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**NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH
AHMEDABAD**

**T.P. No. 21/NCLT/AHM/2017 (New)
Gujarat High Court C.A. No. 125/2014 in C.P. No. 3/2009 (Old)**

Coram: **Present: Hon'ble Mr. BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF AHMEDABAD BENCH
OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.10.2017**

Name of the Company: Panchmahal Steel Ltd.
V/s
Asset Reconstruction Company India Ltd.


Section of the Companies Act: Section 391-394 of the Companies Act, 1956

<u>S.NO.</u>	<u>NAME (CAPITAL LETTERS)</u>	<u>DESIGNATION</u>	<u>REPRESENTATION</u>	<u>SIGNATURE</u>
1.	Sandeep Singhi	Advocate	Petitioner	}
2.	Shamik Bhatt	"	"	
3.	Pranjal Buch	"	"	
4.	Parini Shah for Mr. Vimal Patel	"	"	

ORDER

Learned Advocate Mr. Sandeep Singhi with learned Advocate Mr. Shamik Bhatt with Learned Advocate Mr. Pranjal Buch with Learned Advocate Ms. Parini Shah i/b Learned Advocate Mr. Vimal Patel present for Petitioner. None present for Respondent.

Order pronounced in open court. Vide separate sheets.


**BIKKI RAVEENDRA BABU
MEMBER JUDICIAL**

Dated this the 27th day of October, 2017.

**IN THE NATIONAL COMPANY LAW TRIBUNAL
AHMEDABAD BENCH**

**TP No.21/NCLT/AHM/2017(New)
COMPANY APPLICATION NO. 125 OF 2014(Old)
IN
COMPANY PETITION NO. 3 OF 2008
(Before the High Court)**

In the matter of :-

Panchmahal Steel Limited,
A company incorporated under
the Companies Act, 1956 and
having its registered office at
GIDC Industrial Estate,
Kalol - 389 330,
District Panchmahals,
Gujarat.

...

Applicant

Versus

Asset Reconstruction Company
(India) Limited,
The Ruby, 10th Floor,
29, Senapati Bapat Marg,
Dadar (West)
Mumbai - 400 028.

...

Respondent

Order delivered on 27th October, 2017, 2017

Coram: Hon'ble Sri Bikki Raveendra Babu, Member (J)

Appearance:

Mr. Mihir Thakore, Senior Advocate with Mr. Shamik Bhatt, Advocate for
the Applicant.

Mr. Anip Gandhi, Advocate for the Respondent.

ORDER

1. This application is filed by Panchmahal Steel Limited
(hereinafter called as "PSL") seeking a direction to the
respondent, Asset Reconstruction Company (India) Limited

(hereinafter called as "ARCIL") to issue No Due Certificate in favour of the applicant-PSL in respect of the discharge of liabilities of the applicant towards the respondent under the modified scheme sanctioned by the Honourable High Court of Gujarat vide its order dated 24.11.2008 and also a direction to the respondent to forthwith release the securities created by the applicant in favour of the respondent. The applicant further prayed for a direction to the respondent to forthwith issue its No Objection Certificate to Axis Trustee Services Limited, so as to enable the Trustees to issue their No Objection Certificate in favour of the applicant and to release the securities created by the applicant in favour of the Trustees for the various debentures issued, allotted and redeemed under the modified scheme.

2. PSL proposed a scheme of compromise and/or arrangement between PSL and its secured lenders and equity shareholders before the Honourable High Court of Gujarat. In the Court convened meeting of secured lenders held on 28.12.2007, ARCIL suggested some modifications to the scheme and the scheme with modifications was approved by the secured lenders with requisite statutory majority. Honourable Company Judge of the High Court of Gujarat by an order dated 24.11.2008 sanctioned the modified scheme with certain further modifications as suggested by Gujarat Industrial Investment Corporation Limited (hereinafter referred to as "GIIC"). Aggrieved by the order passed by the Honourable Company Judge, PSL

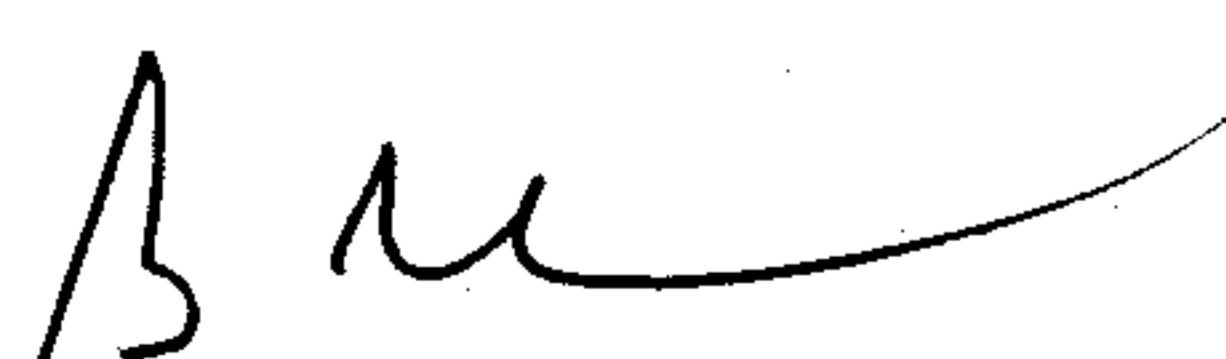
preferred OJ Appeal No.1 of 2009 before the Honourable High Court of Gujarat. During the pendency of OJ Appeal No.1 of 2009, the applicant and GIIC entered into consent terms dated 27.8.2013 and the appeal came to be disposed of in light of the consent terms.

3. The original secured creditors of PSL prior to March 2004 were ICICI Bank Limited, State Bank of India, LIC and GIIC. ICICI Bank Limited, by assignment agreement dated 31.3.2004, assigned the financial assistance granted by it to PSL applicant along with attendant security interests to ARCIL and in that connection ARCIL addressed a letter dated 6.4.2004 to PSL.

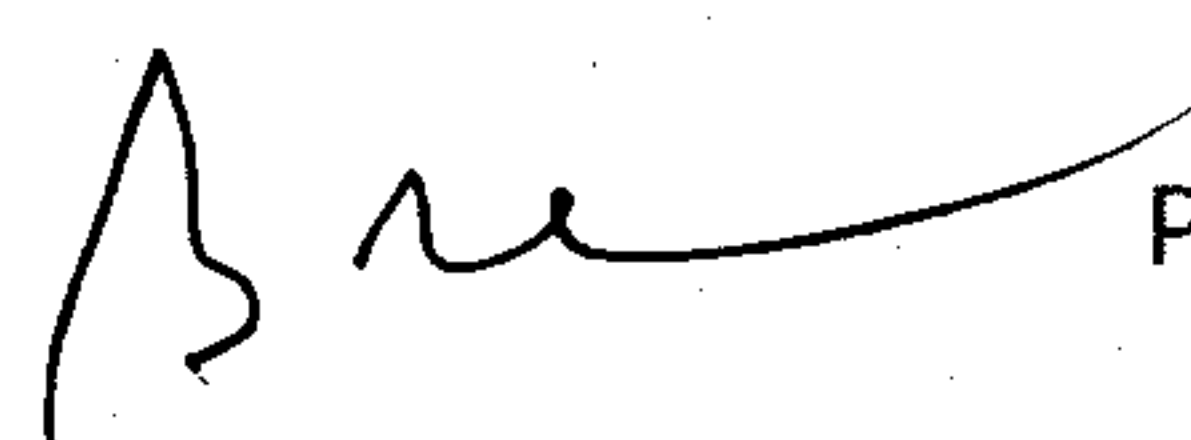
4. According to PSL, there were several meetings between the representatives of PSL and ARCIL regarding the restructuring package. During such negotiations, it was agreed between PSL and ARCIL that pending finalisation of the terms and conditions of the proposed restructuring package/scheme, the payments made by PSL to ARCIL would be given credit and the same would stand adjusted. During the pendency of such negotiations, PSL vide its letter dated 6.12.2004 enclosed a cheque in favour of ARCIL for Rs.83,71,338/-, being interest for the quarter of June 2004, September 2004 and December 2004, which has to be given credit and adjusted against the final amount to be paid to ARCIL under the proposed restructuring package/scheme. In

the negotiations between PSL and ARCIL, there were discussions even regarding the cut-off date for restructuring package/scheme. ARCIL informed PSL that they were also negotiating with State Bank of India for assignment of the financial assistance provided to PSL by SBI in favour of ARCIL. Eventually, ARCIL vide its letter dated 6.5.2005 sanctioned the restructuring package. By that date SBI had not assigned the financial assistance provided to PSL to ARCIL, though the amount in respect of the same was included in the restructured package. According to PSL, there was no dispute between ARCIL and PSL in respect of the credit to be given by ARCIL towards the payment made by PSL during the pendency of finalisation of restructuring package. However, ARCIL, as an afterthought, after repayment of all the dues under the sanctioned modified scheme, took a stand that the payment made by PSL during pendency of restructuring package could not have formed part of the sanctioned modified scheme and that PSL was still required to make payment in respect of the same along with interest. According to PSL, ARCIL in the mail dated 3.3.2005 agreed that PSL would be given credits for the amounts paid to ARCIL for the period preceding April 2005. The mail dated 3.3.2005 is attached to the application along with summary of discussions held in the meeting on 21.2.2005.

5. Subsequent to the sanctioning of restructuring package by ARCIL, the respondent ARCIL vide its letter dated 28.3.2006



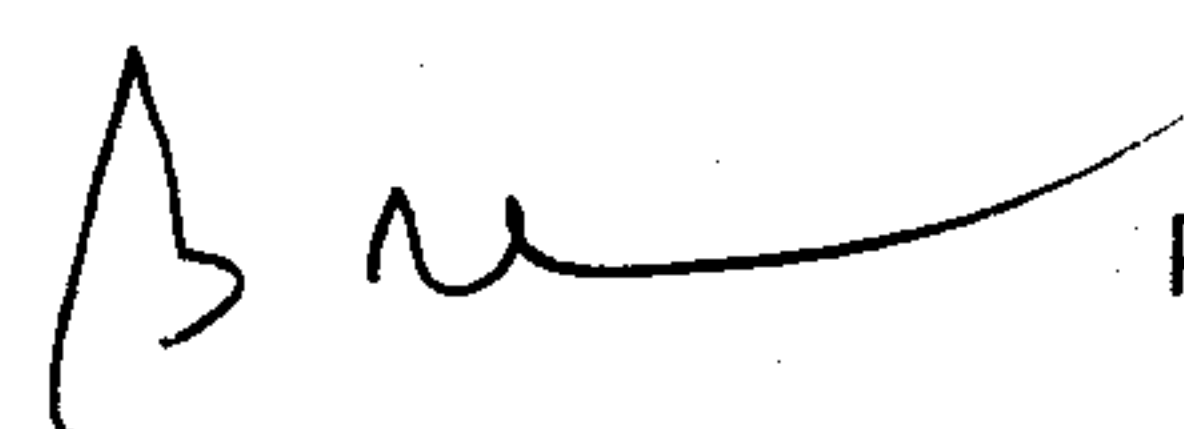
informed PSL that SBI, vide assignment agreement dated 28.3.2006, assigned the term loan assistance granted by SBI to PSL along with attendant interests to ARCIL. Pursuant to the sanctioning of the restructuring package by ARCIL and the assignment agreement between SBI and ARCIL, the applicant commenced payment to ARCIL as per the restructured package. Thereafter, the scheme was prepared in consultation with ARCIL based on the terms and conditions of the restructuring package sanctioned by ARCIL. The said scheme was approved by the Board of Directors of the applicant company in the meeting held on 30.4.2007. In the said scheme, cut-off date was defined to mean 31.3.2004, being the date as of which the existing loans and secured lenders shall be restructured under the scheme. As on the cut-off date, the total liability, as per the books of PSL, towards ARCIL was Rs.116.23 crore. As per clause 3, Part III of the scheme, it is categorically mentioned that except the amount mentioned as on cut-off date in Appendix-B to the scheme, all other loans and/or liabilities including any interest, premium on redemption on loan and other charges by whatever name called, whether accrued or not, whether recorded in the books of the applicant company or not, whether present or future or contingent, pertaining to or in relation to, whether directly or indirectly, with respect to the existing loans shall stand waived or shall abate. According to PSL, under the scheme the liability in respect of Loan-I was to accrue only with effect from 1.4.2005. Therefore, between 1.4.2004 and 31.3.2005 there was no liability



towards secured lenders, which was required to be discharged by PSL. According to PSL, it is entitled for the credit in respect of the payment made for the quarter June 2004, September 2004 and December 2004, i.e. an amount of Rs.83,71,338/- by way of cheque through letter dated 6.12.2004. PSL by mails dated 2.3.2007, 9.4.2007 and 25.6.2007 addressed to ARCIL brought to the notice of ARCIL that the amount paid vide letter dated 6.12.2004 has to be adjusted in respect of the instalment to be paid in June 2007 as per the scheme. But ARCIL requested not to deduct the money from the instalment June 2007 and requested for adjustment later on and in that connection, ARCIL addressed a mail dated 26.6.2007.

6. It is the case of ARCIL that PSL paid an amount of Rs.83,71,338/- on 6.12.2004 towards interest amount that was outstanding. According to ARCIL, at no point of time during the course of negotiations neither discussed nor decided that PSL would be given adjustment of the said amount. In fact, according to the letter of PSL dated 6.12.2004, the said amount of Rs.83,71,338/- was towards interest for the quarter June 2004, September 2004 and December 2004. There was no averment in the said letter that the amount would be adjusted later on. In the meeting held on 21.2.2005 to finalise the restructuring package, discussions were held on adjustment of the amounts paid earlier, but the same was not transcribed into the restructured scheme or package. ARCIL admitted that on

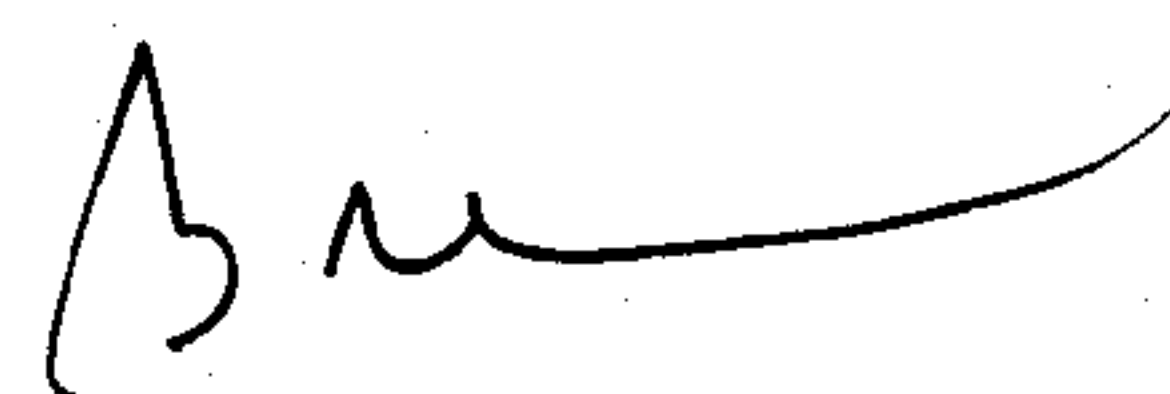
6.5.2005 it had sanctioned the restructuring scheme or package. Even when the restructuring scheme/package was sanctioned by ARCIL on 6.5.2005, there was no reference to the adjustment of Rs.83,71,338/- that would be made at a later point of time. No such provision was incorporated in the restructured scheme or package. According to ARCIL, PSL now makes an attempt to incorporate a provision into the restructured scheme or package which was never a part of the restructured scheme or package. According to ARCIL, PSL had to pay a total amount of Rs.116.23 crore to ARCIL, out of which Rs.93.04 crore was towards financial assistance that had been granted by ICICI Bank Limited and an amount of Rs.23.03 crore was towards term loan granted by State Bank of India. When the revised restructured scheme or package was brought into force, no provision for adjustment of Rs.83,71,338/- was stipulated in the modified restructured scheme or package. According to ARCIL, PSL was estopped from raising any issue that the amount of Rs.83,71,338/- was to be adjusted in the last tranche of payment that was to be made on 31.3.2009. Clause 5(m) of the modified scheme or package stipulates that *“all monies payable by the Company under the Scheme including any reimbursements, if not paid within the stipulated period, shall from the due date carry interest of 10% per annum compounded at quarterly rests. If such amounts, including the interest as aforesaid, are not paid within 90 days, shall further carry additional interest by way of liquidated damages at the rate of 2% per annum in addition to 10% as above.”* According to the



respondent, PSL had to pay the amount with effect from 1st April, 2005 onwards upto 31st March, 2010, as per Appendix-D of the scheme.

7. ARCIL stated in the reply that it never stated in the mail dated 26.6.2007 that it requested for adjustment later on. On the other hand, ARCIL stated that PSL shall continue to make payment as per schedule without any adjustment. According to ARCIL, the Honourable High Court, while granting approval to the scheme on 24.11.2008, gave certain directions and in those directions also, there was no mention that the amount of Rs.83,71,338/- paid on 6.12.2004 shall be given credit to PSL. According to ARCIL, it is entitled to charge interest on the outstanding amount of Rs.83,71,338/- from 31.3.2009 to 31.12.2012, which accumulated to Rs.2.60 crore. ARCIL by its letter dated 1.10.2012 informed PSL that it paid Rs.1.78 crore as against instalment of Rs.3.01 crore due on 31st March, 2009 after adjusting Rs.0.83 crore and interest thereon at 9% per annum from the date of its payment. In the letter dated 18.1.2013 addressed by ARCIL, the respondent ARCIL informed PSL as under :-

“Please refer to the meeting that you had with our Managing Director and CEO and officials at our office on December 18, 2012 wherein you agreed to make payment of Rs.1.23 crore towards the dues payable to ARCIL.”



Pursuant to the meeting held between CMD of PSL and the personnel of ARCIL, it was agreed that PSL would pay Rs.1.23 crore. But PSL did not keep up its promise to pay Rs.1.23 crore.

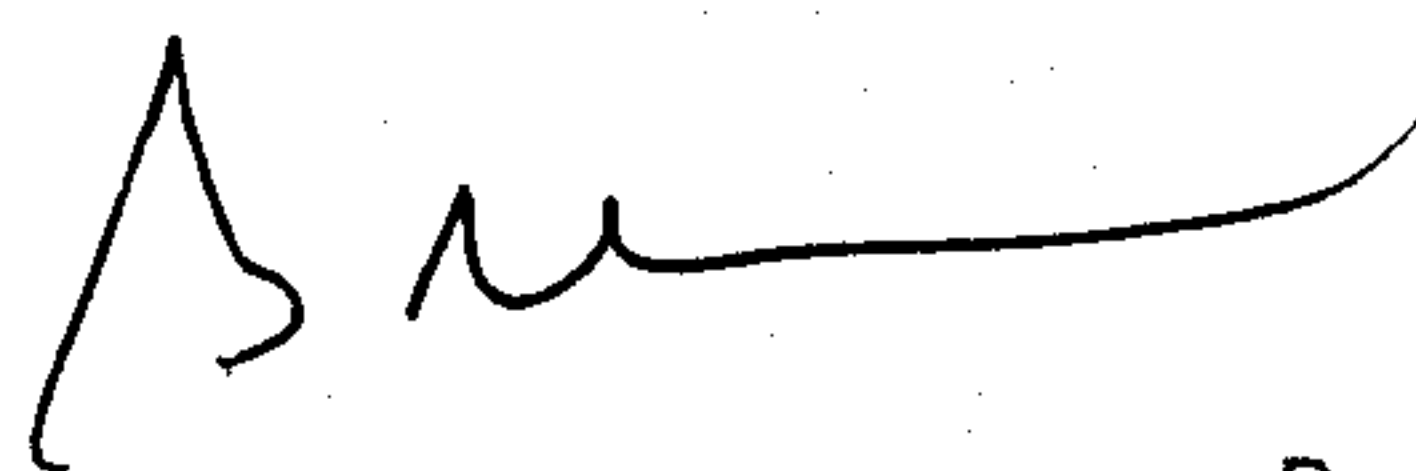
8. In the rejoinder also, the applicant PSL reiterated its case. The applicant PSL also denied the agreement to pay Rs.1.23 crore towards the dues payable to ARCIL.

9. The whole controversy in this case is whether the amount of Rs.83,71,338/- paid by PSL to ARCIL on 6.12.2004 has to be adjusted towards the amounts payable as per the sanctioned scheme or not.

10. The scheme was approved by the Board of Directors of PSL in its meeting held on 30th April, 2007. A perusal of the scheme approved by the Board of Directors indicates that the cut-off date is 31st March, 2004. The relevant clause in the scheme is clause 1.3, which reads as follows :-

'1.3 "Cut-off Date" shall mean 31st March, 2004, being the date as of which the Existing Loans of the Secured Lenders shall be restructured under the Scheme.'

11. Another relevant clause in the scheme approved by the Board of Directors of PSL in its meeting held on 30th April, 2007



is clause 3, which deals with the restructuring of existing loans.

The said clause 3 reads as follows :-

“3. RESTRUCTURING OF EXISTING LOANS

PSL and the Guarantor(s) admit that they jointly and severally owe to the Secured Lenders an aggregate sum of Rs.142.55 crore (as on March 31, 2004).

Subject to the Existing Loans as set out in Appendix-B to the Scheme and subject to the provisions of the Scheme including payment of interest and other liabilities, if any, all other loans and/or liabilities including any interest, premium on redemption of loans and other charges by whatever name called, whether accrued or not, whether recorded in the books of PSL or not, whether present or future or contingent, pertaining to or in relation to, whether directly or indirectly, with respect to the Existing Loans shall stand waived or shall abate.

With effect from the Cut-off Date the Existing Loans of Rs.142.55 crore as stipulated in Appendix-D to the Scheme which consists of :

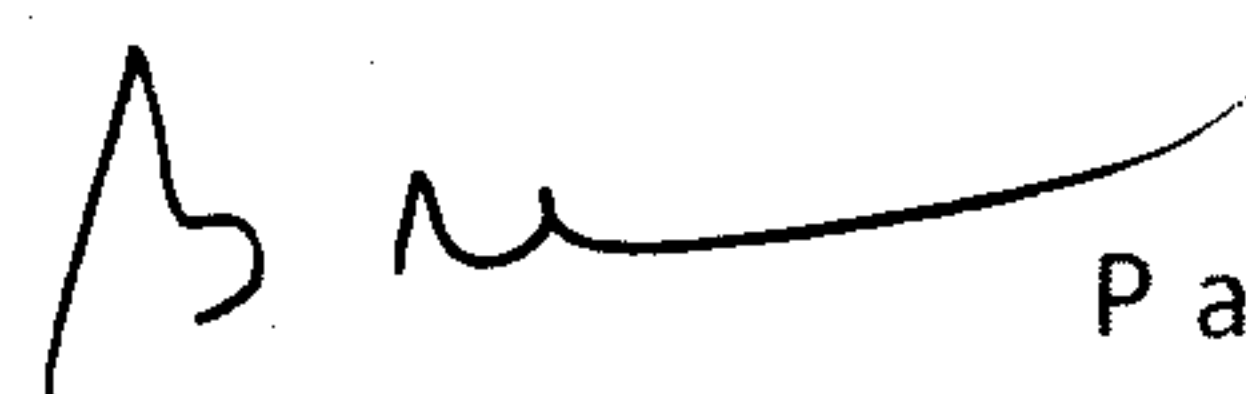
- B. Loan-I of Rs.62.71 crore,*
- C. Loan-II of Rs.13.76 crore, and*
- D. Loan-III of Rs.66.08 crore*

Shall be dealt with by PSL and settled as under:

A. Settlement of Loan-I of Rs.62.71 crore.

PSL and the Guarantor(s) shall jointly and/or severally pay to the Secured Lenders Rs.62.71 crores in the following manner :

- (i) The amount of Rs.62.71 crores shall carry an interest @5% per annum compounded at quarterly rests commencing from 1st April, 2005 and ending 31st March, 2010. The total amount under Loan-I shall be as indicated in Appendix-D to the Scheme.*



- (ii) Such of the Loan-I amount commencing April 1, 2005 and ending March 31, 2009, as more particularly described in Appendix-E to the Scheme, shall be paid in quarterly instalments.
- (iii) the balance of Loan-I amount commencing 1st April, 2009 and ending 31st March, 2010, as more particularly described in Appendix-E to the Scheme upon the Scheme, being effective shall in lieu of actual payment be converted into Secured Zero Coupon Debenture (ZCD) of the face value of Rs.1,00,000/- each. The ZCDs shall be redeemed in quarterly instalments commencing June 30, 2009 and ending March 31, 2010.
- (iv) PSL and the Guarantor(s) shall jointly and severally facilitate an exit for the Secured Lenders by way of sale of the ZCDs to a third party by way of takeout financing on or before 31.12.2008.

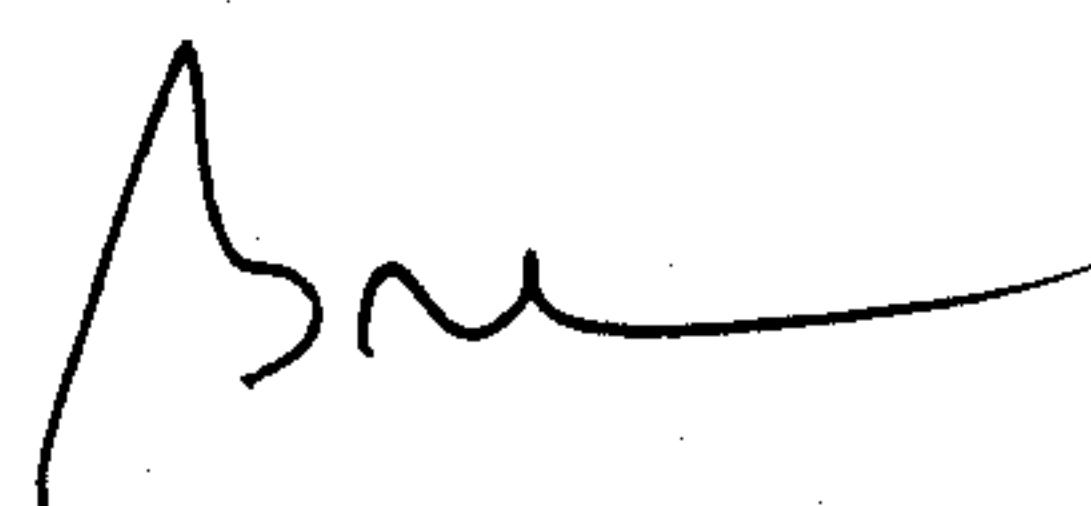
B. Settlement of Loan-II of Rs.13.76 crores.

- (i) Upon the Scheme being effective for settlement of Loan-II, as indicated in Appendix-D to the Scheme, PSL and the Guarantor(s) shall within one month from the effective date issue 1376 number of Series I – Secured Non-Convertible Debentures (NCDs-Series 1) of face value of Rs.1,00,000/- each to the Secured Lenders by converting the Loan-II aggregating to Rs.13.76 crores. NCDs – Series 1 shall be redeemable by PSL and/or the Guarantor(s) within 18 months from the date of issue.
- (ii) In the event there remains any fractional balances as per sub-clause (i) above, the Board shall be empowered to consolidate all such fractional balances, ignoring any fraction remaining after such consultation, into whole NCDs Series 1 and issue and allot them to a Director or Officer of PSL to such other person as the Board shall appoint in this behalf, to be held in trust for all NCDs Series 1 holders who are entitled to such fractional balances, with the express understanding that such Director or Officer of PSL, or such other person, who

is allotted such consolidated NCDs Series 1, shall be bound by the express understanding to cause the sale of such NCDs Series 1 by a Committee of Directors, acting in trust on behalf of the NCDs Series 1 holders entitled to the fractional balances. Such sale of NCDs Series 1 to the Secured Lenders or to any other person shall be made by the said Committee of Directors and the net sale proceeds, deposited with PSL, shall be distributed by PSL to the NCDs Series 1 holders in proportion to the fractional entitlement, after deduction therefrom, the expenses incurred in connection with the same.

C. Settlement of Loan-III of Rs.66.08 crores.

- (i) Upon the Scheme being effective, for settlement of Loan-III as indicated in Appendix-D to the Scheme, within three months from the Effective Date, PSL shall issue and allot 6,60,80,000 number of Secured Fully Convertible Debentures (FCDs) of face value of Rs.10/- each aggregating to Rs.66.08 crores to the Secured Lenders.
- (ii) FCDs shall be converted into Equity Shares of Rs.10/- each of PSL at any time in the period between the following dates:
- a) 9 months from the date of allotment.
 - b) 18 months from the date of allotment.
- (iii) Those FCDs, which become due for conversion into equity shares of PSL, in consonance with sub-clause (ix) hereinbelow, shall carry a premium of 25% of the said FCDs. The conversion of such FCDs along with the premium shall be at a price which is the higher of the following :
- a) Share price at the time of conversion as determined by the guidelines for preferential issue under Chapter-XIII of SEBI (Disclosure & Investor Protection) Guidelines, 2000; and
 - b) Rs.35/- (Thirty five only).



- (iv) For the purpose of preferential allotment of FCDs as stated in sub-clause (i) and (ii) above, no separate meeting of the Shareholders under Section 81(1A) of the Act shall be convened and the resolution passed at the meeting approving the Scheme shall be treated as requisite resolution under Section 81(1A) of the Act and that for the purpose of guidelines issued by SEBI for preferential allotment of shares such resolution shall be deemed to have been passed on the 60th day from the Effective Date and the relevant date shall be 30 days prior to the date of conversion by which the FCD holders become entitled to Shares.
- (v) The Equity Shares to be issued and allotted by PSL, pursuant to conversion, shall subject to applicable regulations be listed or admitted to trading on the relevant Stock Exchange/s, where the Equity Shares of PSL are presently listed or admitted to trading.
- (vi) The Equity Shares to be issued and allotted by PSL, pursuant to conversion, shall rank *pari passu* in all respects including dividend from the date of their allotment in terms of the Scheme with the existing Equity Shares of PSL.
- (vii) The Share Certificates of PSL issued in terms of sub-clause (ii) above, shall be issued in electronic form.
- (viii) The Secured Lenders shall have the right to dispose of the Equity Shares so converted as per sub-clause (ii) above to any third person(s) at any point of time, at any price and on such terms and conditions that the Secured Lenders deem fit. Secured Lenders shall however give the first right of refusal to PSL and/or its Guarantors and/or their nominees to acquire such Equity Shares at prices, terms and conditions that are no less favourable than what is being given by such third person(s).
- (ix) The total amount of Equity converted by all Secured Lenders pursuant to sub-clause (ii) above shall not exceed 26% of the maximum fully diluted Equity

Capital of the Company as mentioned in Clause 5(a)(iv) of the Scheme.

- (x) *As per Clause 5(a)(iv) of the Scheme the total maximum equity shares of Rs.10/- each which can be allotted to the Secured Lenders to maintain the percentage as mentioned in sub-clause (ix) above are 98,30,000 shares. In the event that the converted portion of the FCDs is less than the Loan-III amount at the end of the conversion period, PSL shall issue and allot 5% Secured Non-Convertible Debentures – Series 2 (NCDs Series-2) of face value of Rs.1,00,000/- each to the Secured Lenders for such amount which is equivalent to the difference of the Loan-III amount and the converted portion of the FCDs. The NCDs Series-2 along with coupon rate which is payable effectively from March 31, 2005 shall be redeemed in equity quarterly instalment over a period of 3 years commencing June 30, 2010.*
- (xi) *PSL and the Guarantor(s) shall facilitate an exit for Secured Lenders by way of sale of the NCDs Series-2 to a third party by way of Take Out Financing on or before 31.12.2008.”*

12. The modified scheme was approved in the Court convened meeting on 28.12.2007.

13. It is a fact that there is no mention in the scheme approved by the Board of Directors or in the modified scheme approved in the Court convened meeting that the amount of Rs.83,71,338/- paid by PSL by way of cheque to ARCIL towards interest for the quarters June 2004, September 2004 and December 2004 shall be adjusted towards the settlement of Loan-I. In fact, it is the contention of ARCIL that in the absence of such clause in the scheme or direction from the Court, the applicant PSL cannot

ask for credit of Rs.83,71,338/- and interest thereon at the rate of 9% per annum in the final amount to be paid to ARCIL.

14. It is the contention of PSL that it proposed a scheme of compromise and/or arrangement between PSL and its secured lenders and equity shareholders. After ARCIL was assigned the debt of ICICI Bank Limited, there were negotiations between PSL and ARCIL and during the negotiations, it was agreed between PSL and ARCIL that pending the finalisation of the terms and conditions of the proposed restructuring package, the payments made by PSL to ARCIL would be given credit and the same would stand adjusted. In support of the above said contention, PSL is relying upon letter dated 6th April, 2004, wherein ARCIL asked PSL to have discussions on various issues pertaining to the financial assistance. PSL also relied upon the e-mail dated 3.3.2005. The e-mail dated 3.3.2005, which is at pages 49 and 50 of the application, contained summary of discussions took place in the meeting held on February 21, 2005. The relevant point in the summary of discussions is point No. 8, which reads as follows :-

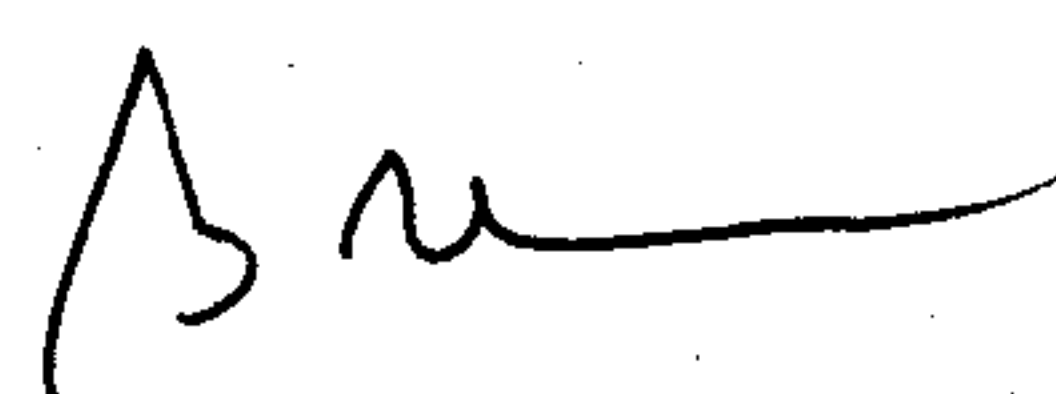
“8. PSL would further be given credit for amounts paid to Arcil in the period preceding the period considered above (April 2005).”

The above e-mail was sent by the Chief Manager of ARCIL to PSL. Therefore, as per the said e-mail, PSL would be given credit for the amounts paid to ARCIL in the period preceding April 2005. There is no dispute about the fact that PSL paid Rs.83,71,338/-

being interest for the quarters June 2004, September 2004 and December 2004 by way of a cheque drawn on ICICI Bank in favour of ARCIL and the said cheque was sent through letter dated 6.12.2004. The said letter is available at page 29 of the application. Therefore, the payment of Rs.83,71,338/- made by way of cheque dated 7.12.2004 was prior to April 2005. In view of the discussions in the meeting held on 21st February, 2005, ARCIL agreed to give credit to PSL for the amounts paid preceding the period April 2005.

15. Another crucial aspect of the present controversy is that the amount of Rs.83,71,338/- paid by PSL to ARCIL has not been deducted while arriving at the amount of Loan-I, Loan-II or Loan-III. It is nobody's case that after deducting the amount of Rs.83,71,338/-, the restructuring of loans was done. Admittedly, the cut-off date is taken as 31st March, 2004. The payment was made after 31st March, 2004, i.e. on 7.12.2004. The entire scheme is for the debts due as on 31.3.2004. When such is the case, whatever amount paid by PSL after 31st March, 2004 to ARCIL shall be given credit to PSL whether it is specifically mentioned in the scheme or not.

16. It is contended by the learned counsel appearing for ARCIL that the amount of Rs.83,71,338/- was paid towards the interest and, therefore, it cannot be given credit. It appears that while preparing the scheme, the secured loans as on 31st March, 2004,

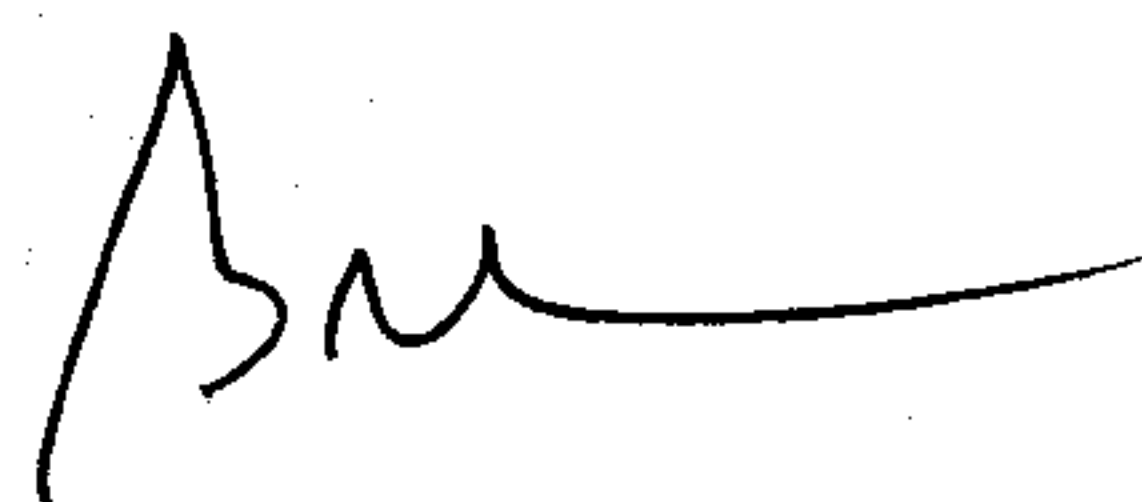


as per the books of PSL, were taken into consideration. Therefore, the amount of interest, if any due as on 31.3.2004, must also have been taken into consideration subject to the restructuring terms and conditions. Therefore, any payment made after 31st March, 2004 shall have to be given effect as per the scheme, which is duly approved by the Board of Directors of the company and in the Court convened meeting even in the absence of a specific mention about the said aspect in the scheme. Learned counsel for the respondent referred to ARCIL e-mail dated 26.6.2007 and contended that PSL has to make the payment as per schedule without any adjustment. Learned counsel appearing for PSL contended that ARCIL had requested PSL to adjust the amount of Rs.83,71,338/- later on. In order to interpret the e-mail dated 26.6.2007, it is necessary to see the background of such e-mail. The e-mail dated 25th June, 2007 reads as follows :-

"Please note that we have to make the payment of June-2007 instalment to ARCIL after adjusting Rs.83,71,338/-."

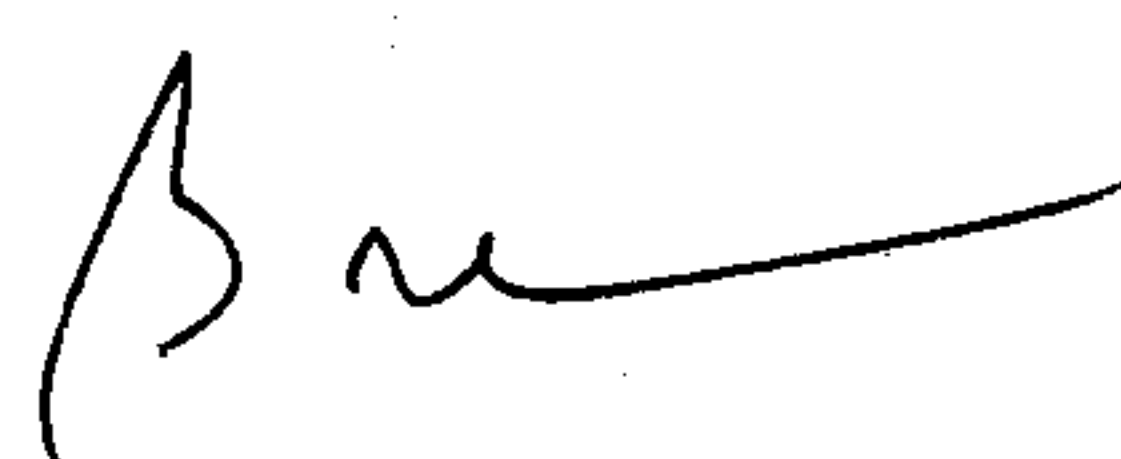
In response to that e-mail, ARCIL sent mail dated 26th June, 2007, which reads as follows :-

"As per our discussion, on account of delay in implementation of scheme and consequent issuance and redemption of NCDs, Arcil has already incurred a loss of more than Rs.2.0 crore. We had also discussed the payment for the above amount. Hence, please continue to make the payments as per schedule without any adjustments."



It appears that the said mail was interpreted by PSL as without adjustment towards June 2007 whereas ARCIL is interpreting it as without any adjustment. But the fact remains that the cut-off date is 31st March, 2004 and the amount of debt was arrived at as on the said date and any payment made thereafter shall have to be adjusted towards the debt arrived at as on 31st March, 2004 irrespective of the consent of ARCIL and irrespective of non-mentioning of the same specifically in the scheme. The loss that is referred to by ARCIL in the mail dated 26th June, 2007 is altogether a different aspect which, even according to them, had occasioned on account of delay in implementation of the scheme and consequent issuance and redemption of NCDs. Therefore, on that ground, ARCIL could not have denied giving credit of Rs.83,71,338/- to PSL by way of adjustment.

17. It is a fact that PSL agreed to adjust the amount of Rs.83,71,338/- in the last instalment, may be on the request of ARCIL or otherwise. When PSL agreed to adjustment of Rs.83,71,338/- in the last instalment, it is not legally permissible for PSL to claim interest on said amount at the rate of 9% per annum from 7.12.2004. Even the Rules of Appropriation of Payment laid down in Sections 59 to 61 of the Indian Contract Act say that if a debtor asked the creditor to appropriate particular payment towards a particular debt, then it should be appropriated to that debt only. No doubt in this scheme there are two debts, i.e. the debt of ICICI Bank and the



debt of State Bank of India, which were assigned to ARCIL. But in the scheme both the amounts were taken together. Therefore, there is only a single debt. The scheme only provides for payment of debt on different dates by way of instalments. When PSL has agreed to adjust the amount of Rs.83,71,338/- towards the last instalment of loan amount payable to ARCIL, then it is not entitled to claim interest at the rate of 9% on it from the date of payment.

18. In view of the above discussion, this Tribunal is of the considered view that ARCIL shall to give credit of Rs.83,71,338/- to PSL but not interest thereon.

19. In the result, this application is partly allowed. The respondent ARCIL has to declare what is the amount due from the applicant PSL after adjusting Rs.83,71,338/- and, upon payment of such due amount, ARCIL shall issue a No Objection Certificate to the concerned Trustees, i.e. Axis Trustee Services Limited, so as to enable the Trustees to issue its No Objection Certificate in favour of PSL along with relevant securities created by PSL in favour of the Trustees for the various debentures issued, allotted and redeemed under the modified scheme.

20. This application is disposed of accordingly.

Signature:  27-10-12
[Bikki Raveendra Babu, Member (J)]

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