

(2020) 02 BOM CK 0024

In the Bombay High Court

Case No : Writ Petition No. 1893 Of 2019, 223 Of 2020

GTL Infrastructure Limited

APPELLANT

Vs

Canara Bank And Ors

RESPONDENT

Date of Decision : 03-02-2020

Acts Referred:

Insolvency And Bankruptcy Code, 2016 — Section 7, 35AA, 35AB
Companies Act, 1956 — Section 205(2)(d)
Constitution Of India, 1950 — Article 14, 226

Citation : (2020) 02 BOM CK 0024

Hon'ble Judges : S.C. Dharmadhikari, J;R.I. Chagla, J

Bench : Division Bench

Advocate : S.U. Kamdar, Nikhil Sakhardande, Rohan Rajadhyaksha, Charles DeSouza, Prasad Lotlikar, Manaswi Agrawal, Sakshi Bhalla, Mahima Sinha, Navroz Seervai, Rohan Rajadhyaksha, Suyash Gadre, Prasad Lotlikar, Vandana Chamle, Dr. Birendra Saraf, Apurva Gupte, Ishtiaq Ali, Zaman Ali, Vinita Hombalkar, Umar F. Azam, Priyanka Shetty, Prabhav Shroff, Ayush Chaddha, Y.R. Mishra, A.S. Singh

Final Decision : Dismissed

Judgement

///

S.C. Dharmadhikari, J",,,

1. Rule. Respondents waive service. By consent of both sides, Rule is made returnable forthwith.",,,

2. These two petitions were heard together and as they involve similar questions and issues, they are disposed of by this common judgment.",,,

3. Writ Petition No.1893 of 2019 has been filed by GTL Infrastructure Limited, a company incorporated under the Companies Act, 1956 having its",,,

registered office at the address mentioned in the cause title. It has been filed against five Banks and Life Insurance Corporation of India Limited by",,,

impleading them as respondent Nos.1 to 6. The seventh respondent is a company registered under the provisions of the Companies Act, 1956 having",,,
its office at the address mentioned in the cause title. It has been impleaded because it is an Asset Reconstruction Company",,,

4. The relief claimed in the writ petition is that this Court should issue a writ of mandamus or any other appropriate writ, order or direction, directing",,,
respondent Nos.1 to 6 to forthwith comply with paragraph 6.4 of the Master Circular dated 1st July, 2015 issued by the Reserve Bank of India (RBI).",,,

5. The petitioner claims that in and around 2007-2008, it availed financial facilities from various banks and financial institutions in India, including",,,
respondent Nos.1 to 6 with a view to expand its business. Thereafter, it says that, owing to certain unforeseen circumstances, increased competition",,,

etc., the telecom industry suffered extensively and the petitioner was unable to comply with its obligations under the documents relating to the sanction",,,

of financial facilities. The petitioner's debt was referred to the Corporate Debt Restructuring Cell (CDR Cell). Pursuant thereto, the CDR Cell",,,

issued a Letter of Approval dated 23rd December, 2011 and restructured the petitioner's debt on the terms and conditions more particularly set out",,,

therein. Pursuant to the issuance of the Letter of Approval by the CDR Cell, the petitioner's lenders and the petitioner executed a Master",,,

Restructuring Agreement, copy of which is at Exhibit A to the petition. It is dated 31st December, 2011.",,,

6. The Reserve Bank of India issued a notification dated 8th June, 2015 bearing No.DBR.BP.BC.No.101/21.04.132/2014-15 in respect of Strategic",,,

Debt Restructuring (SDR Notification). At a Joint Lenders Forum (JLF) meeting held on September 20, 2016 (Review and Reference Date), the",,,

lenders of the Petitioner, including respondent Nos.1 to 6, invoked the SDR Notification in respect of the petitioner and M/S Chennai Network",,,

Infrastructure Limited (for short, CNIL). A copy of the minutes of the JLF meeting dated 20th September, 2016 is annexed as Exhibit",,,

B to the petition. Pursuant thereto, the JLF through the Union Bank of India, which is a monitoring institution, executed a term sheet",,,

containing detailed terms and conditions of the scheme to be implemented in respect of the petitioner under the SDR Notification. The said term sheet",,,

was forwarded by the Union of Bank of India to the petitioner under a cover letter dated 14th June, 2017 alongwith the term sheet for the SDR",,,

scheme, copy of which, alongwith the terms sheet for the SDR scheme, is annexed as Exhibit C to the petition. Similarly, the JLF, through the",,,

Union Bank of India, executed a term sheet containing detailed terms and conditions of the scheme to be implemented in respect of CNIL under the",,,

SDR Notification. The said term sheet was forwarded by the Union Bank of India to CNIL under a cover letter dated 14th June, 2017, copy of which",,,

alongwith the term sheet for the SDR scheme is annexed as Exhibit D to the petition.,,,

7. The petitioner submits that the total outstanding dues of the petitioner to its lenders as on the Review and Reference date was Rs.3357,13,19,841",,,

(Rupees Three Thousand Three Hundred and Fifty Seven Crores Thirteen Lakhs Nineteen Thousand Eight Hundred and Forty One Only). A table,,,

detailing the dues owed by the petitioner to each of its lenders as on the Review and Reference Date is annexed as Exhibit E to the petition.,,,

Similarly, the total outstanding dues of CNIL to its lenders, as on the Review and Reference date, were Rs.5158,10,36,665 (Rupees Five Thousand",,,

One Hundred and Fifty Eight Crores Ten Lakhs Thirty Six Thousand Six Hundred and Sixty Five Only). A table detailing the dues owed by CNIL to,,,

each of its lenders as on the Review and Reference Date is annexed as Exhibit F to the petition.,,,

8. The petitioner further states that the scheme under the SDR Notification (SDR scheme) envisages participation by all the lenders of the petitioner,,,

and CNIL, including respondent Nos.1 to 6, to convert the whole or part of their respective debts into equity share capital of the petitioner or CNIL, as",,,

the case may be. Once the conversion was completed, then, the lenders would sell the equity shares held by the lenders in the petitioner or CNIL to a",,,

new promoter and upon completion of conversion of debt to equity, the existing asset classification of the petitioner and CNIL, as on the Review and",,,

Reference Date, would continue for a period of eighteen months from the Review and Reference Date.",,,

9. It is further submitted that pursuant to execution of the SDR term sheets, the debt of the lenders, including respondent Nos.1 to 6, to the extent of",,,

Rs.1692,21,58,070 (Rupees One Thousand Six Hundred and Ninety Two Crores Twenty One Lakhs Fifty Eight Thousand and Seventy only), was",,,

converted into fully paid up equity shares of the petitioner on and around 13th April, 2017 and only an amount of Rs.1758,41,96,635 (Rupees One",,,

Thousand Seven Hundred and Fifty Eight Crores Forty One Lakhs Ninety Six Thousand Six Hundred and Thirty Five only) remained outstanding from,,, the petitioner.,,,

10. It is further submitted that similarly, as regards CNIL, the debt of the lenders, including respondent Nos.1 to 6, to the extent of Rs.2808,95,53,920",,,

(Rupees Two Thousand Eight Hundred and Eight Crores Ninety Five Lakhs Fifty Three Thousand Nine Hundred and Twenty only) was converted,,,

into full paid up equity shares of CNIL on and around 13th April, 2017 and only an amount of Rs.2385,08,72,011 (Rupees Two Thousand Three",,,

Hundred and Eighty Five Crores Eight Lakhs Seventy Two Thousand and Eleven only) remained outstanding. The details of the outstanding debt of,,,

the lenders, including respondent Nos.1 to 6, pursuant to the aforesaid conversion of debt into equity shares and the details of the shares of the",,,

petitioner and CNIL held by the lenders, including respondent Nos.1 to 6, are annexed as Exhibit â??Gâ?? collectively. The petitioner submits that it",,,

would not be out of place to mention that pursuant to the implementation of the SDR Scheme and merger of CNIL and the petitioner, the lenders,",,

including respondent Nos.1 to 6 together held 63.16% of shareholding in the petitioner.,,,

11. The petitioner submits that thereafter, during the implementation of the SDR scheme, the petitioner paid an amount of Rs.1069,00,00,000 (Rupees",,,

One Thousand and Sixty Nine Crores only) towards interest to the lenders, including respondent Nos.1 to 6 and Rs.75,00,00,000 (Rupees Seventy Five",,,

Crores only) on 22nd June, 2018 and 27th June, 2018 towards the first principal repayment tranche. Upon conversion of debt into equity shares of the",,,

petitioner, all amounts, overdue prior to the date of conversion, were converted into equity shares. Therefore, post conversion, there were no",,,

outstanding payments overdue to be paid by the petitioner in any manner.,,,

12. It is submitted by the petitioner that meanwhile, the lenders of the petitioner, including respondent Nos.1 to 6, attempted to find an investor to sell",,,

their stake in the petitioner.,,,

However, despite extensive assistance from the petitioner, the lenders, including respondent Nos.1 to 6, failed to find an investor and thereby defaulted",,,

in their obligation under the SDR Scheme. The petitioner states that it did not default on any of its obligations, including repayment of the debt, under",,,

the SDR scheme and co-operated to the maximum extent possible with the lenders to find a new investor. The obligation to find the new investor and,,, transfer their respective shareholding in the petitioner to a new investor was that of the lenders alone under the SDR Scheme and the lenders of the,,, petitioner failed to do the same. The petitioner further states that respondent Nos.1 to 6, alongwith other lenders of the petitioner commenced a,,, â??new investor inductionâ?? process which was supported and facilitated by the petitioner and experienced advisors of like Ernst and Young and,,, TAP Advisors were appointed. The petitioner initially received interest from over 20 investors, including the likes of Brookfield Asset Management",,,, and American Tower Company. Potential bidders were given access to the data room as part of a diligence process, followed by management",,,, discussions. Some of the key investors, including Brookfield Asset Management and American Tower Company withdrew from the process due to",,,, extraneous reasons like the entry of new aggressive participant in the market, uncertainty regarding the future of Aircel, and shutting down of telecom",,,, operators like Rcom, Tata Tele, SSTL and Telenor. Post completion of the due-diligence process, the petitioner received non-bonding term sheets",,,, from 3 investors i.e. AION Capital, Beam Group LLC and a consortium of Piramal Enterprises and Bain Capital Credit. However, owing to the",,,, aforementioned adverse circumstances, the consortium of Piramal Enterprises and Bain Capital Credit withdrew from the process and AION Capital",,,, and Beam Group LLC also did not pursue their respective offers.,,,,

13. The petitioner further submits that since the lenders, including respondent Nos. 1 to 6 were uncertain of the induction of a new investor into the",,,, petitioner and the consequent completion of the SDR Scheme, the lenders considered selling their respective debts to an Asset Reconstruction",,,, Company (ARC). Accordingly, on 23rd January, 2018, in the meeting of the Core Committee of the lenders of the petitioner, it was deliberated by the",,,, lenders to consider a sale of their respective debts to an ARC. In the meeting dated 23rd January, 2018, the Core Committee of the lenders was also",,,, informed that respondent No.7 had evinced an interest in buying the debt of the lenders of the petitioner. It is pertinent to note that the decision to sell,,, the petitionerâ??s debt to an ARC was the sole decision of the lenders of the petitioner and their consultants and neither the promoter of the,,,

promoter nor the petitioner itself were involved in the said decision making process at any time. Copy of the minutes of the meeting of the Core,,,

Committee of the lenders held on 23rd January, 2018 is annexed to the petition as Exhibit â??Hâ??. Notably, the meeting dated 23rd January, 2018",,,

was, inter alia, attended by the representatives of respondent Nos. 1, 5 and 6.",,,

14. Thereafter, at the joint lendersâ?? meeting dated 30th January, 2018, the lenders of the petitioner deliberated the proposal to sell the entire debt of",,,

the petitioner to an ARC. Copy of the minutes of the joint lendersâ?? meeting held on 30th January, 2018 is annexed as Exhibit â??Iâ?? to the",,,

petition.,,,

15. It is further submitted that the proposition to sell the debts of the lenders to an ARC was further discussed at the meeting of the Core Committee,,,

of the lenders of the petitioner on 2nd February, 2018. Pertinently, the proposed sale of assets to an ARC was on 50:50 basis i.e. 50% consideration",,,

for sale of asset would be cash and 50% consideration for sale of asset would be security receipts to be issued by the proposed ARC. However, at",,,

the meeting held on 2nd February, 2018, respondent No.1 inquired as to whether the cash consideration for sale of assets to an ARC could be",,,

increased to more than 50% in order to comply with certain guidelines issued by the RBI. Accordingly, it was agreed to increase the cash",,,

consideration of the sale of asset to an ARC to 51%. Further, modifications to the term sheet for the transaction with an ARC were discussed and",,,

agreed and it was decided that the term sheets for the transaction with an ARC would be finalised in the next meeting of the lenders. A copy of the,,,

minutes of the meeting of the Core Committee of the lenders dated 2nd February, 2018 is annexed to the petition as Exhibit â??Jâ??. The meeting of",,,

the Core Committee of the lenders dated 2nd February, 2018 was attended by respondent Nos.1, 5 and 6.",,,

16. Thereafter, the lenders of the petitioner further negotiated the terms of the sale of the debt of the petitioner to an ARC at a Joint Lenders Meeting",,,

held on 12th February, 2018. At the meeting dated 12th February, 2018, the representative of the CDR Empowered Group stated that if the lenders",,,

were to sell their debt to an ARC, the monitoring institution (Union Bank of India) ought to circulate a review note on exit of the petitioner from CDR.",,,

A copy of the minutes of the Joint Lenders Meeting dated 12th February, 2018 is

annexed as Exhibit K to the petition. The said meeting was",,,
 attended by the representative of respondent Nos. 1, 2, 3 and 5.",,,
 17. It is further submitted that pursuant to the discussions and consensus arrived at between the lenders of the petitioner, a process for sale of the",,,
 petitioner's debt to an ARC was initiated and the bids were invited from the ARCs by giving a public notice published in two newspapers on 28th",,,
 February, 2018. Exhibit L collectively is the copy of the said publication in the newspapers. At the end of the bidding process, only one binding",,,
 bid was received, which was made by respondent No.7 jointly with Bank of America Merrill Lynch (BAML). The bid of respondent No.7 BAML was",,,
 discussed by the lenders at the meeting of the consortium of lenders of the petitioner on 23rd March, 2018. As per the joint bid of respondent No.7 and",,,
 BAML, respondent No.7 and BAML were ready and willing to buy the complete debt of Rs.4143,00,00,000/- (Rupees Four Thousand One Hundred",,,
 and Forty Three Crores only) owned by the petitioner to its lenders, in consideration of Rs.2000,00,00,000/- (Rupees Two Thousand Crores only)",,,
 along with transfer of underlying security interest. During the said meeting of the consortium of lenders, ICICI Bank queried whether respondent No.7",,,
 would consummate the transaction if only some of the lenders are willing to assign the debt. Respondent No.7 clarified that the offer then extended by",,,
 respondent No.7 was contingent on 100% of the lenders assigning their debt and piecemeal purchase of the debt from each lender would entail",,,
 substantial reduction in the consideration being offered by respondent No.7. Respondent No.7 further stated that in such a situation, respondent No.7",,,
 would be able to offer only around Rs.1500,00,00,000/- (Rupees one Thousand and Five Hundred Crores only) to Rs.1800,00,00,000/- (Rupees One",,,
 Thousand and Eight Hundred Crores only). Thus, to facilitate aggregation of debts as envisaged by the relevant RBI circular and mandated by the",,,
 IRAC guidelines, it was always understood between the lenders including respondent Nos. 1 to 6, consultants and respondent No.7 that a 100%",,,
 assignment of the debt of the petitioner would help to realise the best value for all the lenders of the petitioner. Further, during the meeting, Ernst and",,,
 Young emphasised that the process of evaluating the sale of the petitioner's debt to an ARC was commenced pursuant to the instructions of the",,,
 lenders of the petitioner in view of the fact that the SDR Scheme had to be

abandoned due to extraneous circumstances. A copy of the minutes of the,,,
meeting of the consortium of lenders of the petitioner dated 23rd March, 2018 is
annexed as Exhibit â??Mâ?? to the petition. The petitioner submits",,,
that for the sake of completeness, it must be noted that though respondent No.7
could not acquire 100% of the debt of the petitioner, respondent No.7",,,
acquired the debt on a cluster basis rather than piecemeal basis to enable the
lenders of the petiitoner to realise the best value of their respective debts,,,
on one hand, commercial considerations on the other hand and keeping in view
the intention of the RBI circulars.",,,

18. The petitioner further submits that in the meeting of the consortium of the
petitionerâ??s lenders dated 3rd April, 2018, it was noted that majority",,,
of the lenders were agreeable to sale off their respective debts to respondent
No.7 and the lenders decided to obtain their respective internal approvals,,,
for the proposed transaction with respondent No.7 and BAML. The said meeting
was inter alia attended by respondent Nos.1 to 6. Copy of the,,,
minutes of the meeting dated 3rd April, 2018 is annexed as Exhibit â??Nâ?? to
the petition.",,,

19. Even while the process for sale to an ARC was under consideration, the
petitioner proactively submitted a resolution plan vide letter dated 27th",,,
April, 2018 (Exhibit â??Oâ??). However, in view of the ARC sale process, the
resolution plan submitted by the petitioner was not considered by the",,,
lenders.,,,

20. By letter dated 8th May, 2018 (Exhibit â??Pâ??), the promoter of the
petitioner expressed its support for the sale of the debt of the petitioner to",,,
an ARC chosen by the lenders of the petitioner.,,,

21. Thereafter, in a meeting of all the lenders, including respondent Nos. 1 to 6,
held on 24th May, 2018, the lenders, including respondent Nos. 1 to 6",,,

Sr. No.,Name of Bank,"Total outstanding as on September 1, 2018 (INR Crores)",
%

- 1.,Union Bank of India,488.5,12.01%
- 2.,Central Bank of India,468.6,11.52%
- 3.,Indian Overseas Bank,410.2,10.09%
- 4.,Bank of Baroda,343.2,8.44%
- 5.,ICICI Bank,306.1,7.53%

- 6., Punjab National Bank, 235.9, 5.80%
- 7., Oriental Bank of Commerce, 207, 5.09%
- 8., Andhra Bank, 206.3, 5.07%
- 9., Bank of India, 188.8, 4.64%
- 10., State Bank of India, 144.2, 3.55%
- 11., Axis Bank, 104.9, 2.58%
- 12., Dena Bank, 30.7, 0.75%
- 13., United Bank of India, 75, 1.86%

IRAC guidelines, respondent Nos.1 to 6 are not entitled to treat themselves as creditors of the petitioner and must mandatorily assign their debts to",,,

respondent No.7. Since they have failed to assign their respective debts to respondent No.7, respondent Nos.1 to 6 are in blatant violation of IRAC",,,

guidelines. The IRAC guidelines constitute a law. The actions of respondent Nos.1 to 6 are not only illegal, but also arbitrary and violative of Article",,,

14 of the Constitution of India. Thereafter in other grounds, particularly, grounds (D) to (Q) of the petition, it is submitted that respondent Nos.1 to 6",,,

be directed by a writ of mandamus or a direction in the nature of mandamus to assign their respective debt owed by the petitioner in favour of",,,

respondent No.7 in terms of the IRAC guidelines.,,,

47. In para 7 of the petition it is said that since the proceedings filed by respondent No.1 under the IBC seeking initiation of the corporate insolvency",,,

resolution process in respect of the petitioner is pending, the petitioner apprehends that respondent Nos.1 to 6 may also continue to assert their",,,

purported rights as financial creditors of the petitioner and file similar proceedings against the petitioner under the IBC. If the corporate insolvency",,,

resolution process is initiated against the petitioner, the same will cause irreparable injury not only to the petitioner, but also to all stakeholders of the",,,

petitioner, including the lenders."",,,

Further, the initiation of the corporate insolvency resolution process will also render the present petition infructuous. The breach of clause 6.4.d (ii) of",,,

the IRAC guidelines is alleged. For all these reasons, the present petition seeks the above referred relief."",,,

48. This petition is filed on 26th April, 2019 and it was listed before a Division Bench of this Court on 30th April, 2019. No orders were passed and",,,

liberty was granted to the petitioner to move the Vacation Court. The petitioner appeared before us on 3rd December, 2019, but it could not be taken",,,

up. It was, therefore, adjourned to 18th February, 2020. However, the advocates for the petitioner moved a praecipe on 20th January, 2020 in view of",,,

the following terms:-,,,

IN THE HIGH COURT OF JUDICATURE AT BOMBAY ORDINARY ORIGINAL CIVIL JURISDICTION WRIT PETITION No.1893 OF,,,

2019,,,

GTL INFRASTRUCTURE LIMITED ..PETITIONER VERSUS,,,

CANARA BANK & ORS. ..RESPONDENTS,,,

_____,
To,",,

The Prothonotary and Senior Master,",,

Bombay High Court,",,

Original Side,,,

Sir,",,

BE PLEASED TO list the above Writ Petition before the Division Bench of Honâ??ble Mr.Justice S.C.Dharmadhikari and Honâ??ble Mr.Justice,,,

R.I.Chagla in the Bombay High Court on _____ when the Advocates for the Petitioner,,,

will seek urgent ad-interim reliefs in the following facts and circumstances.,,,

1. The Petitioner filed the above Writ Petition seeking a writ of mandamus against the Respondent Nos.1 to 6 to assign the debts owed by the,,,

Petitioner to the Respondent Nos.1 to 6 in favour of the Respondent No.7 as mandated by the Reserve Bank of India (RBI) under Prudential Norms,,,

on Income Recognition, Assets Classification and Provisioning Pertaining to Advances dated July 1, 2015 (IRAC Guidelines) and pending such",,,

assignment to refrain from taking any recovery/coercive measures against the Petitioner.,,,

2. The Petitioner submits that since more than 75% of the lenders of the Petitioner have assigned their respective rights to Respondent No.7 i.e. an,,,

Asset Reconstruction Company, as per the IRAC Guidelines, Respondent Nos.1 to Respondent No.6 are also obligated to assign their respective",,,

debts to Respondent No.7.,,,

3. However, Respondent No.1 has filed an Application under Section 7 of the Insolvency and Bankruptcy Code, 2016 against the Petitioner before the",,,

NCLT, Mumbai claiming to be a financial creditor while acting in breach of the IRAC Guidelines. The said Application filed by Respondent No.1 to",,,

initiate the corporate insolvency resolution process against the Respondent is next scheduled to be listed before the NCLT, Mumbai on January 30,",,

2020.,,,

4. In the above circumstances, the Petitioner submits that if the above Writ Petition is not heard urgently for ad interim and interim reliefs sought",,,

therein and Respondent No.1's Application under Section 7 of the IBC is admitted by the NCLT, Mumbai, the above Writ Petition would be",,,

rendered infructuous.,,,

In the above facts and circumstances, BE PLEASED TO list the above Writ Petition before the Division Bench of Honâ??ble Mr.Justice",,,

S.C.Dharmadhikari and Honâ??ble Mr.Justice R.I.Chagla in the Bombay High Court on April 30, 2019 when the Advocates for the Petitioner will",,,

seek urgent ad-interim reliefs.,,,

Dated this 20th day of January, 2020",,,

Sd/-,,,

Meraki Chambers,,,

Advocates for the Petitionerâ??,,,

49. In view of the same, this matter was listed on 29th January, 2020 and on that date, we took on record the rejoinder affidavit dated 22nd January,",,

2020 tendered by the advocate for the petitioner.,,,

50. We heard both sides extensively on that date.,,,

51. An affidavit-in-reply has been filed on behalf of respondent No.1 to this petition.,,,

52. A preliminary objection is raised to the maintainability of the present petition. Firstly, it is argued that the present petition contains a similar prayer",,,

and seeks an identical relief that has been sought in the proceedings before the Honâ??ble Supreme Court, namely, Writ Petition (Civil) 1156 of",,,

2018. Prayer clause,,,

(e) of that petition and prayer clause (a) of the present petition are identical. The Honâ??ble Supreme Court has disposed of that petition vide,,,

judgment dated 2nd April, 2019, without granting any relief of the aforesaid nature. Now, once that relief has not been granted and is deemed to have",,,,

been refused, the present petition is not maintainable.",,,

53. The second objection and raised as a preliminary one is that the petitioner is a borrower company. It has no locus in the matter of sale and,,,

purchase of the respondentsâ?? assets/loans in favour of a third party, including respondent No.7. It cannot, as a borrower, seek a direction to",,,,

respondent No.1 to assign its debt in favour of respondent No.7 at a throw away price.,,,,

54. Thereafter, it is stated that the first respondent had sanctioned a Rupee Term Loan of Rs.200.00 Crores to the petitioner out of the total Debt",,,,

requirement of Rs.3529.00 Crores by the lendersâ?? consortium, including respondent No.1. This is to part finance the Capex plan of installing",,,,

telecom towers (Phase II) over three years from 2008-2009 till financial year 2010-2011. Due to excess tie up, respondent No.1 was allotted a share",,,,

of 166.50 Crores as against the sanctioned limit of Rs.200 Crores. However, the petitioner has availed only Rs.94.97 Crores. The said Term loan",,,,

facility was payable in 28 quarterly installments commencing from 30th September, 2011 till 30th June, 2018. Subsequently, the petitioner has also",,,,

acquired tower portfolio comprising of 17,500 towers of Aircel Group through its fully owned subsidiary-M/S Chennai Network Infrastructure Limited",,,,

(CNIL), which subsequently got merged into the petitioner. The combined tower portfolio of the merged entities was around 28000 towers. The first",,,,

respondent had sanctioned a Term loan of Rs.750.00 Crores to part finance CNIL for the merger of CNIL. Due to excess tie up, respondent No.1",,,,

was allotted a share of Rs.650.00 Crores as against the sanctioned limit of Rs.750 Crores and the unallocated portion Rs.100 Crores was cancelled.,,,,

Aircelâ??s tower portfolio was acquired at a value of Indian Rupees 8.026.00 Crores. The petitionerâ??s group funded the deal in a mix of debt of,,,

Indian Rupees 5,000 Crore and the balance of Rs.3,026 Crore by way of equity. The deal was completed on 19th July, 2010 and the Term loan was",,,,

repayable in 34 quarterly installments.,,,,

55. It is then said that the petitioner and CNIL faced problems in servicing the

debt as per the terms of the respective financing documents and,,, requested the Consortium Lenders for CDR. At the request of both and in consideration of their commitment to improve its operations, the respective,,, accounts were referred to the CDR Cell, a non-statutory voluntary mechanism set up under the aegis of the Reserve Bank of India. This is for the,,, efficient restructuring of corporate debt. Pursuant thereto, a restructuring package was agreed to as set out in the letter dated 23rd December, 2011.",,, The reliefs, concessions and waivers granted as per this package did not improve the conduct and operations in the account of the petitioner and",,, CNIL. That is why, there was a correspondence with the parties requesting them to regularise the account. Owing to default in payment of interest",,, and principal amount, the account of the petitioner became Non Performing Asset (NPA) with effect from 31st March, 2016 as per the IRAC norms",,, of the Reserve Bank of India. The account was also upgraded. However, the petitioner failed to comply with the conditions and other milestones set",,, out in the CDR package. At the request of the petitioner, subject to assurance provided by the petitioner that surplus amount received out of valuation",,, of the assets shall be utilised for repayment of the lenders of the GTL Limited-Parent Company of the petitioner, the Consortium Lenders in the Joint",,, Lenders Forum meeting, held on 20th September, 2016, reviewed the account and after deliberations, invoked SDR scheme as per the Reserve Bank",,, of India guidelines considering 20th September, 2016 as the review and reference date. Thus, Rs.13000 Crores were to be brought in by the petitioner",,, so as to comply with their obligations and, therefore, there was an agreement for conversion of part of the outstanding debt into equity. It was",,, proposed that CNIL be merged with the petitioner and induction of new investor post-merger. In tune with the JLF decision, respondent No.1",,, permitted conversion of part debt of Rs.35.60 Crores out of the total outstanding debt of Rs.71.79 Crores as on reference date into equity shares of,,, the petitioner apart from permitting part debt conversion of Rs.271.11 Crores out of the total outstanding debt of Rs.498.30 Crores in CNIL. After,,, conversion of Rs.7236.69 Crores debt into equity under CDR and SDR, the balance total debt of the lenders was Rs.4143.51 Crores and the total",,, equity shares was around 63.16% held by the lenders in the share capital of the petitioner. In terms of the SDR Scheme, the Rupee Lenders were",,,

expected to divest their shareholding in the petitioner company in favour of new promoter for effecting change of Management, as soon as possible,",,

but in any event, not later than 18 months from the review and reference date i.e. upto 19th March, 2018 in line with applicable RBI guidelines.",,

56. It is alleged that the SDR documents were not complete and the change of Management could not take place within the cut-off date of 19th,,,

March, 2018, which resulted in failure of implementation of the SDR scheme and the account of the petitioner is classified as Non-Performing Asset",,,

with effect from 1st July, 2011 as per the guidelines of the Reserve Bank of India.",,

57. After setting out the facts relating to sale of financial assets to respondent No.7 and bank of America Merrill Lynch, it is stated that respondent",,,

No.1 had not agreed for the sale of financial assets to respondent No.7 and expressed its dissent vide letter dated 3rd August, 2018. Respondent No.1",,,

expressed its dissent in view of the following facts :-,,,

(i) During the change in management process, as discussed in the JLF meeting dated 16th November, 2017, three bids from investors ranging from",,,

Rs.5500 crores to Rs.12780 crores were received, which were subsequently withdrawn for the reason best known to transaction advisor and the",,,

petitioner.,,,

(ii) As per the valuation report of M/s.DH Consultant dated 20th June, 2015, enterprise value of CNIL was Rs.7497.15 crores and GIL was",,,

Rs.5618.16 crores. Hence, combined value of the petitioner entity was Rs.13115.21 crores during 2015.",,

(iii) As per valuation report of Baker Tilly dated 25th October, 2017, enterprise value of CNIL was Rs.5095 crores and the petitioner was Rs.4609",,,

crores. Hence, combined value of the present entity was Rs.9704 crores during the year 2017.",,

(iv) Further, the enterprise value of the petitioner was drastically reduced to as low as Rs.1861 crores as per valuation report of ITCOT dated 20th",,,

March, 2018 and Rs.2410 crores as per valuation report of TRC Corporate consulting dated 28th March, 2018 which was only 1/5th and 1/4th of the",,,

last valuation held five months ago. Hence, such sharp reduction in the valuation within such a short span of five months was beyond understanding",,,

and therefore, was not accepted.",,

(v) The valuation was objected by some of the lenders including respondent No.1 on methodology and approach wherein the valuation was derived by,,,

discounted cash flow method on projected cash flow for a period of five years by one valuer and nine years by another valuer. This projected cash,,,

flow for 5/9 years was based on certain assumptions of the market perception which is highly subjective.,,,

(vi) The useful life of towers is 35 years and it is being depreciated on straight line method at the rate of 2.72% per annum in terms of specific,,,

approval received from the Ministry of Corporate Affairs, Government of India vide Order No.45/2/2010-CL-III dated 26th May, 2010 issued under",,,

section 205(2) (d) of the Companies Act,1956. However, in the above said latest valuation, economic values of the towers were not considered as per",,,

the Government norms.,,,

(vii) As per the petitioner's annual balance-sheet-2018, total depreciated value of property and plant and equipment of the company was",,,

Rs.7944.57 crores, out of which, value of plant and machinery was Rs.7715.24 crores.",,,

(viii) In the recent sale transaction of telecom towers as reported by live mint dated 31st May, 2018, American Tower Company had completed the",,,

acquisition of 9900-stand alone towers from Idea Cellular for around Rs.4000 crores.,,,

(ix) Similar transaction was completed by ATC by way of the acquisition of Vodafone India Ltd.'s 1,200 stand-alone towers for around Rs.3,850",,,

crores.,,,

(x) Thus, the sale of the Financial Assets of the petitioner with underlying towers of 28000 in number should fetch somewhere in the range of",,,

Rs.10000 crores to Rs.13000 crores as per actual market deal happened recently. Further, the petitioner, vide letter dated 19th December, 2017",,,

addressed to the lead bank (Union Bank of India) indicated the valuation in the range of Rs.13,750 to Rs.15,990 crores. Annexure R-4 to the",,,

petition is a true copy of the letter dated 19th December, 2017 of the petitioner company.",,,

(xi) The ERAC-BoAML's offer for purchase of Financial Asset with underlying assets of around 28000 telecom towers was certainly an,,,

undervalued transaction. Some of the lenders, including respondent No. 1 had

raised objections on the ongoing transaction based on the current deals",,,
happening in the same telecom sector.,,,

(xii) Accordingly, respondent No.1 had expressed its dissent over the sale transaction to Asset Reconstruction vide its letter dated 3rd August, 2018.",,,

Annexure 5 is the true copy of the letter dated 3rd August, 2018 addressed to the Union Bank of India.",,,

(xiii) The Union Bank of India (lead bank), being well versed with the terms and conditions of the ERAC-BoML, wherein, it was a conditional bid for",,,

purchase of 100% of Financial Asset, neglected the other dissenting lenders' views and without calling for any consortium/ lenders meet after 13th",,,

July, 2018 and without taking into account the serious and vital objections raised by respondent No.1 vide",,,

its letter dated 3rd August, 2018 addressed to Union Bank of India (lead bank) and marked copy to all the lenders went ahead with the sale",,,

transaction. Respondent No.7 violated its own contract terms, wherein, respondent No.7 went ahead to purchase the assets from the lenders bi-",,,

laterally without the consent of the 100% lenders.,,,

(xiv) The validity of the bid for ARC sale was being extended from time to time since March, 2018 (22nd March, 2018 being the last bid date) till 17th",,,

August, 2018 (last known extended period) to accommodate and facilitate the undervalued ARC deal and the transaction was done with some of the",,,

lenders on 27th August, 2018, which was subsequent to the validity date for sale of asset to EARC-BoAML.",,,

(xv) As per the petitioner, interest had been served and the principal installments on the residual portion of the debt upon converting the part debt into",,,

equity, the BoAML EARC were to receive the interest on the entire amount of the assigned debt i.e. Rs.4143 crores by investing only Rs.2400 crores",,,

fetching an effective return of around 19% on the assigned debt. Therefore, the proposed transaction confers an undue advantage to the Asset",,,

Reconstruction Companies at the sacrifice of the lenders and majority of the lenders being public sector banks, causing grave and serious loss to the",,,

exchequer.,,,

(xvi) During the JLF meetings held on 30th January, 2018, 2nd February, 2018 and 12th February, 2018, sale to ARC was initially proposed in the ratio",,,

of 50:50 structure (i.e. 50% cash and 50% security receipt) with no sacrifice to

the lenders as it was proposed that entire principle outstanding debt,,, will be either refinanced or sold to ARC.,,,

(xvii) However, the proposed offer was initially made for Rs.2000 crores, which constituted at 48.27% of the outstanding debt (Rs.4143 crores) and",,,

the final offer was for Rs.2400 crores, which constituted at 57.92% of the outstanding debt.",,,

(xviii) last consortium meeting was held on 13th July, 2018, wherein, it was decided that the lenders will take up the proposal for sale of debt to ARC",,,

with their respective competent authorities and give their final approval by 31st July, 2018. It was also decided that thereafter, a consortium meeting",,,

would be convened for closing the deal.,,,

Further, Union Bank of India, vide their e-mail dated 1st August, 2018 had requested the lenders to give their approvals at the earliest. However,",,,

subsequent to above no lenders meet was held and the transaction was concluded by 10 lenders on bilateral basis with a value of around Rs.1424,,,

crores i.e. approximately 60% of the outstanding amount on 27th August, 2018, which is a clear violation of consortium spirit and violation of term",,,

sheet floated by M/s.Edelweiss ARC and Bank of America Merrill Lynch. That there is no document which can be put on record by way of",,,

consortium meeting minutes that the consortium of lenders have explicitly, by way of majority (75% by value), accepted the offer of EARC-BoAML",,,

as required under the RBI guidelines on Income Recognition and Asset Classification norms dated 1st July, 2015. Annexure 6 is a copy of the",,,

minutes of the meeting dated 13th July, 2018 of the consortium bank.",,,

(xix) After conversion of debt of Rs.4500 Crores under SDR into equity, the remaining debt of the company as on 30th June, 2018 is Rs.4063.31",,,

Crores. Considering this, the offer of Rs.2353.83 Crores made by ARC was only 57.92% of the outstanding liability as on 31st December, 2017.",,,

Hence, huge hair cut in terms of outstanding principal and unapplied interest was observed. Haircut was more after restoring the debt from the",,,

reference date of CDR after cancelling all the relaxation under event of default by the company.,,,

(xx) Forensic audit was initiated at the instance of Department of Financial Services, Government of India (DFS) guidelines to ascertain the elements",,,

of fraud etc. The final audit report is yet to be submitted by M/s.Chokshi &

Chokshi LLP.,,,

(xxi) Vide their letter dated 27th June, 2018, respondent No.1 requested the petitioner to regularise the account but the petitioner failed and neglected",,,

to do so. Thereafter, respondent No.1 had recalled the advance and invoked personal guarantee/ sponsor support agreement vide notices dated 23rd",,,

August, 2018 and 24th August, 2018.",,,

(xxii) The petitioner is continuously in default with respondent No.1 and has not remitted any amount towards its dues since August, 2018 with",,,

respondent No.1 despite having regular cash flows from the operations. Consequently, respondent No.1 has filed recovery suit against the petitioner",,,

guarantors at DRT, Chennai on 23rd April, 2019.",,,

58. A reference is made then to the two circulars of the Reserve Bank of India. One circular is dated 12th February, 2018, which has been struck",,,

down by the Honâ??ble Supreme Court and the subsequent one is dated 7th June, 2019. It is contended that if a Resolution of such larger essence is",,,

not implemented as per the timeline specified in these guidelines, then, lenders can file insolvency application, singly or jointly, under the IBC.",,,

59. The reference to these directives, according to respondent No.1, enables them to file the application under the IBC. Therefore, filing of that",,,

application is justified. It is contended that the Reserve Bank of India, after the Supreme Court judgment dated 12th February, 2018, issued a new",,,

circular dated 7th June, 2019 on Prudential Framework for Resolution of Stressed Assets. Pursuant to the new circular, the lenders, including",,,

respondent No.1, are free to choose to initiate legal proceeding for insolvency or recovery in accordance with the provisions of new circular. It is",,,

stated that all the contentions of the petitioner in this writ petition are obsolete and the petitioner has no grounds to seek any relief under the circular of",,,

the Reserve Bank of India. Under the circulars of the Reserve Bank of India, including IRAC guidelines, the Reserve Bank of India issued directions",,,

to the banks and financials for the purpose of managing their stressed assets and the borrowers of such banks and financial institutions have no say in",,,

such matters.,,,

60. It is, therefore, submitted that respondent No.1 is a financial creditor and the proceedings initiated by respondent before the National Company",,,

Law Tribunal (for short, â??NCLTâ?) be continued in the interest of justice and

that of all stakeholders, including the petitioner. Further, the",,,
proceedings under the IBC are not recovery action, but to prepare the resolution plan in the best financial interest of all stakeholders under the",,,
supervision of the NCLT. In these circumstances, the prayer is to reject the petition.",,,

61. In the affidavit-in-rejoinder, the petitioner has submitted that the earlier proceedings instituted by respondent No.1 under Section 7 of the IBC,",,
namely, Company Petition No.3604 of 2018 were dismissed on 26th November, 2019 by the NCLT. However, respondent No.1 has again invoked",,,

Section 7 of the IBC against the petitioner by filing Company Petition No.4541 of 2019. That is pending. In the circumstances, the conduct of",,,
respondent No.1 smacks of mala fide and personal vendetta.,,,

62. On these pleadings, the petition has been instituted and there is one more petition filed, namely, Writ Petition (L) No.223 of 2020. In that petition,",,

the petitioner is stated to be GTL Limited and it invokes the jurisdiction of this Court under Article 226 of the Constitution of India for claiming the,,,

relief/direction against respondent No.7 to that petition (Canara Bank) to forthwith withdraw and cancel the Recall Notice dated 10th July, 2018, copy",,,

of which is at Exhibit â??Râ?? to the petition, letter dated 4th June, 2019, copy of which is at Exhibit â??BBâ??, letter dated 27th June, 2019, copy",,,

of which is at Exhibit-II and the letter dated 12nd December, 2019, copy of which is at Exhibit â??VVâ?? to the petition.",,,

63. In this petition, the contention is that the petitioner before this Court is a public limited company incorporated under the provisions of the",,,

Companies Act, 1956 and engaged in the business of independent telecom network services provider with a range of offerings primarily network",,,

operations and maintenance, besides network planning, design and deployment. The petitioner promoted GTL Infrastructure Limited as a",,,

â??Category 1â? Infrastructure Provider and registered with the Department of Telecommunications, Government of India to provide passive",,,

telecom infrastructure services to various Telecom Operators. GIL owns telecom towers and offers these towers to its customers on a shared and",,,

chargeable basis. The petitioner maintains these towers and provide energy management services to GIL and other telecom operators. The parties to",,,

this petition other than the Canara Bank are, Union of India, Reserve Bank of

India and other banking companies. The allegations in that petition are",,,
more or less identical, but the difference is that the Canara Bank opted to issue the notices in question and under challenge. This is notwithstanding",,,
with an explanation submitted by the petitioner to the Canara Bank (respondent No.7) regarding the third proposal dated 2nd June, 2018. It is alleged",,,
that respondent No.7 wrote to IDBI Bank (respondent No.3) and all lenders of the petitioner and stated that this third proposal was allegedly not,,,
attractive and requested for a meeting of the lenders to discuss this proposal. The response was given to this letter on 13th June, 2018.",,,

64. There were meetings held where this proposal was discussed, but it was not acceptable to the CDR lenders. It is specifically alleged in para 27 of",,,
the petition as under :-,,,

â??27. In the meetings of the JLF held on June 27, 2018 and September 6, 2018, the Petitioner once again submitted revised settlement proposals to",,,
the CDR Lenders. However, the Third Settlement Proposal was not acceptable to the CDR Lenders. The Petitioner states that due to the paucity of",,,
time, the resolution attempts could not fructify as there was no time to materially better or improve the plan in the manner sought by the CDR Lenders",,,

and the Petitioner believes that the CDR Lenders were unable to allow more time due to the 180 period imposed by the Revised Framework issued by,,,

Respondent No.2. Copies of the minutes of the JLF dated June 27, 2018 and September 6, 2018 are annexed herewith as Exhibits [P] and [Q]â??"",,,

65. However, it is alleged that on 10th July, 2018, a Recall Notice was addressed, copy of the same is at Exhibit â??Râ??. but the petitioner continued",,,

to pursue its proposal. There was a reply given to the notice, copy of which is at Exhibit â??Tâ??. Though the correspondence continued, ultimately,",,

the same allegations are made and then it is stated that efforts were made to hold discussion on the proposal of the petitioner. It is then alleged that the,,,

lendersâ?? meetings were held to discuss the proposals, but respondent No.7 informed that it has already approached the NCLT. Since there was no",,,

agreement to settle the dues, eventually, the seventh respondent has decided to pursue the Recall Notice. It is in these circumstances that the Recall",,,

Notice is challenged on various grounds. Here as well, the allegations are same, but there is no affidavit-in-reply.",,,

66. The response of the Canara Bank has been that it is not agreeable to the proposal.,,,

67. It is on the above materials that we have heard Mr.Kamdar, learned senior counsel appearing on behalf of the petitioner in Writ Petition No.1893",,,

of 2019 and Mr.Navroz Seervai, learned senior counsel appearing on behalf of the petitioner in other petition." ,,,

68. Mr.Kamdar invited our attention to the petition and its annexures and submitted that the case of the petitioner is that it is the Canara Bank alone",,,

which is objecting to the agreement and assignment of the debt. The circulars of the Reserve Bank of India have been referred to by Mr.Kamdar and,,,

he would argue that these circulars are binding on Canara Bank. It cannot opt out of restructuring of debt and settlement proposal. It is alone resisting,,,

this and though it has not succeeded in its attempt to seek winding/dissolution of the petitioner, if the Canara Bank alone is allowed to frustrate and" ,,,

defeat the proposal, then, it is clear that the nationalised banks have, contrary to the mandate of Article 14 of the Constitution of India, conducted" ,,,

themselves unfairly, arbitrarily, unjustly so also unreasonably. This should not be permitted and we must interfere in our writ jurisdiction and issue the" ,,,

writ as prayed for.,,,

69. These arguments are adopted by Mr.Seervai and he has also emphasised that the Canara Bank is bent upon on liquidating or winding up the,,,

petitioner. It should not be allowed to do so. Our attention has been invited by Mr.Seervai to the communication of 4th June, 2019 by the Canara Bank" ,,,

to M/s.Global Holding Corporation Private Limited on the subject of negotiated settlement with lenders. The bank says that the consortium meeting,,,

rejected the negotiated settlement proposed by the petitioner. The Canara Bank firstly alleges that the negotiated settlement proposed by the petitioner,,,

was one sided and not taking care of the interest of all stakeholders. The bank is pressing onerous conditions and contrary to the Reserve Bank of,,,

India's circulars. It is not assigning any reasons for rejection of the proposal for settlement. Our attention has been invited to the latest circular of,,,

the Reserve Bank of India dated 7th June, 2019 and, particularly, on the guidelines on implementation of Resolution plan. It is, therefore, contended by" ,,,

Mr.Seervai that the bank must be directed to execute an inter-creditor agreement and that is mandatory. If the Resolution of Stressed Assets has to,,,

be done, then, the signing of the agreement by all the creditors is necessary. For these reasons, he would submit that the writ petition be allowed.",,,

70. Our attention has also been invited by Mr.Seervai to the minutes of the consortium meeting held on 19th June, 2019 and the stand of the Canara",,,,

Bank noted therein. Thus, the Canara Bank decides to opt out of the plan thereby jeopardising the interest of the other stakeholders. The refusal of the",,,,

Canara Bank to sign inter-creditor agreement is unjust, unreasonable, unfair and defeats the mandate of Article 14 of the Constitution of India.",,,

71. To appreciate the arguments of Mr.Kamdar and Mr.Seervai, we must first refer to the settled principles, which enable us to issue a writ of",,,,

mandamus. In both matters, a writ of mandamus is claimed. That writ cannot be issued as a matter of course. It cannot be issued on the mere asking",,,,

of it. It cannot be issued merely because the petitioners feel that it should be issued. The petitioner will have to prove that there is a pre-existing and",,,,

pre-established legal right and a corresponding duty, which alone would enable us to issue this writ.",,,

72. In the case of State of Kerala and Ors. Vs. Kandath Distilleries AIR 2013 SC 1812, the Honâ??ble Supreme Court observed thus :-",,,,

â??27. Legislature when confers a discretionary power on an authority, it has to be exercised by it in its discretion, the decision ought to be that of the",,,,

authority concerned and not that of the Court. Court would not interfere with or probe into the merits of the decision made by an authority in exercise",,,,

of its discretion. Court cannot impede the exercise of discretion of an authority acting under the Statute by issuance of a Writ of Mandamus. A Writ",,,,

of Mandamus can be issued in favour of an applicant who establishes a legal right in himself and is issued against an authority which has a legal duty",,,,

to perform, but has failed and/or neglected to do so, but such a legal duty should emanate either in discharge of the public duty or operation of law.â??",,,,

73. In the first petition, the prayer is to issue such a writ directing respondent Nos.1 to 6 to forthwith comply with paragraph 6.4 of the Master Circular",,,,

dated 1st July, 2015 issued by the Reserve Bank of India.",,,

74. Copy of this Circular has Parts A, B, C, C-1 to C-3. Now, the petitionerâ??s prayer is that this Circular should be complied with insofar as it lays",,,,

down the Prudential Norms on Income Recognition Assets Classification and Provisioning pertaining to advances. Now, this part of the Circular would",,,,

require a closer look. The said aspect is found in Part A, 3, 4 and 5. That says, an asset can be termed as Non Performing Asset, if it satisfies the",,,

criteria laid down in the definition of this expression. Firstly, this part says that in line with the international practices and as per the recommendations",,,

made by the Committee on the Financial System, the Reserve Bank of India has introduced, in a phased manner, the norms styled as prudential norms",,,

for income recognition, asset classification and provisioning for the advances portfolio of the banks. Pertinently, Mr.Kamdar does not point out that it is",,,

to move towards greater consistency and transparency in the published accounts that the policy has been brought into effect. It is clarified that this",,,

policy should be objective and based on record of recovery rather than on any subjective considerations. Likewise, the classification of assets of banks",,,

has to be done on the basis of objective criteria, which would ensure a uniform and consistent application of the norms. Importantly, the provisioning",,,

should be made on the basis of the classification of assets based on the period for which the asset has remained non-performing and the availability of",,,

security and the realisable value thereof. The banks are urged to ensure that while granting loans and advances, the repayment schedules fixed should",,,

be realistic. It should promote prompt repayment by the borrowers and thus improve the recovery of advances. Mr.Kamdar does not say that the",,,

policy of income recognition is any way faulty or defective. He relies upon this policy, but ultimately, there is a discretion vesting in the financial",,,

institutions. The asset classification has to be based by determining the assets as Substandard Assets, Doubtful Assets and Loss Assets. What could",,,

be termed as Substandard Assets, Doubtful Assets and Loss Assets is set out in Part 4.1. The guidelines for classification of assets are laid down in",,,

Part 4.2 onwards. The further paras of this part are with regard to provisioning norms and they are set out in Part 5 onwards. The provisioning norms",,,

are aimed at fixing primary responsibility. The primary responsibility for making adequate provisions for any diminution in the value of loan assets,",,

investment or other assets is that of the bank managements and its statutory auditors. There has to be a inspecting officer of the Reserve Bank of",,,

India whose assessment furnished to the bank will assist it and statutory auditors in taking a decision with regard to making adequate and necessary",,,

provisions in terms of prudential guidelines. The prudential norms, the classification of assets would then enable the provisioning. Now, the argument",,,

of the learned senior counsel is based on para 6.4 of this circular. This para sets out the procedure for sale of banks/financial institutions's financial

assets to Securitisation Company and Reconstruction Company, including valuation and pricing aspects. This paragraph reads as under :-

6.4 Procedure for sale of banks'/FIs' financial assets to SC/RC, including valuation and pricing aspects

(a) The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) allows acquisition of

financial assets by SC/RC from any bank/FI on such terms and conditions as may be agreed upon between them. This provides for sale of the

financial assets on a "without recourse" basis, i.e., with the entire credit risk associated with the financial assets being transferred to SC/RC, as

well as on a "with recourse" basis, i.e., subject to unrealized part of the asset reverting to the seller bank/FI. Banks/FIs are, however, directed to

ensure that the effect of the sale of the financial assets should be such that the asset is taken off the books of the bank/FI and after the sale there

should not be any known liability devolving on the banks/FIs.

(b) Banks/FIs, which propose to sell to SC/RC their financial assets should ensure that the sale is conducted in a prudent manner in accordance with a

policy approved by the Board. The Board shall lay down policies and guidelines covering, inter alia,

i. Financial assets to be sold;

ii. Norms and procedure for sale of such financial assets;

iii. Valuation procedure to be followed to ensure that the realisable value of financial assets is reasonably estimated;

iv. Delegation of powers of various functionaries for taking decision on the sale of the financial assets; etc.

(c) Banks/FIs should ensure that subsequent to sale of the financial assets to SC/RC, they do not assume any operational, legal or any other type of

risks relating to the financial assets sold.

(d) (i) Each bank/FI will make its own assessment of the value offered by the SC/RC for the financial asset and decide whether to accept or reject

the offer.

(ii) In the case of consortium/multiple banking arrangements, if 75% (by value) of the banks/FIs decide to accept the offer, the remaining banks/FIs

will be obligated to accept the offer.,,,

(iii) Under no circumstances can a transfer to the SC/RC be made at a contingent price whereby in the event of shortfall in the realization by the,,,

SC/RC, the banks/FIs would have to bear apart of the shortfall.",,,

(iv) Banks using auction process for sale of NPAs to SCs/ RCs should be more transparent, including disclosure of the Reserve Price, specifying",,,

clauses for non-acceptance of bids, etc. If a bid received is above the Reserve Price and a minimum of 50 per cent of sale proceeds is in cash, and",,,

also fulfills the other conditions specified in the Offer Document, acceptance of that bid would be mandatory.",,,

(e) Banks/FIs may receive cash or bonds or debentures as sale consideration for the financial assets sold to SC/RC.,,,

(f) Bonds/debentures received by banks/FIs as sale consideration towards sale of financial assets to SC/RC will be classified as investments in the,,,

books of banks/FIs.,,,

(g) Banks may also invest in security receipts, Pass-through certificates (PTC), or other bonds/debentures issued by SC/RC. These securities will also",,,

be classified as investments in the books of banks/FIs.,,,

(h) In cases of specific financial assets, where it is considered necessary, banks/FIs may enter into agreement with SC/RC to share, in an agreed",,,

proportion, any surplus realised by SC/RC on the eventual realisation of the concerned asset. In such cases the terms of sale should provide for a",,,

report from the SC/RC to the bank/FI on the value realised from the asset. No credit for the expected profit will be taken by banks/FIs until the profit,,,

materializes on actual sale.â??,,,

75. Mr.Kamdar would submit by relying upon clause (d)(ii) of this paragraph that the writ be issued. However, he omits from his arguments other",,,

clauses of para 6.4. The clauses would reveal that the financial institutions and banks can acquire financial assets. This can be done by taking,,,

recourse to the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (for short, â??the SARFAESI",,,

Actâ?). This provides for sale of financial assets on â??without recourseâ?? basis. This means the credit risk associated with the financial assets,,,

being transferred to the creditors. This is subject to unrealised part of the asset reverting to the seller bank/financial institution. The banks are directed,,,

to ensure that the effect of the sale of the financial assets should be such that the asset is taken off the books of the bank/financial institution and after,,,

the sale, there should not be any known liability devolving on the bank/financial institution. Thereafter, how the sale is to be conducted in a prudent",,,,

manner, in accordance with the policy approved by the Board and what policy and guidelines the Board should lay down is set out in clause (b) of para",,,,

6.4. Further, clause (c) says that the banks and financial institutions should ensure that subsequent to sale of the financial assets to Securitisation",,,,

Company and Reconstruction Company, they do not assume any operational, legal or any other type of risks relating to the financial assets, which are",,,,

sold.,,,,

76. The entire set of guidelines denote that this is an advise, caution and guidance provided on sale of financial assets to Securitisation Company (SC)",,,,

and Reconstruction Company (RC). As provided in para 6.3, the financial assets which can be sold to the Securitisation Company and Reconstruction",,,,

Company by any bank or financial institution are non-performing assets, including a non-performing bond/debenture, a Standard Asset where the asset",,,,

is under consortium/multiple banking arrangements and atleast 75% by value of the asset is classified as non-performing asset in the books of other",,,,

banks/financial institutions and atleast 75% by value of the banks/financial institutions who are under the consortium/multiple banking arrangements",,,,

agree to the sale of the asset. Secondly, a procedure has to be followed and in the case of consortium/multiple banking arrangements, if 75% (by",,,,

value) of the banks/financial institutions decide to accept the offer, the remaining banks/financial institutions will be obligated to accept the offer.",,,,

However, this is preceded by an assessment of each bank/ financial institution of the value offered by the Securitisation Company/Reconstruction",,,,

Company for the financial asset and decide whether to accept or reject the offer. Further, there cannot be a transfer to this Securitisation Company/",,,,

Reconstruction Company at a contingent price, whereby, in the event of shortfall in the realization by the Securitisation Company/Reconstruction",,,,

Company, the banks/financial institutions would have to bear a part of the shortfall. Finally, if the auction process is used for sale of non-performing",,,,

assets to Securitisation Companies/ Reconstruction Companies, that should be more transparent and complying with what is laid down in para 6.4",,,,

clause (d)(iv).,,,

77. Mr.Kamdar, therefore, is not correct in arguing that this circular ought to be followed and must be directed to be followed by respondent Nos.1 to",,,

6, even if that is containing a caution, advise and guidance. It is common ground that the petitioner says that these guidelines/norms should be applied",,,

and there is no choice not to abide by it. The argument is that since more than 75% (by value) of the lenders of the petitioner have assigned all their",,,

rights, title and interest in the financial facilities granted by them to the petitioner in favour of respondent No.7 by executing assignment agreements, by",,,

virtue of the IRAC guidelines, all other lenders of the petitioner are obligated to accept the offer of respondent No.7 for assignment of their respective",,,

rights, title and interest in the financial facilities granted to the petitioner. To our mind, this understanding of the senior counsel is flawed and erroneous",,,

simply because there is an obligation only when the guidance is adhered to and all precautions are taken before the assignment arrangement for sale.,,,

Once these are guidelines and they cannot be elevated or placed at the level of a binding rule, regulation and statute, then, we cannot accept the",,,

arguments of Mr. Kamdar. Assuming that these are fulfilled, as projected by the petitioner, still the decision to be taken requires balancing and",,,

weighing of several factors. There is a risk which has to be taken and ultimately the policy must be applied on case-to-case basis. We cannot direct",,,

respondent Nos.1 to 6, who are financial institutions/banks, to agree to the demand of the petitioner. If these are policy matters and dealing with fiscal",,,

and financial issues, then, the discretion of the banks/financial institutions cannot be taken away by issuing a command or writ contrary to the",,,

expressed terms and conditions of the policy. The policy document must be read as a whole and nothing should be read, as is attempted, in isolation or",,,

out of context. In these circumstances, we do not think that the petitioner can claim the writ. In fact, in the grounds of this petition, respondent No.1 is",,,

targeted and it is stated that its actions are mala fide and arbitrary. It is seeking to recover monies from the petitioner under the original financial",,,

documents after a part of the respondent No.1's debt has been converted into equity under the SDR Scheme. Now, we cannot attribute mala",,,

fides and arbitrariness so easily and casually in financial matters to a public sector bank. That bank is the custodian of public funds. It holds them in",,,

trust for the public. It is not expected to surrender and sacrifice its interests, particularly legal rights merely because the petitioner desires that it should",,,

join in total restructuring of the debt of the petitioner or total waiver. We must bear in mind that before us is a debtor who owes thousands of crores to,,,

these financial institutions and banks and it is dictating to them to accept the proposal of settlement or restructuring of its debt. The proposal has to be,,,

evaluated and considered in the backdrop of its long term implications and consequences. If the bank adopts such a course, then, we cannot direct the",,,

bank to act contrary to the same. That would mean calling upon the bank not to act for public good and in public interest.,,,

78. Respondent No.1, on the own showing of the petitioner, contends that the SDR scheme failed because no change in management could be",,,

effected and thus, an event of default has occurred under the CDR scheme. Now, the petitioner says that the obligation to induct new investor and",,,

cause a change in the management was that of the lenders. In raising such a ground, the petitioner is attributing to the bank (respondent No.1)",,,

arbitrariness. Now, such an accusation or allegation is easy to level, but when the nationalised bank has to also consider all pros and cons and its",,,

decision should be rational, reasonable, fair, just and in public interest, then, merely because its interpretation of the clauses of a scheme is allegedly",,,

erroneous, the writ cannot be issued as claimed. In fact, in grounds (E), (F) and (G), precise allegations made by respondent No.1 are summarised.",,,

The petitioner seeks to challenge these allegations. However, all the matters pertaining to these allegations are factual issues. The remarks of the first",,,

respondent are termed as allegations by the petitioner, but what we find is that it is an evaluation by the first respondent. Its evaluation and financial",,,

commitments may not be acceptable to the petitioner, but surely, on the version of the petitioner, we cannot issue the writ as prayed. These are",,,

seriously disputed factual issues. Therefore based on all these grounds, the petitioner cannot insist on respondent Nos.1 to 6 to agree with it. It is",,,

apparent from a reading of ground (K) that respondent Nos.1 to 6 are public sector undertakings and custodian of public funds. However, before",,,

accusing these respondents of acting unfairly, arbitrarily, the petitioner knows that the guidelines of the Reserve Bank of India on all and every",,,

possible aspects of financial management, grant of loans and advances, do not have a binding character. Ultimately, the banks have been given a free",,,

play in the joint. The decisions are discretionary in nature. The discretion cannot be directed to be exercised in a particular manner when several,,,

options and courses are open to the decision making body. It is not obliged to take only one particular decision, much less in favour of the petitioner. It",,,

is in these circumstances that we do not agree with Mr.Kamdar that everything that is placed before us is mandatory in character. In fact, we have",,,

reproduced the paragraphs of the petition which are based on the IRAC guidelines contained in circular dated July 1, 2015. There is no case outside",,,

this circular, which is pressed before us. Merely because several meetings were held and some tentative decisions were taken does not mean that",,,

there is a mandate flowing from the same. The decisions are termed as unanimous by the petitioner, but it is conceded before us that 13 lenders have",,,

assigned their respective debts to respondent No.7. However, respondent Nos.1 to 6 are not agreeable to the decisions taken at the consortium",,,

meeting by the other lenders of the petitioner. There is no question of backing out, but if the petitioner says that there is a commercial merit in",,,

assigning the debt of the petitioner in favour of respondent No.7, then, that commercial wisdom is not collective, but of the majority of the creditors.",,,

Particularly even after scaling down and granting a concession, the debt of the petitioner is enormous and computed to the extent of",,,

Rs.1758,41,96,635/-. There is another debt of the associated company and that is also enormous. When such is the magnitude of the debt, then, a",,,

cautious approach by respondent Nos.1 to 6 cannot be ipso facto termed as arbitrary, unfair and unreasonable. The petitioner will have to establish",,,

and prove that the IRAC guidelines styled as such contain a mandate. That mandate has not been adhered to by respondent Nos.1 to 6 though all,,,

conditions in relation thereto are fulfilled by the petitioner is another facet, which will have to be established and proved by the petitioner. That the",,,

decisions are taken unanimously by all lenders and, therefore, respondent Nos.1 to 6 cannot back out of the same must be proved by leading evidence.",,,

That legally admissible evidence ought to take care of all the alternate versions and placed by the petitioner itself before us. Firstly, it is said that these",,,

decisions are unanimous and thereafter it is said that the decisions are the product of collective commercial wisdom of the superior majority of the,,,

creditors of the petitioner and they have to be implemented.,,,

79. We do not think that the grounds raised in this petition, consistent with which Mr.Kamdar raised the arguments, enable us to issue the writ as",,,

prayed for.,,,

80. The grounds in the writ petition project a version of the petitioner based on which a relief in the nature of specific performance of contractual,,,

obligations is sought in this writ petition. If we make a reference to grounds (N), (O) and (P), then, it is evident that the petitioner say that it has",,,

fulfilled its part of promise or obligation and respondent Nos.1 to 6 have refused to comply with the guidelines despite the same. Now, what the",,,

reciprocal or corresponding obligations qua the dues of the lenders are and whether they are contractual or statutory in character would have to be,,,

established and proved. If these are contractual obligations, then, whether there is absolute refusal to perform the obligations or discharge the duties or",,,

that the duties and obligations allegedly attributed to the lenders have been performed only in part and not in full are matters, which would have to be",,,

established and proved by the petitioner either in substantive legal proceedings or in defence to the proceedings instituted against it by respondent,,,

No.7. To our mind, it would be highly risky and unsafe to rely on the version of the petitioner and issue the writ of mandamus as prayed.",,,

81. All the more, when the seventh respondent has, in a communication addressed to the petitioner, copy of which is at Exhibit â??BBâ?? to the",,,

petition, clarified its position. It has referred to all the facts in details and then said in the recall notice that pursuant to the terms of the SDR package",,,

the debt amounting to Rs. 35.60 Crores and Rs.271.11 Crores were converted into equity in the share capital of the petitioner and Chennai Network,,,

Infrastructure Limited (CNIL). The consortium lenders, alongwith Canara Bank, post conversion of debt into equity, are presently holding 51%",,,

shareholding. They were required to be transferred to new investor within a period of 18 months from the date of reference to the change of present,,,

management. This is an essential condition of the SDR package. That has not been fulfilled. The standstill clause available under the SDR expired on,,,

19th March, 2018. Therefore, by the Reserve Bank of India guidelines, the petitionerâ??s accounts were classified as non-performing assets by the",,,

statutory auditors with retrospective effect from 1st July, 2011. This is on account of failure or non-compliance with the CDR and SDR packages.",,,

The company has failed to meet its repayment obligations towards the Canara Bank and committed breaches and defaults under financial documents.,,,

That is why the Canara Bank called upon the petitioner to pay the dues by its reminder dated 27th June, 2018. There is no response to the same. That",,,

is how the bank was seeking to recover a sum of Rs.540.35 Crores under the Rupees Facility as on 23rd August, 2018.",,,

82. We are clear in our mind after we have perused this letter that it is the first respondent, which is accusing the petitioner of breach and violation of",,,

the packages and the conditions thereof. The bank accuses the petitioner of not fulfilling its commitment or the essential conditions under the,,,

packages. This may be or may not be correct, but it is definitely a version contrary to that of the petitioner. In such circumstances, how arbitrariness,",,

much less, mala fides, can be attributed to a public financial institution without resolution of the factual disputes, is unclear to us. In other words, this is",,,

not an undisputed factual position, but a highly disputed one. It is in these circumstances that we are disinclined to grant any relief.",,,

83. It may be that the seventh respondent has addressed a letter to the petitioner, copy of which is at page 322 of the paper-book, and it claims that it",,,

is entitled to recover from the borrowers or guarantors the total dues of the banks alongwith the interest at contractual rate. It makes reference to,,,

certain banks mentioned in Schedule-1. This may not be inclusive of all the debts and dues to even Canara Bank. Therefore, this communication may",,,

say that the assignment agreements are with Union Bank of India, Andhra Bank, ICICI Bank Limited, Axis Bank, Bank of Baroda, Bank of India,",,

Dena Bank, Indian Overseas Bank, Punjab National Bank, State Bank of India, Oriental Bank of Commerce and Central Bank of India, still, the",,,

petitioner has impleaded Canara Bank, Corporation Bank, Indian Bank, Vijaya Bank, IDBI Bank and Life Insurance Corporation of India Limited, all",,,

of which are not a party to this agreement. In these circumstances, marking of the documents in favour of these entities would not suffice. All the",,,

more when we have made detailed reference to the affidavit-in-reply of respondent No.1 as well.,,,

84. As a result of the above discussion, Writ Petition No.1893 of 2019 fails. Rule is discharged. There would be no order as to costs.",,,

85. We do not think that the judgments relied upon by Mr.Kamdar have any bearing on the issue. In the case of Central Bank of India Vs. Ravindra,,,

and Others (2002) 1 SCC 367, the reliance was placed upon a circular of the bank dealing with interest. There, the Honâ??ble Supreme Court",,,

observed that on the subject of interest, the Circular of the Reserve Bank of India cannot be ignored by the bank. It is evident from the judgment that",,,

the issue there was whether it is possible to construe the words â??the principal sum adjudgedâ? to include the principal amount plus outstanding,,,

interest as on the date of the suit or the interest component should be kept aside or that is inclusive. The Honâ??ble Supreme Court laid down certain,,,

principles and then concluded that the Reserve Bank of India circulars in relation to rate of interest and periods of rest have statutory force. The,,,

context in which these observations have been made should not be lost sight of by us.,,,

86. In Dharani Sugars and Chemicals Limited Vs.Union of India and Ors. (2019) 5 SCC 480, the issue was different. There, the Banking Regulation",,,

Act and Sections referred to in Ravindraâ??s case (supra) have been referred to and thereafter, the argument that these circulars of the Reserve",,,

Bank of India are not traceable to any statutory provisions was dealt with. In these circumstances, the arguments on constitutional validity of Section",,,

35-AA and 35-AB have been rejected. Once again these are in the context of the challenge to these provisions after the Insolvency and Bankruptcy",,,

Code, 2016 was enacted. The Honâ??ble Supreme Court concluded its judgment on the issues by holding the circulars ultra vires. Now, these",,,

circulars, in the backdrop of which the challenge was raised, were not identical nor was the factual issue. Therefore, this judgment has no bearing on",,,

the issue before us.,,,

87. Similarly, the judgment delivered in the case of Innoventive Industries Limited Vs. ICICI Bank and Anr. (2018) 1 SCC 407 would also have no",,,

application as a distinct controversy was dealt with by the same.,,,

88. As far as the writ petition argued by Mr.Seervai is concerned, there, we find that the prayer is to direct respondent No.7 to enter into a inter-",,,

creditor agreement. That is already entered into between the petitioner and remaining domestic lenders (respondent Nos.3 to 6 and 8 to 18).,,,

89. Now, the mandamus that is claimed is once again on the basis of the petitionerâ??s version. The petitioner says, in the grounds of challenge itself",,,

that the prudential framework issued by the second respondent (Reserve Bank of

India) provides lenders with a wide array of options to implement a resolution plan for the resolution of the debts owed by the borrowers. Ultimately, it is a resolution plan. Now, whether the word "shall" appearing therein would denote that it is mandatory to enter into the inter-creditor agreement or otherwise or that is not decisive would depend upon this framework and reading of the same in its entirety. Similarly, the disputes and which are purely factual in nature, founded on contractual obligations necessitates consideration of a contra version. That is how ground (A) of the petition is drafted. The intent of the framework is to facilitate decision on the basis of prescribed thresholds. Whether this prudential framework is better in comparison to given one and contains an absolute mandate as directed, will have to be considered in the backdrop of the case of the Canara Bank. We have referred to that case and the debt of Canara Bank owed by the petitioner. The Canara Bank may have allegedly, contrary to this framework and the alleged mandate therein, approached the NCLT, but the proceedings before the said Tribunal are pending. Now, whether that proceeding is maintainable or not and must be disposed of in the light of the petitioner's assertions, is a matter entirely left for decision by the NCLT. If the NCLT has to determine and decide the matter within the time framework, then, it is not as if the NCLT's decision, if adverse to the petitioner, is unassailable. It can be assailed and challenged in the scheme of the IBC itself by filing appeals. Now, the petitioner says very clearly in ground (B) that respondent No.7 has not per se refused to implement a resolution plan, but its stand is that the petitioner has not submitted a resolution plan that is acceptable to respondent No.7. Respondent No.7 is not averse to considering the so called better plan. Now, which plan completely and totally resolves the disputes and fulfills the obligations of parties and settles the dues of respondent No.7, is not a matter which can be decided in writ jurisdiction. We cannot, by a unilateral version of the petitioner, issue the writ. Ultimately nobody and much less a public sector financial institution/bank can be compelled to accept a settlement or resolution plan of the debtor. The bank has its own limitations, restrictions and desires to abide by the norms which it terms as more prudent. In the circumstances, we do not think that the petitioner's version can be accepted as sacrosanct. The petitioner here also relies upon the minutes of the joint lenders

meeting. If only the Canara Bank is not joining the resolution plan, then, it cannot be compelled to join it by entering into the inter-creditor agreement,",,, all the more when it has approached the NCLT. The allegations made against the Canara Bank by the petitioner can be substantiated in the,,, appropriate proceedings or while defending the proceedings before the NCLT or other Forums. In the circumstances, we think that it would be highly",,, unsafe to issue the writ as prayed in this petition. The petitioner can pursue its objections before the NCLT so also institute substantive proceedings,,, and seek appropriate declaration and relief to compel the seventh respondent to execute the agreement. We do not think that judgments in fiscal and,,, financial matters involving huge debts can be so easily made in our limited powers. For the same reasons as are assigned while dismissing Writ,,, Petition No.1893 of 2019, even this writ petition fails. It is dismissed. Rule is discharged.",,, There will be no order as to costs.,,,