

NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
NEW DELHI

I.A. No. 4057 of 2019

IN

Company Appeal (AT) (Insolvency) No. 467 of 2019

IN THE MATTER OF:

JSW Steel Ltd.

...Appellant

Versus

Ashok Kumar Gulla & Ors.

...Respondents

Present:

For Appellant: Mr. Arun Kathpalia, Sr. Advocate with Mr. Manmeet Singh, Mr. Nakul Sachdeva, Mr. Aakarshan Sahay and Ms Abhilasha Khanna, Advocates.

For Respondent: Mr. Saurabh Jain and Mr. Abhindra Maheshwari, Advocates for Respondent No. 2 (COC)

O R D E R

11.12.2019 Appellant – JSW Steel Ltd., the Successful Resolution Applicant has preferred the Interlocutory Application for modification / clarification of the judgment dated 4th December, 2019 passed by this Appellate Tribunal, whereby the appeal preferred by JSW Steel Ltd. were allowed in part up holding the resolution plan setting aside part of the order dated 9th December, 2018 passed by the Adjudicating Authority (National Company Law Tribunal) New Delhi in so far it relates to certain observations and conditions laid down in regard to ‘subsidiaries companies’ or ‘associates companies’ or ‘joint venture companies’ of the ‘Corporate Debtor’ (Vardhman Industries Limited).

2. Learned counsel for the Appellant submitted that as per the order of this Appellate Tribunal dated 1st July, 2019, the appellant filed modified resolution plan by Affidavit dated 19th July, 2019 so far it relates to 'subsidiaries companies', 'associates companies', 'joint venture companies' and other group of companies of the 'Corporate Debtor', which was declassified. However, in the judgment dated 4th December, 2019, though observation has been made with regard to 'subsidiaries companies', 'associates companies', 'joint venture companies' of the 'Corporate Debtor', no finding has been recorded with regard to other companies and its classification.

3. The aforesaid submission is not disputed by the learned counsel appearing on behalf of the 'Committee of Creditors'

4. Pursuant to the order of this Appellate Tribunal dated 1st July 2019, the Appellant filed proposed modification of Item IX (4) of clause 4 of plan stating:

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"9. That it is humbly submitted that the jurisprudence as laid down in Regulation 31(A)(9) SEBI LODR Regulations clarifies that declassification of a promoter of Vallabh Steels Limited can be given effect to in terms of the Resolution Plan. Further in relation to Vallabh Textile Company Limited, it is submitted that after the implementation of the resolution plan the Company will no longer be a Promoter of Vallabh Textile Company Limited by merely holding shares constituting 13.71% of the shareholding of the Company. Accordingly, the present Clause IX(4) of the Resolution Plan is proposed to be modified as follows:

Sr No.	Provision of the Original resolution Plan (IX(4))	Proposed Modification subject to approval of the Hon'ble Appellate Authority
	<p>“.....Since the Resolution Applicant did not intend to acquire the other subsidiaries and joint ventures of the Company mentioned in Annexure 4 (other than JVTPL) and have no relationship with the other promoters/promoter group of such subsidiaries and joint ventures, the Company shall be declassified as a promotor/promotor group of such companies and shall not be required to follow any separate procedure for reclassification of the Company as ‘public shareholders’ of such companies”.</p>	<p>“..... The Company on approval of this Resolution Plan shall stand declassified as a promoter/part of promoter group of any company or entity, including any subsidiaries or joint ventures or Associate Companies (other than (JVTPL), in which the Corporate Debtor has made an investment including those mentioned in Annexure 4 (other than JVTPL) and shall not be required to follow any separate procedure for reclassification of the Company as ‘public shareholders’ of such companies.”</p>

The aforesaid proposed modification of IX (4) of clause 4 of the resolution plan was filed for approval of this Appellate Tribunal.

5. By our judgment dated 4th December, 2019 we have dealt with the right of JSW Steel Limited, after taken over ‘subsidiaries companies’, ‘associates companies’, ‘joint venture companies’ of the ‘Corporate Debtor’, for which IX (4) of clause 4 has been filed. However, this Appellate Tribunal has not made specific order with regard to declassification of Appellant – JSW Still Ltd. as a promotor / part of the promotor group / company or entity including ‘subsidiaries companies’, ‘associates companies’, ‘joint venture companies’ in which ‘Corporate Debtor’ has made investment as mentioned.

6. In the facts and circumstances of the case and in the light of proposed

modification of the approval plan at IX (4) of clause 4, we modify the judgment dated 4th December, 2019 and in place of paragraph 16 of the said judgment following paragraph should be substituted as :-

*“ **16.(A)** The Company on approval of this Resolution Plan shall stand declassified as a promoter/part of promoter group of any company or entity, including any subsidiaries or joint ventures or Associate Companies (other than JVTPL), in which the Corporate Debtor has made an investment including those mentioned in Annexure 4 (other than JVTPL) and shall not be required to follow any separate procedure for reclassification of the Company as ‘public shareholders’ of such companies.”*

***16 (B)** If the ‘Corporate debtor’ has any right over ‘subsidiaries companies’, ‘associates companies’, ‘joint venture companies’ of the ‘Corporate Debtor’ , once successful resolution applicant (JSW Steel Ltd.) take over the ‘Corporate Debtor’, it will open to the ‘Corporate Debtor’ to decide whether it will continue with such right of ‘subsidiaries companies’, ‘associates companies’, ‘joint venture companies’ or any other companies in which ‘Corporate Debtor’ has share.*

***16 (C)** It is further ordered that the company on approval of the resolution plan shall stand declassified as promoter / part of promoter / group of promoter of any company or entity, including any ‘subsidiaries companies’, ‘associates companies’, ‘joint venture companies’ (other than JVTPL) in*

which 'Corporate Debtor' has made an investment mentioned in Annexure-4 of the plan (other than JVTPL) and it is not required to follow any separate procedure for reclassification of the company as "shareholders of such companies".

7. As plan stands modified by our judgment, we extend the period of implementation be counted from the date of issuance of this order.

8. The judgment dated 4th December, 2019 stands modified to the extent above. I.A. No. 4057 of 2019 stands disposed of.

Let copy of the judgment dated 4th December, 2019 be modified and certified copy be supplied to the counsel for the parties.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

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