IN THE NATIONAL COMPANY LAW TRIBUNAL
NEW DELHI
BENCH-III

C.A. – 205/(ND)/2018
C.A. – 268/(ND)/2018
C.A. – 276/(ND)/2018
In C.P. No. IB-303/(ND)/2017

In relation to Section 10 of the Insolvency and Bankruptcy Code, 2016 and Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority), Rules, 2016.

In the matter of:

VARDHMAN INDUSTRIES LIMITED
Flat No. 1309, 13th Floor,
Vikram Tower,
Rajendra Place,
New Delhi – 110008.

...Corporate Debtor

AND

C.A. – 205/(ND)/2018

In the matter of:

ASHOK KUMAR GULLA
9th Floor, Hansalaya Building,
15 Barakhamba Road,
Connaught Place,
New Delhi.

...Resolution Professional

AND

C.A. – 268/(ND)/2018

In the matter of:

JITENDER SINGH NIMI,
Authorized Representative of
Committee of Creditors,
Deputy General Manager, IDBI Bank,
SCO – 72-73, Sec 17-B,
Chandigarh.

...Applicant

C.A. – 276/(ND)/2018

In the matter of:

PUNJAB NATIONAL BANK,
Plot No. 4, Sector – 10,
Dwarka, New Delhi – 110075.

...Applicant

Coram:

R.VARADHARAJAN,
Hon'ble Member (Judicial)

Dr. V.K. SUBBURAJ
Hon'ble Member (Technical)

C.A. – 205/(ND)/2018: Counsel for the Resolution Professional: Dhir & Dhir Associates

C.A. – 268/(ND)/2018: Counsel for the Committee of Creditors: Saurabh Jain

C.A. – 276/(ND)/2018: Counsel for Applicant: Hashmat Nabi
Counsel for the Resolution Applicant: L&L Partners

ORDER

Date:19.12.2018

1. The present order deals with three applications. The first application C.A. 205/(ND)/2018 is an application which has been filed by the Resolution Professional ("RP") seeking approval of the resolution plan submitted by the resolution applicant JSW Steel Ltd. The second application C.A. 268/(ND)/2018 has been filed by the Committee of Creditors ("CoC") of the Corporate Debtor ("CD") praying this Tribunal to clarify that the personal guarantees as given to the creditors for securing the debt of the CD shall not stand extinguished and the same will remain alive and enforceable by the lenders for seeking recovery of the shortfall. The third application C.A. 276/(ND)/2018 has been filed by Punjab National Bank ("PNB") against the rejection/non-acceptance of claim submitted by PNB vide Form C dated 14.12.2017 by the RP.

2. The present proceedings were initiated by the filing of an application under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("the Code") by the CD praying for initiation of Corporate Insolvency Resolution Process ("CIRP") of the Corporate Debtor. Subsequently, this Tribunal passed an

order dated 16.11.2017 which initiated the CIRP of the CD, imposed moratorium and appointed Mr. Manoj Maheshwari as the interim resolution professional. On 17.01.2018 the present RP Mr. Ashok Gulla was appointed as the resolution professional by this Tribunal, on the request of the CoC.

3. The RP has submitted the progress reports from time to time and the meetings of the CoC were held as prescribed under the Code. During the third meeting of the CoC held on 23.02.2018 the eligibility norms for inviting of Expression of Interest ("EoI") from prospective resolution applicants was approved. Subsequently the EoI was issued on 26.02.2018 inviting resolution plans by 12.04.2018. The last date for submission of resolution plans was thereafter changed to 16.04.2018.

4. On 16.04.2018 JSW Steel Ltd. submitted its resolution plan which was placed before the CoC in its fourth meeting on 17.04.2018. Meanwhile an extension of time was sought from this Tribunal for completing the CIRP, which was granted on 03.05.2018. After a series of meetings, the CoC approved the resolution plan submitted by JSW by a 100% vote on 10.08.2018.

C.A. – 205/(ND)/2018

5. Before discussing other applications, it is necessary to check the fitness of the resolution plan submitted to this Tribunal. The CD is involved in the business of manufacturing and marketing of coated flat products i.e. galvanized sheets (plain and corrugated) and colour coated sheets. According to the CD itself the reasons for the drastic drop in the sales of the CD includes dumping of steel by China into India at extremely low and competitive prices, low pricing by domestic steel manufacturers in India, loss of sales in Jammu and Kashmir where the CD had major market share, due to insurgency and natural calamities and withdrawal of quantity discounts by suppliers. JSW Steel Ltd. is a part of the O.P. Jindal Group and is one of the leading steel manufacturers in India. JSW in its resolution plan projects that once the CD has been turned around then subject to the market conditions, the CD is expected to generate earnings before interest, tax and depreciation of Rs. 12 crores. According to the resolution plan the business plan of JSW is as follows:

Business Plan of RA

i. Raw materials – Key raw material for the facilities can be supplied by JSW's subsidiary which will ensure consistent supply of raw material for the plant and shorten delivery time.

ii. Cost reduction – JSW's production of color coated products will reduce the cost that goes into paint, which is a major component of the total cost.

iii. Product portfolio – JSW Steel's marketing team has identified certain product portfolio initiatives to be undertaken.

iv. Strong technical support – JSW has a very strong technical and application engineering team to develop new, advanced and complex products for various end use applications.

v. Marketing – all materials will be sold under JSW's own brand name which commands premium in the market.

vi. Sales – JSW has distributors and dealers covering all districts in northern India and products are sold by a trained sales work force.

vii. Working capital – currently the plant is working at a capacity of 25-30%. JSW will ensure adequate working capital to operate the plant at its full capacity

6. The implementation of the resolution plan will take place in three steps as follows:

Implementation of Resolution Plan

i. Delisting – Pursuant to the provisions of the Securities and Exchange Board of India (Delisting of Equity Shares) Regulations, 2009, the CD shall stand automatically delisted from the stock exchanges from the Effective Date i.e. 30 days from the date of this Tribunal's approval or such earlier date as intimated by the CD by way of public announcement.

ii. Capital Reduction – the existing issued share capital of Rs.7,89,52,000 divided into 78,95,200 shares of Rs. 10 each will stand reduced to nil and all liabilities of the CD appearing as current borrowings in respect of such equity shares that have been reduced will be completely reduced nil without any liabilities, claims or obligations by virtue of order this Tribunal. This capital reduction will not require the consent of any creditors or shareholders and the approval of this Tribunal shall be binding on the CD and all stakeholders. It is to be noted that the liquidation value payable to the existing shareholders is nil.

iii. Infusion by Resolution Applicant – Simultaneously with the capital reduction, JSW will infuse equity commitment which will be an amount aggregating to Rs. 63.5 crores in the CD by way of subscription of equity shares at face value and/or by way of infusion of debt.

Management of Corporate Debtor

7. The existing board of directors shall be reconstituted with the existing directors deemed to have resigned on the Effective Date. All powers given to the erstwhile management and promoter group will be withdrawn and the memorandum and articles of association of the CD will stand substituted.

8. On and from this Tribunal's approval date and until the Effective Date CD will continue to be managed and controlled by the RP under the guidance of a monitoring committee comprising of 1 representative of approving financial creditor, the RP and 1 representative of JSW. On and from this Tribunal's approval date the reconstituted board shall constitute the board of directors of the CD and the new board and the monitoring committee shall be responsible for implementation of this resolution plan along with the resolution applicant JSW and within 30 days of the Effective Date JSW will submit a report to the statutory auditor of CD confirming the status of implementation of resolution plan. The resolution plan also provides for an

implementation schedule which envisages completion of the implementation on the 45th day from date of approval of the resolution plan by this Tribunal.

Payment of Liabilities of Corporate Debtor

9. In relation to payments to be made to all creditors, it is stated that the liquidation value will not be sufficient to cover the amounts owed to secured financial creditors and the liquidation value of the operational creditors or the other creditors or stakeholders is nil. The details proposed in relation to each stakeholder are as follows:

    i. CIRP costs – cash flows generated by the CD will be sufficient to pay the CIRP costs and the RP and CD shall use the cash flows of CD to pay such CIRP costs. Any CIRP costs which are unpaid as of the NCLT approval date and in case the cash flows of the CD are not sufficient to meet the entire unpaid CIRP costs, the balance amounts will be paid by JSW from the equity commitment on the Effective Date.

    ii. Operational creditors – claims aggregating to Rs.5.14 crores have been verified and admitted by the RP. The liquidation value to be paid to operational creditors is nil. JSW has proposed an upfront payment of Rs. 1 crore within a period of 15 days from the Effective Date.

iii. Financial creditors – Claims aggregating to Rs. 133,83,88,549 have been verified and admitted, from which Rs. 133,63,88,549 is claimed by secured financial creditors and Rs.20,00,000 is claimed by unsecured financial creditors.

The liquidation value payable to the dissenting secured financial creditors will be paid before payment to any other financial creditor which approves the resolution plan. No value will be payable to dissenting unsecured financial creditor since nil liquidation value is owing to them. However, there are no dissenting creditors in the present matter.

In relation to approving financial creditors, the difference between the equity commitment amount and the aggregate of (a) liquidation value payable to dissenting financial creditors, (b) CIRP costs paid by JSW (not out of cash flows) and (c) upfront payment to operational creditors shall be paid to the approving financial creditors, on pro rata basis.

iv. Employees and workmen – no claims by employees or workmen were filed.

v. Outstanding govt. dues, taxes etc – there is no liquidation value owing in respect of outstanding government dues, taxes and other liabilities of CD. Therefore, nil payment has been proposed under the resolution plan towards payment of any outstanding government dues, taxes etc. Any such dues etc in relation period prior to the approval date by this Tribunal shall stand extinguished according to Regulation 37 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("CIRP Regulations"). Further, all notices, assessments or proceedings pending in relation to period prior to approval of the plan by this Tribunal shall stand terminated and withdrawn and all consequential liabilities shall stand extinguished according to Regulation 37, by virtue of order of this Tribunal.

vi. Other stakeholders – in relation to claims of stakeholders other than the ones listed above or who make any claims in the future, no amount is proposed because there are no funds left.

vii. Existing shareholders – as mentioned above the existing subscribed share capital of CD will stand reduced to nil.

10. The mandatory requirements that the resolution plan has to comply with under the Code and CIRP Regulations and the treatment of such compliances in the plan submitted are as follows:

Condition	Compliance under Resolution Plan
S. 30(1) – resolution applicant submits affidavit stating that he is eligible under Section 29A	The resolution applicant JSW has submitted an affidavit to this effect and is eligible under Section 29A to submit a resolution plan. Further, the RP states that in the opinion sought by them from professional experts it has been confirmed by them that JSW was eligible in terms of Section 29A of the Code.
S. 30(2)(a) – provides for the payment of insolvency resolution	Provided for as stated in para 20 (i) above.

process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor.	
S.30(2)(b) - provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the CD under section 53. Regulation 38(1) – amount due to the operational creditors under a resolution plan shall be given priority in payment over financial creditors.	Provided for as stated in para 20(ii) above.
Regulation 38(1A) – a resolution plan shall include a statement as to how it has dealt with the interests of	Provided for as stated in para 20 above.

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all stakeholders, including financial creditors and operational creditors, of the corporate debtor.	
S.30(2)(c) – provides for the management of the affairs of the CD after approval of the resolution plan	Provided for as stated in para 19 above.
S.30(2)(d) – The implementation and supervision of the resolution plan	Provided for as stated in paras 17-19 above
Regulation 38(3): (a) addresses the cause of default; (b) feasible and viable; (c) has provisions for its effective implementation; (d) has provisions for approvals required and the timeline for the same; (e) resolution applicant has the capability to implement the resolution plan	Provided for as stated in paras 16-19 above.

S.30(2)(e) - does not contravene any of the provisions of the law for the time being in force	Complied with.
S.30(4) - The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board	CoC has approved the resolution plan by a vote of 100%.

11. JSW has requested this Tribunal for certain specific reliefs as a part of the resolution plan. The Tribunal feels that there is a need to particularly discuss the following reliefs:

    i. The resolution plan states that all consents, approvals, licenses, rights, entitlements, benefits and privileges whether under law, contract, lease or license, granted in favour of the CD or to which the CD is entitled or accustomed to shall, notwithstanding any provision to the contrary in their terms and notwithstanding that they may have already lapsed or expired due to any non-compliance or efflux of time, be deemed to continue without disruption of the benefit of the CD and the resolution applicant for a period of 18 months from the NCLT Approval Date or until the period mentioned in such business licenses, whichever is later. The CD shall be granted a period of 18 months from the NCLT Approval Date to comply with the statutory obligations without suffering any adverse implications including any revocation of licenses or levy of penalties. With regard to the time period for obtaining the relevant approvals Section 31(4) is to be considered, which reads as follows:

"Section 31. Approval of resolution plan

(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later."

In view of Section 31(4) of the Code, it is directed that the time period of 18 months stated in clause iii of Schedule 7 the resolution plan will stand altered to 12 months and it is further clarified that though the licenses etc shall continue in favour of the CD for the period of 12 months, this order does not waive off any dues that may have to be paid or compliances that may have to be made in relation to continuance or renewal of the licenses etc after the expiry of such 12 months period.

ii. Clause iv of Schedule 7 of the resolution plan states that following the NCLT Approval Date, the CD will investigate as to veracity of any allegations in relation to the non-compliance with the terms of any contract or clearances obtained by the CD and if so, take or cause to be taken remedial actions in this regard within a reasonable period of time, during which time, the related litigations/proceedings should be kept in abeyance and that no coercive action be taken against the CD. It is currently expected that a period of 18 months from the NCLT Approval Date will be required for the resolution applicant to cause the CD to remedy such underlying breaches (if found to be true).

In respect of this waiver, the period of 18 months stands changed to 12 months.

iii. Clause ix of Schedule 7 states that pursuant to Regulation 37 of the CIRP Regulations, the security interest created in favour of Punjab National Bank by way of mortgage over the following lands mentioned in (a) and (b) below and the security interest created in favour of Oriental Bank of Commerce over the lands mentioned in (b) below shall stand reduced and extinguished by virtue of the order of the Adjudicating Authority approving this Resolution Plan and the CD, the resolution applicant shall at no point of time be directly or indirectly, held responsible or liable in relation thereto, in the absence of which the mortgage over such lands shall continue.

The resolution applicant JSW in the resolution plan has asked for extinguishment of the mortgage on CD's property in favour of Punjab National Bank in village Pawa and village Nandpur, Ludhiana and extinguishment of security interest created in favour of Oriental Bank of Commerce in village Nandpur, Ludhiana.

In relation to this waiver, the direction can be given only after discussing the objections filed by PNB.

12. The reliefs in Schedule 7, apart from those discussed above are granted to JSW as requested for in the resolution plan. The resolution plan submitted by JSW seems to be in place and fit to be admitted. However, the question of PNB's claim is still to be decided.

<u>C.A. – 276/(ND)/2018</u>

13. In C.A. 276/(ND)/2018 PNB states that it submitted its claim in Form C dated 04.12.2017 to the resolution professional in relation to the credit facilities availed by the M/s Vallabh Steels Ltd. for which the CD had mortgaged its properties with PNB. The credit facilities availed by Vallabh Steels as stated in Form C dated 04.12.2017 are as follows:

Facility	Amount (Rs. In Cr.)
CC	38.36
NFB	8
Total	46.36

14.As a security for the above stated credit facilities the CD created an equitable mortgage on two of its properties – factory land in village Pawa, Ludhiana and factory land in village Nandpur, Ludhiana - according to PNB. It is submitted that the claim filed by PNB was rejected on the ground that no credit facility was provided by PNB to the Corporate Debtor. Further, letter dated 24.07.2018 sent by the RP to PNB also stated that the resolution applicant JSW is seeking extinguishment of the entire mortgage as a part of the resolution plan on the basis of Regulation 37 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

15.To understand the nature of the transaction between PNB and the CD we will first discuss what is understood to be a mortgage. According to Section 58 of the Transfer of Property Act, 1882 mortgage is defined as follows:

> *"58. "Mortgage", "mortgagor", "mortgagee", "mortgage-money" and "mortgage-deed" defined —*
>
> *(a) A mortgage is the transfer of an interest in specific immoveable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the*

performance of an engagement which may give rise to a pecuniary liability. The transferor is called a mortgagor, the transferee a mortgagee; the principal money and interest of which payment is secured for the time being are called the mortgage-money, and the instrument (if any) by which the transfer is effected is called a mortgage-deed."

16.From a reading of the above definition it is understandable that if a mortgage is enforced by the mortgagee then it will create a right of payment in the mortgagee to be fulfilled by the mortgagor. Under the Code a right of payment is termed as a claim under Section 3(6)(a) and a liability or obligation in respect of a claim is termed as debt under Section 3(11). Thus, the obligation of the mortgagor in terms of the mortgage amounts to a debt under the Code and makes the mortgagor the debtor and the mortgagee the creditor. The question which remains is whether the mortgagee would only be a secured creditor under Section 3(30) of the Code or will fall in the more specific category of a financial creditor in terms of Sections 5(7) and 5(8) of the Code.

17.Section 5(7) of the Code defines a financial creditor as follows:

"a person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred"

18.Section 5(8) of the Code defines a financial debt as follows:

> *"a debt along with interest, if any, which is disbursed against the consideration for time value of money and includes-*
>
> a. *Money borrowed against payment of interest;*
>
> b. *Any amount raised by acceptance under any acceptance credit facility or its de-materialized equivalent;*
>
> c. *Any amount raised pursuant to any note purchase facility or the issue of bonds, notes, debentures, loan stock or any similar instrument;*
>
> d. *The amount of any liability in respect of any lease or hire purchase contract which is deemed as a finance or capital lease under the Indian Accounting Standards or such other accounting standards as may be prescribed;*
>
> e. *Receivable sold or discounted other than any receivable sold on non-recourse basis;*
>
> f. *Any amount raised under any other transaction, including, any forward sale or purchase agreement, having the commercial effect of borrowing;*
>
> g. *Any counter-indemnity obligation in respect of a guarantee, indemnity, bond, documentary letter of credit or any other instrument issued by a bank or financial institution;*
>
> h. *The amount of any liability in respect of any of the guarantee or indemnity for any of the items referred to in sub-clauses (a) to (h) of this clause."*

19. The Hon'ble Appellate Tribunal in *Nikhil Mehta & Sons vs. AMR Infrastructure*, [2017] 143 SC L278 interpreted the meaning of financial debt as follows:

> *"The opening words of the definition clause would indicate that a financial debt is a debt along with interest which is disbursed against the consideration for the time value of money and it may include any of the events enumerated in sub-clauses (a) to (i). Therefore, the first essential requirement of financial debt has to be met viz. that the debt is disbursed against the consideration for the time value of money and which may include the events enumerated in various sub-clauses. A Financial Creditor is a person who has right to a financial debt. The key feature of financial transaction as postulated by section 5(8) is its consideration for time value of money. In other words, the legislature has included such financial transactions in the definition of 'Financial debt' which are usually for a sum of money received today to be paid for over a period of time in a single or series of payments in future. It may also be a sum of money invested today to be repaid over a period of time in a single or series of instalments to be paid in future. In*

Black's Law Dictionary (9th edition) the expression 'Time Value' has been defined to mean "the price associated with the length of time that an investor must wait until an investment matures or the related income is earned". In both the cases, the inflows and outflows are distanced by time and there is a compensation for time value of money."

20. Thus, to qualify as financial debt the debt must have been disbursed against time value of money i.e. the transaction should involve compensation to the creditor for the length of time that he is foregoing the use of the amount lent. In the case of a mortgage, if the mortgage money is lent on terms that compensate the mortgagee or the creditor for the time value of money i.e. a price is paid to him for the length of time he waits for the investment to mature then the debt can be called a financial debt and the secured creditor can be categorized as a financial creditor.

21. In the present case the loan amount has been paid by PNB to Vallabh Steels on the term that along with repayment of the principal amount, interest will also be paid as per the rates specified in the sanction letter. Thus, the debt has been disbursed against consideration of time value of money. The

creditor can enforce the mortgage to realize the principal amount plus interest from the mortgagor. Thus, the present transaction between PNB and the CD is a financial debt and PNB is a financial creditor of the Corporate Debtor. The fact that the debt is originally disbursed to Vallabh Steels and not the CD will not act as a bar to the above conclusion, since the definition of Financial debt under Section 5(8) of the Code does not specify or imply that the loan amount has to be disbursed to the Corporate Debtor.

22. The claim filed by PNB should qualify as a claim filed by a financial creditor and it should be added to the list of financial creditors. However, the present CIRP has reached its final stage and the resolution plan, approved by the CoC, has been submitted to this Tribunal for its approval. PNB, in its pleadings has prayed that if the resolution plan is approved by the CoC before its claim gets admitted as financial debt then this Tribunal may direct the revision of the resolution plan to consider the claim of PNB. The resolution applicant JSW has pleaded that in the event that this Tribunal admits the claim of PNB as that of a financial creditor then JSW could not be fastened with or accountable for any additional liability and will be liable only for the amount as mentioned in the resolution plan, which will be distributed amongst all the financial creditors including PNB on a pro rata

basis. Further, if PNB is admitted as a financial creditor and is therefore paid a portion of the amounts allocated to financial creditors on a pro rata basis then consequently the security interest on the mortgaged land will automatically stand extinguished. JSW has further pleaded as follows:

> *"That without prejudice to the terms of the resolution plan and also rights of the Resolution Applicant, in the event that this Hon'ble Tribunal is inclined to consider admitting the claim of the Applicant as a Financial Creditor of the Corporate Debtor, then the Alternative Prayer as sought by the Applicant may be considered. However, if this Hon'ble Tribunal is inclined to not include the Applicant as a Financial Creditor of the Corporate Debtor and is further not inclined to extinguish the security interest then the said security interest qua the lands as mentioned herein below may continue. However, no other liability or obligation can be cast upon the Corporate Debtor…"*

23. In view of the restriction on powers of this Tribunal, we cannot send back the resolution plan for revision; we can either admit or reject it. Rejection of the resolution plan because PNB's claim has not been admitted, which would entail liquidation of CD is unreasonable and unfair, and would defeat the mandate of the Code. Thus, a more appropriate action would be to

continue the mortgage in favour of PNB without casting any additional obligation or liability on the CD. PNB, as such, on date has not claimed any amount in default from the principal debtor, namely Vallabh Steels Ltd. nor has invoked the guarantees offered by the CD in relation to the same. in this regard approval of the resolution plan by this Tribunal will not diminish or enhance the liability of the CD in terms of any agreement/consent as entered into between the CD and PNB. Further, the JSW and PNB are in any case free to negotiate as between themselves in relation to the guarantee given by CD in relation to M/s Vallabh Steels Ltd.

24. Thus, it is directed that the mortgage in favour of PNB and OBC over the properties of CD in village Pawa and village Nandpur, Ludhiana shall be preserved, to do complete justice for all the financial creditors in this process, even though OBC has not filed its claim with the RP.

<u>C.A. – 268/(ND)/2018</u>

25. This application has been filed by the CoC asking the Tribunal for clarifying that the personal guarantees as given for securing the debt of the CD shall not stand extinguished and the same will remain alive and enforceable by the lenders for seeking recovery of the shortfall and direct the

resolution applicant to not create any impediment in invocation of the personal guarantee of the guarantors of CD issued in favour of the lenders.

26. No objections have been raised by any stakeholder to this application. The prayer does not request a substantial alteration to the resolution plan by this Tribunal, but only a clarification regarding the interpretation of certain clauses and appears to be in order. Thus, it is clarified that the personal guarantees as given for securing the debt of the CD shall not stand extinguished and the same will remain alive and enforceable by the lenders for seeking recovery of the shortfall and the resolution applicant should not create any impediment on basis of the resolution plan in invocation of the personal guarantee of the guarantors of CD issued in favour of the lenders. This view is also supported by the recent decision as passed by the Hon'ble Supreme Court in State Bank of India vs. Ramakrishnan & Anr, Civil Appeal No. 3595 of 2018 dated 14.08.2018.

27. This Bench record its satisfaction for granting approval to the resolution plan, subject to the following conditions:

   i. In relation to Cl. IX (1) at page 18 dealing with right to receivables, it is directed that any amounts recovered by the CD would be, before being put to any other use, would be used to pay the balance amount to financial creditors and operational creditors of the CD which has been accepted as haircut to the total amount due to them, under this resolution plan.

ii. In relation to Cl. IX (2) at page 18 dealing with carry forward losses, it is directed that the relief asked for will be allowed subject to the approval of the Income Tax Department of the same.

iii. In relation to Cl. IX (4) at page 18 dealing with proposal relating to subsidiaries, associate companies and joint ventures of the CD and in relation to Cl. 1.7(ii) of Schedule 4 at page 29, the relief asked for will be granted for the joint venture JSW Vallabh Tinplate Private Limited ("JVTPL"), subject to consent of JVTPL to the same, filed through a board resolution.

iv. In relation to Cl. 1.6(ii) of Schedule 4 at page 28, the relief that all notices, assessments, appellate or other proceedings, pending or threatened in relation to the CD will stand terminated and withdrawn and that all consequential liabilities will stand extinguished, will be granted subject to approval of the authorities concerned with the notices, proceedings etc.

v. If there is any deficiency found or, violation committed qua any enactment, statutory rule or regulation, the sanction granted by this Tribunal will not come in the way of action being taken, in accordance with law, against the concerned persons, directors and officials of the CD.

28. Henceforth the moratorium order shall cease to have effect. The resolution professional shall further act upon as prescribed, on approval of the resolution plan to forward the records, to the concerned authorities and to intimate the closure of the insolvency proceedings. Resultantly the case-file is now required to be consigned to records.

-Sd- 19/12/2018
(Dr. V.K. SUBBURAJ)
MEMBER (TECHNICAL)

-Sd- 19/12/18
(R.VARADHARAJAN)
MEMBER(JUDICIAL)

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