(2007) 12 AP CK 0002

Andhra Pradesh High Court

Case No: Company Petition No. 100 of 2007 in Company Application No. 1160 of 2007 in Company Application No. 747 of 2007

In Re: SJK Steel Plant Limited — APPELLANT

Vs

RESPONDENT

Date of Decision: Dec. 14, 2007

Acts Referred:

- Companies (Court) Rules, 1959 - Rule 85
- Companies Act, 1956 - Section 100, 101, 102, 103, 104

Citation: (2008) 143 CompCas 161

Hon'ble Judges: V.V.S. Rao, J

Bench: Single Bench

Judgement

V.V.S. Rao, J.

This company petition filed by M/s. SJK Steel Plant Limited under Sections 100, 391 and 392 of the Companies Act, 1956 (the Act, for brevity), seeks sanction of the Court to the Scheme of Compromise/Arrangement proposed by the petitioner with their shareholders.

On 16th March 1993, the petitioner company was incorporated as Sujana Metal India Limited, as per Certificate of Incorporation. Thereafter, the name of petitioner company was changed as Tadipatri Metal India Limited, which was again changed as SJK Steel Corporation Limited, and again as SJK Steel Plant Limited (the present name of the company). The present authorized share capital of the petitioner is at Rs. 1000,00,00,000/- (Thousand crore only) divided into 50,00,00,000 (fifty crores) equity shares of Rs. 10/- each and 5,00,00,000 preference shares of Rs. 100/- each. These are issued, subscribed and paid-up to the extent indicated in the petition. The main objects of the petitioner company are to produce, manufacture, purchase, refine, import, export, sell and to deal in naturally occurring ores and agglomerated iron ores, sponge iron, pig iron, grey iron, alloy iron, ductile iron, SG iron, malleable

iron and special iron and steel in all forms and/or by-products thereof, etc., as mentioned in the affidavit annexed to this petition.

2. The petitioner proposed a scheme of arrangement with their secured creditors and shareholders. The Board of Directors of the petitioner company in their meeting held on 21.12.2006 unanimously approved the Scheme of Compromise/Arrangement between the petitioner and their shareholders. In pursuance thereof, the petitioner filed an application, being C.A. No. 747 of 2007, wherein this Court by order dated 19.04.2007 appointed Sri M.S. Rama Chandra Rao, Advocate, as Chairperson to convene the meeting of the equity shareholders, preference shareholders and the secured creditors of the petitioner company at its Registered Office, after giving individual notices and publication. The Chairperson having conducted meeting, filed his report before the Court stating that no quorum was present at the meeting, and therefore, the petitioner filed C.A. No. 1160 of 2007 seeking fresh directions as to convening, holding and conducting of meetings of creditors and shareholders. This Court in the said application by order dated 27.07.2007 directed Chairperson, appointed earlier, to convene meeting at the Registered Office of the petitioner company and to file a report thereof.

3. The Chairperson, after conducting the meeting, filed his report before Court stating that the proposed modified Scheme of Compromise/ Arrangement has been approved by 100% of the equity shareholders, 96.90% of the secured creditors and 100% of the preference shareholders present at the meeting in person or through proxy or through corporate representatives. Pursuant thereto, the Director of the petitioner company filed the present company petition praying this Court to sanction the scheme of arrangement with their shareholders. This Court on 13.09.2007 while admitting petition, issued notice to the Central Government, and directed the petitioner to publish notice of hearing of company petition in two newspapers, namely, Deccan Chronicle and Vaartha. This has been complied with.

4. On behalf of the Central Government, the RoC filed an affidavit on 11.10.2007 stating that as part of arrangement between the Secured Creditors and the company, Term loan to the extent of Rs. 6.00 crores will be converted into equity at par, which further provides for buy back of such equity shares allotted to the secured creditors by M/s. Kalyani Steels as per buy back agreement entered with secured creditors, and it is submitted that since the petitioner company is a public company, the equity shares issued by the company are having privilege of free transferability, but in this case a condition has been stipulated that secured creditors shall transfer their shares to M/s. Kalyani Steels in terms of buy back arrangement. Hence free transferability of the shares of the said company has been restricted. It is further stated that in second part of the scheme in chapter B, there is a clause, which is against proviso (a) of Section 80(1) of the Act. As per arrangement the loan will be considered only as contingent liability, which is also having clause of waiver of the fund if the term loan is fully repaid by the company to the secured

creditors. The preference shares can be redeemed only in the manner prescribed under the abovementioned proviso otherwise the company has to comply with requirement of proviso (d) of the said section. It is further averred that 50% of the existing equity capital aggregating to Rs. 1,87,35,91,000/- shall be converted into 0.1% non cumulative redeemable preference shares (NCRPS) to be redeemed after entire secured creditors due is repaid as per the scheme, that the entire secured creditors will be repaid only in the financial year 2028. Thus, repayment period starts in 2028 or thereafter, which is beyond maximum time limit of 20 years prescribed. Such clause is contrary to provisions of Section 80(5A) of Companies Act.

5. In reply to affidavit filed by RoC, petitioner filed an affidavit disputing validity of objections raised by RoC. The petitioner contends that although petitioner company is a closely held limited company, it is not a listed company, and can, under the circumstances, restrict free marketability of shares and as such there is no bar under the Act. As per the terms of the scheme, the preference shares are not being redeemed but are being converted into loan, and this has been done after convening meeting of the preference shareholders in pursuance of order dated 27.07.2007 in C.A. No. 1160 of 2007.

6. In the instant case, as already noted supra, the proposed scheme of arrangement, was unanimously approved by 100% of equity shareholders, 96.90% of the secured creditors and 100% of the preference shareholders present at the meeting in person or through proxy or through corporate representatives. When the shareholders, in their wisdom, thought that the proposed scheme of arrangement is fair and reasonable for them, it is not for this Court to go into the pros and cons thereof and balance them. Suffice it to say that the proposed scheme of compromise/arrangement, having been approved by the shareholders, this Court has to approve proposed scheme of arrangement, as approved by the shareholders of the company, unless it contravenes any law or provisions of law or intended to defeat interest of stakeholders by fraud and misrepresentation.

7. Before considering four objections of central Government, for a proper understanding, it has to be observed that the object of the scheme of arrangement proposed between secured creditors of the company and equitable/preferential shareholders of the company is to make the business of the company financially viable by restructuring the term loans, working capital loans and equity/preferential shares. The salient features of scheme are as below.

I. TERM LOAN: The arrangement with secured creditors, who have given term loans aggregating Rs. 6,373,449,246/- (Rupees six thousand three hundred seventy three million four hundred forty nine thousand two hundred and forty six only) envisages repayment of 50% of the Term Loan (TL-I) with interest at 9% per annum in 48 quarterly instalments commencing from 01.4.2008 on ballooning basis i.e., 5% each year from 2008-09 to 2012-13; 10% each year from 2013-14 to 2016-17; 12% each year from 2017-18 to 2018-19; and 11% for 2019-2020. Nextly it envisages

conversion of TL-I to the extent of Rs. 60,000,000/- (Rupees sixty million only) at par after de-rating of existing equity as per the scheme and allotting equity to secured creditors on pro-rata basis. If the secured creditors are not willing to take equity, it shall be governed by a special provision in the scheme. Such a provision postulates that M/s. Kalyani Steels Limited shall enter into buy-back agreement with the secured creditors for buy-back of equity shares held by them or as and when called upon by secured creditors to do so, any time after three years from "cut off date" at a price, which should give yield of 14% per annum or market price, whichever is higher. In the event of M/s. Kalyani Steels Limited not honouring obligation secured creditors shall have the right to dispose off shares through the market.

The Balance Term Loan of Rs. 3,126,724,623/- (Rupees three thousand one hundred twenty six million seven hundred twenty four thousand six hundred twenty three only), (TL-II), shall carry interest at 1% per annum payable monthly in 68 quarterly instalments commencing from 0.1.4.2011 on ballooning basis, namely, 2% each year from 2011-12 to 2017-18; 3% each year from 2018-19 to 2019-20; and at 10% each year from 2020-21 to 2027-28.

The rate of interest accruing on TL-I and TL-II and further interest/liquidated damages and interest on defaulted payments shall be paid from time to time, as per the scheme.

II. Funded Interest Term Loans (FITL): FITL aggregating Rs. 6,561,346,549/- (Rupees six thousand five hundred sixty one million three hundred forty six thousand five hundred forty nine only) as on cut off date shall be treated as 0% FITL-II (referred to as contingent debt). This shall be repayable in 10 annual instalments commencing from financial year 2028-29 but if the TL-I is repaid as stipulated supra, the contingent debt shall stand waived on proportionate basis to the repayment of TL-I subject to individual lenders having right to adjust the amount being waived as per their convenience within over all period.

III. Working Capital Terms Loan (WCTL): The company has an outstanding WCTL of Rs. 543,516,384/- (Rupees five hundred forty three million five hundred sixteen thousand three hundred and eighty four only). The scheme provides for restructuring the same. 50% of WCTL amounting to Rs. 271,758,192/- (Rupees two seventy one million seven hundred fifty eight thousand one hundred ninety two only) shall carry interest at 1% per annum payable monthly in 68 quarterly instalments commencing from 01.4.2011 on ballooning basis.

COMPROMISE/ARRANGEMENT WITH EQUITY AND PREFERENCE SHAREHOLDERS:

(A) 50% of the Existing Equity Capital aggregating Rs. 1,873,591,000/- (Rupees one thousand eight hundred seventy three million five hundred ninety one thousand only) shall be converted into 0.1% Non-Cumulative Redeemable Preference Shares (NCRPS) to be redeemed after entire Secured Creditors dues are repaid as per this scheme

(B) Face Value of the balance Existing Equity Capital of Rs. 936,795,500/- (Rupees nine hundred thirty six million seven hundred ninety five thousand five hundred only) shall be reduced to Rs. 299,774,560/- (Rupees two hundred ninety nine million seven hundred seventy four thousand five hundred sixty only)by transferring an amount of Rs. 637,020,940/- (Rupees six hundred thirty seven million twenty thousand nine hundred forty only) to Securities Premium Account. The utilization of the Securities Premium Account shall be with the prior approval of the majority of the Secured Creditors.

Upon the effective date and in consideration of aforesaid de-rating of existing equity capital, the existing equity shares, shall without further act, application or deed, be deemed to have been cancelled and in lieu thereof for every 100 existing equity shares held by the members of the company, the company shall allot 50 (fifty) - 0.1% Non-Cumulative Redeemable Preference Shares of Rs. 10/- each and 16 (Sixteen) Equity Shares of Rs. 10/- each.

(a) The new Equity and Preference Shares to be issues and allotted in terms hereof will be subject to the Memorandum and Articles of Association of the Company.

(b) The Existing Share Certificate(s) held by the Shareholders of the Company, shall be required to be surrendered to the Company and in lieu thereof the Company shall deliver new Equity and Preference Share Certificate(s).

(c) The Existing Equity Shares held in electronic form shall stand automatically cancelled and the requisite number of new Equity and Preference Shares shall be issued in the same electronic form by the Company.

Existing 12% Cumulative Redeemable Preference Share Capital aggregating Rs. 610,344,900/- (Rupees six hundred ten million three hundred forty four thousand nine hundred only) plus accumulated dividend thereon as on Cut Off Date shall be treated as 0% FITL-II and shall be referred as Contingent Debt. The Contingent Debt shall be repayable in 10 annual instalments commencing from FY 2028-29. However, in case the Company effects repayment of TL-I on stipulated due dates, the Contingent Debt shall stand waived on proportionate basis to the repayment of TL-I subject to individual lenders having right to adjust the amount being waived as per their convenience within the overall period.

8. Insofar as Compromise/Arrangement with Equity and Preference Shareholders is concerned, the scheme proposes to give effect to it as integral part of the scheme itself without any separate act, application, petition or deed as required u/s 101 of the Act. The same does not involve either diminution or any liability in respect of unpaid share capital or payment to any shareholder of any paid up share capital and the order of the Court sanctioning the scheme shall be deemed to be an order u/s 102 of the Act. The company shall pass a special resolution u/s 100 of the Act confirming rejection of existing equity and preferential share capital.

9. The central Government opposes the scheme inter alia on the ground that the scheme in ways more than one is contrary to law especially Section 81(a) and 81(d) of the Act. A scheme of arrangement which is in contravention of law cannot be sanctioned by Court. Per contra, learned Counsel for petitioner company submits that the powers conferred on the Court under Sections 100 and 392 of the Act are wide enough to sanction a scheme of arrangement between the company on one side and secured creditors and shareholders on the other side. The power is intended to protect the interest of these categories of persons and in a given case where the secured creditors and shareholders unanimously accept and agree to the scheme in the meeting convened as ordered by this Court, the objections on the ground of contravention or breach of provisions of the Act, notwithstanding the scheme can be sanctioned by the Court. Learned Counsel placed reliance in a number of reported decisions.

10. The preliminary question is whether a scheme of arrangement proposed by the company cannot be sanctioned u/s 391 and 392 read with Section 100 of the Act. In the opinion of this Court, the question is no more res integra by reason of the decision of Supreme Court in Miheer H. Mafatlal Vs. Mafatlal Industries Ltd., (hereinafter referred to, as Mafatlal case).

11. In PSI Data Systems Limited, In re (1999) 98 Comp. Cas 1 (Kerala), dealing with the question whether there was any violation of Section 80(1) of the Act in the Scheme of Arrangement, it was held.

The provisions contained in section 80(1) are to protect the preferential shareholders and their interests from any unilateral action of the company and the equity shareholders. When the company unilaterally, without the participation of the preferential shareholders, decided to redeem their stake, naturally, it shall be in terms of Section 80(1) of the Companies Act and not otherwise. An arrangement u/s 80(1) shall be without the participation, knowledge and consent of the preferential shareholders. In this case, the meeting of the preferential shareholders was held and all of them including the equity shareholders and the secured creditors have consented for the arrangement. The preferential shareholders who are if at all adversely affected, have no objection in the arrangement proposed by the company. In such circumstances, it is not to the prejudicial interest of such shareholders but it is as consented to by them. Therefore, there is no reason to withhold the sanction in terms of Section 391(2) of the Companies Act.

12. In Himachal Telematics Ltd., In re (1996) 86 Comp. Cas 325 (Delhi) a question arose whether a scheme inconsistent with the provisions of the Act can be sanctioned or not u/s 394(1) of the Act. The Delhi High Court held that Section 42 of the Act, which deals with process of incorporation and matters inconsistent thereto as well as Memorandum of Association and Articles of Association, cannot be said to have any effect on the powers of the Court under Sections 391, 392 or 394 of the Act. When the scheme of amalgamation was approved by the shareholders and

creditors and the Official Liquidator also filed an affidavit that the affairs of the Company are not conducted in the manner prejudicial to the shareholders or prejudicial to the public interest, the scheme cannot be withheld on the ground that it is hit by Sections 42 and 77 of the Act.

13. In S.E.B.I v. Sterlite Industries (India) Limited (2003) 113 Comp. Cas 273 a Division Bench of the Bombay High Court considered, inter alia, the question whether the Company Court has power to grant reorganization scheme u/s 391 read with Sections 100 - 104 of the Act empowering the Company to buy back the shares from the shareholders. A question arose as to whether the scheme sanctioned by the Company Court seemingly in contravention of the law can be justified. It was held therein as under.

It is well settled that u/s 391 of the Companies Act, the court is invested with very wide powers to approve or sanction any scheme of amalgamation, arrangement, compromise or reconstruction. The court has power to sanction all matters which for their effectuation require a special procedure to be followed under the Companies Act. The only exception to this is the special procedure to be followed u/s 101 for reduction of capital since Rule 85 of the Companies (Court) Rules, 1959, specifically enjoins the following of a special procedure prescribed for reduction of share capital.

14. In T.C.I. Industries Limited, In Re (2004) 118 Comp. Cas 373 this Court laid down that while exercising powers under Sections 391 and 394 of the Act the Court cannot sit in appeal over the decision arrived at by the shareholders or the secured creditors or the unsecured creditors, not scheme can be minutely examined whether the proposed scheme as approved by the shareholders should be sanctioned or not.

15. The ratio in the decisions referred to herein above is that unless a company resorts to an unilateral action detrimental to equity/ preferential shareholders, nothing prevents the Court from sanctioning the scheme of arrangement u/s 391 of the Act. None of the decisions lay down that the Court can sanction a scheme of arrangement even when such a scheme contravenes the provisions of Companies Act or in breach of procedure contemplated by the Act. This position is well settled by reason of the decision of Supreme Court in Mafatlal Case.

16. In Mafatlal Case, scheme of amalgamation between Mafatlal Industries Limited (MIL) and Mafatlal Fine Spinning Limited (MFL) was sanctioned by a learned Single Judge of Gujarat High Court. While doing so, learned Single Judge overruled objections of Miheer H. Mafatlal (Miheer, for brevity). Miheer then filed an appeal before Division Bench. The appeal was dismissed against which by special leave he filed an appeal before Supreme Court. Four submissions were made in support of appeal. These were: (1) MIL did not disclose the interest of the directors in the explanatory statement supporting the scheme and consequently the shareholders

were misled; (2) the scheme when unfair to the minority shareholders represented by Miheer, ought not to have been sanctioned by the Court; (3) the scheme is otherwise unfair to the equity shareholders as the exchange ratio of equity shares of transferor and transferee companies was ex facie unreasonable and unfair; and (4) Miheer represents distinct category of equity shareholders and therefore a separate meeting ought to have been convened by the company Court. These four submissions were considered by Supreme Court. A reference was made to Hindustan Lever Employees'' Union v. Hindustan Level Ltd. 1995 (1) SCC 499 :AIR 1994 SCW 4701, wherein it was held that a company Court does not exercise appellate jurisdiction while considering a scheme of arrangement for amalgamation nor the Court can ascertain with mathematical accuracy if the determination is satisfied arithmetical test. It was also observed therein that broad and general principles in any compromise or settlement should be kept in mind while examining scheme of arrangement. Their Lordships also considered other decisions and summarized the following principles.

1. The sanctioning court has to see to it that all the requisite statutory procedure for supporting such a scheme has been complied with and that the requisite meetings as contemplated by Section 391(1)(a) have been held.

2. That the scheme put up for sanction of the court is backed up by the requisite majority vote as required by section 391(2).

3. That the concerned meetings of the creditors or members or any class of them had the relevant material to enable the voters to arrive at an informed decision for approving the scheme in question. That the majority decision of the concerned class of voters is just and fair to the class as a whole so as to legitimately bind even the dissenting members of that class.

4. That all the necessary material indicated by Section 391(1)(a) is placed before the voters at the concerned meetings as contemplated by Section 391(1).

5. That all the requisite material contemplated by the proviso to Sub-section (2) of Section 391 of the Act is placed before the court by the concerned applicant seeking sanction for such a scheme and the court gets satisfied about the same.

6. That the proposed scheme of compromise and arrangement is not found to be violative of any provision of law and is not contrary to public policy. For ascertaining the real purpose underlying the scheme with a veil to be satisfied on this aspect. The court, if necessary, can pierce the view of apparent corporate purpose underlying the scheme and can judiciously X-ray the same.

7. That the company court has also to satisfy itself that members or class of members or creditors or class of creditors, as the case may be, were action bona fide and in good faith and were not coercing the minority in order to promote any interest adverse to that of the latter comprising the same class whom they

purported to represent.

8. That the scheme as a whole is also found to be just, fair and reasonable from the point of view of the prudent men of business taking a commercial decision beneficial of the class represented by them for whom the scheme is meant.

9. Once the aforesaid broad parameters about the requirement of a scheme for getting sanction of the court are found to have been met, the court will have no further jurisdiction to sit in appeal over the commercial wisdom of the majority of the class of persons who with their open eyes have given their approval to the scheme even if in the view of the court there could be a better scheme for the company and its members or creditors for whom the scheme is framed. The court cannot refuse to sanction such a scheme on that ground as it would otherwise amount to the court exercising appellate jurisdiction over the scheme rather than its supervisory jurisdiction.

(emphasis supplied)

17. Principle No. 6 is to the effect that a scheme of compromise and arrangement which is in violation of any provision of law cannot be sanctioned and the Court has to first satisfy itself that any scheme of arrangement does not contravene any law or such compromise is not entered into in breach of any law. Therefore the objections of Central Government have to be considered in the light of the decision of Supreme Court in Mafatlal Case.

In Re Objection No. 1:

18. The first objection of the central Government is that conversion of preference shares with accumulated dividend thereon into FITL and waiver of preference shares on proportionate basis on repayment of term loan, is contrary to Section 80(1)(a) of the Act. Learned Counsel for Central Government submits that as per Section 80(1)(a) of the Act, preference shares shall be redeemed out of the profit or even fresh issue of shares and they cannot be converted into FITL and they cannot be waived. The submission is without any basis. Section 80 of the Act deals with power of the company to issue redeemable preference shares. When preference shares are issued, it is not always necessary that they shall have to be redeemed. Sub-section (1) of Section 80 of the Act clearly provides that, "such preference shares are liable to be redeemed", at the option of the company. The proviso (a) to Sub-section (1) of Section 80, lays down modalities in case preference shares are redeemed. Nowhere Section 80 prohibits conversion of preference shares into a loan. It is nobody''s case that preference shares shall be redeemed on repayment of term loan No. 1. Indeed learned Counsel for petitioner submits that preference shares are not being redeemed but are being converted into FITL and the term loan availed by the company shall stand waived on repayment of term loan No. 1. He also submits that preference capital is not waived and its nature is changed to a loan. Therefore the objection of the Central Government cannot be sustained.

19. In Re Objection No. 2:

It is submitted by learned Counsel for Central Government that the term loan extended by secured creditors to an extent of Rs. 6,00,00,000/-is being converted into equity with condition to the effect that such shares shall be transferred to M/s. Kalyani Steels after a period of three years and thus privilege of free transferability of shares in a public limited company is restricted which is not permissible in law. Per contra, learned Counsel for other side submits that the term loan of secured creditors being converted into equity capital is not a restrictive allotment. It is only preemption right which would not in any manner bar transferability of equity shares. It is pointed out petitioner company is an unlisted company and therefore new allottees would not be in a position to transfer in the free market. This Court finds force in the submission of the learned Counsel for petitioner. It is admitted position in law that when equity capital of a company is not offered to public and such company shares are not listed, there is always restriction on the transfer of shares by members. Such restriction can operate either by way of a lock in period in case such company offers shares to the public or transferability being permitted subject to approval of the company. In this case secured creditors agreed to partly convert the term loan into equity capital and also agreed to sell such equity shares to M/s. Kalyani Steels. They are also given right to sell shares in the market in case M/s. Kalyani Steels goes back on its obligation. The condition in the scheme of arrangement was also agreed to by the secured creditors in the meeting convened by chairperson appointed by this Court. Therefore there cannot be any serious objection nor such clause violates any provision of law.

20. In Re Objection No. 3:

Subsection (5A) of Section 80 of the Act reads as below.

(5A) Notwithstanding anything contained in this Act, no company limited by shares shall, after the commencement of the Companies (Amendment) Act, 1988, issue any preference share which is irredeemable or is redeemable after the expiry of a period of twenty years from the date of its issue.

21. The above provision has overriding effect. As per this, after commencement of Companies (Amendment) Act, 1996, a company limited by shares shall not issue any preference shares redeemable after a period of twenty years from the date of issue. While placing reliance on this provision, learned Counsel for Central Government submits that Chapter-B of the Scheme of arrangement is contrary to Section 80(5A) of the Act. Insofar as the same provides for redemption of non-cumulative redeemable preference shares (NCRPS) after entire loans for secured creditors are repaid as per the scheme. The objection is raised with reference to Clause-A of Chapter-B which reads as below.

50% of the Existing Equity Capital aggregating Rs. 1,873,591,000/- (Rupees One Thousand Eight Hundred Seventy Three Million Five Hundred Ninety One Thousand

only) shall be converted into 0.1% Non-Cumulative Redeemable Preference Shares (NCRPS) to be redeemed after entire Secured Creditors dues are repaid as per this Scheme.

22. The scheme provides for payment of dues to secured creditors in 2028. By necessary corollary 50% of equity capital which is converted into 0.1% NCRPS will be redeemed in the year 2028 or thereafter i.e., beyond period of twenty years after repayment of entire dues to secured creditors. Any such issue of preference shares redeemable after twenty years is prohibited by Section 80(5A) of the Act. Therefore if the existing clause is allowed as such it would certainly contravene the provisions of the Act and goes against the ratio laid down by the Supreme Court in Mafatlal Case.

23. Initially learned Counsel for petitioner made a strenuous effort to submit that even if NCRPS are redeemed after lapse of twenty years having regard to the fact that shareholders and secured creditors agreed for such arrangement the Court is competent to sanction the scheme. Though an effort was made on these lines learned Counsel for petitioner ultimately agreed for modification of existing clause by adding a further clause to the effect that if the company is not able to redeem NCRPS within twenty years, at the end thereof the company will make a fresh issue of new NCRPS of an equivalent to the holders of NCRPS. The scheme has been approved by the shareholders and secured creditors and therefore relevant clause can be modified as suggested by learned Counsel for petitioner. Accordingly Clause-A to Chapter-B of Part-Ill shall stand modified as below.

50% of the Existing Equity Capital aggregating Rs. 1,873,591,000/- (Rupees One Thousand Eight Hundred Seventy Three Million Five Hundred Ninety One Thousand only) shall be converted into 0.1% Non-Cumulative Redeemable Preference Shares (NCRPS), which shall be redeemed on or before 31.3.2026 and if the company is not able to redeem NCRPS the company will make fresh issue of NCRPS of the equivalent amount to the existing holders of NCRPS.

24. In Re Objection No. 4:

A two fold contention is raised by learned Counsel for Central Government. First M/s. Kalyani Steels who agreed to contribute Rs. 32.00 crores by way of equity capital towards capital expenditure have not filed any undertaking to that effect and secondly promoters of the company did not file any undertaking to the effect that they would bring Rs. 18.00 , crores as a part of restructuring scheme. Both these objections do not survive. The Director of M/s. Kalyani Steels has filed a notarized affidavit undertaking to enter into buy back agreement with secured creditors to buy back 6,000,000 equity shares of Rs. 10/- each aggregating Rs. 60,000,000/-, as per Clause (b) of Chapter-A of Part-Ill of the scheme of arrangement. In the reply affidavit filed by Director of the petitioner company, M/s. Kalyani Steels already extended working capital support to a tune of Rs. 72.00 crores and out of which Rs. 32.00 crores is sought to be converted into equity. Further Schedule-11 (particulars

of creditors) to balance sheet for the year 2006-2007 would show that an amount of Rs. 424.424 million is the cost of the raw material supplied by M/s. Kalyani Steels. This is not seriously disputed by learned Counsel for Central Government. Insofar as additional contribution of Rs. 18.00 crores by the promoters is concerned, in the reply affidavit filed by the Director of petitioner company, it is averred that promoters have already brought into interest free unsecured loan of Rs. 18.00 crores towards capital expenditure on 15.3.2007.

25. Clause-28 to Part-VI of the scheme under consideration contains list of defects. Inter alia it is provided that secured creditors shall have the right to reverse the waivers/sacrifices provided under the scheme in the event of defaults by non-induction of M/s. Kalyani Steels as majority stakeholders and/or non-fusion of funds to the extent of at least Rs. 18.00 crores as interest free unsecured loan. In view of this, the objection of the Central Government is unsustainable.

26. In the result, on condition of modifying Clause-A to Chapter-B of Part-Ill of Scheme of arrangement as indicated hereinabove while considering objection No. 3, the scheme of arrangement as set out in paragraph 12 of the petition in the schedule hereto between M/s. SJK Steel Plant Limited, its secured creditors and equity and preference shareholders is hereby sanctioned. This Court hereby declares the same to be binding on the company, its equity/preference shareholders and secured creditors. All the parties to the scheme or other persons interested shall be at liberty to apply to this Court for any directions that may be necessary in regard to the working of the compromise/arrangement. The order shall be in Form No. 41 with the modification as indicated herein above and the petitioner company do file with the Registrar of Companies the certified copy of the order within thirty days from this date. The petitioner company shall pay costs of Rs. 5,000/-(Rupees five thousand only) to the Assistant Solicitor General for the Central Government.

The petition shall stand disposed of accordingly.