JAIPRAKASH ASSOCIATES LIMITED

Ref: JAL:SEC:2024 7th December, 2024

The Manager
Listing Department
BSE Limited
25th Floor, New Trading Ring,
Rotunda Building,
P J Towers, Dalal Street, Fort,
MUMBAI 400 001

The Manager
Listing Department
National Stock Exchange of India Ltd
"Exchange Plaza",
C-1, Block G, Bandra-Kurla Complex,
Bandra (E), Mumbai - 400 051

SCRIP CODE: 532532 ***NAME OF SCRIP: JPASSOCIAT***

Ref: Intimation under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulation 2015.

Dear Sir/Madam,

This is to inform you that the Hon'ble National Company Law Appellate Tribunal (NCLAT), New Delhi Bench has today (6th December, 2024) pronounced its Order on Company Appeal (AT) No. 197 and 199 of 2024 titled Sunil Kumar Sharma, Suspended Board of Directors of Jaiprakash Associates Limited Vs. ICICI Bank Limited & Anr., filed before it against the Order dated 3rd June, 2024 of Hon'ble National Company Law Tribunal (NCLT), Allahabad not approving the Scheme of Arrangement between Jaiprakash Associates Limited, Jaypee Infrastructure Development Limited and Lenders.

A Copy of the order is attached herewith.

You are requested to take the above information on records.

Thanking you.

Yours faithfully,
For JAIPRAKASH ASSOCIATES LIMITED
Som Nath Grover
2024.12.07 21:50:13
+05'30'

(Som Nath Grover)
Vice President & Company Secretary

Encl: As above

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Delhi Office : JA House, 63, Basant Lok, Vasant Vihar, New Delhi-110057 (India)
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JAYPEE GROUP

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) No. 197 of 2024
& I.A. No. 6806 of 2024

In the matter of:

Sunil Kumar Sharma Suspended Board of Director of Jaiprakash Associates Ltd. & Anr. **...Appellants**

Vs.

ICICI Bank Ltd. & Anr. **...Respondents**

For Appellants: **Dr. Abhishek Manu Singhvi, Sr. Advocate and Mr. Abhijeet Sinha, Sr. Advocate with Mr. Sudhir Sharma, Mr. Naman Singh Bagga, Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Mr. Gaurav Rai, Ms. Astha Agarwal, Mr. Aditya Shukla, Ms. Heena Kochar, Ms. Ridhima Mehrotra, Advocates.**

For Respondents: **Mr. Sunil Fernandes, Sr. Advocate with Mr. Vaijayant Paliwal, Mr. Aditya Marwah, Mr. Kirti Gupta, Ms. Rajshree Chaudhary, Advocates for RP.**
Mr. Sanjiv Sen, Sr. Advocate with Ms. Srideepa Bhattacharyya, Ms. Anjali Singh, Mr. Madhav Kanoria, Ms. Neha Shivhare, Mr. Pragyan Mishra and Mr. Prahlad Balaji, Advocates for R2.
Mr. Ankur Mittal, Ms. Yashika Sharma, Ms. Muskan Jain, Advocates for SBI.

Company Appeal (AT) No. 199 of 2024
& I.A. No. 6807 of 2024

In the matter of:

Sunil Kumar Sharma Suspended Board of Director of Jaiprakash Associates Ltd. & Anr. **...Appellants**

Vs.

ICICI Bank Ltd. & Anr. **...Respondents**

For Appellant: **Dr. Abhishek Manu Singhvi, Sr. Advocate and Mr. Abhijeet Sinha, Sr. Advocate with Mr. Sudhir Sharma, Mr. Naman Singh Bagga, Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Mr.**

	Gaurav Rai, Ms. Astha Agarwal, Mr. Aditya Shukla, Ms. Heena Kochar, Ms. Ridhima Mehrotra, Advocates.
For Respondents:	**Mr. Sunil Fernandes, Sr. Advocate with Mr. Vaijayant Paliwal, Mr. Aditya Marwah, Mr. Kirti Gupta, Ms. Rajshree Chaudhary, Advocates for RP.** **Mr. Sanjiv Sen, Sr. Advocate with Ms. Srideepa Bhattacharyya, Ms. Anjali Singh, Mr. Madhav Kanoria, Ms. Neha Shivhare, Mr. Pragyan Mishra and Mr. Prahlad Balaji, Advocates for R2.** **Mr. Ankur Mittal, Ms. Yashika Sharma, Ms. Muskan Jain, Advocates for SBI.**

JUDGMENT
(06th December, 2024)

Ashok Bhushan, J.

These two Appeals by a Suspended Director of the Corporate Debtor-Jaiprakash Associates Limited have been filed challenging the order dated 03.06.2024 passed in IA No.18 of 2024 in CP (CAA) No.19/ALD/2018 and Company Petition (CAA) No.19/ALD/2018, respectively. By separate orders dated 03.06.2024, the NCLT has rejected the second motion petition CP (CAA) No.19/ALD/2018 and has also rejected IA No.18 of 2024 filed by the Appellants for deferment of pronouncement in CP (CAA) No.19/ALD/2018. Appellants aggrieved by the above two orders have filed these two Appeals.

2. Brief facts of the case necessary to be noticed for deciding these Appeals are:-

2.1. The account of the Corporate Debtor- Jaiprakash Associates Limited was declared NPA by the lenders on 31.03.2015. Under the Circular issued by the RBI, the lenders approved a Scheme of Arrangement vide Joint

Lenders Meeting held on 22.06.2017. Under the debt realignment plan, the debt of the Corporate Debtor was trifurcated into three buckets- Bucket-1, Bucket-2A and Bucket-2B. With regard to debt of Bucket-2B, a scheme of arrangement was prepared by Appellants for hiving off its debt of Rs.11,689 Cr. to an SPV. The scheme of arrangement was approved by the Board of Directors of JAL and JIL and on 20.11.2017, Company Application bearing CA No.174 of 2017 was filed before the NCLT Allahabad seeking dispensation of the meeting of the members/creditors under Section 230-232 of the Companies Act, 2013. On 08.01.2018, NCLT passed an order accepting the first motion petition by giving direction regarding service to various authorities, publication in Newspapers and meeting of shareholders and creditors. A Writ Petition was filed in the Hon'ble Supreme Court by homebuyers being W.P (C) No.744 of 2017- ***"Chitra Sharma & Ors. vs. Union of India & Ors."*** in which an interim order was passed on 11.09.2017 by the Hon'ble Supreme Court directing JAL to deposit an amount of Rs.2000 Crore and further directed the JAL not to create any third party rights in its assets without leave of the Court. The RBI filed an application in Writ Petition of Chitra Sharma seeking leave of the Hon'ble Supreme Court for initiating CIRP process against the JAL as per recommendation of the IAC. The Hon'ble Supreme Court on 09.08.2017 delivered a judgment allowing the application of RBI to file an application for CIRP against JAL as per recommendation of the IAC. JAL before the Hon'ble Supreme Court in Writ Petition of Chitra Sharma has also sought a direction with regard to scheme of arrangement filed by JAL. However, the Hon'ble

Supreme Court did not accept the prayers made by JAL. A letter dated 14.08.2017 was written by the RBI directing the ICICI Bank to initiate CIRP against the JAL. After the letter dated 14.08.2017, on 06.09.2018, Section 7 application was filed by the ICICI Bank against the JAL before the NCLT, Allahabad. On 06.09.2018, ICICI Bank filed an intervention application being CA No.2013 of 2018 in the scheme petition. On 23.01.2018, second motion petition was filed by the JAL and JIL before the NCLT. JAL filed Supplementary Affidavit in the scheme petition contending that the Judgment of the Hon'ble Supreme Court in Chitra Sharma dated 09.08.2018 in no manner impact the Second Motion Petition. On 06.09.2019, NCLT passed an order indicating that both Second Motion Petition as well as Section 7 filed by the ICICI Bank will be heard simultaneously. On 12.02.2020, YEIDA cancelled the allotment of entire SEZ land allotted in favour of JAL, which land was proposed to be hived out to SPV for debt in Bucket 2B. JAL filed a Writ Petition No.6049 of 2020 before the Allahabad High Court challenging the order dated 12.02.2020 passed by the YEIDA cancelling the allotment of land. On 25.02.2020, *status quo* order was passed by the High Court subject to deposit of Rs.100 Crores by JAL. JAL deposited the amount of Rs.100 Crores. On 29.09.2022, High Court directed JAL for making further deposit of Rs.100 Crores to YEIDA. On 07.05.2024, the ICICI Bank filed a Supplementary Affidavit in Second Motion Petition. On 07.05.2024, NCLT passed an order allowing CA No.213 of 2018 for intervention filed by the ICICI Bank. NCLT directed soft copy of the Second Motion to be served on the ICICI Bank. On 17.05.2024,

both Second Motion Petition being CA No.19 of 2018 and CA No.2013 of 2018 and Section 7 application were heard and judgment was reserved. On 03.08.2024, Adjudicating Authority passed an order in CP (IB) No.330 (ALD) of 2018 admitting Section 7 application. By an order of the same date, IA No.18 of 2024 filed by the Appellant for deferring the pronouncement was rejected. By order dated 03.06.2024, CA No.19 of 2018, Second Motion Petition was rejected. Aggrieved by the order dated 03.06.2024 rejecting Second Motion Petition as well as order dated 03.06.2024 rejecting CA No.18 of 2024 for deferment of pronouncement have been challenged in these two Appeals as noted above.

3. We have heard Dr. Abhishek Manu Singhvi, Learned Senior Counsel and Shri Abhijeet Sinha, Learned Senior Counsel for the Appellant, Shri Sanjiv Sen, Learned Senior Counsel for the ICICI Bank, Shri Ankur Mittal, Learned Counsel for the SBI and Shri Sunil Fernandes, Learned Senior Counsel for the Resolution Professional.

4. Counsel for the Appellant challenging the order impugned submits that the order of the NCLT dated 03.06.2024 rejecting Second Motion Petition is contrary to the statutory scheme as delineated by Section 230-232 of the Companies Act, 2013. It is submitted that the Scheme of Arrangement was submitted by filing First Motion Petition and after due approval of all the lenders including the ICICI Bank second motion was filed. In the Scheme of Arrangement, consent was granted by the lenders, it cannot be allowed to turnaround and oppose the approval of the Scheme.

The scope of the inquiry under Section 230-232 of the Companies Act, 2013 is very restrictive and the role of the NCLT while scrutinising the scheme is supervisory and peripheral and not appellate. The scope of the NCLT was only to examine as to whether statutory requirements as delineated in Section 230-232 of the Companies Act, 2013 has been met in the Scheme. Only reason given by the Adjudicating Authority as contained in the impugned order is that the allotment of land parcel has been cancelled by YEIDA on 12.02.2020 and since the asset in question is under dispute, viability of the scheme has been prejudiced. Only reason given in the impugned order is contained in paragraphs 15 and 16 which cannot be held to be any sufficient reason for rejecting the Scheme of Arrangement. It is submitted that the Scheme of Arrangement could very well have been approved subject to order passed by the High Court in Writ Petition where cancellation order by YEIDA has been challenged. It is submitted that although Adjudicating Authority has noticed the dispute on account of cancellation of land parcel but failed to notice the order of the Allahabad High Court in Writ Petition No.6049 of 2020 where interim order of *status quo* was passed on 25.02.2020 subject to deposit of Rs.100 Crores. When the interim order of *status quo* has been passed which is still continuing and the JAL continues in possession, the said *status quo* would be relevant factor to be noticed by the NCLT which NCLT failed to notice. It is submitted that the scheme which was approved by all the lenders could not have been rejected on the ground that dispute has arisen with regard to land which was to be hived on to the SPV. It is further submitted that the Adjudicating

Authority in the impugned order has also noticed admission of Section 7 application by separate order dated 03.06.2024 which was wholly irrelevant for deciding the Second Motion Petition. NCLT itself has decided to hear both the matters simultaneously, hence, admission of Section 7 application could not be a reason for rejecting scheme petition. The judgment of Chitra Sharma passed by the Hon'ble Supreme Court has no bearing in the scheme petition. The assertion on the part of the ICICI Bank that the scheme has undergone material adverse changes making it infructuous and unworkable is misplaced. The lenders who have given their consent to the Scheme of Arrangement cannot be allowed to contend that scheme has become unworkable. The lenders interest was completely secured by the land in question of Bucket 2B. The value of underlying asset has also appreciated. Scheme which was viable could not have become unviable. Intervention petition by the ICICI Bank in Second Motion Petition was uncalled for. JAL has not taken any adjournment except two adjournments in the Scheme Petition and matter was not taken on account of various reasons including the COVID-19 and strike of the bar. The contention of Respondent No.1 that they are no more consenting the scheme is patently erroneous. No lenders who have given their consent are entitled to withdraw their consent.

5. Shri Sanjiv Sen, Learned Senior Counsel appearing for the ICICI Bank (lead lender) submits that the consent which was given by the ICICI Bank for the Scheme was a conditional consent which is reflected its letter dated 19.01.2018. The condition as was indicated in the letter having not been

fulfilled by the Appellants, it cannot be said that the ICICI Bank and the lenders have consented to the Scheme. It is submitted that mandatory statutory requirement laid down under the Companies Act have also not been met. Counsel for the Respondent has referred to Section 232 (2)(a) of the Companies Act, 2013. Counsel for the Respondent submits that there is material change which is adverse to the interest of the members and creditors after filing the application of sanction of scheme. Subsequent changes which has adverse effect on the interest of the lenders can very well be looked into at the time of sanctioning of the Scheme. The scheme which was devised on the basis of financial position of the JAL in 2017 is no longer viable. Section 7 application having already initiated against JAL under the direction of the RBI and the Hon'ble Supreme Court the second motion petition deserved rejection on that ground alone. When the material change has occurred subsequent to first motion which is adverse to the interest of the members, secured creditors and public, Court is entitled to take notice while sanctioning the scheme. The scheme could not have been sanctioned on 03.06.2024 since the financial position of JAL has changed. It is submitted that mere fact that Section 7 petition has been admitted against JAL was sufficient ground to reject the Second Motion petition. It is contended that the allotment of land to SPV for debt of Bucket 2B having no more available, it having been cancelled by YEIDA, the foundation of the scheme has been knocked out. The fact that Writ Petition is pending in the Allahabad High Court challenging the cancellation of the land cannot be a reason to ignore cancellation of the land. The dispute which is pending in

the Allahabad High Court even if it is decided may not be final culmination of dispute. The matter may further be agitated by the aggrieved party before the Hon'ble Supreme Court. There being material adverse change with respect to the secured creditors as a land parcel which was transferred to the JIDL and has to be treated as security of the lenders being cancelled, scheme has become unworkable and unviable. The NCLT has rightly refused to sanction the Scheme which has become unviable and unworkable. The Scheme which was proposed to be effective from 01.07.2017 has not yet been effective. The effective date has already been defined in Clause 4.04 and 4.05 of the Scheme. The Scheme cannot be approved. The consent given to the Scheme at the time of moving of first motion cannot act as an estoppel against ICICI Bank.

6. Shri Ankur Mittal, Learned Counsel for the SBI intervener submits that the scheme which was submitted before the NCLT was conditional and has become unviable. There are huge dues of the State Bank of India who had also filed Section 7 application against JAL which was disposed of on account of admission of Section 7 application of the ICICI Bank. Counsel for the SBI adopts the submissions made by Counsel for the ICICI Bank.

7. We have heard Learned Counsel for the parties and perused the record.

8. Adjudicating Authority in the impugned order dated 03.06.2024 while rejecting second motion petition has given two reasons i.e. (i) the asset in

question (which was to be hived off to JIDL for debt of Bucket 2B) has been cancelled by YEIDA, asset in question being under dispute the viability of the scheme has been prejudiced. (ii) Section 7 application namely CP (IB) No.330/ALD/2018 has been admitted by separate order dated 03.06.2024. We will first take the first ground given by the Adjudicating Authority for rejecting the Second Motion Petition.

9. While noticing the facts giving rise to these Appeals, we have noticed the letter issued by the RBI and the order of the Hon'ble Supreme Court in Chitra Sharma (supra). In Writ Petition (Chitra Sharma) filed in the Hon'ble Supreme Court, the Hon'ble Supreme Court vide an interim order dated 11.09.2017 directed JAL to deposit Rs.2000 Crores. It was further directed that if any asset or property to be sold that should be done after obtaining prior approval of the Court. Following is the direction issued by the Hon'ble Supreme Court on 11.09.2017:-

> *"d) JAL which is not a party to the insolvency proceedings, shall deposit a sum of Rs.2,000 crores (Rupees two thousand crores) before this Court on or before 27.10.2017. For the said purpose, if any assets or property of JAL have to be sold, that should be done after obtaining prior approval of this Court. Any person who was a Director or Managing Director of JIL or JAL on the date of the institution of the insolvency proceedings against JIL as well as the present Directors/Managing Director shall also not leave the country without prior permission of this*

> *Court. The foregoing restraint shall not apply to nominee Directors of lending institutions (IDBI/ICICI/SBI):"*

10. In the Writ Petition of Chitra Sharma, RBI has filed an application seeking leave of the Court to file an application for CIRP against JAL as per recommendation of IAC. The Hon'ble Supreme Court by its judgment dated 09.08.2018 allowed the application of RBI granting it permission to file an application of CIRP process against JAL as per recommendation of IAC. Before the Hon'ble Supreme Court one of the prayers made by the Senior Counsel appearing for JAL was that direction be issued to the NCLT Allahabad to decide the application filed before it for sanctioning the scheme of arrangement, propounded pursuant to a master restructuring agreement signed and accepted by the 32 creditors. The said prayer was noticed in paragraph 29 of the judgment, which is as follows:-

> *"29. .....JAL has sought a direction to the NCLT at Allahabad to decide the application filed before it for sanctioning a scheme of arrangement, propounded pursuant to a master restructuring agreement signed and accepted by the 32 creditors. JAL seeks to continue the stay of liquidation proceedings against its deposit of post-dated cheques of Rs 600 crores. JAL also seeks a stay on the direction of this Court allowing the IRP to remain in management."*

The prayer made on behalf of the Appellant was not accepted. In paragraph 30, following was held:-

> "*30. Having carefully considered the proposal submitted on behalf of JAL by Mr FS Nariman, learned senior counsel we are not inclined to accept it. As we shall explain, accepting the proposal submitted on behalf of JAL would cause serious prejudice to the discipline of the IBC and would set at naught the statutory provisions of the statute."*

11. After the above judgment of the Hon'ble Supreme Court dated 09.08.2018, RBI issued direction to the ICICI Bank on 14.08.2018 to file an Insolvency Resolution Process application against JAL as per recommendations of the IAC. Consequently, the ICICI Bank filed an application before the Adjudicating Authority on 07.09.2018. As noted above, the First Motion Petition was moved on 20.11.2017 by JAL and JIL which was allowed on 08.12.2017. By order dated 08.12.2017, meeting of shareholders and creditors of the transferee company was dispensed with. The voting was directed to be taken by postal ballot/ e-voting. After the order dated 08.12.2017, notices were published as required by the statute and Second Motion Petition was filed on 22.01.2018. On 25.01.2018, the NCLT issued various directions for publication of the petition in newspaper which was duly published and Affidavits and reports were filed by concerned entities. When Second Motion Petition was pending, ICICI Bank filed an application CA No.213 of 2018. A supplementary affidavit was filed in CA No.213 of 2018 dated 15.09.2018 by the ICICI Bank bringing on record a letter dated 19.01.2018 which was sent by the ICICI Bank to the JAL in

respect to Scheme of Arrangement. In the letter dated 19.01.2018, the ICICI Bank referred to the order passed by the Hon'ble Supreme Court in Chitra Sharma's case dated 11.09.2017. It was also stated that JAL is required to take requisite approval from the Hon'ble Supreme Court for proceedings with SPV Scheme. The said letter has been referred to and relied by Counsel for the Respondent which was filed along with Supplementary Affidavit by ICICI Bank and is brought on the record of the Appeal which is to the following effect:-

> *"Ref. No: ICICI/0007/MISC/2017-18/1214*
>
> *Date: January 19, 2018*
>
> *To,*
>
> *Jaiprakash Associates Limited,*
> *Sector-128, Noida -201304,*
> *Uttar Pradesh (India)*
>
> ***Subject: Scheme of Arrangement in relation to transfer of residual debt in Jaiprakash Associates Limited to Jaypee Infrastructure Development Limited along with identified real estate assets under the Debt Realignment Plan***
>
> *Dear Sir,*
>
> *We refer to your notice dated December 19, 2017 issued to us pursuant to the order dated 8th December 2017 of the Hon'ble National Company Law Tribunal, Allahabad Bench at Allahabad ("NCLT"), seeking our approval in respect of the scheme of arrangement inter-alios between Jaiprakash Associates Limited ("JAL") and Jaypee Infrastructure Development Limited ("JIDL") filed with the NCLT in relation*

to transfer of residual debt in JAL to JOIL along with identified real estate assets ("SPV Scheme") envisaged under the Debt Realignment Plan (as defined below).

As you are aware, JAL was under financial stress and a debt realignment plan was agreed among various lenders over multiple meetings of Joint Lenders Forum ("JLF", comprising 36 lenders of JAL) from March, 2016 to June, 2017 which involved: (A) sale of cement asset (which were previously charged to the lenders) to Ultratech Cement Limited ("UTCL"), (B) restructuring of sustainable debt remaining in JAL and (C) transfer of residual debt in JAL pursuant to the SPV Scheme; and the same was approved by the JLF in its meetings dated May 18, 2017 and June 22, 2017 ("Debt Realignment Plan"). It is pertinent to note that Debt Realignment Plan is not only aimed at protecting lenders' interest but also at reviving JAL's financial stress through reduction of liabilities towards third parties. thereby reviving the business operations of JAL and making it viable for future servicing of liabilities. In this regard, it may be noted that the first phase which relates to sale of 21.2 MTPA cement capacity belonging to the Jaypee group to UTCL has been completed on June 29, 2017 (by virtue of which approximately 40% of the outstanding debt liabilities of JAL and one of its subsidiaries stood repaid/transferred) and the remaining two phases under the Debt Realignment Plan is underway.

3 Under phase II of the Debt Realignment Plan, JLF lenders' debt aggregating to 42.01 billion (Rupees Forty Two Billion and Ten Million) was to be restructured and an additional working capital term loan of ₹ 5.00 billion (Rupees Six Billion) was sanctioned to JAL towards inter-alia its real

estate division. Accordingly, a working capital term loan agreement dated July 28, 2017 (WCTL FA", which expression shall include any amendments and accessions made thereto from time to time) and a Master Restructuring Agreement dated October 31, 2017 ("MRA", which expression shall include any amendments and accessions made thereto from time to time) were executed between JAL and the respective lenders mentioned in WCTL FA and MRA towards the implementation of the aforesaid restructuring. As per the terms of WCTL FA and MRA, JAL has inter-alia the obligation to create security interest over its movable and immovable fixed assets, both present and future (which are already secured to the lenders for the existing loans that have restructured pursuant to the WCTL FA and MRA). However, it may be noted that JAL is yet to complete the creation and perfection of security interest to the satisfaction of lenders pursuant to the terms of the WCTL FA and MRA.

4. In relation to phase III of Debt Realignment Plan, which involved transfer of residual debt in JAL to a special purpose vehicle of JAL along with identified real estate assets, we have now been served with the notice seeking our approval on the SPV Scheme.

5. As you are also aware, amidst the progress in the Debt Realignment Plan. various orders were passed by the Hon'ble Supreme Court against JAL. in the matter of Chitra Sharma & Ors. v. Union of India & Ors (Writ Petition Civil No. 744 of 2017) in relation to the insolvency proceedings of Jaypee Infratech Limited, a subsidiary of JAL. We further draw your attention to directions (d) and (v) and of the Supreme Court Orders dated 11-09-2017 and 10-01-2018

respectively, the relevant extracts of which are provided below against the respective dates:

(i) September 11, 2017:

"JAL which is not a party to the insolvency proceedings, shall deposit a sum of Rs. 2,000 crores (Rupees two thousand crores) before this Court on or before 27.10.2017. For the said purpose, if any assets or property of JAL have to be sold, that should be done after obtaining prior approval of this Court. Any person who was a Director of Managing Director of JIL or JAL on the date of the institution of the insolvency proceedings against JIL as well as the present Directors/Managing Director shall also not leave the country without prior permission of this Court. The foregoing restraint shall not apply 10 nominee Directors of lending institutions (IDBI/CICI/SBI);"

(II) January 10, 2018:

"The earlier order of injuncting JAL to create any kind of third party interest in the assets is reiterated."

6. A conjoint reading of the aforesaid two orders clarifies the intention of the Hon'ble Supreme Court that, without its prior permission, JAL cannot transfer and/or create any kind of third party interest over its assets till such time JAL has complied with the orders of the Hon'ble Supreme Court directing JAL to deposit a sum of 20.00 billion (Rupees Twenty Billion). Accordingly, JAL is required to take requisite approval from the Hon'ble Supreme Court for (a) creating security interest under the MRA and WCTL FA as stipulated therein and (b) proceeding with the SPV Scheme under the Debt Realignment Plan, as the same may

otherwise construed to be violative of the aforesaid two Orders of the Supreme Court.

7. In light of the above, please note that while we have accorded our in principle approval on the SPV Scheme through postal ballot form dated January 19, 2018, pursuant to your notice, we request you to (i) approach the Hon'ble Supreme Court for seeking necessary orders for permitting JAL to (a) fulfil its obligations including creation of security interest for the benefit of its lenders under and in relation to the MRA, WCTL FA and (b) proceed with the SPV Scheme, pursuant to the Debt Realignment Plan and (ii) produce this letter before the NCLT prior to NCLT issuing its order sanctioning the SPV Scheme.

Yours Sincerely,

For ICICI Bank Limited (Lead Bank for fenders of JAL)"

12. The above letter of the ICICI Bank also has clearly flagged the direction of the Hon'ble Supreme Court. The fact of filing of Section 7 application on 07.09.2018 was also brought before the NCLT. As noted above, NCLT has passed an order dated 06.02.2019 that both Second Motion Petition and Section 7 petition shall be heard together. Section 7 petition was admitted by the Adjudicating Authority by separate order passed on the same date i.e. 03.06.2024 which was referred to and relied in paragraph 17 of the impugned order of the Adjudicating Authority. The submission of the Counsel for the Appellant is that filing of Section 7 petition by the ICICI Bank or its admission under Section 7 has no relevance

nor can preclude consideration and hearing of Second Motion Petition which was pending since before. On the other hand, Counsel for the Respondent submitted that the filing of Section 7 application against JAL under the permission of the Hon'ble Supreme Court and directions of the RBI is valid reason for not sanctioning the Second Motion Petition.

13. Before we proceed further to consider the above ground, it is relevant to notice the judgments relied by Counsel for the parties on the scope and ambit of power of the NCLT while sanctioning a scheme under Section 230-232 of the Companies Act, 2013.

14. Counsel for the Appellant submitted that the only remit which is prescribed by the Companies Act to NCLT is to examine as to whether all statutory requirements as contained in Section 230-232 of the Companies Act 2013 are fulfilled. Counsel for the Appellant has placed reliance on the judgment of the Hon'ble Supreme Court in ***"Miheer H. Mafatlal vs. Mafatlal Industries Ltd.- (1997) 1 SCC 579"***. Counsel for the Appellant relies on the proposition as laid down by the Hon'ble Supreme Court in paragraph 29 of the judgment. The Hon'ble Supreme Court in ***"Miheer H. Mafatlal"*** laid down that the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. It was held that the Court certainly would not act as a court of appeal and sit in judgment over the informed view of the parties concerned to the compromise as the same would be in

the realm of corporate and commercial wisdom of the parties concerned. Following was laid down by the Hon'ble Supreme Court in paragraph 29:-

> *"**29.** However further question remains whether the Court has jurisdiction like an appellate authority to minutely scrutinise the scheme and to arrive at an independent conclusion whether the scheme should be permitted to go through or not when the majority of the creditors or members or their respective classes have approved the scheme as required by Section 391 sub-section (2). On this aspect the nature of compromise or arrangement between the company and the creditors and members has to be kept in view. It is the commercial wisdom of the parties to the scheme who have taken an informed decision about the usefulness and propriety of the scheme by supporting it by the requisite majority vote that has to be kept in view by the Court. The Court certainly would not act as a court of appeal and sit in judgment over the informed view of the parties concerned to the compromise as the same would be in the realm of corporate and commercial wisdom of the parties concerned. The Court has neither the expertise nor the jurisdiction to delve deep into the commercial wisdom exercised by the creditors and members of the company who have ratified the Scheme by the requisite majority. Consequently the Company Court's jurisdiction to that extent is peripheral and supervisory and not appellate. The Court acts like an umpire in a game of cricket who has to see that both the teams play their game according to the rules and do not overstep the*

limits. But subject to that how best the game is to be played is left to the players and not to the umpire. The supervisory jurisdiction of the Company Court can also be culled out from the provisions of Section 392 of the Act which reads as under:

"392. (1) Where a High Court makes an order under Section 391 sanctioning a compromise or an arrangement in respect of a company, it—

(a) shall have power to supervise the carrying out of the compromise or arrangement; and

(b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement.

(2) If the Court aforesaid is satisfied that a compromise or arrangement sanctioned under Section 391 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the company, make an order winding up the company, and such an order shall be deemed to be an order made under Section 433 of this Act.

(3) The provisions of this section shall, so far as may be, also apply to a company in respect of which an order has been made before the commencement of this Act under Section 153 of the Indian Companies Act, 1913 (7 of 1913), sanctioning a compromise or an arrangement."

> *Of course this section deals with post-sanction supervision. But the said provision itself clearly earmarks the field in which the sanction of the Court operates. It is obvious that the supervisor cannot ever be treated as the author or a policy-maker. Consequently the propriety and the merits of the compromise or arrangement have to be judged by the parties who as sui juris with their open eyes and fully informed about the pros and cons of the scheme arrive at their own reasoned judgment and agree to be bound by such compromise or arrangement. The Court cannot, therefore, undertake the exercise of scrutinising the scheme placed for its sanction with a view to finding out whether a better scheme could have been adopted by the parties. This exercise remains only for the parties and is in the realm of commercial democracy permeating the activities of the concerned creditors and members of the company who in their best commercial and economic interest by majority agree to give green signal to such a compromise or arrangement. The aforesaid statutory scheme which is clearly discernible from the relevant provisions of the Act, as seen above, has been subjected to a series of decisions of different High Courts and this Court as well as by the courts in England which had also occasion to consider schemes under pari materia English Company Law."*

15. In the same judgment Hon'ble Supreme Court has also observed that the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not

contrary to any provisions of law and it does not violate any public policy. It was held that it cannot be said that the Court has to act merely as a rubber stamp and must almost automatically put its seal of approval on such a scheme. In paragraph 28 of the judgment, following has been stated:-

> *"28……..Before sanctioning such a scheme even though approved by a majority of the concerned creditors or members the Court has to be satisfied that the company or any other person moving such an application for sanction under sub-section (2) of Section 391 has disclosed all the relevant matters mentioned in the proviso to sub-section (2) of that section. So far as the meetings of the creditors or members, or their respective classes for whom the Scheme is proposed are concerned, it is enjoined by Section 391(1)(a) that the requisite information as contemplated by the said provision is also required to be placed for consideration of the voters concerned so that the parties concerned before whom the scheme is placed for voting can take an informed and objective decision whether to vote for the scheme or against it. On a conjoint reading of the relevant provisions of Sections 391 and 393 it becomes at once clear that the Company Court which is called upon to sanction such a scheme has not merely to go by the ipse dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and*

reasonable and is not contrary to any provisions of law and it does not violate any public policy. This is implicit in the very concept of compromise or arrangement which is required to receive the imprimatur of a court of law. No court of law would ever countenance any scheme of compromise or arrangement arrived at between the parties and which might be supported by the requisite majority if the Court finds that it is an unconscionable or an illegal scheme or is otherwise unfair or unjust to the class of shareholders or creditors for whom it is meant. Consequently it cannot be said that a Company Court before whom an application is moved for sanctioning such a scheme which might have got the requisite majority support of the creditors or members or any class of them for whom the scheme is mooted by the company concerned, has to act merely as a rubber stamp and must almost automatically put its seal of approval on such a scheme. It is trite to say that once the scheme gets sanctioned by the Court it would bind even the dissenting minority shareholders or creditors. Therefore, the fairness of the scheme qua them also has to be kept in view by the Company Court while putting its seal of approval on the scheme concerned placed for its sanction. It is, of course, true that so far as the Company Court is concerned as per the statutory provisions of Sections 391 and 393 of the Act the question of voidability of the scheme will have to be judged subject to the rider that a scheme sanctioned by majority will remain binding to a dissenting minority of creditors or members, as the

> *case may be, even though they have not consented to such a scheme and to that extent absence of their consent will have no effect on the scheme. It can be postulated that even in case of such a scheme of compromise and arrangement put up for sanction of a Company Court it will have to be seen whether the proposed scheme is lawful and just and fair to the whole class of creditors or members including the dissenting minority to whom it is offered for approval and which has been approved by such class of persons with requisite majority vote."*

16. Counsel for the Appellant has also relied on the judgment of the Hon'ble Supreme Court in ***"Marshall Sons & Co. (India) Ltd. vs. Income Tax Officer- (1997) 2 SCC 302"*** that the scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. It was held that the order of court sanctioning the scheme may have taken place subsequent to the date of amalgamation/transfer. Amalgamation will be the date as provided in the scheme. Following was laid down in paragraph 14 of the judgment: -

> *"**14.** Every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place. The scheme concerned herein does so provide viz. 1-1-1982. It is true that while sanctioning the scheme, it is open to the Court to modify the said date and prescribe such date of amalgamation/transfer as it thinks appropriate in the facts and circumstances of the case.*

If the Court so specifies a date, there is little doubt that such date would be the date of amalgamation/date of transfer. But where the Court does not prescribe any specific date but merely sanctions the scheme presented to it — as has happened in this case — it should follow that the date of amalgamation/date of transfer is the date specified in the scheme as "the transfer date". It cannot be otherwise. It must be remembered that before applying to the Court under Section 391(1), a scheme has to be framed and such scheme has to contain a date of amalgamation/transfer. The proceedings before the Court may take some time; indeed, they are bound to take some time because several steps provided by Sections 391 to 394-A and the relevant Rules have to be followed and complied with. During the period the proceedings are pending before the Court, both the amalgamating units, i.e., the Transferor Company and the Transferee Company may carry on business, as has happened in this case but normally provision is made for this aspect also in the scheme of amalgamation. In the scheme before us, clause 6(b) does expressly provide that with effect from the transfer date, the Transferor Company (Subsidiary Company) shall be deemed to have carried on the business for and on behalf of the Transferee Company (Holding Company) with all attendant consequences. It is equally relevant to notice that the courts have not only sanctioned the scheme in this case but have also not specified any other date as the date of transfer/amalgamation. In such a

situation, it would not be reasonable to say that the scheme of amalgamation takes effect on and from the date of the order sanctioning the scheme. We are, therefore, of the opinion that the notices issued by the Income Tax Officer (impugned in the writ petition) were not warranted in law. The business carried on by the Transferor Company (Subsidiary Company) should be deemed to have been carried on for and on behalf of the Transferee Company. This is the necessary and the logical consequence of the Court sanctioning the scheme of amalgamation as presented to it. The order of the Court sanctioning the scheme, the filing of the certified copies of the orders of the Court before the Registrar of Companies, the allotment of shares etc. may have all taken place subsequent to the date of amalgamation/transfer, yet the date of amalgamation in the circumstances of this case would be 1-1-1982. This is also the ratio of the decision of the Privy Council in Raghubar Dayal v. Bank of Upper India Ltd. [AIR 1919 PC 9 : 46 IA 135 : 23 CWN 697]"

17. In the above judgment, the Hon'ble Supreme Court has also referred to an earlier judgment of the Privy Council in "***Raghubar Dayal v. Bank of Upper India Ltd.- AIR 1919 PC 9"*** in which judgment also Privy Council while considering Section 153 of the Indian Companies Act, 1913 has taken the view that proceeding of the meeting under which compromise or arrangement was sanctioned by majority is binding provided the scheme does not fail to be subsequently sanctioned. Pricy Council in the said judgment laid down following:-

"The question is whether under sec. 153 (which is a section in familiar language, practically identical with the corresponding section of the English Companies Act) the creditor was bound. The Court of the Judicial Commissioner, agreeing with the Judge who heard the case in the first instance, says that it was so, and it is obvious that it is convenient that it should be so. Otherwise, with the uncertainty as to what the ultimate rule of the Court may be, when a decision has finally been obtained, the door would be open for a race between creditors and persons concerned in administering the affairs of the bank. The Court of the Judicial Commissioner put it very well in its judgment when it said this:—

"If it had been the intention of the Legislature that such an agreement should not be binding until the arrangement had been sanctioned by the Court, instead of the words 'if sanctioned by the Court' the words 'when it has been sanctioned by the Court' would ordinarily have been used. The agreement becomes binding from the date when it is arrived at, subject to subsequent sanction by the Court. If that sanction be refused, the agreement is without effect. But it is not the case that the agreement is to take effect from the date of sanction. It takes effect from the date when it is made. Such is our interpretation of the words of the section."

When you look at the latter part of Sect. 153 it appears that this is so, because the words there are that if the compro- mise or arrangement, which is the

compromise or arrangement sanctioned by a majority of the meeting, is passed, then the compromise or arrangement, if sanctioned by the Court, is to be binding. It is the proceeding of the meeting that is to be binding, provided only that it does not fail to be subsequently sanctioned. Therefore, not only convenience, but the literal language of the section, is in favour of the view to which the Court below adhered, and their Lordships will humbly advise His Majesty that that view should be affirmed, and that the appeal should be dismissed with costs."

18. The judgment of the Hon'ble Supreme Court in ***"Marshall Sons & Co. (India) Ltd."*** and "***Raghubar Dayal"*** (supra), as noted above, are on the question that the scheme of arrangement approved in a meeting are binding and shall take effect on the date as provided in the scheme even if sanctioned subsequently. In the present case, the above issues are not attracted since in the present case the scheme has not been sanctioned by the NCLT and the question of date of effect of the scheme is not relevant. The counsel for the Appellant has also referred to the judgment of the Hon'ble Supreme Court in ***"Arun Kumar Jagatramka vs. Jindal Steel and Power Limited and Anr.- (2017) 7 SCC 474"*** in support of his submission that there are several modes of revival of the corporate debtor and one of the mode of revival is contemplated modalities provided in Section 230 of the Companies Act, 2013. Counsel for the Appellant has referred to paragraphs 68 and 70 of the judgment which provides as follows:-

*"**68.** Now, it is in this backdrop that it becomes necessary to revisit, in the context of the above discussion the three modes in which a revival is contemplated under the provisions of the IBC. The first of those modes of revival is in the form of CIRP elucidated in the provisions of Chapter II IBC. The second mode is where the corporate debtor or its business is sold as a going concern within the purview of clauses (e) and (f) of Regulation 32. The third is when a revival is contemplated through the modalities provided in Section 230 of the 2013 Act. A scheme of compromise or arrangement under Section 230, in the context of a company which is in liquidation under the IBC, follows upon an order under Section 33 and the appointment of a liquidator under Section 34. While there is no direct recognition of the provisions of Section 230 of the 2013 Act in the IBC, a decision was rendered by NCLAT on 27-2-2019 in Y. Shivram Prasad v. S. Dhanapal [Y. Shivram Prasad v. S. Dhanapal, 2019 SCC OnLine NCLAT 172] (herein referred to as "Y. Shivram Prasad"). NCLATin the course of its decision observed that during the liquidation process the steps which are required to be taken by the liquidator include a compromise or arrangement in terms of Section 230 of the 2013 Act, so as to ensure the revival and continuance of the corporate debtor by protecting it from its management and from "a death by liquidation". The decision by NCLAT took note of the fact that while passing the order under Section 230, the adjudicating authority would perform a dual role : one as the adjudicating*

authority in the matter of liquidation under the IBC and the other as a tribunal for passing an order under Section 230 of the 2013 Act. Following the decision of NCLAT, an amendment was made on 25-7-2019 to the Liquidation Process Regulations by IBBI so as to refer to the process envisaged under Section 230 of the 2013 Act.

70. *Undoubtedly, Section 230 of the 2013 Act is wider in its ambit in the sense that it is not confined only to a company in liquidation or to corporate debtor which is being wound up under Chapter III IBC. Obviously, therefore, the rigours of the IBC will not apply to proceedings under Section 230 of the 2013 Act where the scheme of compromise or arrangement proposed is in relation to an entity which is not the subject of a proceeding under the IBC. But, when, as in the present case, the process of invoking the provisions of Section 230 of the 2013 Act traces its origin or, as it may be described, the trigger to the liquidation proceedings which have been initiated under the IBC, it becomes necessary to read both sets of provisions in harmony. A harmonious construction between the two statutes [G.P. Singh, Principles of Statutory Interpretation (1st Edn., Lexis Nexis 2015) which notes that:"Further, these principles [referring to the principle of harmonious construction] have also been applied in resolving a conflict between two different Acts" and providing the following examples — "Jogendra Lal Saha v. State of Bihar, 1991 Supp (2) SCC 654 (Sections 82 and 83 of the Forest Act, 1927 are special provisions which prevail over the*

provisions in the Sale of Goods Act); Jasbir Singh v. Vipin Kumar Jaggi, (2001) 8 SCC 289 : 2001 SCC (Cri) 1525 (Section 64 of the NDPS Act will prevail over Section 307 CrPC, 1974 as it is a special provision in a Special Act which is also later); P.V. Hemalatha v. Kattamkandi Puthiya Maliackal Saheeda, (2002) 5 SCC 548 [conflict between Section 23 of the Travancore Cochin High Court Act and Section 98(3) of the Civil Procedure Code resolved by holding the latter to be special law]; Talcher Municipality v. Talcher Regulated Market Committee, (2004) 6 SCC 178 [Section 4(4) of the Orissa Agricultural Produce Markets Act, 1956 was held to prevail over Section 295 of the Orissa Municipalities Act, 1950 as the former was a special provision and also started with a non obstante clause]; and Iridium (India) Telecom Ltd. v. Motorola Inc., (2005) 2 SCC 145 (Letters Patent and rules made under it constitute special law for the High Court concerned and are not displaced by the general provisions of the Civil Procedure Code)".”] would ensure that while on the one hand a scheme of compromise or arrangement under Section 230 is being pursued, this takes place in a manner which is consistent with the underlying principles of the IBC because the scheme is proposed in respect of an entity which is undergoing liquidation under Chapter III IBC. As such, the company has to be protected from its management and a corporate death. It would lead to a manifest absurdity if the very persons who are ineligible for submitting a resolution plan, participating in the sale of assets of the company

> *in liquidation or participating in the sale of the corporate debtor as a "going concern", are somehow permitted to propose a compromise or arrangement under Section 230 of the 2013 Act."*

19. In the case of ***"Arun Kumar Jagatramka"*** *(supra)*, promoter of the corporate debtor has submitted a Resolution Plan. It was put to vote on meeting of the CoC scheduled on 23.11.2017 to 24.11.2017. IBC was amended by Insolvency and Bankruptcy Code (Amendment Act) 2018 w.e.f. 23.11.2017 providing a list of persons who are ineligible to be Resolution Applicant. The question arose as to whether Arun Kumar was eligible for Resolution Plan. The question was also considered whether an applicant who is not eligible under Section 29A of the IBC is eligible in liquidation proceedings. In the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations 2016 there was no provision for consideration of scheme of compromise and arrangement. Regulation was subsequently amended by adding Regulation 2A for providing the scheme of compromise and arrangement in the liquidation proceeding. The Hon'ble Supreme Court in the above judgment has also held that even in the liquidation, the persons who are ineligible under Section 29A are also not eligible to submit a compromise scheme. Paragraph 71 of the judgment is as follows:-

> *"**71.** The IBC has made a provision for ineligibility under Section 29-A which operates during the course of CIRP. A similar provision is engrafted in Section 35(1)(f) which forms a part of the liquidation provisions contained in Chapter III as well. In the context of the*

statutory linkage provided by the provisions of Section 230 of the 2013 Act with Chapter III IBC, where a scheme is proposed of a company which is in liquidation under the IBC, it would be far-fetched to hold that the ineligibilities which attach under Section 35(1)(f) read with Section 29-A would not apply when Section 230 is sought to be invoked. Such an interpretation would result in defeating the provisions of the IBC and must be eschewed."

20. The judgment of the Hon'ble Supreme Court in ***"Arun Kumar Jagatramka"*** *(supra)* does not help the Appellant in the present case to buttress his submissions.

21. Counsel for the Respondent has placed reliance on the judgment of the Madras High Court in ***"Subhiksha Trading Services Ltd.- 2010 (6) CTC 348"***. In the above case, Madras High Court had occasion to consider the provisions of Sections 391 and 392 of the Companies Act, 1956. In the above case, after receiving consent of majority of creditors, petition was filed under Sections 391 to 394 of the Companies Act, 1956. When the application came for consideration, objections were raised by several creditors even those creditors who have earlier consented to the scheme. In the above reference, Madras High Court had to examine the nature of jurisdiction which was to be exercised by the Court while sanctioning a scheme. Madras High Court has also referred to and relied on judgment of the Hon'ble Supreme Court in ***"Hindustan Lever Employees' Union vs.***

Hindustan Lever Limited- 1995 (83) Com. Cases 30". In paragraph 123 of the judgment, following was observed:-

> *"**123.** The objection that the latest financial position is not available, has, therefore, to be viewed in the context of "public interest" and in the context of the question whether the Scheme is just, fair and reasonable. What constitutes public interest and the role played by the principle of public interest in considering a Scheme, was considered by the Supreme Court in Hindustan Lever Employees' Union v. Hindustan Lever Limited., 1995 (83) Com. Cases 30. It was held therein as follows:*
>
> *"What requires, however thoughtful consideration, is whether the Company Court has applied its mind to the public interest involved in the merger. In this regard the Indian law is a departure from the English law and it enjoins a duty on the Court to examine objectively and carefully if the merger was not violative of public interest. No such provision exists in the English law. What would be public interest cannot be put in a strait-jacket. It is a dynamic concept which keeps on changing. It has been explained in Black's Law Dictionary, as "something in which the public, the community at large, has some pecuniary interest, or some interest by which their legal rights or liabilities are affected. It does not mean anything so narrow as mere curiosity, whereas the interest of the particular locality which may be affected by the letters in question. Interest shared by citizens generally in affairs of local, State or National Government." It is an*

expression of wide amplitude. It may have different connotation and understanding when used in service law and yet a different meaning in Criminal law or Civil law and its share may be entirely different in Company law. It's perspective may change when merger is of two Indian Companies. But when it is with a subsidiary of a foreign Company the consideration may be entirely different. It is not the interest of the shareholders or the employees only but the interest of the society which may have to be examined. And a Scheme valid and good may yet be bad if it is against public interest".

22. After referring to the judgment of other High Courts, following was laid down in paragraphs 129 and 130:-

*"**129.** But, I do not think that the role of the Company Court examining a Scheme is merely akin to the role of an Appeal Examiner in the Registry of a Court. This is why, the Supreme Court pointed out in **Hindustan Lever** that the Court has to examine the Scheme objectively and carefully, to see if the merger was not violative of public interest. The emphasis in **Hindustan Lever** was on the interest of the Society at large and not merely the interest of the shareholders and the employees.*

***130.** Therefore, the Scheme for which the stamp of approval is sought, has to be examined from the point of view of public interest. This is why, some of the objectors have contended that the proposed Scheme is prejudicial to public interest and hence should not be sanctioned.*

Therefore, let me now turn on to the issue of public interest."

23. Madras High Court after considering the objections came to the conclusion that the scheme is not just, fair and reasonable is prejudicial to public interest. In paragraph 146 ultimately the High Court has laid down following:-

*"**146.** Therefore, in the light of the above, I am of the view that the proposed Scheme is not just, fair and reasonable, but is prejudicial to public interest. The revival plan submitted by the Petitioners, makes it obvious that the proposed Scheme is not financially viable, since it is structured on many ifs and buts and presumptions and surmises. Therefore, the Court cannot permit consciously, the transfusion of the blood of several members of the public, to a patient who has suffered multiple organ failure and various other ailments and whose chances of survival depends only on miracles. Hence, both these Petitions are dismissed. There will be no order as to costs."*

24. The judgments of the Hon'ble Supreme Court and the Madras High Court as noted above, clearly laid down the scope and ambit of examination of a scheme for merger and amalgamation when it come for sanction. It is true that the first inquiry under Section 230(1) has to confine as to whether the procedure prescribed in sub-sections (1) and (2) of Section 232 has been complied with. As noted above, the Hon'ble Supreme Court in ***"Miheer H. Mafatlal"*** (supra) has laid down that the Company Court which is called

upon to sanction such a scheme has not merely to go by the ipse dixit of the majority of the shareholders or creditors or their respective classes who might have voted in favour of the scheme by requisite majority but the Court has to consider the pros and cons of the scheme with a view to finding out whether the scheme is fair, just and reasonable and is not contrary to any provisions of law and it does not violate any public policy. The court has not to act merely as a rubber stamp as was held in the above case.

25. The present is a case where financial distress of the JAL has been flagged both by the Hon'ble Supreme Court as well as the RBI as noted above. In paragraph 41 of Chitra Sharma judgment, the Hon'ble Supreme Court has noted the financial distress of the JAL and JIL. Hon'ble Supreme Court noticed in the above paragraph that the account of the JAL was declared NPA on 31.03.2015. Paragraph 41 of the judgment is as follows:-

> *"41 JAL was classified under the SMA - Il category (demands overdue for more than 60 days) by banks as early as on 3 October 2014 and as an NPA since 31 March 2015. We agree with the submission of the RBI that any further delay in resolution would adversely impact a viable resolution being found for JAL and JIL. The facts which have emerged before the Court from the application filed by the RBI clearly indicate the financial distress of JAL and JIL, The apprehensions of the home-buyers in regard to their financial incapacity is borne out by RBI, as a responsible institution has urged before the Court. The IBC has been enacted in the form of a comprehensive*

bankruptcy law and with a specific legislative intent. With the amendment brought about by the Ordinance promulgated in June 2018, the interests of the home buyers have been sought to be safeguarded. Accordingly, we accede to the request made on behalf of the RBI to allow it to follow the recommendations of the IAC to initiate a CIRP against JAL under the IBC."

26. IAC after examining the account has recommended for initiation of CIRP against the JAL who was included in the list. The observations of the Hon'ble Supreme Court noticing the IAC recommendation with regard to JAL has already been made in paragraph 40 of the judgment of Chitra Sharma which we have already extracted above. JAL which was in financial distress since before 30.06.2017, the subsequent events which include the initiation of CIRP against JAL under the directions of the RBI and ultimately admission of Section 7 application filed by the ICICI Bank on 03.06.2024 are relevant factors while sanctioning a scheme of compromise and arrangement which was submitted on 20.11.2017. We are not persuaded to accept the submission of the Counsel for the Appellant that the admission of Section 7 application against JAL is not relevant and the same shall have no bearing on the scheme of arrangement which was submitted by JAL. Counsel for the ICICI Bank has relied on judgment of this Tribunal in Company Appeal (AT) No.899 of 2024- ***"Grand Developers Pvt. Ltd. vs. Nitin Batra & Ors."***. In the above case, application for initiation of Section 7 application was filed by the corporate debtor. In section 7 application, corporate debtor filed various objections which was rejected by the Adjudicating Authority and Company

Appeal filed against the said order was also dismissed. The Appellant- Grand Developers Pvt. Ltd. filed an intervention application in Section 7 application claiming that it is allottee of 105 units. It was contended by the Appellant that the corporate debtor has already filed a scheme under Section 230 of the Companies Act before the Adjudicating Authority by filing a Company Petition for consideration and approval of the scheme under Section 230, hence, initiation of CIRP under Section 7 shall be prejudicial to the scheme. The said submissions were noticed in paragraph 4 of the judgment which is as follows:-

> *"4. Learned Counsel for the Appellant challenging the order contends that the Appellants are holders of 105 units and they have filed their intervention petition seeking intervention in the company petition because in event Section 7 application is admitted against the corporate debtor, the interest of the applicant/appellant shall be prejudiced. Appellant is hopeful that the corporate debtor shall be able to complete the project. The corporate debtor has already filed a Scheme under Section 230 of the Companies Act, 2013 before the Adjudicating Authority by filing a Company Petition for consideration and approval of Scheme under Section 230 of the Companies Act which company petition is still pending. It is submitted that in event the Scheme is approved, construction shall be carried out by the corporate debtor as per the scheme. Hence, initiation of CIRP under Section 7 shall be prejudicial to the scheme which has now been proposed."*

27. This Tribunal ultimately affirmed the rejection of application for intervention filed by Grand Developers Pvt. Ltd. and arguments raised by the Appellant on the basis of scheme under Section 230 submitted by the Corporate Debtor was also noticed. Argument on the basis of scheme under Section 230 was also rejected. It was held by this Tribunal that filing of petition under Section 230 cannot be a ground to permit the proceeding under Section 7 to be halted. In paragraph 16 of the judgment, following was observed: -

> *"16. The Company Petition which has been filed in the year 2024 by Respondent No.6- M/s. Mist Direct Sales Pvt. Ltd., Counsel for the Respondent No.2 has produced the order dated 05.04.2024 of the Adjudicating Authority where petitioners have been asked to clarify various aspects. The petition under Section 230 for scheme by the corporate debtor is independent proceeding but filing of the said petition cannot be a ground to not permit the proceeding under Section 7 which are being halted and obstructed by one or other attempts by corporate debtor and other applicants as noted above. It is further noticed that the case of the corporate debtor as noticed from the record, it is clear that the RERA registration of the project has already cancelled and there is a dispute of title as claimed by the corporate debtor regarding the land. We, thus, do not find any substance in the submission of the counsel appearing for Respondent No.6 to accepts the*

submission that Section 7 application be further not proceeded with till application under Section 230 of the Companies Act filed by Respondent No.6 be finalised."

28. Counsel for the Appellant contended that the said judgment is distinguishable since in the said case various obstructions were created by the Corporate Debtor in Section 7 application, hence, the above observation was made by this Tribunal. Be that as it may, we have already noticed the facts of the said case. However, the submission that Section 7 application be further not proceeded since the application under Section 230 is pending was specifically noted and rejected.

29. Madras High Court in 'Subhiksha Trading' (supra) has held that even if after the filing of the application for sanctioning of the scheme, any material changes adverse to the interests of the members and the creditors had occurred, the court should not shut its eyes and just go by the latest financial position as on the date of filing of the application. In paragraph 119 of the judgment of 'Subhiksha Trading', following was held by Madras High Court:-

*"**119.** But it does not mean that if after the filing of the Application for sanction, it is brought to the notice of the Court that any material change adverse to the interests of the members and the creditors had occurred, the Court should shut its eyes and just go by the latest financial position as on the date of filing of the Application. One of the contours of the*

jurisdiction of the Company Court, as held in ***Miheer H. Mafatlal*** *is that the Scheme as a whole should be just, fair and reasonable. Moreover, the reference to the element of "public interest", made under both the provisos to Section 394(1) makes it clear that the inquiry conducted by the Court need not necessarily be confined to the latest financial position as on the date of filing of the Application. To put it differently, an Applicant (including the Transferor and the Transferee Companies) would have satisfied the requirement of disclosure of all material facts, if he had filed the latest financial position and the Latest Auditor's Report on the accounts of the Company as on the date of filing the Application. But the role of the Court does not end with a mere scrutiny of such material, especially when a material change had occurred subsequently, adverse to the interests of the members, secured creditors or the public."*

30. The financial distress of the JAL as was noticed by the Hon'ble Supreme Court in its judgment dated 09.08.2018, directions of the RBI dated 14.08.2018 which direction was in exercise of statutory jurisdiction under Section 35AA of the Banking Regulations Act, 1949, ultimate initiation of Section 7 proceeding and its admission under Section 7 are all factors which have taken place subsequent to filing of scheme petition and at the time of sanction of consideration of second motion. NCLT was fully entitled to look into and consider as to whether in view of above subsequent events, the scheme deserves to be sanctioned or not.

31. The Hon'ble Supreme Court in ***"Kedar nath Agrawal (Dead) and Anr. Vs. Dhanraji Devi (Dead) By Lrs. And Anr.- (2004) 8 SCC 76"*** has held that it is the power and duty of the court to consider the change circumstances to take into account subsequent event. Following was laid down in paragraph 16 of the judgment:

> *"**16.** In our opinion, by not taking into account the subsequent event, the High Court has committed an error of law and also an error of jurisdiction. In our judgment, the law is well settled on the point, and it is this : the basic rule is that the rights of the parties should be determined on the basis of the date of institution of the suit or proceeding and the suit/action should be tried at all stages on the cause of action as it existed at the commencement of the suit/action. This, however, does not mean that events happening after institution of a suit/proceeding, cannot be considered at all. It is the power and duty of the court to consider changed circumstances. A court of law may take into account subsequent events inter alia in the following circumstances:*
> *(i) the relief claimed originally has by reason of subsequent change of circumstances become inappropriate; or*
> *(ii) it is necessary to take notice of subsequent events in order to shorten litigation; or*
> *(iii) it is necessary to do so in order to do complete justice between the parties.*

(Re Shikharchand Jain v. Digamber Jain Praband Karini Sabha [(1974) 1 SCC 675 : (1974) 3 SCR 101], SCC p. 681, para 10.)"

32. We, thus, are of the considered opinion that the events leading to filing of Section 7 application against the JAL which culminated into admission of Section 7 application were relevant factors which weighed with the NCLT not to approve the second motion petition. We, thus, are of the view that the second reason given by the NCLT in not approving the scheme is valid reason and fully sustainable.

33. Now we come to the first reason given by the NCLT as noticed in paragraph 16 of the judgment i.e. cancellation of land which was allotted to the JAL by the YEIDA by order dated 12.02.2020. Under the scheme of arrangement, land parcels which were primary asset of the SDZ Real Estate Development undertaking was to be demerged and transferred to the transferee company. The primary assets of the demerged undertaking comprise of land admeasuring 950.35 acres. NCLT in paragraph 3 of the order has noted clause 1 of the scheme of arrangement, which is as follows:-

"3. That the salient features of the Scheme of Arrangement are summarized below:
(i) Transfer and vesting: Upon the Scheme coming into effect but with effect from the Appointed Date, the SDZ Real Estate Development Undertaking [Demerged Undertaking] as defined and described in clauses 2.01(d) and (j) read with clause 4.01 (ii) of the Scheme, shall stand demerged from the

Transferor Company and such Demerged Undertaking, in its entirety, shall simultaneously stand transferred to and vested in the Transferee Company, as a going concern on a slump exchange basis, without any further act, instrument or deed and pursuant to the provisions of Sections 230-232 of the Act, and all the properties, estate, assets, rights, title, interest, authorities and privileges and with all liabilities and obligations, which arise out of the activities and operations and pertain to or are part of the said Undertaking, so as to become, as and from the Appointed Date, the business and properties, estate, assets, rights, title, interest, authorities and privileges and all liabilities and obligations etc. of the Transferee Company, subject to such specific provisions made in the Scheme as may be applicable. The Scheme, however, provides that the liability for payment of all installments towards the premium and external development cost of the land forming part of the Demerged Undertaking and interest thereon, if any, which might have become due prior to the appointed date or which may become due after the appointed date, shall continue to be the liability of the Transferor Company and will not form part of the Transferred Liabilities.

The details of land parcels, being the primary assets of the SDZ Real Estate Development Undertaking and its liabilities as on the appointed date, which will stand transferred to the Transferee Company in

terms of the Scheme, are given in ANNEXURE - 11 hereto.

As on the appointed date, the primary assets of the demerged undertaking comprise of land admeasuring 950.35 acres. The fair value of above assets was assessed by M/s. Jones LangLasalle Property Consultants (India) Private Limited (JLL), a Valuer engaged at the instance of the Joint Lenders' Forum of JAL, as Rs. 11,898.04 crores vide their Report dated 28th July, 2016. This valuation has been referred to an considered by M/s Bansi S. Mehta & Company, Independent Valuer, in their Valuation Report dated 07.10.2017. As against the above, the aggregate liabilities of the Demerged Undertaking as on the appointed date have been Rs. 11,833.55 Crores."

34. The YEIDA who had granted JAL 1000 hectares of land for establishing SDZ focus sports on its primary activities committed default, hence, by order dated 12.02.2020, YEIDA cancelled the said allotment. It is matter of record that the land parcel which was cancelled was the land which was to be transferred to the transferee company for taking care of the debt covered in Bucket 2B. A Writ Petition No. 6049 of 2020 was filed by the JAL challenging the order dated 12.02.2020 before the Allahabad High Court. On 25.02.2020, Allahabad High Court passed an interim order directing the parties to maintain *status quo* subject to payment. It is useful to extract relevant part of the interim order as contained in paragraph 11 (i) and (ii) of the order dated 25.02.2020, which is as follows:-

> *"11. After addressing the Court for sometime, learned counsel for both parties have agreed to the conditions stated below, subject whereto parties may observe status quo. We therefore pass order in the following manner:*
> *(i) Petitioner-M/S Jai Prakash Associates Ltd. shall deposit Rs.100 crores with respondent-2 within one month but in two parts. Rs.50 crores shall be paid by 10th of March, 2020 and another Rs.50 crores shall be paid by 25th of March, 2020.*
> *(ii) Subject to payment of aforesaid amount, parties shall maintain status quo as on the date, in respect of property in dispute."*

35. Counsel for the Appellant contended that although NCLT has noted the cancellation of land parcel but has failed to notice the order of *status quo* passed by the High Court on 25.02.2020. It is further contended that subsequently High Court further directed for deposit of Rs.100 Crores more which was complied by the JAL. It is submitted that the JAL is in possession of assets and NCLT could have sanctioned the scheme subject to orders passed by the High Court. It is submitted that the hearing in the Writ Petition has been concluded and order was reserved on 11.09.2024. Counsel for the ICICI Bank on the other hand submits that the fact remains that as on the date when second motion of the scheme of arrangement came for consideration the land was not available to be demerged into the transferee company. The land have been cancelled and the matter is pending before the Allahabad High Court for adjudication, Counsel for the Respondent

submits that by cancellation of the land very basis of scheme has been knocked out and there being issue pertaining to validity of the cancellation of the land which is pending adjudication before the High Court, the scheme was no more viable to be approved.

36. The sequence of the events and facts as noted above indicate that the land parcel which was allotted to the JAL and which was subject matter of land parcel was to be demerged from the JAL and transferred to transferee company is subject to challenge raised by the JAL in the Writ Petition before the Allahabad High Court. Thus, we are of the view that the fact of the cancellation of the land, was also relevant factor, it is true that the filing of the Writ Petition before the Allahabad High Court and orders passed therein were all brought on the record by the parties including the interim order dated 25.02.2020. In paragraph 10 of the impugned order, NCLT has noticed the interim order. Paragraph 10 of the order of the NCLT is as follows:-

> *"10. The Hon'ble High Court vide order dated 25.02.2020 directed both parties to maintain the status quo, with JAL required to deposit Rs. 100 crores in installments. Following subsequent court orders dated February 8, 2021, and March 1, 2021, JAL complied with the deposit requirement along with the interest demanded by YEIDA."*

37. The NCLT was thus, well aware of the filing of the Writ Petition by JAL and interim order passed by the High Court, hence, the submission of the

Appellant cannot be accepted that NCLT has not taken cognizance of interim order dated 25.02.2020 passed by the Allahabad High Court granting *status quo*. Taking into consideration the facts of the present case and submission as noted above, we are of the view that the first reason given by the NCLT that the assets in question is under dispute (litigation), the viability of the scheme has been prejudiced cannot be said to be unsustainable. Thus, the first reason given by the NCLT was also valid reason for not approving the scheme.

38. Counsel for the ICICI Bank has also raised various other submissions including the consent given by the lenders was only conditional consent as was communicated by letter dated 19.01.2018 and all financial statements of the JAL were not brought on the record. We having upheld the order of the NCLT not approving the scheme for two reasons as noted above, we see no necessity to consider the above submissions advanced by Counsel for the ICICI Bank.

39. In view of our reasons and conclusions as indicated above, we do not find any infirmity in the order of the NCLT dated 03.06.2024 not approving the second motion petition i.e. CA 19/ALD/2018.

40. Now coming to the order passed by the NCLT dated 03.06.2024 on IA No.18 of 2024 filed by the JAL for deferring the pronouncement of the order in Company Petition CA 19/ALD/2018. We do not find any infirmity in the order of the NCLT rejecting the said IA. In the order dated 03.06.2024

passed in IA No.18 of 2024, the NCLT has noted both the grounds for praying deferment of the pronouncement in paragraph 3 of the order. Financial Creditor opposed the application and the submission of the Financial Creditor on the above two grounds have also been noticed in paragraphs 4 and 5 of the order, which is as follows:-

> *"4. Notice in the present application was issued to the Financial Creditor. The Ld. Counsel representing the Financial Creditor vehemently opposed the present application for deferment of the order to be passed in CP No.330 of 2018 on the ground that in so far as the Writ Petition No.6049 of 2020 is concerned, the same has remained pending and there is nothing new about the dispute in the aforesaid writ petition which has come to the light after the order in CP No.330 of 2018 has been reserved. Therefore, according to him, it is not in view of any new fact which could justify seeking adjournment of the pronouncement of the order.*
> *5. He further states that as regards to the OTS, he has instructions that the present application be not entertained at this stage as the orders have already been reserved."*

41. The NCLT thus after considering the grounds raised by JAL in IA No.18 of 2024 for deferment of the pronouncement has rightly not acceded the prayers of the Appellant. We do not find any infirmity in the order dated 03.06.2024 passed by the NCLT in IA No.18 of 2024.

42. In result, both the Appeals are dismissed.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

[Arun Baroka]
Member (Technical)

New Delhi
Anjali