.

c) The 'Resolution Professional' after approval of the 'resolution plan' will place the same before the Adjudicating Authority for its approval, which may pass appropriate order in accordance with law but not give effect to the approval without prior permission of the Appellate Tribunal.

d) Any decision taken by the 'Committee of Creditors' or the Adjudicating Authority shall be subject to the decision of this Appellate Tribunal."

32. Mr. Vashisht has also pointed out that the plans were submitted to the Hon'ble Appellate Tribunal on 17.08.2018 in a sealed cover along with the voting results showing approval by voting share of 97.12% and the Hon'ble Appellate Tribunal has passed an order on 04.02.2019 issuing direction to the Adjudicating Authority-NCLT. According to Mr. Vashisht the Hon'ble Appellate Tribunal has imposed restriction on the parties not to reargue such arguments before the Adjudicating Authority-NCLT which have already been advanced before the Hon'ble Appellate Tribunal. According to the learned counsel the only direction given is that the Adjudicating Authority-NCLT was to consider approved resolution plan of JSW and to ensure that all the

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

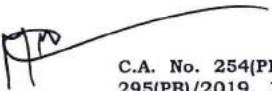
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stake holders particularly operational creditors were to be treated similarly and no discrimination was to be made between the Financial Creditors and the Operational Creditors: and that the judgment of the Hon'ble Appellate Tribunal rendered in the case of ***Binani Industries Limited Vs. Bank of Baroda & Anr.,*** Company Appeal (AT) (Insolvency) No. 82 of 2018 was required to be followed.

33. Referring to the judgment of Hon'ble the Supreme Court rendered in the case of Vijay Kumar Jain (supra) and the prayer made in C.A. No. 286(PB)/2019 by the Ex-Promoters, Mr. Vashisht has argued that there is substantial compliance of the law as laid down in Vijay Kumar Jain's case. Learned senior counsel has drawn our attention to various notices issued to the Ex-Promoters inviting them to participate in the meetings of the CoC and a reference has been invited to notice dated 05.06.2018. The notice was issued along with the agenda, notes to agenda, explanatory statement for the 14th meeting of the CoC. It has been pointed out that the notice was being given in accordance with the provisions of Regulation 18, 19 & 20 and it has been sent to the Ex-Promoters. According to the learned counsel the Hon'ble Appellate Tribunal in its order dated 09.05.2018 after hearing all the stake holders has

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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passed an order directing the CoC to consider the resolution plan submitted by all the resolution applicants and the CoC was to give reasons for rejecting one or the other resolution plan; and it was also to record suggestions if any given by the Board of Directors or the Operational Creditors or their representatives. It is in the aforesaid context that notice to the suspended board assumes significance which is also evident from the reply filed by the RP to the application being C.A. No. 286(PB)/2019. Our attention has been drawn to the notices sent to various stake holders and under caption '**B. Corporate Debtor (Without Voting Right) (i)**' notices were issued to Mr. Sanjay Singal and Ms. Aarti Singal, R.P. Goyal, Dinesh Kumar Yadav, R.N. Yadav, H.C. Verma and Dinesh Kumar Behal on their respective e-mails addresses as given. Notices were also sent to the Operational Creditors participants. Our attention has also been drawn to agenda for the 14th meeting particularly item No. 11 & 12 concerning Evaluation of Resolution Plans by CoC, Discussions and declaration of H-1 Resolution Applicant; and decision on modalities of negotiation with H-1 Resolution Applicant.

34. The RP also sent an e-mail on 15.06.2018 to all the stake holders including the promoters along with the minutes of 14th meeting of the CoC held on 11.06.2018 and apprised them that

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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presentation made by SBI Caps, Liberty House Group and JSW Steel Ltd. are hereby enclosed for your reference and the password for Liberty House presentation is Ihgconfidential1506. The e-mail reads as under:-

'Please find attached herewith the minutes of the 14th meeting of committee of creditors of Bhushan Power & Steel Ltd. held on 11th June, 2018.

Please note that the presentations made by SBI Caps, Liberty House Group and JSW Steel Limited are hereby enclosed for your reference and the password for Liberty House presentation is: Ihgconfidential1506


Also, despite several reminders, Tata Steel Limited is yet to share their presentation. Hence, it will be circulated if and when received.

35. On a representation made by one Mr. R.P. Goyal with a prayer for a copy of the resolution plan and the RP sent him detailed reply and our attention has been drawn to some part para of the reply (Annexure-5) to show that in accordance with the direction of the Hon'ble Appellate Tribunal the suggestion of the Promoters/Directors were sought in the CoC meeting held on 11.06.2018 and the key feature of the resolution plan by each of the resolution applicant in respect of their respective plan were highlighted in their detailed presentation during the meeting of the

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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CoC held on 11.06.2018. Thereafter suggestions were sought from the Ex-Directors attending the meeting and no suggestions have been sent despite all material information about the resolution plan having being divulged. It has been pointed out that there was ample opportunity to seek further information from the resolution plan applicant during the CoC meeting held on 11.06.2018 and they failed to provide any suggestion despite all material facts and information about the resolution plan being available with them. He stoutly denied the allegation that no suggestions were sought and attention was drawn to the minutes of the CoC dated 11.06.2018 whereby suggestion were solicited but not given. The RP also pointed out that the resolution plan is a confidential document and the TATA refused to share their resolution plan with the Ex-Promoters on the ground that there was confidential information and the RP was requested by the e-mail of TATA dated 15.06.2018 to share their presentation only after the presentations from all the resolution applicants were received and that a copy of the presentation made by each of the resolution plan applicants has already been shared with the Directors/Promoters which is adequate information and it was not limited to the details of the financial parameters of each of the resolution plans and there was


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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no impediment for the Directors to provide their suggestions. In the context of the aforesaid factual position Mr. Vashisht has argued that there is substantial compliance. The Ex-Promoters/Directors were again sent a communication apprising the Promoters/Directors that the resolution plans of TATA, Liberty House and JSW are likely to be considered by the CoC in a convened meeting and a copy of the presentation made by Liberty House and JSW had already been provided vide e-mail dated 15.06.2018 and the presentation made by TATA has been provided on 09.07.2018 with a object of seeking suggestions. The RP requested them to depute one of their representatives to visit the offices of the legal counsel of the RP and to peruse the resolution plans and to give their suggestions relevant to them. It was pointed out that the resolution plan would remain available for their perusal at Shardul Amarchand Mangaldas ('SAM'), Amarchand Towers, 216, Okhla Phase III, Okhla Industrial Estate, New Delhi. A request was made to them to send a signed (duly stamped) confidentiality undertaking as per draft attached by an e-mail and to bring signed original at the time of visit. In response to the e-mail Mr. R.P. Goyal has sent the reply e-mail which reads as under:-



C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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'Reference to E-mail dated 21.07.2018, with regard to inspection of Resolution Plans.

It is to inform you that the undersigned, due to some unavoidable circumstances' is unable to attend the office of Shardul Amar Chand Mangal Dass today. This is for your kind information please.

However, the detailed response to your email is being sent separately.'

36. Mr. Vashisht has then highlighted the acknowledgement and confirmation dated 26.07.2018 signed by Mr. R.P. Goyal and Mr. Sanjay Singhal which are identical in its contents [Annexure-11 (Colly)] and one of the acknowledgment read as under:

'ACKNOWLEDGEMENT AND CONFIRMATION

I, R.P. Goyal, son of Shri V.P. Goyal, resident of 157, Sector 16 Panchkula, in my capacity as a member of the erstwhile Board of Directors of Bhushan Power and Steel Limited ("**BPSL**"), acknowledge and confirm that the resolution professional of BPSL has provided to me, access to view the resolution plans submitted by the resolution applicants, i.e. JSW Steel Limited, Tata Steel Limited and Liberty House Group, pursuant to the corporate insolvency resolution process of BPSL ("**Resolution Plans**").



I further acknowledge and confirm, that I have been given adequate opportunity to peruse the Resolution Plans and record my suggestions in respect of the same in a satisfactory manner.'

37. On the aforesaid basis Mr. Vashisht has vehemently argued that granting of opportunity to inspect resolution plan, sharing of the presentation of all the resolution plan applicants and inviting them to each meeting of the CoC would adequately satisfy the requirement of law as laid down by Hon'ble the Supreme Court in Vijay Kumar Jain's case (supra). In support of his submission Mr. Vashisht has placed reliance on the judgment of Hon'ble the Supreme Court rendered in the case of ***Biecco Lawrie Ltd. & Anr. vs State of West Bengal & Anr.***, (2009) 10 SCC 32. Mr. Vashisht has also argued that even after the furnishing of a copy of the resolution plan without sharing the confidentiality part the counsel for the Ex-Promoters/Directors have not been able to point out any prejudice which they might have suffered on account of non supply of resolution plan. In that regard reliance has been placed on the judgment of Hon'ble the Supreme Court rendered in the case of ***Managing Director ECIL Hyderabad & Ors. v. B. Karunakar & Ors.***, (1993) 4 SCC 727.



C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018


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ARGUMENTS ON BEHALF OF COC

38. Mr. Ramji Srinivasan, learned Senior Counsel has vehemently opposed the submissions advanced on behalf of the Ex-Board of Directors and Operational Creditors, and submitted that this Tribunal exercises jurisdiction under Section 60(5) of the IBC, which is wider than that of Section 31 of the Code. Jurisdiction of the Tribunal under Section 31 deals with matters at the stage of approval of the Resolution Plan whereas under Section 60(5)(c), the Tribunal enjoys jurisdiction to entertain or dispose of any question of priorities or any question of law or facts, arising out of or in relation to the Insolvency Resolution or liquidation proceedings of the corporate debtor or corporate person under this Code.

39. According to the learned counsel the facts of present case are entirely distinguishable in material particular than that of Vijay Kumar Jain's case (supra). Therefore, the said decision would not apply to the case in hand, because "substantial compliance" has already been made and no prejudice has either been caused or pleaded.

40. Learned Counsel further submitted that Mr. Singhal, the Ex-Director has filed his affidavit that the Resolution plans were discussed by all the members of the CoC. He maintained that once

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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he is aware of it and solemnly affirms so, then why he did not attend a single meeting. It is submitted that copies of the presentations were given to them. Their representatives attended the meetings. It is submitted that if some objection had been raised as regards supply of some documents at that stage, they could have moved the Tribunal under Section 60(5) for seeking appropriate orders. Learned counsel submitted that he never demanded the Resolution Plan because he already knew the resolution plans through various people, including his representative. It is submitted that it was not a new plan. All other conditions continued to remain the same. Only financial offers were revised later as per directions of the Hon'ble Appellate Tribunal.

41. According to Mr. Srinivasan it is only to raise objection for the sake of raising objections. In this case, the Operational Creditors have been treated fairly and even better than the other Creditors. Learned counsel submitted that the argument of the promoters is absolutely erroneous that because of the non-supply of resolution plan as per the judgment in Vijay Kumar Jain's case (supra), the whole resolution process is vitiated.

42. Learned counsel took us through the date-wise list of the events from 26th July, 2017 till 29th March, 2019, and submitted


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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that to understand the ratio *decidendi* of the aforesaid judgment in Vijay Kumar Jain, and in order to comply with Section 21 and 24 of the Code, one must give copies of the relevant documents to the erstwhile directors or promoters so that they could effectively participate in the meetings of the CoC, and that Section 24(3)(b) includes therein, the members of the suspended Board of Directors or the partners of the Corporate persons, as the case may be; and (c) operational creditors or their representatives if the amount of the aggregate dues is not less than ten percent of the debt.

43. Learned counsel submitted that the voting share is allocated to the Financial Creditors and the Operational Creditors do not have right to vote or to participate in the voting process. In the present case, as distinct from the facts of Vijay Kumar Jain, they were aware of everything but he voluntarily opted not to attend the meetings. Had he attended, he would have been aware what all the resolution plan is but he himself opted not to attend. It is important to note that even before the judgment passed in Vijay Kumar Jain, he had been invited by the RP. Learned counsel thus argues that these facts are altogether different from Vijay Kumar Jain's case (*supra*).


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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44. It is further argued that the operational creditors who are claiming participation and all documents, have no right to comment on 'viability or feasibility'. The law would not permit them.

45. Learned counsel has cited various authorities, to prove that substantial compliance has been made in this case. He placed reliance on the following judgments: **Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Others, (2011) 1, SSC 236, M.C. Mehta v. UOI & Ors. (1999) 6 SCC 237 and Dharampal Satyapal Limited v. Deputy Commissioner of Central Excise and others, (2015) 8 SCC 519 @ 39.**

ARGUMENTS ON BEHALF OF JSW STEEL LTD.- H1 APPLICANT

46. Mr. Rajiv Nayar, learned Senior counsel on behalf of JSW Steel Ltd. has supported C.A. No. 254(PB)/2019 filed by RP under Sections 30 and 31 of the Code, 2016. Highlighting the credentials of JSW Group, Mr. Nayar has submitted that it has turnover of USD 13 billion, and has diversified interests in mining, carbon steel, power, industrial gases, port facilities and cement businesses. In support of the resolution plan, Mr. Nayar has pointed out that initially JSW submitted its resolution plan on 08.02.2018 and improved the financial proposal on 31.07.2018 and 13.08.2018

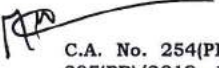
pursuant to the directions of the Hon'ble National Company Law

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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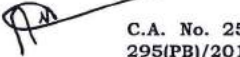
Appellate Tribunal in the appeal titled as *Tata Steel Limited v. Liberty House Group Pte. Ltd. and Ors.*, Comp. App. (AT)(Ins) No. 198 of 2018. Subsequently, on 03.10.2018, JSW submitted its consolidated resolution plan incorporating the improved financial proposal as submitted on 13.08.2018, clarifications issued during the CoC meeting dated 14.08.2018 and other compliance related clarifications without changing the 'feasibility and viability' of the resolution plan. In sum and substance, the Consolidated Resolution Plan continues to be the original resolution plan as submitted on 08.02.2018, except the improved financial proposal as submitted on 13.08.2018 and clarifications given to RP/CoC. The Addendum Letter dated 10.10.2018 has already been placed on record in order to clarify and modify some of its terms in light of the amendments made on 05.10.2018 in the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The aforesaid amendment in the resolution plan including the Addendum Letter, was duly approved by the CoC pursuant to the e-voting conducted on 15.10.2018 and 16.10.2018. Mr. Nayar has vehemently opposed that the principles of natural justice have been violated because adequate opportunity was given to the members of suspended


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Board of Directors as has been clarified by the learned counsel for the RP and CoC. It is because of the aforesaid factual and legal position that the RP has verified the contents of the resolution plan and has authenticated by filing Form-H stating that the requirements envisaged under Section 30 of the Code and Regulation 38 of the CIRP Regulations stand complied with.

47. Mr. Nayar then proceeded to highlight the salient features of the Resolution Plan. JSW is to incorporate or identify a wholly owned subsidiary and to infuse equity of Rs. 8,550 crores into a special purpose vehicle (SPV), which is to be in accordance with the provisions of the Resolution Plan, and is to merge with the Corporate Debtor on the effective date. The sources of funds for the implementation of the Resolution Plan has been provided in Schedule 3 of the Resolution Plan and the JSW had provided firm commitment letters from scheduled banks at the time of evaluation of the Resolution Plan. The CIRP Costs which have remained unpaid is to be paid in full and in priority over other payments, from the cash flows of the Corporate Debtor. In case the cash flows are insufficient to pay CIRP Costs, then JSW has undertaken to pay the CIRP Costs. The Workmen's dues are to be paid 100% of the admitted claims amounting to Rs. 9.86 crores in priority to the

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Financial Creditors in the same fashion. The Financial Creditors are to be paid upfront a sum of Rs. 19,350 crores on a pro-rata basis against their admitted claims of Rs. 47,157.99 crores. All the uninvoked bank guarantees issued by the financial creditors are to be counter-guaranteed in full. Accordingly, the Resolution Plan provides for a recovery of 41.03% to the financial creditors.

48. In so far as Operational creditors are concerned the Resolution Plan provides for the payment of 50% of the admitted claims of the operational creditors other than (i) workmen and (ii) such creditors whose liabilities have been identified as 'contingent liabilities' in the books of account of the Corporate Debtor it is subject to maximum of Rs. 350 crores, in proportion to their admitted claims. The total admitted claims of the Operational Creditors as submitted by RP amounted to Rs. 733.76 crores and the payment to such Operational Creditors is to be made within 12 months from the effective date. Thus, the Resolution Plan provides for a recovery of 47.69% to the operational creditors which is much more than the recovery of the Financial Creditors.

49. The Resolution Plan provides for the payment of government dues and taxes that are contingent as on the Insolvency

Commencement Date, i.e. 26.07.2017 and are crystallised within a

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018


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period of 2 years from the date of approval of the Resolution Plan by the CoC to the extent of 10% of the principal amount. The total maximum amount of Rs. 150 crores has been kept apart. The aforesaid amount is to be paid within a period of 90 days from the expiry of 2 years from the date of approval of the Resolution Plan by this Tribunal. Likewise, the Resolution Plan provides for the payment to Identified Contingent Creditors and any other creditors of 10% of their claims that are contingent, incurred or to be incurred, accrued or to be accrued. All other claims shall stand extinguished upon approval of the Resolution Plan, except the one stated in various clauses.


50. In connection with FIR dated 05.04.2019 registered by CBI against the Corporate Debtor and its Directors under Section 120B, 420, 468, 471 and 477A of the Indian Penal Code, 1860 and Section 13(2) read with Section 13(l)(d) of the Prevention of Corruption Act, 1988 it has been submitted that the Tribunal may order that all present and future liabilities, claims and penalties that may be imposed on the Corporate Debtor on account of actions/omissions on account of breach of applicable law in respect of the period prior to the effective date should stand extinguished as the allegations of diversion of Rs. 2,348 may significantly

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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increase during the course of investigations. In the absence of any such protection it would go to the root of 'feasibility and viability' as examined by the CoC and rendered the Resolution Plan unfeasible and unviable. Reliefs and concessions have also been sought by banking upon the power of the Adjudicating Authority-NCLT under Sections 31(1) and 60(5) of the Code read with Regulation 37 of the CIRP Regulations and Section 238 of the Code.

51. The Resolution Plan provides that pursuant to the approval of the Resolution Plan by the Adjudicating Authority-NCLT the Corporate Debtor would continue to be managed and controlled by the Reconstituted Board. The representatives of 3 (three) approving Financial Creditors which have the largest share in the Admitted Financial Debt are to constitute the "Steering Committee" which shall have the sole obligation to recommend independent persons, to the Reconstituted Board. On the date of approval by the Adjudicating Authority-NCLT the existing board of directors of the Corporate Debtor would be deemed to have resigned and the board would stand vacated; and the persons recommended by the Steering Committee are to be inducted as directors of the Corporate Debtor. During the period between the date of approval and the


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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effective date, the RP is to act as a monitoring professional and perform the duties as were discharged by the RP.

52. Mr. Nayar then made submissions with regard to the supply of a copy of the Resolution Plan to Sanjay Singal and Ms. Aarti Singal who have filed C.A. No. 286/2019. Mr. Nayar has reiterated in sum and substance the submissions made by the counsel for the CoC and the RP and has highlighted the lists of dates and events.

53. Mr. Nayar has also raised very pertinent issues and has argued that in Vijay Kumar Jain's case the directions were issued to supply a copy of the Resolution Plan to a stake holder who was not a competitor in submitting a resolution plan or providing proposal under Section 12A of the Code. According to the learned counsel the ratio decidendi in the Vijay Kumar Jain's case is not directed to the facts of the present case. It has been emphasised that judicial pronouncements are made in the context of the facts of a particular case and a close similarity is not enough to apply the ratio of one judgment to another set of facts. In that regard Mr. Nayar has placed reliance on the Constitution Bench judgment of Hon'ble the Supreme Court in ***Padma Sundara Rao v. State of Tamil Nadu***, (2002) 3 SCC 533 and has proceeded to highlight the differences between the two cases.

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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V.K. Jain	Sanjay Singal/ Aarti Singal
<p>V.K. Jain approached the Adjudicating Authority and sought a copy of the plan, much before the voting on the resolution plan could even commence, and subsequently appealed before Appellate Tribunal and thereafter before the Hon'ble Supreme Court.</p> <p>CoC vote was conducted after the judgment was passed by the Hon'ble Appellate Tribunal but before the order of the Hon'ble Supreme Court. It is in this context that the decision vote (CoC) was set aside.</p>	<p>1. The Promoters chose not to approach the Adjudicating Authority/the Appellate Tribunal/Supreme Court seeking a copy of the Resolution Plan when the Tata Steel Appeal was being heard (when even OCs chose to intervene) and the resolution plans of the various resolution applicants were being discussed.</p> <p>2. The Promoter Applicants kept quiet and did not ask the RP for a copy of the Resolution Plan until 07.02.2019. If the Promoter Applicants believed that the CoC meetings were vitiated as a copy of the Resolution Plan was not provided to them, as they are now contending, instead of approaching the Adjudicating Authority / Appellate Tribunal or the Supreme Court.</p> <p>3. The Promoter Applicants have approached the Hon'ble Adjudicating Authority in a belated manner with the intent to delay and drag the proceedings in order to frustrate the Resolution Applicant so that it withdraws the plan.</p>
<p>In <i>V.K. Jain</i>, the director had no conflict of interest as he <i>was</i> not submitting a resolution plan or a settlement offer.</p>	<p>1. In this case there is a clear conflict of interest as the Promoter Applicants have made two proposals to PNB under Section 12A of the Code and have filed an application seeking consideration of such proposals. [C.A. 327 of 2019 filed by the</p>

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Promoter Applicants.

2. Further, at the hearing dated 05.03.2019 in the present proceedings, a submission was made on behalf of the Promoter Applicants that they be given a copy of the Resolution Applicant's Resolution Plan so that the Promoter Applicants can further improve their settlement proposal if required, on the basis of such Resolution Plan.

3. The Promoter Applicants were always seeking to compete with the Resolution Applicant. In this regard, it is submitted that on 05.07.2018) the Promoter Applicant No. 1 wrote to the RP seeking a copy of the copy of the information memorandum, and Process Document since he intended to submit a resolution plan. **[See letter dated 05.07.2018 from Sanjay Singal to the RP]**

It is relevant to note that, the Hon'ble Appellate Tribunal has *Rajputana Properties Pvt. Ltd. v. Ultratech Cement Ltd and Ors. IA. No. 594 o/2018 in Company Appeal (AT) (Insolvency) No. 188 of 2018* held that the copy of the resolution plan cannot be given to another resolution applicant.

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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	<p>(Para 9)</p> <p>4. It is submitted that the Promoter Applicants impugned Section 29A before the Hon'ble Supreme Court in <i>Swiss Ribbons</i> with the stated objective of being permitted to submit a resolution plan.</p> <p>It is submitted that the Resolution Applicant was not a party to the proceedings before the Appellate Tribunal on 20.07.2018, when the order was made. The Resolution Applicant impleaded itself as a party and entered appearance in the proceedings for the first time on 01.08.2018. The order dated 01.08.2018 recorded this fact which was tendered to the Adjudicating Authority during the hearing on 22.04.2019.</p>
<p>Despite there being no conflict of interest in <i>V.K Jain</i>, the SC recognised that confidential information contained in the resolution plan needs to be protected and therefore stated that a confidentiality agreement may be entered into. [Para 15 of V.K. Jain]</p>	<p>1. At the hearing dated 05.03.2019 in the present proceedings, a submission was made on behalf of the Applicant Promoters that they be given a copy of the Resolution Plan so that the Promoter Applicants can further improve their settlement proposal if required, on the basis of such Resolution Plan. It is submitted that a confidentiality agreement can only prevent disclosure to a third party, and not use of the same by the</p>

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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	<p>person himself.</p> <p>2. The Hon'ble Adjudicating Authority in its order dated 29.03.2019 in the present proceedings recognised the legitimate interest in proprietary information.</p> <p>3. The redacted pages of the Resolution Plan do not relate in any manner to the interests of the Promoter Applicants and they contain proprietary /confidential information of the Resolution Applicant, and the suspended board of directors only wanted information to the extent relevant for them, which has been provided to them.</p>
<p>No visibility or any access was given at any point of time to the suspended directors who were not even allowed in the meetings Thus, <i>V.K. Jain</i> was given in a context where there was no effective participation on account of non-access to copies of resolution plan. [Paras 2-3 of order dated 01.08.2018 passed in <i>Vijay Kumar Jain v. Resolution Professional and Anr. in CP (IB) 1371/2017</i>, by Adjudicating Authority, Mumbai]</p>	<p>1. The Promoters Applicants had complete visibility on the Resolution Plan, which is evident from the acknowledgements, signed by the suspended directors (including Sanjay Singal's nominee), that they were given adequate opportunity to inspect the Resolution Plan and provide suggestions in a satisfactory manner.</p> <p>2. In fact, CA 327/2019 filed by the Promoter Applicants contains a comparison (although misleading) of the amounts offered in the settlement proposal and Resolution Plan. From this, it is evident that Promoter Applicants were well aware of the</p>

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C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Resolution Plan.

3. Incidentally, in the case of the insolvency resolution process of Essar Steel India Limited ("**Essar Steel**") wherein the Hon'ble Adjudicating Authority, Ahmedabad Bench, vide its order dated 08.03.2019 in C.P. (IB) Nos. 39 & 40 of 2017, rejected the applications filed on behalf of the members of the suspended board of directors of Essar Steel and the operational creditors of Essar Steel, noting that it was evident from the comparison provided between the resolution plan and the settlement proposal that the suspended board was already well aware of the contents of the resolution plan. [Please see NCLT, Ahmedabad Bench order dated 08.03.2019 in C.P. (IB) Nos. 39&40 of 2017 - Para 3 @ Pg 57]

4. At no point of time prior to filing of the application CA 286 / 2019 have the Promoter Applicants approached any court contending that they have not been able to participate in the meetings of the CoC.

5. As already submitted by the RP, all members of suspended board of directors were invited to participate in the meetings of the CoC. However, the Promoter Applicants who have vehemently argued before this Hon'ble Adjudicating Authority regarding access to the Resolution Plan for

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the Corporate Debtor and their right to effectively participate in the CoC meetings were conspicuously absent at such CoC meetings.

a. Sanjay Singal has only attended 2 CoC meetings, i.e. the 1st meeting and 17th meeting (on 27.07.2018) despite being invited to all CoC meetings by the RP.

b. Aarti Singal has not attended any CoC meetings.

6. Further, even when called for inspection of the resolution plan, instead of Sanjay Singal attending himself, he sent a representative to inspect the resolution plan. It is pertinent to note that under the Companies Act, 2013, a director cannot depute a representative to act in lieu of him, other than an alternate director. In this case, Amarjeet Shanna, who attended in place of Sanjay Singal is not an alternate director. Aarti Singal, did not even inspect the resolution plan.

7. Further, the conduct of the Promoter Applicants also clearly shows that they had no interest in discharging any role or responsibility as directors and their only interest, if any, was in their personal capacity as shareholders and guarantors of the Corporate Debtor.

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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<p>V.K. Jain was in the context of providing copies of the plan prior to CoC voting. In such case, the director had approached the Hon'ble Adjudicating Authority even prior to the meeting in which the resolution plans were discussed and voting by the CoC took place during the pendency of the proceedings initiated by the directors. [paras 2 and 3 of V.K. Jain]</p>	<p>In the present case, the CoC voting had concluded on 16.10.2018, i.e. much before directors sought copies of the plan by filing the application CA 286 / 2019 before the Hon'ble Adjudicating Authority.</p>
<p>The order dated 01.08.2018 passed in <i>Vijay Kumar Jain v. Resolution Professional and Anr. in CP (IB) 1371/2017</i>, by Adjudicating Authority, Mumbai observes that non-disclosure of the Resolution Plan does not affect the interest of the directors as the debts owed to Secured Creditors are more than the Liquidation value so in any case nothing is payable to Directors / shareholders. [Para 31]. Therefore, the Supreme Court, in its judgment, records that members of the erstwhile Board of Directors, are vitally interested in a resolution plan, as they are often also directors, as such resolution plan then binds them. Therefore, such directors need to see the impact of the Resolution Plan on themselves in their capacity as shareholders and guarantors. [Para 12 @ Pg. 34-35 of V.K Jain 1</p>	<p>1. The sections of the Resolution Plan relevant to the erstwhile Board of Directors, in their capacity of being guarantors / shareholders had been given the inspection of to the Promoter Applicants. Further, all discussions on the financials of the Resolution Plan happened in the presence of the suspended Board of Directors/their representatives. The suspended Board of Directors were also given powerpoint presentations on the Resolution Plan.</p> <p>2. Even at the time of inspection pursuant to the order dated 20.07.2018 passed by the Appellate Tribunal, inspection was given without showing the pages containing proprietary information [page 10, RP's Reply in CA 286/ 2019 - "It is submitted that during the visit of the members of the Board of Directors for inspection of the resolution plans, certain pages of</p>

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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the plans were not shown at the request of the resolution applicants, since the same contained sensitive proprietary information]

3. Further, at such time, the authorised representative of the Promoter Applicant No. 1 signed an acknowledgement upon inspecting the Resolution Plan stating their satisfaction. It is submitted that they did not make any reservation which clearly shows that they were satisfied with what was shown to them and found it adequate for their purpose, and were also satisfied that what was not shown to them did not relate to them or their interest at all. If the Resolution Applicant's business plan and financial projections for the Corporate Debtor were not considered relevant by them then, it cannot now be claimed as an afterthought that it is relevant.

4. Further, the Addendum Letter dated 10.10.2018 has been provided to the Promoters in full.

5. The redacted version of the Resolution Plan was also provided on 29.03.2019, containing sections of the Resolution Plan relevant to the erstwhile Board of Directors, in their capacity of being guarantors / shareholders.

A note specifying the portions of the Resolution Plan which were redacted and those portions which were not redacted is

54. Mr. Nayar then submitted that the entire CIR Process including the voting on the Resolution Plan has been undertaken by the RP pursuant to the directions issued by the Appellate Tribunal in Tata Steel's Appeal. The Promoter obviously have been permitted to inspect the Resolution Plan and provide their comments pursuant to the order dated 09.05.2018 and 20.07.2018 passed by the Hon'ble Appellate Tribunal. It was directed by way of oral direction on 20.07.2018 that the Resolution Plan are to be shared with the Operational Creditors and Suspended Board for their comments but no copy was to be provided. Having acted upon and having taken the benefit of the order passed by the Appellate Tribunal the Ex-Directors/Promoters cannot agitate the issue of non-provision of a copy of plan. The order passed by the Appellate Tribunal have attained finality which are binding on the Ex-Directors/Promoters as they have acted upon the orders by obtaining inspection without objecting to them at any stage. Merely because a judgment of Hon'ble Supreme Court in Vijay Kumar Jain's case has come later on, they cannot now turn a volte-face and reopen the concluded issue and they are deemed to have

waived their rights. The Promoter Applicants have kept quiet and

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did not ask for the RP for a copy of the Resolution Plan until 07.02.2019. They did not choose to litigate.

55. Mr. Nayar has submitted that no reliance could be placed on the judgment of Hon'ble Supreme Court in the case **Corona Ltd v. Parvathy Swaminathan, (2007) 8 SCC 559**, that non furnishing of Resolution Plan is a jurisdictional fact. A resolution plan which has not been approved by the CoC, if placed before the Adjudicating Authority, goes to the root of the jurisdiction of the Adjudicating Authority. Moreover, no prejudice has been suffered or caused. Mr. Nayar has also submitted with regard to C.A. No. 327/2019 filed by Sanjay Singal and Aarti Singal under Section 60(5) read with Section 12A of the Code wherein a direction has been sought to the RP to place that proposal for settlement dated 20.02.2019 by the Promoter before the CoC for their acceptance and termination of the CIR Process. According to the learned counsel it is a self-serving application and not maintainable, and is ultimately an attempt to delay and derail the CIR Process. A reply to this application has also been filed.

ARGUMENTS ON BEHALF OF EX-MANAGEMENT/PROMOTERS

56. Mr. Mukul Rohatgi, Mr. A.S. Chandhiok & Mr. U. K.

Chaudhary, all learned Senior Counsels have supported the cause

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018


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of Ex-Management/Promoters. They have advanced arguments on various dates of hearing which are summed up as under:

1. Learned Senior counsels have vehemently argued that judgment of Hon'ble the Supreme Court in the case of Vijay Kumar Jain (supra) has laid a Rule of Law which requires that a complete copy of the resolution plan upto date must be handed over to the Ex-Management/Promoters which has not been done in the present case. According to the learned counsels the course adopted in Vijay Kumar Jain's case (supra) must also be adopted in the present case as well by firstly issuance of directions to the RP and CoC to furnish a copy of the resolution plan and then send the case back to the CoC to consider the objections of the Ex-Management/Promoters.
2. Learned counsels have highlighted that if the aforesaid course is not followed then the resolution plan approved by CoC in its 19th Meeting held on 10.10.2018 must be declared illegal and the liquidation proceedings must commence.


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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3. In addition to the aforesaid two submissions, Mr. A.S. Chandhiok, learned Senior Counsel has argued the additional points namely

3.1 Notice under Section 24 (3) (b) of the Code of each Meeting of Committee is required to be given to the Members of the Suspended Board of Directors so as to enable the Ex-Directors to participate in the meetings of the CoC and get full opportunity.

3.2 Mr. Chandhiok has pointed out that a copy of the resolution plan supplied to the Ex-Directors/Promoters is incomplete in material particular and pages 12 to 16, 40 to 41, 61 and 25 to 151 have been illegally blackened. Learned counsel submits that the Ex-Directors being entitled to participate in every CoC meeting were firstly deprived of a copy of the resolution plan and then even before this Tribunal an incomplete copy has been furnished which might cause prejudice to their rights.

3.3 The argument is that the confidentiality which is being claimed by Resolution applicant or RP/CoC had never been claimed before the CoC. It is maintained that the Code does not provide in any of the provision under which

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any such information could be withheld and in the absence of complete copy of the resolution plan no effective discussion could have taken place. The compliance as suggested by the counsel for the RP is no compliance in the eye of law and as there is non compliance with the provisions under Section 31 of the Code and approval by the Adjudicating Authority-NCLT must be declined.

3.4 Mr. Chandhiok also submitted that Regulation 39 (3) of the Insolvency Process Regulation stand violated. According to the provisions of Regulation the CoC is obliged to record reasons for approving or rejecting the resolution plan after considering its 'feasibility and viability' and such other factors which may be specified by the IBBI. The CoC has failed to record reasons recording their satisfaction before approving the resolution plan.


3.5. It was then submitted that a revised offer was made by the JSW after 25.07.2018 which got evaluated by the CoC. It shows that suggestions were made by CoC to amend the resolution plan of JSW. Some negotiations in the Core Committee were held on 27.08.2018. This resulted in a


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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consolidated resolution plan dated 3.10.2018. Learned counsel has also argued that a copy of the amended plan has never been given nor inspection has been allowed. Learned counsel has concluded by arguing that the RP should have disclosed to the ex-directors the liquidation and fair value. Learned Counsel has submitted that a notice for meeting held on 04.10.2017 and 02.02.2018 were given but no copies of the report of liquidation value and the fair value have been furnished which were subject matter of discussion in CoC in its first and second meeting.

4. Mr. Chaudhary, learned Senior Counsel has also made additional submissions and has argued that grave prejudice has been caused by non furnishing of complete copy of the resolution plan. A copy of the resolution plan should have been submitted before it was discussed by the CoC. According to the learned counsel even a copy in pursuance of the order passed by this Tribunal on 29.03.2019 has not been furnished. Learned counsel has maintained that the so-called proprietary information claimed to be confidential is neither protected by the


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018


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provisions of the Code or any Rules and Regulations. Mr. Chaudhary then points out that the sources of fund is reflected in Schedule-III which apparently have been disclosed to the Tribunal but the copy supplied to the Ex-Director/Promoters is completely obliterated. Accordingly, the Ex-Director/Promoters have no knowledge to comment upon the sources of fund or on the financial viability. Mr. Chaudhary has been emphatic with regard to the violations of principles of natural justice and the grave prejudice suffered by the Ex-Director/Promoters.

ARGUMENTS ON BEHALF OF OPERATIONAL CREDITORS


57. Mr. A.S. Chadha, learned Senior Counsel has argued on behalf of the Operational Creditors and referred to the remand order issued by the Hon'ble Appellate Tribunal remanding the case back to the Adjudicating Authority-NCLT. Mr. Chadha, learned Senior Counsel as per the directions of the Hon'ble Appellate Tribunal has been authorized by us with the consent of other Operational Creditors to put across the point of view of all operational creditors.

58. Mr. Chadha has initially submitted that the non supply of the Resolution Plan by the RP, has caused serious prejudice to their

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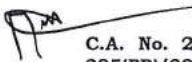
rights of being heard in violation of the rules and principles of natural justice especially at this stage of hearing to see compliance with the provisions, inter alia, of Section 31 and 34(4) of the Code. It is submitted that no part of the plan has been furnished to them. It is however candidly admitted by the counsel that the Resolution Plan was only shown to them as it was before the approval and their suggestions had been obtained but it was not brought to their knowledge as to whether their suggestions have been duly incorporated and their interests have been safeguarded or not. It is submitted that the stage of securing an “undertaking” as ruled by the Hon’ble Supreme Court was only at the initial stage when it was not sure how many resolution plans would be submitted, and that at this stage there was no confidentiality involved. It has been further submitted that the copy of the plan should be given in advance to the Operational Creditors to make their suggestions as regards safeguarding their interest and also be given to them to see whether the suggestions made by them have been given effect to or not and to safeguard their interests. Learned counsel however admitted that to protect the sanctity of the CIR process, this information is confidential but at the stage of Section 31, this will not affect the process adversely in any manner. As regards post


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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COC approval, there is no Supreme Court finding and only as a necessary corollary it should be given to the operational creditors at this stage also to protect their interests. The counsel referred to and relied upon the judgment of Hon'ble Supreme Court rendered in Vijay Kumar Jain's case.

59. Learned counsel further submitted that the Operational Creditor mentioned at Item no. 374 (Jaldi) in the list has been wrongly shown as a Contingent Creditor and would be paid only 10% whereas the others are being paid 50%, particularly when this Operational Creditor stands at a better footing because his claim has been duly verified and admitted. It is submitted that the RP has admitted its claim at Rs.150 crores then why should it be put as an Identified Operational Creditor. It was submitted by the learned counsel that this Creditor may not even get 10% because there is a cap of Rs.35 crores. Learned counsel further submits that the RP cannot be permitted to term them as "contingent creditor" particularly when it is an adjudicated claim culminated into an award in its favour. Whereas in the case of other Operational Creditors there is no adjudication and their claims have simply been admitted by the RP. Learned Counsel submitted that this is an artificial classification and there is no such provision either in


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the statute or in the regulations to treat them separately. RP can only collate the record and admit the claims. Learned counsel relied on the judgment of the Hon'ble Appellate Tribunal rendered in the case of Benani Industries, regarding the status of the operational creditors.

60. Learned counsel submitted that the financial creditors are in a better position to keep a watch and check on the financial conditions of the operational debtors as they get balance sheets and get evaluation of their assets done while giving them loans and ensure that the company is not defaulting.

61. Mr. A.S. Chadha, further argued that 68 per cent of the total amount of admitted claims of the operational creditors stand paid 100% and this has resulted into discrimination towards the remaining operational creditors who would be paid merely 50% of their admitted claim under the Resolution Plan. It is submitted that the payments made by the RP were sanctioned towards invoices that were raised prior to CIRP because the amounts sanctioned were arrived at by adding specific invoices.

62. Having heard the learned counsels for all the stakeholders at great length and having perused the record with their able


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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assistance and the minutes of meetings of the CoC we find that various issues emerge for determination by this Tribunal. It is also pertinent to mention that the Resolution Professional has filed Form-H showing substantial compliance with various provisions of the Code, Rules and Regulations. These are the correct dates and events. The same is also set out below for facility of reference.

25.07.2018	The RP wrote to the members of the suspended board of directors and their representatives inviting them to see the resolution plans at the offices of the legal counsel for the RP. (CoC's compilation, p. 159)
25.07.2018	RP Goyal confirming that he shall come for inspection of the resolution plans on 26.07.2018. He also sought a copy of the resolution plans and all accompanying documents filed by the resolution applicants. (Promoter Applicants' reply to CA 254, p. 67)
25.07.2018	RP sent the notice for the CoC meeting dated 27.07.2018, along with the agenda and explanatory notes, to the CoC and the members of the suspended board of directors.
26.07.2018	Submission of improved financial proposal by JSW Steel. All other terms of the resolution plan submitted on 08.02.2018 by JSW Steel remained the same. Two members of the suspended board of directors, including Sanjay Singal (through his authorised representative) inspected the resolution plans at the office of the legal counsel for the RP, and provided an acknowledgment to the RP that he had been given adequate opportunity to inspect the resolution plan and provide his suggestions in a satisfactory manner. No inspection was undertaken by Aarti Singal. (CoC's compilation, pp. 194, 206)
27.07.2018	CoC at its meeting decides to invite improved financial proposals from the three resolution applicants until 31.07.2018.

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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	<p>Such meeting was attended by Sanjay Singal's representative, RP Goyal and Ram Naresh Yadav (through his representative).</p> <p>At such meetings, suggestions were given by the members of the suspended board of directors to which JSW Steel provided its responses.</p> <p>The comments provided by the members of the suspended board of directors, on each of the resolution plans, were discussed at the CoC meeting on 27.07.2018 and 31.07.2018.</p>
31.07.2018	<p>Submission of improved financial proposal by the Resolution Applicant.</p> <p>Letter sent by R.P. Goyal (i) noting that comments were given by directors during the CoC meeting held on 27.07.2018; and (ii) giving further comments. (Coe's compilation, p. 356)</p> <p>No comments given by Sanjay Singal (who inspected through Amarjeet Sharma).</p>
31.07.2018	<p>CoC meeting continues.</p> <p>At the CoC meeting, only RP Goyal and Ram Naresh Yadav (through authorised representative) were present. Comments given by the suspended directors on each resolution plan were noted, and resolution applicants responded to each such comment.</p>
13.08.2018	<p>Resolution Applicant-submitted a further improved financial proposal pursuant to the order dated 06.08.2018 passed by the Hon'ble Appellate Tribunal in the Tata Steel Appeal permitting the resolution applicants to file additional unconditional 'resolution plans' by 13.08.2018 improving the financial offer.</p>
14.08.2018	<p>At the CoC meeting, the revised resolution plans submitted by the resolution applicants on 13.08.2018, including JSW Steel's resolution plan, were discussed between the CoC, the representatives of the operational creditors, the individual resolution applicants and the suspended Board of Directors at the CoC meeting on 14.08.2018.</p>

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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	<p>The Promoter Applicants (Sanjay Singal and Aarti Singal) did not attend such meeting. Two other members of the suspended board of directors (Ram Naresh Yadav. through authorised representative and Hardev Chand Verma) attended such meeting.</p> <p>The effective part of the offer made by JSW Steel was read out (see pages 424-425 of CoC's compilation). Further, at such meeting, the CoC's legal counsel raised the following query for clarification from JSW re personal and corporate guarantees:</p> <p>The legal counsel of CoC then raised the following queries for clarification from Resolution Applicant: "(d) With regard to enforcement of personal and corporate guarantees, the Committee wanted to be very clear that in their Resolution Plan, the financial creditors shall continue to have the right to recover from personal and corporate guarantees which were executed by existing promoters. It was further stated that the Committee duly noted the safeguard that JSW seeks and they are ready to provide for subrogation rights to be extinguished in the same clause ... "</p> <p>Further, Resolution Applicant clarified that: (CoC's compilation, pg. 431-432) c) With regard to personal guarantee based on the request of the creditors, the representative of JSW stated that they are fine with it, however they also emphasized that it is very important that subrogation is protected properly which they have mentioned in the relief section and requested the recognition of extinguishment of subrogation, reimbursement, indemnity rights, to which the legal counsel of COC responded that it can be brought into the main part of the Resolution Plan.</p> <p>Thus, the suspended board of directors present at the CoC meeting raised no objections including in respect of the new clause proposed and agreed on the provisions on extinguishment of subrogation rights regarding the personal guarantees.</p>
03.10.2018	Resolution Applicant submitted its Consolidated Resolution Plan incorporating the improved financial proposal as submitted on 13.08.2018, clarifications issued

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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	<p>during the CoC meeting dated 14.08.2018 and other compliance related clarifications not affecting feasibility and viability.</p> <p>Therefore, the Consolidated Resolution Plan merely represented a sum of parts and not a new resolution plan.</p>
07.10.2018	RP invited the members of the suspended board of directors to attend the CoC meeting dated 10.10.2018 called to approve Resolution Applicant's Consolidated Resolution Plan.
09.10.2018	RP sent an email to the CoC and members of the suspended board of directors sharing the presentation to be shown at the CoC meeting on 10.10.2018. (CoC's compilation, pp. 458-459)
10.10.2018	<p>19th meeting of the CoC to consider and vote upon the Consolidated Resolution Plan. At such meeting, further negotiations were held between the CoC and Resolution Plan regarding certain modifications required to the Consolidated Resolution Plan on account of the amendments made to the CIRP Regulations on 05.10.2018.</p> <p>Based on the same, Resolution Applicant submitted a letter dated 10.10.2018 ("Addendum Letter") clarifying and modifying certain terms of its resolution plan to ensure compliance of the amended CIRP Regulations.</p> <p>At such meeting, the CoC resolved to put the Consolidated Resolution Plan as amended by the Addendum Letter for vote through e-voting between 15.10.2018, 5 p.m. and 16.10.2018, 5 p.m.</p> <p>(1) No objection (as is now sought to be taken) raised by the members of the suspended board of directors during or after the meeting to such voting; and (2) No objection taken before the Hon'ble Almellate Tribunal or Hon'ble Adjudicating Authority against conduct of such voting.</p> <p>(2) the Promoter Applicants, <i>i.e.</i> Sanjay Singal and Aarti Singal chose to remain absent, despite the specific</p>

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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	invitation from the RP. Only Ram Naresh Yadav (present through authorised representative) and Hardev Chand Sharma present from the suspended board of directors.
11.10.2018	Addendum Letter was circulated by the RP by email to the suspended board of directors. (CoC's compilation, pp. 518-519) <u>No objection raised to the Addendum Letter.</u>

63. We may proceed to discuss the issues:

RE-SUPPLY OF A COPY OF RESOLUTION PLAN TO THE ERSTWHILE MEMBERS OF BOARD OF DIRECTORS

64. The first and foremost issue raised before us pertains to supply of a copy of a resolution plan to the erstwhile members of Board of Directors. In order to find out whether substantial compliance has been made of this requirement as per the law laid down in Vijay Kumar Jain's case (supra) or not. In that few facts may first be seen.

65. In accordance with the provisions of Section 24(2) the RP is obliged to conduct all meetings of the CoC. The RP is a non partisan and independent umpire. It is further clear that he is obligated to give notice of each meeting of the CoC to the Members of Suspended Board of Directors [See Section 24(3)(b)]. The provision of Sub Section 4 of Section 24 further clarify that such

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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erstwhile Director may attend the meetings of the CoC but are not entitled to vote in such meetings. However, it is provided in clear terms that the absence of any such Director is not to invalidate proceedings of any such meetings. A close scrutiny of the minutes of meetings of the CoC shown to us prove beyond any doubt that notice of all meetings has been given by clearly specifying the date of the meeting and sometime they attended meetings but many a time the erstwhile members of Board of Directors have remained absent also. In that regard the details of all 24 meetings is summed up in the form of a table which shows their presence/absent and the same reads thus:

Meeting No.	Notice of the meeting	Date of the meeting	Members of suspended board of director Present/absent
1.	Email dated 25.8.2017	1.9.2017	Present Mr. Sanjay Singal Mr. Ravi Prakash Goyal
2.	Email dated 29.9.2017	4.10.2017	Absent
3.	Email dated 25.10.2017	31.10.2017	Absent
4.	Email dated 13.11.2017	17.11.2017	Absent
5.	Email dated 6.12.2017	11.12.2017	Absent

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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6.	Email dated 20.12.2017	26.12.2017	Present Mr. Ravi Prakash Goyal Mr. Hardev Chand Verma
7.	Email dated 2.1.2018	8.1.2018	Present Mr. Ravi Prakash Goyal Mr. Hardev Chand Verma
8.	Email dated 29.1.2018	2.2.2018	Absent
9.	Email dated 15.2.2018	21.2.2018	Absent
10.	Email dated 9.3.2018	14.3.2018	Absent
11.	Email dated 14.4.2018	17.4.2018	Present Mr. Hardev Chand Verma
12.	Email dated 24.4.2018	27.4.2018	Absent
13.	Email dated 25.5.2018	29.5.2018	Absent
14.	Email dated 6.6.2018	11.6.2018	Present Ravi Prakash Goyal Mr. Hardev Chand Verma through representative MR. Arun Kumar Agarwal Mr. Dinesh Kumar Yadav through representative Mr. V.P. Chhabra

Handwritten signature/initials

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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15.	Email dated 6.7.2018	9.7.2018	Present Mr. Ravi Prakash Goyal Mr. Ram Naresh Yadav through representative MR. Arun Kumar Agarwal
16.	Email dated 11.7.2018	16.7.2018	Present Mr. Ram Naresh Yadav through representative MR. Arun Kumar Agarwal
17.	Email dated 25.7.2018	27.7.2018	Present Mr. Sanjay Singal through representative MR. Arun Kumar Agarwal Mr. Ravi Prakash Goyal Mr. Ram Naresh Yadav through representative Mr Amarjeet Singh
18.	Email dated 10.8.2018	14.8.2018	Present Mr. Ram Naresh Yadav through representative MR. Arun Kumar Agarwal Mr. Hardev Chand Verma
19.	Email dated 7.10.2018	10.10.2018	Present Mr. Ram Naresh Yadav through representative MR. Arun Kumar Agarwal
20.	Email dated 27.12.2018	3.1.2019	Present Mr. Ravi Prakash Goyal Mr. Ram Naresh Yadav through representative MR. Arun Kumar

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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			Agarwal Mr. Hardev Chand Verma Mr. Dinesh Kumar Yadav through representative Mr. Amarjeet Sharma
21.	Email dated 5.2.2018	8.2.2019	Present Mr. Ravi Prakash Goyal Mr. Ram Naresh Yadav through representative MR. Arun Kumar Agarwal Mr. Hardev Chand Verma through representative Mr V.P. Chhabra Mr. Dinesh Kumar Yadav through representative Mr. Amarjeet Sharma
22.	Email dated 16.3.2018	19.3.2019	Present Mr. Ravi Prakash Goyal Mr. Hardev Chand Verma Mr. Dinesh Kumar Yadav through representative Mr. Amarjeet Sharma
23.		23.5.2019	Present Mr. Sanjay Singal through authorised representative Mr. Arvind Kumar Gupta Mr. Ram Naresh Yadav through representative MR. Arun Kumar Agarwal Mr. Ravi Prakash Goyal Mr. Hardev Chand Verma
24.		24.7.2019	Present Mr. Dinesh Kumar Yadav through representative Mr V. P. Chhabra

Handwritten signature/initials

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

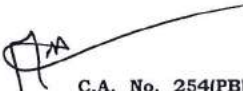
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66. A perusal of the aforesaid table shows that the erstwhile members of Board of Directors attended 1st, 6th, 7th, 14th, 15th, 16th, 17th, 18th, 19th, 20th, 21st, 22nd, 23rd and 24th meetings.

67. In 15th meeting of the CoC held on 09.07.2018 a resolution plan submitted by Tata Steel Limited was considered as the highest evaluated compliant plan and the voting on that plan was deferred. In the 16th meeting of the CoC held on 16.07.2018 the voting for the approval was allowed to be conducted till 18.07.2018 and the resolution plan by Liberty House Group was also presented in pursuance of directions issued by this Tribunal in the order dated 23.04.2018 and further order of Hon'ble NCLAT.

68. However, in the 17th meeting held on 27.07.2018 the resolution plan of JSW also came up for consideration. In the minutes of 17th meeting of the CoC it has been recorded that the details of the resolution plans were duly disclosed to the Members of the CoC, Operational Creditors and the Suspended Board of the Corporate Debtor and the relevant portion of the Minutes reads as under:

“The Legal Counsel of the RP further stated that in the evening of 26th July 2018, the RP has received a letter from the JSW Steel


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Limited which is marked to the Resolution Professional and one of the financial creditors, along with its revised financial proposal. He further clarified that, as a matter of fact, since the details of the Resolution Plans had only been disclosed to the *members of the CoC, Operational Creditors and to the suspended Board of Corporate Debtor and not disclosed to Resolution Applicants*, therefore the RP is not disclosing the details of the revised financial proposal received from the JSW Steel Limited in the meeting (in the presence of other resolution applicants).” (emphasis added)

69. A perusal of the aforesaid minutes would show that the details of the resolution plan submitted by JSW were shared with the CoC, Operational Creditors and the erstwhile members of Board of Directors. It was not however disclosed to the Resolution Applicant for obvious reasons. It is also obvious that JSW had revised the financial proposal which was obviously in pursuance of the directions issued by the Hon’ble NCLAT.

70. It is further clear from the 17th meeting of CoC that the views of the erstwhile members of Board of Directors were solicited by the RP and they made the following observations:

“The Legal Counsel of RP sought views of the suspended Board of Directors as per the resolution plans. The Representative of

suspended BoD pointed out the following:


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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- i. The Resolution Plan was shown to them a day before the meeting however, certain pages of the Resolution Plan were not shown to them.
- ii. In one of the Resolution Plans, it was mentioned that the employees on roll of the Company shall be retained, however, there are more than 10,000 employees on Contractual basis. He suggested that all the employees shall be retained in the Company irrespective of whether they are Contractual or permanent.
- iii. He enquired as to how is the preference share capital is being taken care of; whether Companies Act, 2013 is being complied with or not; and whether the Process is being run as per Companies Act, 2013; to which the Legal Counsel of the RP responded that since it is an implementation aspect, it shall be in compliance with law.
- iv. He enquired about deduction in share capital of promoters.
- v. He enquired about the treatment with respect to Preference Shares, and how shall they be redeemed.

The Legal Counsel of the RP requested the representative of suspended BoD that since these queries are specific to the RA and it is not to be disclosed to other RAs, they need be put to the specific RA. He further requested them to send an email comprising their observations on all the Resolution Plans. The Representatives of suspended BoD took note of the same. He further drew attention


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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of RP to the Supreme Court Order dated 18th July 2018 and read out the order.” (emphasis added)

71. A perusal of the aforesaid minutes’ shows that the contents of the resolution plan were shared with the erstwhile members of Board of Directors without sharing the confidential information and they have participated by making specific observations. The RP has granted them full opportunity to send a query with respect to any of the resolution plan to the Resolution Plan Applicants. The RP also shared his concern that the information was not to be shared with the other Resolution Plan Applicants obviously because they were competitors with one and another.

72. Likewise, the representatives of the Operational Creditors made enquiries from the RP and some time was granted to the Resolution Applicant for taking a decision to revise and send the improvement concerning the financial component by 31.07.2018 which was to be evaluated by the CoC on that very day. The aforesaid part of the minutes of meeting of CoC reads as under:

“The Representative of Operational Creditors enquired from the RP as to whether they are going to invite suggestions from the participants on the Resolution Plan already submitted by JSW, Tata Steel and Liberty House or they are going to ask the

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Resolution Applicants if they are willing to come up with a revised offer and match the offer made by JSW. He added that he had a lot of suggestions on all the Resolution Plans however, he shall raise them only after finalization of Plans. He further requested the RP to make the offer of JSW public for the information of all entitled to the same.

The Legal counsel of CoC further stated that some time needs to be given to Resolution Applicants and suggested that if the Resolution Applicants decide to revise and send their improvements to the financial components of the resolution plan by 9:00 am on 31st July, 2018 (Tuesday), then those offers will be evaluated at the CoC meeting on Tuesday itself and the outcome will be submitted to the Adjudicating Authority for approval after voting. The representative of Andhra Bank further stated that opportunity must be given to the representative of operational creditors as well as to see the Resolution Plans on that day to which the legal counsel of RP responded that the representative of operational creditors has already seen the plans, it is only the increased number that needs to be shown and the same can be shown on the same day. Further, the representative of JSW Steel Limited stated that they have no objection to the opportunity provided to revise offers by Tuesday, however, they raised an objection with regard to sharing the offers



C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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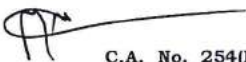
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with other Resolution Applicants to which the legal counsel of CoC responded that the offers will be shared with the members of the Committee, operational creditors and suspended Board of Directors only and not with the other Resolution Applicants.”

(emphasis added)

73. A perusal of the aforesaid extracted minutes would show that the CoC has been a vibrant house with complete participation of the erstwhile members of Board of Directors and Operational Creditors apart from Financial Creditors. It is not possible to quote each and every debate but one can feel satisfy that it was a transparent process. It is also evident that the erstwhile members of Board of Directors did not ask for a copy of the resolution plan and appears to be satisfied with the inspection of resolution plan and the details shared with them. However, the confidentiality with regard to raising of the finances, were not shared.


74. In the 18th meeting of CoC held on 14.08.2018 only representatives of Mr. Ram Naresh Yadav and Mr. Hardev Chand Verma were present. On behalf of Jaldi Overseas, Mr. Ravi Hamirbasiya was present and there were four representative of JSW and Liberty House Group. There were many representatives of Tata Steel Limited. The legal counsel of the RP apprised the Members


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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that the offer of JSW was an addendum to the resolution plan dated 08.02.2018 and he read out clause 2.2 which has been reproduced in the minutes of meeting. The concern of the Operational Creditor was also noted at item No. 10 which records the reply of the RP. A perusal of the minutes would show that thread bare discussion took place with regard to the resolution plan submitted by Tata Steel Ltd, Liberty House Group and JSW Steel Limited and the revisions/improvements made by each one of them. Various Financial Creditors raised issues which have been answered by the legal counsel of the RP or the RP himself. As the matter was pending before the Hon'ble NCLAT the CoC decided to keep the scores of the Resolution Applicants in a sealed envelope which was to be submitted to the Hon'ble NCLAT.

75. In the 19th meeting of the CoC held on 10.10.2018 the meeting was only attended by the representatives of Mr. Ram Naresh Yadav; and Mr. Hari Chand Verma attended the meeting in person and erstwhile directors Mr. Sanjay Singal, Mr. Ravi Prakash Goyal, Ms. Aarti Singal and Mr. Dinesh Kumar Yadav were absent. Under the agenda item No. 5 the final evaluation of the resolution plan submitted by JSW Steel Ltd. and the changes that the Members of the CoC desired to make in the resolution plan of JSW were


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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discussed. With regard to claim of the Operational Creditors clarification were sought and given by JSW. A discussion on that score is evident from the minutes of meeting under item No. 5 and the same reads as under:


“The legal counsel of RP requested JSW to consider the request of CoC, a body with fiduciary duty, to make the payment to operational creditors upfront so that the operational creditors could also be benefitted or clarification could be sought from Adjudicating Authority at the time of submission of JSW resolution plan. The representative of operational creditors requested the representatives of JSW to consider the payment of amount offered in the resolution plan to be paid upfront prior to financial creditors as a part of the amendment under Regulation 38 and further requested JSW to pay full amount to the operational creditors. The representative of JSW responded that the resolution plan was very fair to all the stakeholders involved in the process and they had deliberated the matter earlier as well amongst its internal management and also negotiated on the same and would rather stick to the payment plan as proposed in the resolution plan, however, if the laws requires the operational creditors to be paid upfront then they shall follow the procedure as prescribed under law.



C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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The representative of JSW stated that the amount due to the operational creditors is the amount prescribed in law and as per the requirement of the Code, it is the liquidation value that is required to be given to the operational creditors and that the rest of the amount is not the 'amount due' rather it is an incremental amount offered in view of the value maximization. He further stated that 'amount due' is the amount that can be claimed legally to which the representative of operational creditor responded that as per their understanding, the amount due which is referred as the liquidation value by the representative of JSW is as per Section 30(2)(b) and the amendment has been enforced in Regulation 38 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations which provides for 'amount due' under the Resolution Plan and hence as per the Resolution Plan if INR 350 Crores is being provided to operational creditors then such an amount has to be paid in priority to payment of financial creditors. The representative of JSW further stated that if Regulation 38 of CIRP Regulation is read as interpreted by the representative of operational creditor, then there will not be any incentive for any Resolution Applicant to necessarily do any good to the operational creditor, which is not the purpose of the Code. He further stated that with that purpose in mind, in their option, the 'amount due under Resolution Plan' has to be the

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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amount which the law prescribes to be due and Section 30 of the Code provides for such amount. He further opined that Regulation 38 is just a regulation which is delegated legislation and it flows from the Code and the Code itself prescribes the liquidation amount as the minimum due amount, for which they have agreed to make payment before any payment to financial creditor. The representative of operational creditor stated that such a stance will definitely be challenged in Hon'ble NCLT on the submission and discussion of the Resolution Plan. He further stated that the incentive mentioned by the representative of JSW has been clarified on many platforms that every stakeholders must be taken care of and it is not just the liquidation value which the operational creditor must be given. He further stated that it is also the onus of the CoC to ensure that all stakeholders are being treated fairly.

(emphasis added)

The representative of JSW stated that this is the very reason why the CoC had negotiated with respect to the payment of operational creditors and as a part of the negotiation, they have considered the request of CoC and have made a fair proposal to the operational creditors which complies with law including the CIRP Regulation amendment dated October 5, 2018. The representative of SBI also stated that the operational creditors are getting paid more than financial creditors in terms of percentage and hence it is a fair

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Resolution Plan. Subsequently, he requested the representative of JSW to consider upfront payment to the operational creditors to which the representative of JSW responded that they have considered the request of CoC and reiterated that their Resolution Plan is fair and in compliance with law however they also stated that the law is new and there may be an ambiguity in interpretation. He also seconded the observation of the legal counsel of RP and stated that if Hon'ble NCLT, while considering the Resolution Plan, does believe that the law means that all amounts payable under the Resolution Plan are considered as 'amount due' and needs to be cleared upfront to the operational creditors, then they will certainly adhere to such directions. The representative of operational creditor stated that the view of the CoC must be followed while negotiating on the Resolution Plan with the representatives of JSW and that the operational creditor will raise their objection before the Adjudicating Authority only when their views are not taken into consideration by the CoC.

The matter was deliberated at length. Subsequently, the legal counsel of CoC stated that Section 30(2) of the Code talks about the manner of payment and not the quantum of payment and concluded that the CoC is taking a dual view in this aspect and is not taking any antagonistic view towards either party.



C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

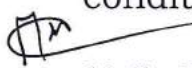
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The representative of operational creditor stated that contingent claims should not have any cap and it should be paid as and when it crystallizes because it is not being dealt with in the moratorium period, hence putting a cap on it will not be fair solution at this stage to which the representative of JSW responded that there is very limited or no room to negotiate any further unless it involves a matter of law since they have taken a holistic view of the Resolution Plan with respect to paying maximized value to all the stakeholders to the extent feasible in their perspective. He further requested that the Committee to go ahead with the commercial aspect already submitted by them unless there is a peculiar situation where a question of law is involved.

Subsequently, it was agreed that the legal counsel of CoC will discuss and finalize all the points from the language perspective with the representative of JSW while the Committee continues the deliberations with the rest of the agenda items. The Chairman thanked the representatives of JSW.” (emphasis added)

76. Under item No. 8 the resolution plan submitted by JSW on 03.10.2018 was discussed and the erstwhile members of Board of Directors raised the issue that the resolution proposal was conditional and hence it would be difficult for the Members of the


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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CoC to vote on the proposed resolution. All Members opted to vote through e-voting and the modified resolution plan was to be circulated by the RP along with the minutes. The concluding part of item No. 8 concerning the resolution plan of JSW reads as under:

“Hence, the Legal counsel of RP stated that the Resolution shall be modified as discussed earlier in the meeting and the Compliance Certificate under Section 30(2) of IBC shall be circulated by RP along with the Minutes:

“RESOLVED THAT pursuant to Section 30(4) of Insolvency & Bankruptcy Code, 2016 and in accordance with rules and regulations made thereunder, the approval of Committee of Creditors be and is hereby accorded to the Resolution Plan submitted by JSW Steel Limited on October 3, 2018 (as modified by the Letter dated October 10, 2018 from JSW Steel Limited to the Regulation Professional) as per the requirements of the Code and CIRP Regulations (including with such modifications that members of CoC deem fit).

RESOLVED FURTHER THAT the select group of members, constituting State Bank of India, Punjab National Bank, Bank of India, Bank of Baroda and Axis Bank are authorized to finalize the Letter of intent, and the Resolution Professional is authorized to issue the Letter of intent, as finalized by the select group of members, to JSW Steel Limited.


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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FURTHER RESOLVED THAT the Resolution Professional is hereby authorized to apply to National Company law Tribunal (NCLT), New Delhi for approval of the above said Resolution Plan.”

There were no further comments from the members on the same and the said Resolution with necessary modifications was put to vote.

The Chairman asked the members to vote on the above resolution through e-voting facility as per the instructions for e-voting. The Committee requested that Saturday and Sunday, being non-working days, the e-voting be opened on October 15, 2018 (Monday). It was agreed by the Committee of Creditors hence, on the requests received from the members, the Chairman concluded that e-voting will be opened from 05:00 PM on Monday, October 15, 2018 till 5:00 PM on Tuesday, October 16, 2018.”

77. In the 20th meeting of CoC held on 03.01.2019 again few erstwhile members of Board of Directors were present namely Mr. Ravi Prakash Goyal, representatives of Mr. Ram Naresh Yadav and Mr. Hardev Chand Verma in person. The CoC under item No. 8 took note of the update on the CIRP Proceeding pending before Hon'ble NCLAT in the case of Tata Steel Ltd. v. Liberty House Group Pte Ltd. and Ors. observing that the order was reserved on 20.12.2018

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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and also noted that erstwhile member of Board of Directors, Mr. Sanjay Singal has filed a petition before Hon'ble the Supreme Court which obviously refers to challenge to Section 29A of the Code. It also noted that the aforesaid petition was tagged with other matters which eventually culminated in passing the judgment in the case of Swiss Ribbons v. Union of India & Ors. (Writ Petition (C) No. 99 of 2018). It is appropriate to mention that Mr. Sanjay Singal, erstwhile Member of Board of Directors had filed Writ Petition (C) No. 822/2018 and the judgment was pronounced by Hon'ble the Supreme Court upholding validity of Section 29A of the Code on 25.01.2019 with the lead case in Swiss Ribbons (supra). The aforesaid paras from the minutes of meeting are extracted below which read as under:

“The Chairman requested the legal counsel of RP and CoC to apprise the members on the legal developments.

The legal counsel of RP apprised the members of the Committee with the following legal updates:

- In the matter of 'Tata Steel Ltd v. Liberty House Group Pte Ltd and Ors.' before Hon'ble National Company Law Appellate Tribunal ('NCLAT'), the order has been reserved on December 20, 2018.

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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- In the matter of ‘Sanjay Singal v. Union of India and Ors.’ before the Hon’ble Supreme Court, the matter has been tagged along with other matters. There is a stay directed by the Hon’ble Supreme Court on the consideration of the approval application by Hon’ble National Company Law Tribunal (‘NCLT’).

The legal counsel of RP then requested the legal counsel of CoC to apprise the members on the action taken by them to get the stay removed. Subsequently, the legal counsel of CoC stated the following:

- In the matter before Hon’ble NCLAT, the order has been reserved and that it is expected to come in the first half of January, 2018. All the parties have submitted their written submissions post the hearing held on December 20, 2018 and subsequently, circulated to the members wherein the CoC’s position on each of the points along with corrections in factual inaccuracies which Tata had put across in their oral pleadings have been stated. The written submissions of other parties are not available since they have been handed over to the Tribunal directly; however, if they receive a copy, the same will be circulated to the members. If the Hon’ble NCLAT passes the order in favour of CoC (given its recent decisions

in the case of Binani Cement and others), subject to any


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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appeal being filed by Tata, the Resolution Plan may be submitted to Hon'ble NCLT, however, whether Hon'ble NCLT will hear their plea at that point of time is uncertain in light of the Supreme Court direction that Hon'ble NCLT will not finalize any bids without the leave of the Court.

- In the matter before Supreme Court, it has been tagged with all constitutional challenges to IBC but the petition of Sanjay Singal was the most argued upon. The same has been argued for two and a half days by Mr. Mukul Rohatgi and Mr. K.V. Vishwanathan, Senior Advocates and the other petitioners argued for half a day, subsequently, the Attorney General has commenced his reply and the next date of hearing in the matter is January 08, 2019. This matter has been taken up on priority by the Hon'ble Supreme Court so the hearings will continue on day to day basis. The Attorney General is expected to take around two and a half days subsequent to which, the other respondents will be making their submissions. The hearing in this matter is expected to be completed by the second week of January, 2018. An early judgment may be expected as well. CAM made their efforts to vacate the stay directed by the Hon'ble Supreme Court by mentioning the same four times in the Hon'ble Supreme Court, however, the Court was not keen on it. Hence, the

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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vacation of stay is not expected to be removed before the judgment and no further applications on vacation of stay will also be entertained further.”

78. It is thus patent that the CoC was fully apprised of the legal proceedings pending before one fora or the other and erstwhile members of Board of Directors, their representatives as well as the Operational Creditors and their representatives were fully aware of the legal developments.

79. In the 21st meeting of CoC held on 08.02.2019 again the erstwhile members of Board of Directors, Mr. Ravi Prakash Goyal in person was present and Mr. Ram Naresh Yadav, Mr. Hardev Chand Verma and Mr. Dinesh Kumar Yadav were represented by their representatives. Ms. Aarti Singal and Mr. Dinesh Kumar Bahal were absent. This meeting is significant as in agenda item No. 7 the settlement proposal given by Mr. Sanjay Singal and Ms. Aarti Singal under Section 12A of the Code received on 30.01.2019 and circulated to CoC on 31.01.2019 was under consideration. After apprising the Members about the settlement proposal, the RP read out the letter dated 29.01.2019 sent by Mr. Sanjay Singal and Ms. Aarti Singal. *The settlement proposal made by erstwhile members of Board of Directors was rejected by Punjab National Bank and State*


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Bank of India who were the largest lenders of the Committee. It is appropriate to mention that Section 12A of the Code requires approval of the 90% of the voting share of the CoC and accordingly, the settlement proposal did not meet the threshold and was rejected. Under the agenda item No. 9 (ii) discussion took place on the letter of intent and proposal performance guarantee in respect of JSW Steel Ltd. The deliberation with core committee in the meeting held on 05.02.2019 was brought to the notice of the CoC which shows that JSW has scored highest marks in the evaluation criteria thereby declaring them as successful Resolution Applicant. Accordingly, JSW was required to submit performance bank guarantee of INR 100 crores post which LOI was to be issued in favour of JSW. Keeping in view the urgency JSW was given time until 07.01.2019 for submission of the PBG. The concluding para on the aforesaid agenda item reads thus:

“The representative of IDBI asked the Legal Counsel of RP on the further course of action, the Legal Counsel of RP responded that the next step would be first to receive the performance guarantee from JSW, the CoC will then issue the Lol post which the RP would file an application for the approval of the Resolution plan with the Adjudicating Authority. The Legal Counsel of RP further stated that



C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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they would try to file by Tuesday i.e. 12th February, 2019, subject to the receipt of the Performance Bank Guarantee.”

80. Under item No. 9 (iii) the CoC also took notice of the letter received from Mr. Sanjay Singal and Ms. Aarti Singal dated 07.02.2019 in which they have demanded a copy of the resolution plan and have alleged that they have been prevented from effective participation in the meetings of the CoC. The legal counsel of the RP clarified the aforesaid letter by apprising the CoC as under:

“The Legal Counsel of RP clarified that in the month of July, 2018, the RP made the Resolution Plans of all the 3 (Three) Resolution Applicants available to the Suspended Board of Directors and to all the Operational Creditors as well as to their Authorised Representatives for their perusal. He further stated that after reviewing the Resolution Plans the Suspended Board of Directors, Operational Creditor and their Authorised Representatives had also given an acknowledgement and their comments in the meeting of the CoC. Mr. Amarjeet Sharma, who had been authorized by Mr. Sanjay Singal had reviewed all the 3 (Three) Resolution Plans on 26th July 2018 and after reviewing he had given an acknowledgement to RP that he was given an adequate opportunity to peruse the Resolution Plans and had recorded his suggestion in a satisfactory manner. The Legal Counsel of RP also stated that in


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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the subsequent CoC's meetings where the Resolution Plans were considered, the RP and CoC had always sought suggestions from the Operational Creditors, Suspended Board of Directors and from their representatives who had attended the meeting, the same were duly recorded in the minutes of the meetings and the copies of the minutes of CoC meetings were also circulated to the Suspended Board of Directors.

The participants took note of the same.”

81. A perusal of the aforesaid para would show the reiteration of the earlier minutes that all the three resolution plans were made available to the erstwhile members of Board of Directors and all the Operational Creditors as well as their authorized representatives for their perusal and each one of them also gave acknowledgement in writing and their comments were noted in the meetings of CoC. It was specifically highlighted that Mr. Amarjeet Sharma, authorized representative of Mr. Sanjay Singal had reviewed all the three resolution plans on 26.07.2018 and has given an acknowledgement to RP. Therefore, adequate opportunity to peruse the resolution plans was given and he had also recorded his suggestion. Obviously, the aforesaid letter by Mr. Sanjay Singal and Ms. Aarti Singal was written after the judgment in the case of Vijay Kumar

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C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Jain's (supra) which was pronounced on 31.01.2019. In terms the CoC noted the letter with the observation that there is substantive compliance of principles of natural justice which amounts to giving a copy of the each of the resolution plan to the erstwhile members of Board of Directors.

82. The 22nd meeting of CoC held on 19.03.2019 in agenda item No. 7 took notice of the proceeding before this Tribunal and the factum of filing application under Section 31 of the Code seeking approval of the resolution plan approved by the CoC submitted by JSW. It also took notice of the treatment given to Operational Creditors by dividing them into two categories namely Non Contingent Operational Creditors who were to get 50% of their claim with a cap of INR 350 Crores and Contingent Operational Creditors who were to get 10% payment of their claims subject to maximum of INR 35 Crores.

83. In the 23rd meeting of CoC held on 23.05.2019 Ms. Aarti Singal and Mr. Dinesh Kumar Yadav were absent and other were represented through their representatives or present in person. Under agenda item No. 7 it was noted that Mr. R.P. Goyal, erstwhile member of Board of Directors filed a CWP No. 10325/2019 in Punjab and Haryana High Court and vide order dated 18.04.2019

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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directions have been issued to this Tribunal to decide the issue concerning supply of resolution plan first as a preliminary issue along with certain other directions.

84. The 24th meeting of CoC held on 24.07.2019 is the last meeting where the proceedings under agenda item No. 6 pending before this Tribunal have been noted.

85. The aforesaid various minutes of the meeting of CoC would highlight that the erstwhile members of Board of Directors have been kept in picture in all proceedings and have also been shown the resolution plan. They have submitted their comments and have filed the affidavits showing complete compliance without any demur. On 26.07.2018 one Mr. Amarjeet Sharma representing Mr. Sanjay Singal filed an acknowledgement and confirmation which makes interesting reading and the same reads as under:

'ACKNOWLEDGEMENT AND CONFIRMATION

I, Amarjeet Sharma, son of Late Shri Harichand, resident of 707, Sector 16, Panchkula, in my capacity as a member of the erstwhile Board of Directors of Bhushan Power and Steel Limited (**"BPSL"**), *acknowledge and confirm that the resolution professional of BPSL has provided to me, access to view the resolution plans submitted by the resolution applicants, i.e. JSW Steel Limited, Tata Steel Limited*



C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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and Liberty House Group, pursuant to the corporate insolvency resolution process of BPSL ("**Resolution Plans**").

I further acknowledge and confirm, that I have been given adequate opportunity to peruse the Resolution Plans and record my suggestions in respect of the same in a satisfactory manner.'

(emphasis added)

86. A perusal of the aforesaid acknowledgement and confirmation shows that access was provided to the resolution plan to the erstwhile members of Board of Directors which included the resolution plans submitted by JSW Steel Ltd. Tata Steel Ltd and Liberty House Group. He further acknowledged and confirmed that he was given adequate opportunity to peruse the resolution plan and record his suggestion in respect of the same. A similar acknowledgment and confirmation has been filed by one Ravi Hamirbasiya on behalf of M/s. Jaldi Overseas, Mr. Sumant Batra as authorized representative of Operational Creditor, Ms. Shristi Kapoor, Mr. Kshitsraj and Mr. Nikhil Agarwal on behalf of Operational Creditors and many others on behalf of Operational Creditors filed the acknowledgement and confirmation on 26.07.2018. It is also significant to note that Mr. R.P. Goyal as erstwhile members of Board of Directors also filed similar

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C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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acknowledgement which is duly signed. All the aforesaid acknowledgement and confirmation show grant of wholesome opportunity which has been availed without a demur and even suggestions have been given by active participation in the CoC as has been noticed in the preceding paras while reading the various minutes of the meetings.

87. It has also come on record that Mr. Sanjay Singal and others filed Writ Petition (Civil) No. 822/2018 which has been decided along with bunch of other petitions on 25.01.2019 by Hon'ble the Supreme Court and the challenge to Section 29A of the Code to its constitutional validity has been rejected. There was no application made for supply of a copy of resolution plan either before this Tribunal or before any other Fora. A prayer could have been made before Hon'ble the Supreme Court in the Writ Petition (C) No. 822/2018 decided on 25.01.2019. Even that has not been done. We may also observe that such a course preferred by the erstwhile members of Board of Directors would amount to relinquishment of their right. In that regard we may place reliance on the observations made by Hon'ble the Supreme Court in **State Bank of India v. Gracure Pharmaceuticals Ltd.**, (2014) 3 SCC 595 and hold that *"if the plaintiff omits to sue or intentionally relinquishes any portion*

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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of his claim, it is not permissible for him to sue in respect of the portion so omitted or relinquished afterwards. The defendant should not be vexed twice for the same cause which is part of public policy."

Moreover, the erstwhile members of Board of Directors are not entitled to audit a resolution plan with regard to its 'feasibility and viability' which is within the domain of CoC alone. In that regard the commercial wisdom of the CoC has to be respected. In support of the aforesaid proposition we place reliance on paras 33, 39, 42, 44, 47, 48 and 61 of the judgment of Hon'ble the Supreme Court rendered in the case of **K. Sashidhar v. Indian Overseas Bank & Ors.** (Civil Appeal No. 10673 of 2016, decided on 05.02.2019) which lays down that the commercial wisdom of the CoC is paramount and neither the Adjudicating Authority nor the Appellate Tribunal have the power to reopen the same.

88. The Code of Civil Procedure (for brevity 'CPC') as such may not apply *sub silentio* to the proceeding before us yet rudiment principles governing the public policy of law are attracted. It is well settled principles of law that a plea which was available to the litigant in a pending litigation, if not taken, is deemed to have been taken and decided against him. This is policy of law which is all pervasive to avoid multiplicity of litigation and the principles are

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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explicit from reading explanation IV to Section 11 read with Order II Rule 2 CPC. It does not require any great elaboration and various citations of Hon'ble the Supreme Court that these principles have stood test of time and even in these proceeding must be followed and applied. We may further observe that technicalities of law must be applied if the object of a statute is advanced namely resolution of stressed assets. The Courts may refuse to apply technicalities to defeat justice or to defect the object of a statute. Accordingly for that reason also the demand for supply of a copy is wholly unwarranted.

89. The conduct of the erstwhile members of Board of Directors is not praiseworthy. The application for obtaining a copy of the resolution was filed before CoC which came as a shot from the blue. It was after availing every opportunity of examining and inspecting resolution plan and, discussing it in CoC in details that the application has been filed merely because the judgment in Vijay Kumar Jain's case (supra) was pronounced on 31.01.2019. Therefore, we find that it is like having your cake and eat it too. Moreover, resolution plan was supplied to them also by Court order dated 29.03.2019.




C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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90. We are further of the view that even the rules of natural justice are not be allowed to be exploited as a purely technical weapon to undo a decision which does not in reality cause substantial injustice. Such a relief can be refused if it is shown that no prejudice as a result of non supply of a copy of the resolution plan has been caused. Once the underline purpose has been achieved by permitting access to the resolution plan and also furnishing a copy at the time of hearing vide order dated 21.03.2019 then by giving another copy would not result in any change. All that could have been said by the Ex-Directors is placed on record as is evident from the perusal of minutes of various meetings of the CoC's. It is well settled that the Courts do not pass order which result in futile exercise. In that regard we may place reliance on the observations made by Hon'ble the Supreme Court in **S.L. Kapoor v. Jagmohan**, (1980) 4 SCC 379 and **Managing Director ECIL Hyderabad & Ors.** (supra). Therefore, for these additional reasons also we are unable to persuade ourselves to conclude that non furnishing of copy of the resolution plan has resulted in any injustice and the contentions raised to the contrary are rejected.


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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91. We are also inclined to accept the submission made by Mr. Rajiv Nayar, learned Senior Counsel that once the erstwhile members of Board of Directors had shown keen interest in submitting a plan for settlement under Section 12A of the Code then they would be standing in the capacity of another Resolution Plan Applicant because then they would become a competitor and any plan divulged to them would prejudice the rights of other Resolution Plan Applicants. It is evident from the perusal of minutes of 21st meeting of CoC held on 08.02.2019 that the erstwhile members of Board of Directors made a proposal for settlement under Section 12A of the Code and were not able to muster adequate support of 90% of voting and their proposal was rejected. It is in the same meeting that they requested for supply of a copy of the resolution plan. The judgment rendered in V.K. Jain's case would not thus be applicable and attracted as it would have no application when the resolution plan is sought by a Resolution Applicant who is a competitor with the other Resolution Applicant which include the erstwhile Members of the Board of Directors who were making efforts to offer settlement in terms of Section 12A of the Code. Accordingly, we are inclined to hold that the erstwhile members of Board of Directors had accepted the position of access


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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to the resolution plan, its close perusal and filing of objection. This was considered as a satisfactory procedure which is as good as supply of a resolution plan and the principles of constructive *res judicata* explicit from the reading of explanation IV to Section 11 read with Order II Rule 2 CPC are attracted. We are also firmly of the view that no prejudice has been caused to erstwhile members of Board of Directors as the minutes of the meetings of CoC adequately demonstrate their complete participation by raising objections and suggestions. We may also refer to the proviso to Section 24 (4) which say that absence of any Director or their representative is not to invalidate proceeding of any such meeting. It is needless to add that notice of each and every meeting has been given and many a time the erstwhile members of Board of Directors have remained absent as is evident from a bare glance on the table extracted above. The process undertaken by the RP and minutes of meetings of CoC conducted by him do not leave any manner of doubt that the process is fair and transparent. Therefore, the complete access given to the resolution plan cannot be regarded as inferior to providing a copy of the resolution plan itself.

92. We may also take notice of the submissions made by Mr. Rajiv Nayar, learned Senior Counsel, Mr. Abhinav Vashisht & Mr. Ramji


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Srinivasan, learned Senior Counsels on behalf of the Resolution Plan Applicant, Resolution Professional and CoC. They have argued that there is substantial compliance and law laid down by Hon'ble the Supreme Court in the judgment in Vijay Kumar Jain's case (supra) would stand satisfied. It is not that supply of a copy alone would satisfy the requirement of law. We are inclined to accept the submission that once the resolution plan has been shown to them and they have filed their certificate of satisfaction then there is no escape from the principle of substantial compliance which in this case stands satisfied. In that regard we may place reliance on para 32 of the judgment rendered in the case of **Commissioner of Central Excise, New Delhi v. Hari Chand Shri Gopal and Ors.**, (2011) 1 SCC 236 which read as under:

"The doctrine of substantial compliance is a judicial invention, equitable in nature, designed to avoid hardship in cases where a party does all that can reasonably expected of it, but failed or faulted in some minor or inconsequential aspects which cannot be described as the "essence" or the "substance" of the requirements....if the requirements are procedural or directory in that they are not of the "essence" of the thing to be done but are given with a view to the orderly conduct of business, they may be fulfilled by substantial, if not strict compliance."

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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93. Mr. Rajiv Nayar, learned Senior Counsel has rightly argued that the changes made in the resolution plan were restricted only to financial offer without any change regarding 'feasibility and viability' and the same were carried in response to the directions issued by the Hon'ble NCLAT in its order dated 01.08.2018 and 06.08.2018 in the case of *Tata Steel Limited v. Liberty House Group Pte. Ltd. and Ors.* (Company Appeal (Insolvency) No. 198/2018) which allowed revision to be made only to the financial offer. It would be appropriate to refer to the aforesaid orders which are as under:

"on the oral request of the learned counsel for the appellant, we allow the 'Appellant' and the other 'Resolution Applicants' to file additional **unconditional 'resolution plans'** by 13th August, 2018 improving the 'financial offer' without compromising the basic para-meters of the 'resolution plans' already submitted by them. In such case additional plans will be treated to the part of their respective 'original resolution plans'."

94. Mr. Nayar also rightly highlighted that the decision taken by the Core Committee were discussed in the CoC meeting which have been noted in the preceding para and were never concealed from the erstwhile members of Board of Directors.

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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95. As a sequel to the above discussion we are satisfied that the access provided to the erstwhile Members of the Board of Directors to examine the resolution plan and various opportunities furnished to them as discussed in the preceding paras is sufficient compliance with the law laid down in V.K. Jain's case. Accordingly, the aforesaid issue stand decided against the Ex-Directors/Promoters of the Corporate Debtor.

CA NO. 327(PB)/2019

96. The erstwhile Board of Directors filed CA No. 327(PB)/2019 through Mr. Sanjay Singhal and Mrs. Aarti Singhal under Section 60(5) read with Section 12A of the Code and a direction has been sought to the resolution professional to place the settlement proposal dated 20.02.2019 made by them before the CoC for their consideration/acceptance and to terminate the Corporate Insolvency Resolution Process.

97. Reply to the application has already been filed by the Resolution Applicant-JSW Steel Ltd.


98. Once the application has been rejected by the Punjab National Bank then it could not have sought withdrawal of the Insolvency Proceeding initiated under Section 7 with prior approval of 90 % or more of the voting share of financial creditor. We are further of the

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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view that making of offer by Mr. Sanjay Singhal and Mrs. Aarti Singhal and the rejection of the same by the Punjab National Bank is a step prior to filing of an application before the Resolution Professional for withdrawal in Form-FA as is provided under Regulation 30A of the CIRP Regulations, 2016. The second proposal for settlement has also been rejected by the Punjab National Bank and the State Bank of India and both of them constitute 30.18 % of the voting share in the CoC as is evident from the perusal of para 5 of the application-CA No. 254(PB)/2019. It is therefore, evident that the settlement proposal did not meet the requirement of Section 12A of the Code read with Regulation 30A and Form-FA of the CIRP Regulations and the same has not in any been accepted by the Punjab National Bank and the State Bank of India who constitute 30.18 % of the voting share in the CoC and any settlement proposal is required to be carried with 90 % or more than 90 % of the voting share.

99. At the outset we may observe that the instant application under Section 12A of the Code has been preferred without complying with the provisions of the Code and the Regulations. It is appropriate to mention that Section 12A was added to the Code on 06.06.2018 and it has been held to be prospective in nature by

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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Hon'ble the Supreme Court in the case of **M/s. Shipra Hotels Ltd. v. M/s. Value Line Interiors Pvt. Ltd.** passed in Civil Appeal No. 7405 of 2018 decided on 03.08.2018, it has been held in that case that *"Since the admission of the petition was on 01.06.2018, Section 12A, the Insolvency and Bankruptcy Code, 2016 enacted with effect from 06.06.2018 will not come into the picture."*

100. In the present case the petition was admitted on 26.07.2017 and Section 12A was enacted with effect from 06.06.2018. It is thus obvious that no such settlement proposal of the erstwhile directors would be maintainable and nor the same could be considered. Moreover, the Hon'ble Appellate Tribunal in its order dated 04.02.2019 passed in Company Appeal (AT) (Insolvency) No. 198 of 2018 by directing in para 48 that the Adjudicating Authority-NCLT was to pass appropriate order under Section 31 and the resolution professional was to immediately place the approved resolution plan before it for its order. In para 49, it was to ensure that all the stakeholders particularly the operational creditors are treated similarly and no discrimination is being made between the financial creditors or the operational creditors as held by this Appellate Tribunal in "Binani Industries Limited". Therefore, there is no room



C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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to entertain any other application left by the Hon'ble Appellate Tribunal.

101. On merit also the requirements of Regulation 33A of The Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2018 remains unfulfilled. Regulation 30A (1) in categorical terms states that an application for withdrawal under Section 12A has to be filed before the issuance of invitation for expression of interest under Regulation 36A. On facts it is evident that expression of interest in this case were invited on 21.09.2017 and the last date was 06.10.2017. Obviously, the withdrawal of the Corporate Insolvency Resolution Process was sought on 29.01.2019 and 20.02.2019. Again, it was a desperate attempt on the part of the erstwhile Members of the Board of Directors to delay the conclusion of these proceedings. Therefore, we do not find any substance in the application which is liable to be dismissed.

RE-CLAIMS OF OPERATIONAL CREDITORS

102. Hon'ble NCLAT sent the matter back to the Adjudicating Authority vide order dated 04.02.2019. In para 48 to 50 the parameters for examination of the resolution plan have been laid down which read thus:

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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“48. The case is remitted to the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi for passing appropriate orders under Section 31. The ‘Resolution Professional’ before the Adjudicating Authority for its order.

49. The Adjudicating Authority at the time of consideration of the approved ‘Resolution Plan’ of ‘JSW Steel’ will only ensure that all the stakeholders, particularly the ‘Operational Creditors’ are treated similarly. It should ensure that no discrimination is being made between the ‘Financial Creditors’ or the ‘Operational Creditors’ as held by this Appellate Tribunal in “Binani Industries Limited”.

50. In case, the Adjudicating Authority is of the opinion that the discrimination has been made between the ‘Financial Creditors’ and the ‘Operational Creditors’. It may give opportunity to the ‘JSW Steel’ to improve its plan and thereby, by substituting the approved ‘Resolution Plan’ with such improvement...”

103. A perusal of the aforesaid para shows that we have to ensure that all the stakeholders particularly the Operational Creditors are treated similarly and without any discrimination made between the Financial Creditors or the Operational Creditors as per the view taken by the Hon’ble NCLAT in Binani Industries case (supra).




C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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104. We may state that view of the Hon'ble NCLAT in Binani Industries case (supra) did not meet the Legislative approval. It is appropriate to notice that Section 30 (2) (b) of the Code has been amended vide notification dated 05.08.2019. There is thus no contravention of law under Section 30 (2) (e) of the Code. We further find that the primary focus of the Legislation is to ensure revival and continuation of the Corporate Debtor by protecting the Corporate Debtor from its own management and from a Corporate Death by Liquidation. The erstwhile members of Board of Directors have made every effort to thwart any attempt of the CoC and other stakeholder for revival and they have ensured continuation of the Corporate Debtor. Therefore, acceptance of the resolution plan would fulfil the object of the Code as observed by Hon'ble the Supreme Court in the case of Swiss Ribbons (supra) and the relevant para reads as under:

"It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have,

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018


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therefore, been bifurcated and separated from that of its promoters/those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests. The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through its entrepreneurial skill, resuscitate the corporate debtor to achieve all these ends."

105. It is also pertinent to notice that in the admission order dated 26.07.2017 we have noted then on 09.07.2017 Mr. U.K. Chaudhary, learned Senior Counsel on instructions received from the then Board of Directors-Respondent had stated in categorical terms that they did not have any objection and no objection to the admission of the petition was filed.

106. The contentions raised by Mr. A.S Chadha, learned senior counsel appointed by the Adjudicating Authority-NCLT to represent the cause of Operational Creditors, have been that the resolution

plan has illegally classified 'Jaldhi' as contingent creditor entitling to be paid only 10 % of its claim subject to a cap of Rs. 35 crores, if it crystalized within two years from the date of approval of the resolution plan by the CoC. It is evident that Jaldhi is an operational creditor and its claim has been admitted by Resolution Professional to the extent of Rs. 151.3 crores. Jaldhi has been maintaining that it has made a claim of Rs. 151.9 crores on the basis of 3 Arbitration Awards in its favour and against the corporate debtor and that it has initiated execution proceeding by filing 3 execution petitions before Hon'ble High Court of Calcutta. Those proceedings were pending when the CIR Process was initiated on 26.07.2017. Later on, different submissions were made and it was claimed that its claim is contingent liability but not an operational debt and that contingent liability can never be resolved under a resolution plan. It was thus argued that the resolution applicant has to assume a risk to contingent liability devolving on the corporate debtor in future. In a separate application filed, Jaldhi again shifted which is stand by arguing that although its claim had been admitted by the RP but the resolution plan categorises its claim has an identified contingent liability. It was contended that it is operational creditor and its claim as a

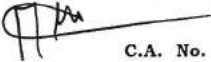

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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contingent liability then it cannot be dealt with in the resolution plan.

107. Before embarking upon the aforesaid contention, it may be appropriate to first capture the treatment given to the operational creditors in the resolution plan of 'JSW'. The resolution plan provides for payment of Rs. 50 % of the admitted claims of the operational creditors other than (I) Workmen and (II) such creditors whose liabilities have been identified as contingent liabilities in the books of accounts of the corporate debtor. It is subject to maximum of Rs. 350 crores in proportion to their admitted claims. The total admitted claim of operational creditors amounts to Rs. 733.76 crores to the payment to such operational creditor is to be made within a period of 12 months from the effective date thus the resolution plan provide for recovery of 47.69 % to the operational creditor under Section 2.2 (f) executive summary of the resolution plan.

108. The Resolution Plan provides for the payment of government dues and taxes that are contingent as on the Insolvency Commencement Date, i.e. 26.07.2017 and are crystallized within a period of 2 years from the date of approval of the Resolution Plan by the CoC to the extent of 10% of the principal amount (excluding


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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any interest and penalty) subject to a maximum of Rs. 150 crores. The same shall be paid within a period of 90 days from the expiry of 2 years from the date of approval of the Resolution Plan by this Hon'ble Adjudicating Authority. To the extent government dues and taxes are crystallized as of the Insolvency Commencement Date, they are paid as part of the payment to operational creditors above.

[See Section 2.2 (g), Executive Summary read with Section 1.6, Part B of the Resolution Plan]

The Resolution Plan further provides for the payment to Identified Contingent Creditors and any other creditors of 10% of their claims that are contingent, incurred or to be incurred, accrued or to be accrued, and pertain to the period prior to the Insolvency Commencement Date and which crystallise within a period of 2 years from the date of approval of the Resolution Plan by the CoC, subject to a maximum of Rs. 35 Crores. Such payment shall be made within 90 days from the expiry of 2 years from the date of approval of the Resolution Plan by this Hon'ble Tribunal.

[See Section 2.2(h), Executive Summary read with Section 1.7, Part B of the Resolution Plan]

The Resolution Plan also provides that all claims shall stand extinguished upon approval of the Resolution Plan, except for

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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contingent government dues /statutory dues and the other identified contingent liabilities set out in Annexure 2 of the Resolution Plan, in respect of which the maximum liability of the Resolution Applicant/Corporate Debtor would be limited to the extent of 10% of the principal amount subject to an aggregate of Rs. 150 crores and Rs. 35 crores, respectively (on a pro rata basis), as set out above. To the extent any such contingent government dues/ statutory dues and the other identified contingent liabilities set out in Annexure 2 of the Resolution Plan, remain contingent at the end of 2 years from the approval of resolution plan by CoC, the same would stand extinguished by virtue of the order of the Hon'ble Adjudicating Authority approving the Resolution Plan.

109. The arguments of Mr. Chadha claiming that the Jaldhi and other operational creditors similarly situated must be considered as contingent creditor is *ex facie* unsustainable as in para 9 of the limited reply filed by Jaldhi, it has been stated that Jaldhi is the largest operational creditor of the corporate debtor. It is again repeated in para 18 with the emphasis that it is an operational debt is defined under Section 5(20) read with Section 5 (21), para 19, 27 read with 'Annexure 8'. Jaldhi has always attended the meetings of the CoC as representative of the Operational Creditor and it was

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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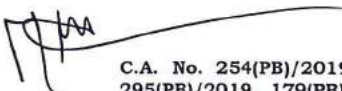
never its case that the debt owe to it by the corporate debtor should be kept outside the resolution process. Even in its email dated 07.06.2019 (Annexure 8 of Jaldhi's reply) their consent has been expressed to attend the meeting of the CoC on behalf of the operational creditors. The argument raised on behalf of Jaldhi that it is *sui generis* class of creditor and their claims be kept outside the insolvency resolution process is not borne out of the pleadings. Even the definition of 'operational debt' in Section 5(21) is very wide and it means a claim in respect of provisions of Goods or Services. The definition of expression 'claim' in Section 3 (6) is also very wide to cover a right to payment and takes into its sweep a right to payment whether or not such right is disputed or undisputed or reduce to judgments etc. The definition of word 'operational creditor' under Section 5(20) is also crystal clear that and operational creditor is a person to whom an operational debt is owed. If we read all the aforesaid definitions co-jointly it would include the creditor whose claims are contingent.

110. We are also of the view that Regulation 13 of the CIRP Regulations require an RP to verify every claim thereby including within its ambit contingent claims as well in a case where the amount claimed by a creditor in his claim form is not precise on

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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account of contingency and other reasons, Regulation 14 (1) require the RP to make best estimate of the claim based on information available with him. Thus, the Code and the regulation envisaged that claims of all creditors including contingent creditor be resolved under a resolution plan. We are further of the view that the resolution plan complied with the law laid down by Hon'ble the Supreme Court in the case of Binani Industries Ltd. (supra) as there is no discrimination made between the Operational Creditors or between the Financial Creditors. As a matter of fact, the recovery to the Operational Creditors is at higher percentage than the recovery made for the financial creditors which is 41.3 % and 47.69 % respectively. The total figure is Rs. 19,350 crores out of Rs. 47,157.99 crores for the financial creditors and Rs. 350 crores out of Rs. 733.76 crores. We are unable to persuade ourselves with the submissions made by Mr. Chadha on behalf of the operational creditor and also other operational creditors like Jaldhi Overseas PTE Ltd., Medi Carrier Ltd., Jai Mahakal India Logistics Ltd. etc. The argument of Mr. Chadha that there is discrimination emerging from treating the operational creditor as contingent and non-contingent or crystalize creditor has not persuaded us as all the categories are separate and distinct. Moreover, the resolution


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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applicant is obliged to pay under Section 30(2) (b) & (d) an amount which would have been payable had there been liquidation. Applying the aforesaid principles, the operational creditor would not be entitled to any amount. The aforesaid position has been clarified by amendment made to Section 30 as notified on 05.08.2019 by the Insolvency and Bankruptcy Code (Amendment) Act, 2019. Sub-section 2 (b) has not been substituted which reads as under:-

“(a) in sub-section (2), for clause (b), the following shall be substituted, namely:—

“(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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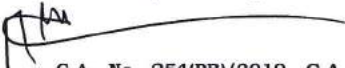
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creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor. Explanation 1.—

For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors. Explanation 2.—

For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor—


- (i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;
 - (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or
 - (iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;”;
- (b) in sub-section (4), after the words “feasibility and viability,”, the words, brackets and figures “the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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53, including the priority and value of the security interest of a secured creditor” shall be inserted.”

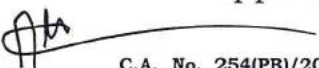
111. A perusal of the aforesaid provision makes it evident that the amount to be paid to operational creditor shall not be less than the amount payable to such creditor in the event of liquidation of the corporate debtor under Section 53. It further clarifies that the amount would have been paid to such creditors if the amount is to be distributed under the resolution plan then the same had been distributed in accordance with the order of priority and sub-section 1 of Section 53. The water fall providing for the priority has been now incorporated and the position of law has been clarified. It is further appropriate to mention that explanation ‘2’, it has been clarified that the amendment is to apply to all those resolution plans which approved or rejected by the Adjudicating Authority-NCLT or even at the stage of appeal etc. Therefore, we are of firm opinion that the legislative intent has to be given effect and the resolution plan must be read to mean that it will release the amount of the operational creditors in accordance with priorities given in Section 53(1). We are satisfied that the resolution plan fulfils the legal requirements and does not suffer from any illegality.


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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112. There are some other submissions made against the resolution plan, we are unable to find any substance in the argument that the CoC was required to record reasons for approving or rejecting a resolution plan and their failure vitiate the CIR Process. In that regard reliance has been placed on Section 30 of the Code read with Section 25 and proviso to regulation 39(3) from the perusal of minutes of meeting of the CoC, it becomes patent that in 16, 17, 18 & 19 meetings a detailed discussion took place and the aforesaid discussion must be recorded as sufficient reasons for approval of resolution plan of the 'JSW' and a copy of the minutes is provided to all the stakeholders. It is in the aforesaid background that Hon'ble the Supreme Court made the following observations in para 73 of the judgment rendered in the case of **K. Sashidhar v. Indian Overseas Bank** decided on 05.02.2019 (2019 SCC Online SC 257) which read as under:-

“73.....The dispensation provided in the I & B Code is entirely different. In terms of Section 30 of the I & B Code, the decision is taken collectively after due negotiations between the financial creditors who are constituents of the CoC and they express their opinion on the proposed resolution plan in the form of votes, as per their voting share. In the meeting of CoC, finally proceed to exercise their option (business/commercial decision) to approve or not to approve the proposed resolution plan. In such a case, non-


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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recording of reasons would not per se vitiate the collective decision of the financial creditors. The legislature has not envisaged challenge to the “commercial/business decision” of the financial creditors taken collectively or for that matter their individual opinion, as the case may be, on this count.”

113. The other submission shall also not detain us that liquidation value and fair value was not disclosed to the erstwhile members of the board of directors because in their writ petition filed before Hon’ble the Supreme Court being CWP No. 822 of 2018 on 11.07.2018, it has been clearly highlighted that the liquidation value as well as fair value being 9,700 crores and Rs. 25,000/- crores. The aforesaid prayer was not granted by Hon’ble the Supreme Court and cannot be resurrected in the present case round litigation as it is hit by the principle of constructive *res judicata*.

114. Another objections raised to the resolution plan was based on the argument that the resolution plan result in termination of proceedings before Hon’ble the Supreme Court and Hon’ble High Court and other forums. (Page 44 of the resolution plan). As a matter of fact, the contents of List B are not an operative part of the resolution plan and the resolution professional in CA No. 254(PB)/2019 has not sought any of these reliefs or prayer and

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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therefore, it cannot constitute a ground of objection. Accordingly, if the aforesaid relief has not granted then it is not to affect adversely the implementation of the resolution plan as it is not contended to any such implementation. Similar rationale would apply to the argument emerging from fixing a moratorium period which again is part of List B. The other objection with regard to the waiver of Stamp Duty and Registration Fee would also be covered as the relief has been claimed in List B.

115. We are further of the view that resolution plan can provide for continuous of rights of financial creditor against the guarantors as is clarified by Hon'ble the Supreme Court in the case of **State Bank of India v. V. Ramakrishanan & anr.** (Civil Appeal No. 3592 of 2018 decided on 14.08.2018) and the aforesaid observations reads as under:-

“22. Section 31 of the Act was also strongly relied upon by the Respondents. This Section only states that once a Resolution Plan, as approved by the Committee of Creditors, takes effect, it shall be binding on the corporate debtor as well as the guarantor. This is for the reason that otherwise, under Section 133 of the Indian Contract Act, 1872, any change made to the debt owed by the corporate debtor, without the surety's consent, would relieve the


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018


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guarantor from payment. Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the Resolution Plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate debtor. Far from supporting the stand of the Respondents, it is clear that in point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.”

116. Therefore, objections raised on the time of hearing would not stand judicial scrutiny and is hereby rejected.

117. One more objection which was raised during the hearing was that the resolution plan takes away the statutory right of subrogation which is available to a guarantor and the same reads as under:-

“A resolution plan can modify the rights of creditor or guarantor against the corporate in terms of the response stated above. Further, the right of subrogation of a surety is a step in right, which results in the surety stepping in the shoes of the creditor


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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against the principal borrower. Therefore, if the principal claim of the creditor is itself modified, the step-in rights can also be modified/extinguished in a resolution.

The right of subrogation can have onerous impact on the corporate debtor and can affect the successful resolution of the corporate debtor, and termination of such rights is necessary to the feasibility of the corporate debtor.

Further, it should be noted that there are various legal situations in which the right of subrogation is not exercisable against the company – for example, if the principal borrower is in liquidation, after distribution of the liquidation estate, the lender may recover the outstanding amounts from the guarantor without the guarantor being able to exercise the right of subrogation.”

118. Another argument of Mr. Chadha, learned counsel for the Operational Creditors is that an artificial division has been created amongst the Operational Creditors by dividing them in two categories of Contingent Creditors and other Operational Creditors. It is true that Operational Creditors who are to get 50% of their admitted claims with a maximum cap of 350 crores has been kept as a category separate then the Contingent Operational Creditors who are to get 10% payment of their claims subject to maximum


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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cap of INR 35 crores. The argument is based on the definition of word 'claim' defined in Section 3 (6) and the word 'debt' defined in Section 3 (11) read with the definition of 'Operational debt' defined in Section 5 (20) & (21) of the Code.

119. Mr. Chadha has argued that a claim could be reduced to judgment disputed or undisputed. It may even include a right to remedy for breach of contract and the use of word claim in Section 5 (21) would include even the unsettled and the settled claims. According to Mr. Chadha all operational debt must be placed under one category.

120. However, we find that the contingent claims belong to entirely a different class of creditors. They are in the nature of un-liquidated and disputed claims and the bankruptcy proceedings are like a premature termination of a going concern. If the concern continuous to go on contingent claims it may become disputed claims. It may be settled and un-liquidated damages may get quantified yet bankruptcy proceedings cannot afford to wait for the indefinite time. On the one hand it is necessary to quantify such claims yet they may be kept under a category different than the other claims. It is also evident that the Code has not made explicit references to contingent or un-liquidated claims which can however

 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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be inferred from the reading of Section 3 (6), 3 (11), 5 (20) & 5 (21) of the Code. As a matter of fact, the Code seeks to amend Section 343 of the Companies Act whereby the Liquidator in case of a company is entitled to settle contingent claims. Therefore, we are of the considered view that there is no violation of any law or hostile treatment given to the contingent creditors which constitute a category distinct from the Operational Creditors.

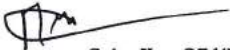
OTHER ISSUES

121. The prayer for grant of various concessions extracted under List 'B' of Section 1.2 of Part B of the resolution plan cannot be granted in a blanket manner. In that regard we follow the law laid down in the case of State Bank of India v. Bhushan Energy Limited, C.A. No. 929 (PB)/2018 in C.P. (IB) No. 530(PB)/2017 decided on 30.05.2019.

POST HEARING FACTS:

122. In order to put the record straight we bring on record few post hearing facts. After detailed hearing on day to day basis we reserved the order on 23.04.2019 but the post hearing we have been posted with the following facts on various dates:

1. One of the Ex-Director of the Corporate Debtor-Bhushan Power and Steel Limited namely Ravi Prakash Goyal filed


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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CWP No. 10325/2019 before the Punjab & Haryana High Court and a Division Bench ex parte issued directions which are as under:

i) The issue raised by the present petitioner for providing all aforesaid documents and thereafter to convene a meeting of the CoC "afresh" to deliberate and consider the suggestions and objections of the erstwhile Board of Directors before passing any Resolution Plan (including CA No.286 of 2019) (P-19) would be treated as a preliminary issue.

ii) The preliminary issue would be decided by the Adjudicating Authority-NCLT (Principal Bench, Delhi) before considering other Applications or before approval of any Resolution Plan (CA No.254 of 2019).


iii) In deciding the said preliminary issue, Adjudicating Authority would be guided by the judgment of Hon'ble Supreme Court in Vijay Kumar Jain's case (supra) and shall not take into consideration any other past practice, procedure, directions, judgments or orders of Adjudicating Authority/NCLAT which are in contravention, contradiction or derogation of the directions of the

Hon'ble Supreme Court in the matter of Vijay Kumar Jain's case (supra).

iv) Any judgment and order passed by the Adjudicating Authority on the aforesaid preliminary issue is directed to be kept inoperative for two weeks enabling the affected parties to exercise their appellate remedies in accordance with law.

v) All other issues of fact, law, priorities, all other applications before Adjudicating Authority etc arising out of or in relation to the insolvency Process of Corporate Debtor are left open for decision by the appropriate and competent Court of Law/Tribunal.”

123. The aforesaid order was placed before us. However, an order dated 03.05.2019 of Hon'ble the Supreme Court was also placed before us on 09.05.2019 whereby the Special Leave Petition filed by the aforesaid Director was dismissed as withdrawn. According to the directions issued by the Division Bench of Punjab and Haryana High Court we were required to treat the issue of providing a resolution plan and thereafter we were to direct convening of the meeting of CoC afresh as a preliminary issue before considering any other application or before approval of the Resolution plan. It was


 C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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also directed that in that regard the Tribunal was to be guided by the judgment of Hon'ble the Supreme Court in Vijay Kumar Jain's case (supra) and was not to take into consideration any other past practice, procedure, directions, judgments or orders of Adjudicating Authority/NCLAT which are in contravention of the directions of the Hon'ble Supreme Court in the matter of Vijay Kumar Jain's case (supra). The direction to the Adjudicating Authority-NCLT went to the extent of holding that preliminary issue was to be kept inoperative for two weeks to enable the affected parties to avail the appellate remedies in accordance with law.

124. Keeping in view the aforesaid directions and after the dismissal of the Special Leave Petition the directions issued by the Division Bench of Hon'ble Punjab and Haryana High Court became binding on the Tribunal and the process of rendering judgment on those lines commenced.

125. But before it could be done the CoC challenged the judgment of Division Bench of Hon'ble Punjab and Haryana High Court by filing Special Leave Petition No. 13755/2019 before Hon'ble the Supreme Court which came up for hearing on 03.07.2019. Mr. Ramji Srinivasan, learned Senior Counsel for the CoC placed a copy of the order before us which shows that the Division Bench


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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judgment of Hon'ble Punjab and Haryana High Court was stayed while issuing notice. Therefore, the judgment was required to be rendered on the basis of submissions made before us without noticing the directions.

126. It appears to us that the Ex-Management and Promoters were moving places to delay the conclusion of proceedings before us. Accordingly, another set of written submissions was filed by Mr. Virendra Ganda, learned Senior Counsel by urging that the judgment of the Hon'ble Appellate Tribunal rendered in the case of Standard Chartered Bank v. Satish Kumar Gupta, R.P. concerning Essar Steel Limited in C.A. No. 287/2019, 288/2019, 289/19 and 295/2019 decided on 04.07.2019 was placed before us. Numerous other applications have been filed after the order was reserved which have delayed and interrupted the pronouncement of the order and those applications are as under:

S. No.	CA No.	Filed by	Dates of filing
1	CA 1297(PB)/2019	Becquerel Industries Pvt. Ltd.	03.05.2019
2	CA 973(PB)/2019	Sanjay Singal	21.05.2019
3	CA 1055(PB)/2019	Resolution Professional	30.05.2019

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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4	CA 1056(PB)/2019	Sanjay Singal	30.05.2019
5	CA 1296(PB)/2019	PNB	11.06.2019
6	CA 1295(PB)/2019	JSW	10.07.2019

127. However, the Appellate Tribunal in Company Appeal (AT) (Insolvency) No. 198 of 2018 has issued directions on 04.02.2019 that Adjudicating Authority-NCLT may proceed with the pronouncement of the order. We have added this unusual para to this order with the object of showing how desperate and frustrated the Ex-Management/Promoters are and how they are making efforts to cause delay. We do not say any further on this aspect.

128. As a sequel of the above discussion, CA No. 254(PB)/2019 is allowed and the resolution plan of JSW-H1 Resolution Plan Applicant is accepted. The objections raised by the Ex-Directors cum Promoters of the Corporate Debtor and Operational Creditors are hereby over-ruled. However, the acceptance and approval of the resolution plan shall be subject to the following;

- a) The amount due to the operational creditors under the resolution plan must be paid in accordance with the amended Section 30 (2) of the Code as the amendment expressly provides that it would be applicable to all

C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

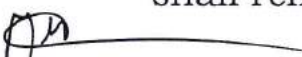
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applications pending for approval of the resolution plan like the one in hand.

- b) C.A. No. 327(PB)/2019 with a prayer for placing the settlement proposal dated 20.02.2019 before the CoC is hereby rejected.
- c) CA No. 286(PB)/2019 filed by the erstwhile directors Mr. Sanjay Singhal and Mrs. Aarti Singhal seeking copies of the resolution plan is dismissed with a cost of Rs. 1/- lac to be paid personally by Mr. Sanjay Singal and Ms. Aarti Singal in equal share.
- d) The resolution plan would be binding on the corporate debtor, its creditors, guarantors, members, employees and other stakeholders. The reduction of share capital of the corporate debtor as contemplated by the resolution plan would take effect without any further deed or act on the part of the corporate debtor and/or its constitutes.
- e) We also approve the appointment of Monitoring Agency from the date of this order until the closing date. Accordingly, the CoC and the RP would continue as Monitoring Agency.
- f) The power of the Board of Directors of the Corporate Debtor shall remain suspended until the closing date.


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

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- g) Various reliefs sought from the statutory authorities under the Income Tax Act, 1961, Ministry of Corporate Affairs, Department of Registration and Stamps, Reserve Bank of India and others are also disposed of. We do not feel persuaded to accept the prayer made in the resolution plan yet the resolution plan applicant may file appropriate applications before the competent authorities which would be considered in accordance with law because it would not be competent for the Adjudicating Authority-NCLT to enter into any such area for granting relaxation, concession or waiver which is wholly within the domain of competent authorities.
- h) It is needless to clarify that Section 30(2) (f) of the Code mandates that the Resolution plan should not be against any provisions of the existing law. The resolution applicant, therefore, shall adhere to all the applicable laws for the time being in force.
- i) The criminal proceedings initiated against the erstwhile Members of the Board of Directors and others shall not effect the JSW-H1 Resolution Plan Applicant or the implementation of the resolution plan by the Monitoring Agency comprising


C.A. No. 254(PB)/2019, C.A. No. 327(PB)/2019, C.A. No. 286(PB)/2019, CA-288(PB)/2019, 287(PB)/2019, 289(PB)/2019, 295(PB)/2019, 179(PB)/2019, 437(PB)/2019, 1008(PB)/2018, 729(PB)/2018 935(PB)/2018, 1009(PB)/2018, 1010(PB)/2018, 1011(PB)/2018, 1116(PB)/2018, 1247(PB)/2018 & 537(PB)/2018

In

C.P. (IB)-202(PB)/2017 in the matter of

Punjab National Bank v. Bhushan Power and Steel Limited

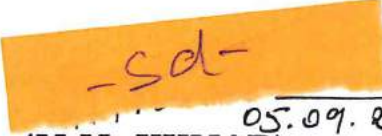
of CoC and RP. We leave it open to the Members of the CoC to file appropriate applications if criminal proceedings result in recovery of money which has been siphoned of or on account of tainted transactions or fabrication as contemplated under the various provisions of the Code or any other law. Those applications shall be considered in accordance with the prevalent law.


- j) The RP is directed to redistribute the profits earned by running the Corporate Debtor during the Corporate Insolvency Resolution Process in accordance with the judgment of the Hon'ble NCLAT rendered in the case of ***Standard Chartered Bank v. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors.***, Company Appeal (AT) (Ins.) No. 242 of 2019 decided on 04.07.2019 and the action to be taken by the RP is evident from the reading of para 211 of the said judgment.
- k) The cases in which the Adjudicating Authority or the Appellate Authority could not decide the claim on merit, all such Applicants may raise the issue before an appropriate forum in terms of Section 60(6) of the Code. The other



'Financial Creditors/Operational Creditors' would not be entitled any remedy under Section 60 (6) of the Code.

129. The sealed covers which have been furnished during the course of hearing shall be returned after re-sealing by the Bench Officer to the learned Counsel for the RP and acknowledgment of receipt may be obtained.

 -sd-
05.09.20
(M.M. KUMAR)
PRESIDENT

 -sd-
(S.K. MOHAPATRA)
(MEMBER TECHNICAL)

05.09.2019
VINEET