IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30.09.2020

CORAM :

THE HONOURABLE MR.JUSTICE N.KIRUBAKARAN

W.P.Nos.11777 & 16622 of 2017

and

W.M.P.Nos.12750, 12751 of 2017 & 6775 of 2018

W.P.No.11777 of 2017

1.Vinkem Labs Ltd.,
Represented by its Managing Director Mr.M.Perumal,
AH 29, Shanthi Colony,
4th Avenue, Anna Nagar, Chennai 600 040.

2.Ulavar Perunthalaivar C.Narayana Samy Naidu
Ninaivu Virudhungar Dis.
Tamilaga Vivazaigal Sangam,
Represented by its President,
Mr.N.A.Ramachandra Raja,
184, Mudangiyar Road,
Rajapalayam 626 117.

(P2 impleaded as per order dated 09.06.2017 made in W.M.P.No.15676 of 2017 in W.P.No.11777 of 2017)

... Petitioner

Vs

1.Union of India,
Represented by its Secretary to Government,
PMO, South Block,

Raisina Hill,
New Delhi 110 011.

(Deleted as per order dated 11.04.2018 made in W.M.P.No.6775 of 2018 in W.P.No.11777 of 2017)

2.Union of India,
Represented by its Secretary to Government,
Department of Pharmaceuticals,
Ministry of Chemicals & Fertilizers,
Shastri Bhavan, New Delhi.

3.Union of India,
Represented by its Secretary to Government,
Ministry of Commerce & Industry
Udyog Bhavan, New Delhi.

4.Union of India,
Represented by its Secretary to Government,
Ministry of Finance,
Department of Expenditure, Procurement Policy Division,
516, Lok Nayak Bhavan,
New Delhi.

5.Union of India,
Represented by its Secretary to Government,
Ministry of Health,
Nirman Bhavan,
New Delhi.

6.The Chairman,
NABARD, Plot No.C-24, G-Block,
Bandra Kurla Complex,

BKC Road, Bandra East,
Mumbai, Maharashtra 400 051.

7.State of Tamil Nadu,
Represented by its Secretary,
Health and Family Welfare Department,
Fort St. George, Chennai.

8.State of Tamil Nadu,
Represented by its Secretary,
Department of Agriculture,
Fort St. George,Chennai.

(R6 to R8 suo motu impleaded as per order dated 15.06.2017 made in W.P.No.11777 of 2017)

9.Bank of India,
Represented by its Manager,
Mid Corporate Branch,
Tarapur Towers, Anna Salai, Chennai.

10.Tamil Nadu Medical Services Corporation Limited,
Represented by its Managing Director,
No.417, II Floor, Pantheon Road,
Egmore, Chennai.

(R9 & R10 suo motu impleaded as per order dated 05.07.2017 made in W.P.No.11777 of 2017)

11.Drug Controller of India,
New Delhi.

(R11 suo motu impleaded as per order dated 12.07.2017 made in W.P.No.11777 of 2017)

12.The Reserve Bank of India,
Banking Operations Division,
Represented by its General Manager,
Chennai.

(R12 suo motu impleaded as per order dated 26.07.2017 made in W.P.No.11777 of 2017)

13.ITCOT Consultancy and Service Ltd.,
50-A, Greams Road,
Chennai 600 006.

(R13 impleaded as per order dated 31.10.2017 made in W.P.No.11777 of 2017)

14.The Secretary,
Department of Scientific and Industrial Research,
Ministry of Science and Technology,
Government of India,
New Delhi

(R14 suo motu impleaded as per order dated 11.04.2018 made in W.P.No.11777 of 2017)

15.Tamil Nadu Industrial Development Corporation,
Rep. by its Chairman & Managing Director,
19-A, Rukmini Lakshmipathy Road,
Egmore, Chennai 600 008.

(R15 suo motu impleaded as per order order dated 10.07.2018 made in W.P.No.11777 of 2017)

16.Nithi Aayog,
Represented by its Chairman,
New Delhi.

(R16 suo motu impleaded as per order dated 27.08.2018 made in W.P.No.11777 of 2017)

17.Government of India,
Represented by its Principal Secretary,
Department of Financial Services,
Ministry of Finance,
3rd Floor, Jeeven Deep Building,
Sansad Marg, New Delhi 110 001.

(R17 suo motu impleaded as per order dated 12.06.2019 made in W.P.Nos.11777 & 16622 of 2017)

... Respondents

PRAYER: Petition is filed under Article 226 of the Constitution of India for issuance a Writ of Mandamus directing the respondents to consider and grant the representation of the petitioner dated 28.04.2017 to give preferential allotment/necessary quota in all public procurements for medicines manufactured with indigenously produced Active Pharmaceutical Ingredients and facilitate and implement the same with enabling criteria and applying concessional measures recommended by the expert committee constituted for revival of the Indian Bulk Drugs industry within a reasonable time frame to be fixed by this Court.

For Petitioner : Mr.Om Prakash
Senior Counsel
for Ms.K.Sumathi

For Respondents : Mr.G.Karthikeyan, (for R1, R14, R16 & R17)
Assistant Solicitor General
Mr.Srinivasamurthy, (for R2 to R5 & R11)
Mr.T.Ravichandrdan, (for R6 & R9)
Mr.T.M.Pappiah, (for R7, R8 & R10)
Special Government Pleader
Mr.C.Mohan, (for R12)
Mr.Vijayan (for R15)
Mr.N.L.Rajah,
Amicus Curiae

W.P.No.16622 of 2017

Vinkem Labs Ltd.,
Represented by its Managing Director Mr.M.Perumal,
AH 29, Shanthi Colony,
4th Avenue, Anna Nagar, Chennai 600 040.

... Petitioner

Vs

1.The Chairman,
National Bank for Agriculture and Rural Development (NABARD),
Plot No.C-24, G-Block,
Bandra Kurala Complex,
BKC Road, Bandra East,
Mumbai, Maharashtra 400 051.

2.Deputy General Manager,
National Bank for Agriculture and Rural Development (NABARD),
Tamil Nadu Regional Office,
No.48, Mahatma Gandhi Road,

Post Box No.6074, Nungambakkam,
Chennai 600 034.

3.Bank of India,
Represented by its Assistant General Manager,
Asset Recovery Branch,
'Star House', 1st Floor, No.30 Errabalu Chetty Street,
Chennai 600 001.

4.Government of India,
Represented by its Principal Secretary,
Department of Financial Services,
Ministry of Finance,
3rd Floor, Jeeven Deep Building,
Sansad Marg, New Delhi 110 001.

(R4 suo motu impleaded as per order dated 12.06.2019 made in W.P.No.11777 of 2017 and W.P.No.16622 of 2017)

... Respondents

PRAYER: Petition filed under Article 226 of the Constitution of India for issuance of Writ of Certiorarified Mandamus calling for the records of the respondents, quash the communications dated 08.03.2017 in Reg.No.Vinkem 2016-17 issued by the 2nd & 3rd respondents, that is, Deputy General Manager of NABARD and Assistant General Manager of Bank of India, dated 03.05.2017 in Reg.No.CZ/ARB/MKS/09 issued by the 3rd respondent, that is, Assistant General Manager of Bank of India and dated 21.06.2017 in Reg.No.NB.T.N.DOR.1CD/Cofinance/140/vinkem labs-2017-18 issued by the 2nd Respondent, that is, Deputy General Manager of NABARD and

direct the Respondents to reckon the stocks of the Petitioner valued at Rs.41.25 crores by experts nominated by Banks and the sum of Rs.1.46 crores realized by Sale of Promoter's Personal Asset towards Margin Contribution for the Corporate Debt Restructuring and to extend to the Petitioner Sanction in terms of the Respondents' letter dated 23.01.2017 with further concessions in interest as per the recommendations of the Expert Committees and direct the Respondents to make the sanction and commence disbursements within a period of four weeks to enable the Petitioner to participate in the subsisting Public Procurement Tenders for the current year.

For Petitioner : Mr.Om Prakash,
Senior Counsel
for Ms.K.Sumathi

For Respondents : Mr.T.Ravichandran, (for R1 to R3)

Mr.G.Karthikeyan, (for R4)
Assistant Solicitor General

C O M M O N O R D E R

"உறுபசியும் ஓவாப் பிணியும் செருபகையும்
சேரா தியல்வது நாடு"

திருக்குறள் – 734

A country is one that strenuously guards against **spiralling hunger**, **endemic disease** and **ravage of the foe**.

Thirukkural – Couplet 734

2.If so, what would become of a nation that leaves supply of its essential life-saving medicines, livelihood of a tranche of its farmers to the mercy of its competing neighbour is the question that arises for consideration in these Writ Petitions.

II. India's near total dependence on imports from one single nation which is an enemy country for essential life-saving medicines

3.India has emerged as a pioneer in pharmaceuticals. Yet, for the basic ingredients of medicine making, it is heavily dependent on imports from one single neighbour nation, viz., China. This dependency handicaps us in responding effectively to security and other breaches by the neighbour. It also makes our patients to more often contend with spurious and sub-standard drugs and placing them in a vulnerable prospect of going without medicines if tensions escalate between the two countries, especially after galwan valley tussle.

4.Though we do not import medicines as such, we import the active ingredients of a medicine that is known as Active Pharmaceutical Ingredients/Bulk Drugs and make finished dosages out of it for domestic and export purposes.

5.To appreciate this better, it would be useful to know what is '**R&D in Generics**', '**Active Pharmaceutical Ingredients ['API']**' & '**Formulations**'.

6.R&D in Generics refers to 'Reverse' Engineering of equivalents of Proprietary Medicines by independent process. Generic Medicines could enter market upon expiry of patent period for a Proprietary Medicine.

7.'Active Pharmaceutical Ingredients' ('APIs') refers to the ingredients in a medicine that act upon the illness of the patient. These ingredients constitute the nucleus of any medicine and are also referred to as 'Bulk Drugs'.

8.'Formulations' refer to finished dosages made adding excipients to Active Pharmaceutical Ingredients that are administered to patients. Excipient is an inactive substance that serves as the vehicle or medium for a drug. Excipients are things like Colouring Agents, Preservatives and Fillers while Active Pharmaceutical Ingredients are the key ingredients of the medicine meant to act upon the illnesses and are thus the nucleus of all medicine.

9.Over the years, India has built robust know-how and systems for all the three limbs of medicine making, namely, Generic R&D, Active Pharmaceutical Ingredients ['API'] and making of Formulations. We became pioneers in generics and earned the distinction of being Pharmacy to the World. However, gradually, on account of import of API requirements at cheap costs, our country has declined to a mere Formulations hub.

10. Thus, India's API segment built over several decades has given way for cheap import APIs, primarily from China who were able to sell their APIs at 1/4th of their corresponding manufacturing cost in India. As a result, our country that had once built 99.7% self-reliance in APIs went on to import over 90% of its API requirements from China. The economic advantage of importing APIs has led India to lose its scientific edge and self-reliance in APIs and India now thrives as a mere Finished Dosage Hub, that is, a country that imports its API requirements and bundles them into finished dosages. On account of this abdication of domestic segment, the patients of our country have to face issues such as proliferation of sub-standard drugs, unavailability of life saving drugs etc., At one stage, even the National Security Advisor ('NSA') has cautioned the Government of the danger to our national security on account of this excess import dependence from a single nation.

11. Hence, Government of India constituted a committee of experts to recommend measures to revive the domestic API production under stewardship of eminent scientist Dr.V.M.Katoch. The committee studied the issues and given its recommendations in the year 2015. **However, the implementation of its salient recommendations is still on the anvil citing logistic and financial considerations**.

12. While so, with the import dependence looming to over 90%, and serious concerns were raised in the Parliament, **the Union Government deemed it fit to**

constitute an Inter-Ministerial Task Force comprising of Secretary level representatives of various ministries to address the issue of self-reliance and promotion of Active Pharmaceutical Ingredients [API] for essential medicines in Indian drug making.

13. However, till date our country's reliance on one single nation for key ingredients of all life-saving medicines remains at very high proportions posing grave security and other concerns. One would shudder at the prospect of patients, young and old, being deprived of access to life saving drugs, especially, primary medicines for ailments that call for timely intensive medication such as tuberculosis, AIDS, Cardiovascular diseases, Cancer and so on.

14. The Writ Petitions on hand raise concerns with regard to access to quality life-saving medicines to patients suffering from one of the dreaded diseases, namely, Cancer.

III.The Menace of Cancer in India

15. Cancer is a gruesome disease. It is the Emperor of all Maladies. The physical and mental toll that cancer exacts is far higher than that of any other disease. Nothing is more painful than watching someone come to the end of their life because of cancer. In addition to the trauma that the patient has to endure, the excruciating

treatment and tragedy that quite often follows on its heels leaves their loved ones also numb and scarred for life. Cancer treatment is also beyond the means of most patients, especially in developing countries. Approximately 70% of cancer deaths occur to those of low and middle incomes.

16. Cancer is no more a rarity. It is galloping with alarming statistics. In India, each day, Cancer is stated to kill 50 kids. Every 7 minutes one woman dies of Cervical Cancer. Breast cancer claims one life every 10 minutes. By 2025, these cancers are expected to kill one victim each in 4.6 and 6.2 minutes respectively. There has been a near 60% increase in the incidence of cancer in less than two decades and is estimated that cancer will kill 5.5 million women per year – about the population of Denmark –by 2030. According to the National Cancer Institute (NCI) which is part of the US Department of Health and Human Services (USDHHS), every 13th new cancer patient in the world is an Indian. Mortality rate is also very high in Cancer - Globally, one in every eight deaths is caused by cancer.

17. Cancer does not wait. Treatment to cancer patients cannot be put on hold. Timely intervention and intensive treatment are the only hope for Cancer Patients. In developed nations, the rate of remission/cure for Cancer Patients is stated to be many times higher compared to that of the patients of developing nations. It is also reported that compared to rich nations, Cancer may kill 4 times more kids in developing nations.

18. Much of the aforesaid facts and statistics had been adverted to by this Court in an earlier order dated 29.05.2018 made in WP.No.11777 of 2017 to appoint an *amicus curiae* and are not in dispute. The report filed by the learned *amicus curiae* in this matter also details how the loss of self-reliance and proliferation of sub-standard drugs happen on account of our excessive imports of API from one single nation. Government of India, the original respondent in the Writ Petition also did not agitate on the criticality of the aforesaid issue. In fact, it has reported that conserving and reviving of API strength of the country has become a need of the hour.

19. The importance of protecting self reliance in making of Cancer Drugs cannot be overstated with the raging virus endemic in our neighbour nation on whom we depend. At the world stage, shortage of a drug named 'Vincristine' to treat childhood cancer is the raging issue for which the petitioner has know-how and unique capabilities.

20. Further, Cancer patients in developing nations could also be treated with better outcome, if, among others, the patients of these countries get access to aseptic world class medicines. However, patients of developing nations have to very often contend with either spurious fake medicines that do not carry medicinal ingredients at all or with sub-standard drugs, i.e., medicines made with shoddy manufacturing practices.

21. Even worse is a predicament where scores and scores of these Cancer Patients whose lives are hanging in the balance, especially, women and child patients, could altogether be denied access to life saving medicines. This is the worst conceivable nightmare. Hence this Court bestowed its anxious consideration to these matters with the Government of India too, a party respondent in these Writ Petitions, coming forward with one of the most proactive responses in the history of adversarial litigation.

22. The contention raised by the petitioner in W.P.No.11777 of 2017, in nutshell are as follows:

(a).The 1st Writ Petitioner in WP.No.11777 of 2017 and the Writ Petitioner in WP.No.16622 of 2017, is hereinafter referred to as 'Petitioner' for the sake of convenience. The petitioner claims to be a generic research cum manufacturing industry in the Cancer drugs segment. The Petitioner had filed WP.No.11777 of 2017 praying for certain reliefs in terms of the recommendations of "**Dr.V.M.Katoch Committee**" to conserve its existence. It has staked claims of possessing exclusive generic know-how for primary molecules in the cancer drugs segment, of having established State of the Art research cum manufacturing facilities that have very few parallels in the world and of having attained highest known bench marks in aseptic medicine making and that its know-how is critically relevant for the Country's self-reliance in essential medicines being the only venture in India to possess unique

know-how in 7 critical molecules applied in Cancer Care.

(b).The petitioner would further contend that consequent to directives issued by this Court in an earlier Writ Petition for CDR revival, the Commercial Viability of the Petitioner came to be evaluated and satisfied through different independent experts nominated by its Bankers. However, no relief could fructify on account of its valuable stocks worth Rs.41.25 crores being accorded 'NIL' value for the purpose of margin requirements.

(c).The petitioner would contend that this was on account of restrictive tender policies and absence of level playing field for domestic Good Manufacturers in Public procurement due to policy lapses. It is contended that **the singularly price driven policies not only crippled the Petitioner industry but eroded the entire segment weakening the Health Security of the nation as a whole**. The petitioner has submitted that the Government cannot pursue policies that erode right to life and livelihood of its citizens.

23.A detailed counter affidavit has been filed on behalf of the Union Government in W.P.No.11777 of 2017, wherein it has been stated as follows:-

The Union Government, did not seek to take umbrage on technicalities. It came forward with a reasoned Counter Affidavit wherein it chronicled the various steps sought to be taken pursuant to the recommendations of Dr.V.M.Katoch Committee to

reduce import dependence for API and the financial and Inter-State logistic challenges putting them on hold. The Government also listed the steps pursuant to its **"Make in India Policy"** to encourage domestic manufacturers. With regard to the Writ Petitioner, the Government only submitted that the reliefs sought for by the Petitioner could not be considered on the basis of its own self-serving assertions of distinctions and relevance.

IV.Various Evaluations to which the Petitioner has been subjected to and their outcomes

24. During the course of hearing, this Court felt that significant issues have arisen for consideration. While the contentions of the Writ Petitioner may not be *ex facie* accepted, the same could not be *ex facie* rejected either. This led to the Court to direct *suo moto* impleading of relevant party respondents from time to time and also entrusting the responsibility of testing the claims made by the Petitioner to the respondents themselves and assist the Court accordingly. This resulted in the Writ Petitioner being subjected to a spate of evaluations.

25. It is seen that pursuant to orders of this Court in the earlier Writ Petitions filed by the petitioner in W.P.No.9610 of 2016 and the present W.P.No.11777 of 2017, the Petitioner has undergone the following evaluations:-

Evaluations consequent to WP.No.9610/2016

(**i**).May - October 2016 - Techno Economic Viability Study by MITCON Consultancy & Engineering Services Ltd.,a body of independent experts nominated by Banks pursuant to order dated 27.04.2016 made in WP.No.9610 of 2016.

(**ii**).December 2016 - Fixed Asset Valuation by ITCOT Consultancy and Services Ltd., a body of independent experts nominated by Banks pursuant to order dated 27.04.2016 made in WP.No.9610 of 2016.

(**iii**).31.08.2016 - Stock Audit by M/s.A.Devan & Co., experts nominated by Banks.

Evaluations consequent to WP.No.11777 of 2017

(**iv**).24.08.2017 - Drug Testing Report from the Central Drug Testing Laboratory.

(**v**).14.03.2018 - Joint Inspection Report by Deputy Drug Controller (I), Central Drugs Standards Control Organization (SZ) Government of India & Director of Drugs Control, State of Tamil Nadu.

(**vi**).14.03.2018 - Joint Inspection Report by Bank of India & NABARD.

(**vii**).10.07.2018 – Report by Senior Advocate Mr.N.L.Rajah, the *amicus curiae* appointed by this Court.

(**viii**).23.01.2019 –Report of Expert Committee of Multi-Ministerial High Level Task Force for API's constituted by Government of India.

26. The outcome of the aforesaid evaluations are as follows:-

(A).Techno Economic Viability Study by MITCON Consultancy & Engineering Services Ltd., - May -October 2016 -Excerpts

MITCON Consultancy & Engineering Services Ltd is a body of independent experts nominated in May 2016 by the Bankers to the Petitioner, namely, Bank of India and NABARD **to conduct detailed feasibility study of the Technical and Economic Viability of the Petitioner for US-FDA Approval for the CDR restructuring proposal of the Petitioner**. The report submitted by the said agency in October 2016 after such study, *inter alia,* state that

(1) The Company is engaged in manufacture of life saving, anti-cancer and other valuable drugs.

(2) As the sale of API was slow down due to the regulated market, the Company had planned to set up a USFDA compliant injectable plant and also expand the API plant to suit the USFDA compliant in 2006.

(3) Technology used: Manufacture of API: Isolation of the active principal from vinca leaves having API content as low as 0.0004% and molecules containing more number of asymmetric carbon need a high level of expertise in chromatographic separation technologies which is used for isolating vinca alkaloids. The reactions are highly potent and carries high cost. Therefore, it needs a high level of expertise.

USP of Vinkem:

(4) *Ability to manufacture all the 5 known vinca products namely* ***Vincristine****, Vinblastine, Vinorelbine, Vindesine and Vinflunine under one roof.*

(5) Vinca molecules are still the basic generic cancer medicines used in chemotherapy drug having constant demand, and is manufactured by only few

companies in the world. Hence the product life cycle is quite longer.

(6) Being driven by technocrat, utmost quality standards are maintained with documentation support.

(7) The only company which makes 23 oncology API's under one roof with technology developed by their in-house R&D laboratory which is a DSIR (Department of Scientific Industrial Research, GOI) recognized laboratory.

(8) Ability to offer 65 dosage forms in Aseptically filled liquid and lyophilized injectable form.

(9) The project supports the livelihood of small and marginal farmers. SFAC of ministry of Agriculture has granted Venture capital assistance of Rs. 399.50 lakhs for this project because this project aims to give a livelihood support to small and marginal farmers who cultivate vinca as a medicinal plant promoted by NABARD which is an ideal crop for the rain fed black cotton soil of Southern districts of Tamil Nadu.

(10) For developing new technology for the isolation of the latest cancer medicine namely Vinflunine which is still under patent, DSIR / TDB has granted Rs. 40 lakhs under their Technology Development Fund. The project has been completed and the molecule is ready for commercial production.

(11) Ability of offer MNC bench marked product at domestic prices.

(12) Having developed manufacturing technologies for several oncology drugs which have high value in the market.

(13) Complete quality control from API to finished dosage form with traceability

records and 100% SAL assured 21 CFR compliant plant.

(14)Above all, the products are manufactured from dedicated oncology facility where no other category of drug is manufactured.

(15)The facility is well designed as per the WHO guidelines, meeting the CGMP guidelines

(16)Implementation under the guidance of Dr. David Matsuhiro from USA. Dr.David is the Principal trainer in PDA (Parenteral Drug Association) in USA which trains people from all over the world for running aseptic facilities. Dr.David is also the trainer of USFDA auditors to conduct audit of aseptic facilities. He is considered as an authority on aseptic technology. Vinkem has engaged his services for putting up their FDF facility who has also conducted trainings, verification of procedures, documents and media fill tests.

Readiness indicators for USFDA:

(17)The SOP for operation/quality control/Quality Policy, STP for testing the finish products, IQ, OQ, PQ, FAT, SAT for the installed equipment, are in place. The facility is sufficient to meet the manufacturing process and achieve its declared manufacturing plan.

(18)Based on the above visit and observations the plant can be started immediately for USFDA- ANDA document preparation.

(19)Once the plant commences the operations M/s. Vinkem Labs Ltd can go for USFDA inspection after filing ANDA and they will get approval based upon the compliances.

(20)The company got all the latest equipment and machineries to produce injectable (liquid and lyophilized vials) to meet international standards of oncological products.

(21)The filing line is imported from Bosch – Germany and it is totally PLC control with minimum manual intervention.

(22)The plant has been designed keeping in mind that 21 CFR and SCADA guidelines.

Technical Feasibility

(23)*In view of all the above factors, the domestic and semi-regulated sales of finished dosage forms by Vinkem Labs Ltd is dependent on filing of DMF and ANDA with USFDA. Considering the future prospects in terms of sale of API and FDF, and huge revenue generation, transparent USFDA process adhering to clear timelines, huge global market, it is a prudent decision on the part of the company to go for USFDA filing process at the earliest.*

(24)*The Company has obtained necessary permissions/approvals/ sanctions from respective authorities except for renewal of certain approvals from WHO-GMP etc.,*

(25)List of Licenses obtained in API facility.

(26)List of Licenses obtained at TADA Injectable facility are given from Page No.44 of the report.

Life of machineries:

(27)***API Facility:*** *All the key reactors and process lines in API facility are made*

out of SS316 steel grade. Quality control equipments are imported from world leaders. The USFDA block is totally isolated from outside environment. Particle entries are prevented by using high efficient scrubbers. Neutral pH is maintained. Hence longevity of machineries are longer. Installed capacity is yet to be utilized. ***With normal preventive maintenance, the plant life span is expected to be more than 25 years.***

(28)***Injection Facility:*** *Similar observations have been made for this Facility also and it has been certified that with proper preventive maintenance, the life of the machineries is expected to be more than 25 years.*

Marketing & Marketing Arrangements

(29)*Vinkem has been selling API in both domestic market as well as to countries such as Egypt, Greece, Turkey, Belarus, Argentina etc till 2005. Indian customers were Sun Pharma, Dabur (India), CIPLA, Naprod Life Sciences, Neon Antibiotics, Bhagat Corporation etc. Turnover as high as Rs.8.00 crore has been made in one financial year.*

(30)Pfizer alone projects its annual cancer drug returns will be $11 billion by 2018. In 2010, Gleevec grossed $4.3 billion. Roche's Herceptin (the HER2 drug) and Avastin did even better: $ 6 billion and $ 7.4 billion respectively. Cancer plays a huge role in the rising costs of healthcare. America's National Institutes of Health predict that spending on all cancer treatment will rise from $ 125 billion last year to at least $158 billion in 2020. If drugs become pricier, as seems likely, that bill could rise to $207 billion.

(31)*Against the above background, Vinkem upon approval of the facility by USFDA is set to make major inroads into API Sales.*

Recommendation:

On the basis of detailed technical and financial appraisal, we are of the opinion that the project is technically feasible and economically viable for the envisaged project cost and envisaged means of finance and the bank consider the proposal for the finances as fair banking risk.

(B).Fixed Assets Valuation by ITCOT Consultancy and Services Ltd., - December 2016 – Conclusion

ITCOT Consultancy and Services Ltd., another body of independent experts nominated by Bankers to do Assets Valuation have given the **Assessed value fixed asset of the Petitioner at SIDCO &APIIC as Rs. 156,93,75,842 (*Rupees one hundred fifty six crores ninety three lakhs seventy five thousand eight hundred and forty two only*) with distress value at 90%.** They have also stated that various other parameters and additional aspects such as WHO GMP Licensing could be reckoned for Business Valuation of the units.

(C).Stock Audit and Valuation by expert body nominated by Banks

It is also seen that the current assets have been separately valued by another body of independent experts nominated by the Banks. **They have assigned a Valuation to the stocks of the Petitioner comprising of medicines and intermediaries of**

Rs.41.25 crores as on 31.08.2016.

(D).Medicines' Testing Report by Central Drug Testing Agency

The next evaluation of the Petitioner has been by Drug Testing Agencies of the Central and State Governments. By order dated 12.07.2017, this Court has directed the Petitioner to provide samples of its Drugs to the Central Government and Tamil Nadu Medical Services Commission Ltd., to ascertain the worthiness of their products. As per the said directives, we have on record Drug Testing Reports dated 24.08.2017 from the Central Drug Testing Laboratory and have concluded that the samples of petitioner tested by them are of **STANDARD QUALITY** as defined in the Drugs and Cosmetics Act, 1940 and Rules there under.

27.Further Reports:- The above exercises came to be followed by further directives of this Court dated 20.02.2018 calling upon a Joint Team of Senior Officials of Bank of India and NABARD & Drug Controllers of the Centre and the State to inspect and evaluate the facilities of the Petitioner.

28. As per the said directives, five Senior Officials from Bank of India and NABARD and the Deputy Drug Controller (I), Central Drugs Standards Control Organization (SZ) Government of India and Director of Drugs Control, State of Tamil Nadu with their team of Officials have conducted a joint inspection of the facilities of the Petitioner on 02.03.2018 and submitted their respective reports on 14.03.2018.

(E).Joint Report of Deputy Drug Controller (I), CDSCO Government of India & Director of Drugs Control, State of Tamil Nadu filed on 14.03.2018

29. Deputy Drugs Controller (I), CDSCO (SZ), Government of India and Director of Drugs Control, Government of Tamil Nadu along with Drugs Inspectors visited both the facilities of the Petitioner on 02.03.2018 and made the following observations:-

i. As per the records reviewed, the manufacturing facilities have been licensed under Drugs and Cosmetics Act, 1940 for the manufacture of various anticancer drugs. The formulation facility was licensed in 2012 under License no.29/NL/AP/2012/F/G and valid till 13.08.2017. API Manufacturing Facility was licensed in 2008 under License no.914/17 is valid till 17.12.2018.

ii. As per the records reviewed, both the manufacturing facilities have been inspected at periodic intervals by the Drugs Inspectors of Central and State Government and their compliance with Good Manufacturing practices (Schedule M of Drugs and Cosmetics Act, 1940) were found satisfactory.

iii. As per the records reviewed, both the manufacturing facilities have been inspected and on satisfactory compliance with the requirements of Good Manufacturing Practices of World Health Organization were granted WHO GMP certificate in 2014 and 2017.

iv. At the time of inspection, it was found that both the manufacturing facilities have been provided with the necessary equipment for the manufacture of Bulk

drugs and Formulations of Anticancer drugs.

v. At the time of inspection, it was found that the facility is in lay-off state and therefore no technical staffs were available and there was no manufacturing activity. However, the equipments were found in good working condition and there was adequate maintenance.

vi. During the visit, the officials of Drug control Department interacted with the bank officials and explained them about the Licensing procedure under the Drugs and Cosmetics Act, 1940 and the procedure for USFDA approval.

The Report then goes on to elaborate the list of Drugs Control Department officials visited the Facility [6 Officials] and the list of equipment found in the Formulations Facility at TADA Mandal and the API Manufacturing Facility at Tiruvallur.

(F).Joint Report of Senior Officials of Bank of India & NABARD in pusuant to the visit made on 02.03.2018.

30.In this report, the Banks have provided name and rank of Officials who conducted inspection, visited the facilities and their details in relation to loan account of the petitioner. They have made the following remarks and conclusions.

REMARKS:

During the joint inspection of both the units, the inspecting officials have observed as under:-

i.At both the unit sites, there are no activities going on since long and the units are kept closed.

ii.API formulations facilities machines at unit – I are more than 20 years old and its revival and usability needs to be assessed.

iii.During the inspection, it is reported that the unit is manufacturing drugs out of plant extract and wish to apply for USFDA license. As per IPR Act, anything derived from plant origin cannot have patent right over it.

iv.Although some stocks of medicine are available, the borrower since beginning has no marketing arrangement for sale of drugs. The Company also has no license to sell the stocks either in the Indian Market or in foreign market. Since the inspecting officials were not allowed to check the stocks, the validity/expiry date of the medicine could not be ascertained.

v.Further they have not paid any excise duty also, since no production was going on for past few years.

vi.Master cards for attendance/inspection/maintenance of each of the lab room were last updated in the year 2012 evidencing no activity in the labs.

CONCLUSION:

i.Both the banks have done the inspection at the instance of the Hon'ble High Court and without prejudice to the banks' rights.

ii.We have all along been maintaining that M/s.Vinkem Labs Pvt.Ltd., is not a fit case for further funding, in view of it being already an NPA account for almost 9 years. Banks while taking a commercial decision and also as the trustees of public money, cannot commit good money after bad

money (NPA) and that too in 100% provision made accounts. Any funding in such accounts implies funding out of the net profits of the banks which is not available at the present.

iii.There are many non-compliance issues by the subject Company in matters of Company Laws as also Banks' Regulatory framework which makes it difficult for banks to even have a re-look into any kind of further exposure in the account. The RBI had initiated Prompt Corrective Action on 20.12.2017, for mounting bad loans, placing various restriction on the bank including issuance of fresh loans. Further, the RBI on 12.02.2018 introduced a Revised Framework for Resolution of Stressed Assets under the Insolvency and Bankruptcy Code, 2016 (IBC) and had withdrawn extant instructions on resolution of stressed assets such as CDR, SDR, S4 etc. with immediate effect.

iv.There is no Balance Sheet available and filed with the Registrar of Companies (RoC) after 2014.

v. The Company Directors have since been disqualified by RoC.

vi.There is no production and hence, no revenue generation happening in the company. There is no visible roadmap by the Company for future earnings also. The lenders cannot base business decision solely on projected bench mark ratios.

vii.The list of 23 molecules which the Company intends to produce are already enlisted as ANDA and available as medicines even before

01.10.2012. The Company therefore is not an innovator/pioneer. The Company has so far not tapped the domestic market for sale of its generic medicines. The Company does not have a plan either in the original project or in the present proposal for additional funding, to sell its medicines within the country. The Advocate and the main Promoter admit that the Company cannot make any profit unless it sells in the international market. This clearly negates the social cause and serving the poor cancer patients in the country.

viii.The stocks of the Company are too old and obsolete with no marketability. The Current Asset has thus eroded resulting in depletion of the security available to the Banks even to cover the existing debt.

ix.Margin requirement: In its present proposal for CDR, though the MITCON TEV Report estimated the amount required outlay as Rs.51 crore, the Company has arbitrarily downsized the outlay to Rs.35.30 crore so as to reduce the promoter's contribution. It is apprehended by the banks that even after restructuring, the project will not be completed and that the Company would approach again for further funding. In the present restructuring proposal, Rs.20.16 crore is required as salary for staff/management/USFDA processing staff. The Company has incurred losses during 2014-15 & 2015-16 and is facing financial crisis. In this situation, bringing margin money upfront is necessary to ensure ceaseless operation of the project post restructuring. The shares of the Company are

not listed and the value is unascertainable as the Company had incurred losses in the last 2 years.

x.Business tie-ups with other Drug Companies: Over the years, the Company has been providing list of drug companies interested in collaborating with him/making tie-up arrangements. However, so far none of these proposals have materialized. This is because the Company is not amenable to any cooperative endeavor. Further, the Company is not willing to dilute its stake. It is keen on tie-ups which will ensure the lion's share to itself. The Company has not heeded to the suggestions given by the banks in this regard.

xi.Recovery process is already initiated in the account in terms of suit filed vide O.A.No.581 of 2015 before the DRT – II, Chennai.

xii.There are many financial irregularities in the account which qualify for being reported as fraud which the Banks are investigating for taking further steps in this direction.

Further Evaluations:

31.Since report of the Senior Bank Officials and the Drug Controllers of the State and Center were altogether variant and in the backdrop of issues under consideration, this Court thought it fit to appoint Mr.N.L.Rajah, learned Senior Counsel as *amicus curiae* to ascertain the worthiness of the Petitioner as a venture significant to Health Security of the nation.

(G).Report of the learned *amicus curiae*

32.The learned *amicus curiae* filed his detailed report dated 03.07.2018 with the following parts: (A) API & Indian Pharmaceutical Industry, (B) India's reliance on China for APIs, (C) KATOCH COMMITTEE 2015- Key Recommendations, (D) Recent Developments, (E) About Vinkem Labs Ltd., (F) The present Writ Petition and the Developments following the same, (G) Preliminary Observations of Amicus Curiae, (H) Request of Amicus for Directions from this Court highly commending the project of the Petitioner and its relevance to the nation.

33.The learned *amicus curiae* also provided the following Case Laws with elucidation in support of jurisdiction of this Court to pass orders in this matter:

1. Kalpana Mehta vs Union of India, Supreme Court, W.P (CIVIL) No. 558 OF 2012, Supreme Court (9 May 2018)

2. State of U.P v. All U.P. Consumer protection Bar Assn, (2018) 2 SCC 225

3. The State of Tamil Nadu v. K. Balu, (2017) 2 SCC 281

4. Imtiyaz Ahmad vs State of U.P & Ors, Crl.A.Nos.254-262 of 2012 (SC, 2nd Jan 2017)

5. Board of Control for Cricket in India v Cricket Association of Bihar, (2015) 3 SCC 251

6.University of Kerala (2) v. Council of Principals of Colleges, Kerala and Ors. SLP (C) No.25295 of 2004, 16.05.2007

7. National Campaign Commtt. V Union of India, 2017 SCC Online SC 1604.

8. B.C. Chaturvedi vs Union Of India And Ors 1995 SCC (6) 749,

9. Srinivas Rajan vs The Director of Matriculation & ors, WP.No. No. 2116 of 2011, Madras High Cout (20 Feb. 2012)

10. Krishna Chandra Pallai v. Union of India, 1992 II OLR 102.

(H).Report of Expert Committee of High Level Multi Ministerial Task Force constituted by Government of India for Conservation and Promotion of Domestic API strength of our country

34.In the light of the recommendation by learned *amicus*, this Court directed the Government of India Multi-Ministerial API Task Force to visit and evaluate the petitioner as a pilot case study to take stock of the significance of the API Know-How and Technology of the petitioner for the nation. Accordingly, Government of India, Ministry of Chemicals & Fertilisers, Department of Pharmaceuticals *vide* its communication dated 03.12.2018 in F.No.31026/31/2017- Policy (Vol.- II) has constituted a Committee with the following members.

(i) Shri.D.K.Sekar, Additional Director General of Foreign Trade, Department of Commerce, Chennai

(ii) Dr.W.Haq, Chief Scientist & Head, Medical & Process Chemistry Division, Central Drugs Research Institute, Lucknow

(iii) Dr.K.Bangarurajan, Joint Drugs Controller (I), Central Drugs Standard Control Organisation , New Delhi

(iv) Shri HK Mallick, Under Secretary, Department of Pharmaceuticals , New Delhi-110001

35.The multi-departmental experts inspected the facilities on 29.12.2018 and submitted their report before this Court on 23.01.2019.

36.The Expert Committee commended the know-how, technology, upkeep and relevance of the petitioner to our country under various heads, viz., **(1)** In-House API Know-How **(2)** DSIR approved Research Lab & Manufacturing facility for APIs **(3)** State of the Art Injectable facility **(4)** Capacity in the entire chain – (i) R&D (ii) API manufacture & (iii) Formulations **(5)** Equipment available in the facilities **(6)** Standards of the Equipment & Procedures installed in the facilities **(7)** On the capacities and unique designs and features of the laboratory and manufacturing equipments **(8)** Upkeep and maintenance of the facilities and the equipment **(9)** The research experience, areas of expertise & potential for further R&D by the Promoter **(10)** The range of cancers for which Vinkem medicines could be put to use **(11)** Vinkem being a source of support to farming community of drought laden aspirational Virudunagar district **(12)** The facilities having been established to international standards to be able to fetch substantial Foreign Exchange Earning benefits for the nation **(13)** On Vinkem's capacity to be a catalyst on the standards of health care and self-reliance in health care **(14)** Other matters

37.In particular, **the Expert Committee stated that the petitioner is the only company in India having in-house know-how for isolation of vinca alkaloids complying the regulatory norms**.

38.In conclusion, the Expert Committee has opined that "***The Committee is satisfied of the scientific merit and capabilities of Vinkem Labs Ltd., to be a significant player in Cancer related Health Care related to vinca alkaloids. Considering the flagship thrust to preserve and develop domestic API strengths by Government of India that has become a pressing need, our observations and the huge time and financial outlay that would be involved if similar facilities with similar know-how were to be created afresh in the specialized area of low volume high cost natural products for cancer therapy from inception, the Committee is of the view that to revive the Vinkem Labs Ltd., would bring significant benefits for our nation***"

(H).State Government's Report on *Vinca rosea* farming in the State:

39.As the welfare of *vinca rosea* farmers of the State are also involved in the Writ Petition, this Court allowed the Association of Farmers to implead themselves as Co-Petitioners in WP.No.11777/2017 and directed the State to submit a detailed report on the benefits to *vinca rosea* farmers that could accrue on account of the business of the Writ Petitioner. In the report submitted through the learned *amicus curiae* on 18.09.2019, the State Government confirmed that *vinca rosea* is a

medicinal plant useful in Treatment of Cancer and that in Tamil Nadu, it is growing in an area of 267 ha with the total production of 550 tonnes.

40.Thus, in addition to the expert studies made by Banks on the Petitioner, the commendable fairness and proactive approach on the part of the Union and State Governments that were party respondents in the Writ Petition in assisting the Court culminated in detailed expert evaluations of the Petitioner by the Governments themselves, including the expert committee of Government of India Task Force constituted specifically for reviving API strength in the nation.

V.Contentions of Parties & Factual Matrix

41.There are two Writ Petitions for consideration before this Court with contentions in common, viz., W.P.No.11777 of 2017 & W.P.No.16622 of 2017. In this regard, it is useful to note that there were two prior Writ Petitions as well in WP.Nos.9610 of 2016 & 4178 of 2017 between the Petitioner and the Banks to which WP.No.16622 of 2017 is a sequel.

42.Hence, it would be useful to narrate the contentions putforth from WP.No.9610 of 2016.

Case of the Petitioner in WP.No.9610 of 2016

43.W.P.No.9610 of 2016 is the first Writ Petition filed by Petitioner against the

co-financing Banks. In W.P.No.9610 of 2016, the contentions of the Petitioner were that it has been promoted by a Research Chemist specializing in reverse engineering of Hi-Tech, High Value, Low Volume life-saving molecules applied in Cancer Treatment. The Petitioner narrated the unique distinctions and relevance that it has accumulated over the years with its in-house R&D capabilities.

44. Further, the Petitioner has elaborated in detail as to how, as a API venture, it has made strides in the market, achieved break even, repaid all the stakeholders including the then bankers and became a debt free venture by 2004.

45.Furthermore, the petitioner has narrated the domestic and global scenarios that made it necessary and prudent to go for expansion & forward integration to be able to cater to US and such other niche markets. NABARD & Bank of India jointly funded the USFDA project. The existing facility and personal assets of promoter were collateralized with the Banks.

46.According to the Petitioner, this exercise has turned out to be an ordeal in the following ways.

(a).Firstly, there were inordinate delays at every stage from processing of the loan proposal to sanctions to disbursements. The loan that was applied for in September 2006 came to see first tranche of disbursement only in January 2008.In the interregnum of about 18 months, cost estimates underwent revision in view of change

in USFDA norms requiring SCADA, 21CFR Part II compliance and requirement of WHO-GMP for exports. Also, the intervening recession has resulted in huge rise in cost of building materials, steel, labour etc., by 60% which necessitated the Petitioner to submit a proposal for cost escalation.

(b).However, according to petitioner, even the escalation sanction that normally takes a fortnight in business parlance took about seventeen months. The escalation applied for in August 2008 saw disbursement by NABARD only in January 2010. Meanwhile, Bank of India, citing non sanction of escalation by NABARD not only withheld its escalation sanction but unilaterally restructured the loan account including unilateral fixing of Commercial Operation Date ['COD'] to 2010 and subsequently, got the Petitioner to issue a request letter for re-structuring as per their terms. Such arbitrary unilateral fixing of COD caused the Petitioner to agree for repayment of the loan instalments even before placing order for procuring the machinery for the Project whereas completion of project, commencing of commercial operations/obtaining of USFDA license and overseas sales were essential for generating any revenues to effect repayment.

(c).The delay in escalation sanction once again halted the project implementation for a considerable number of months. The L/C got opened only in June 2010 for supply of machineries. The custom made Bosch Filling line is supplied only after 18 months from the date of opening the L/C and Euro value has gone up

from Rs.55 to Rs.71/- in the interregnum. This caused the Petitioner to submit yet another application in June 2010 for second escalation of Rupees Three Crores to meet the differential cost of equipment caused by depletion of exchange value of currency during the interregnum.

(d).Again the Banks wrangled *inter se* regarding this escalation resulting in project coming to a grinding halt by another 17 months without any progress. NABARD ceded *pari passu* charge only after the matter was escalated up to C.M.D. The Petitioner was further constrained to shell out in crores for demurrage, penalties etc., on account of this delay and the Banks stoutly refused to acknowledge that the first escalation and the further escalation were a making of their own delays from the start.

(e).Meanwhile, Bank of India, besides declining second sanction, has started demanding repayment of the loan from September, 2010 based on the unilateral and arbitrary fixing of Commercial Operation Date ['COD'] even before the arrival of equipment for the project.

(f).The Petitioner also elaborated as to how an executive official of lead Bank who took charge of the loan account of the Petitioner at that juncture saw the potential of the venture and set out to exploit the situation to his personal advantage. The said official got the promoter to divest the stakes in favour of a private channel

sponsored by him in inequitable manner and terms and thereafter, how the promises of requisite funding to see the project through were sabotaged in systemic ways with the investor and Banks acting hand in glove to force further divestment in favour of the private channel.

(g).Only a sum of Rs.1 crore came to be released towards Staff Salary & EB Bills after desperate appeals and thereafter, Bank of India sanctioned Rs.12 crores as Term Loan demanding petitioner to access domestic market. According to the Petitioner, even out of this, only Rs.6 crores came to be released towards machinery import and other expenditure and the remaining amount was used for Term Loan Repayment including future instalments against norms.

(h).The petitioner would state that notwithstanding all hurdles, the establishment of State of the Art Plant was completed with facilities which were qualified by International Aseptic Specialist who trained even the US-FDA personnel for audit. Finally, the facilities that were originally conceived to be completed in the year 2009 were eventually inaugurated in January 2012.

(i).Ultimately, when Petitioner sought further assistance to carry forward, Bank of India took a stand that their exposure was already far greater than NABARD & NABARD said that they would not extend Working Capital as per policy. While so, one other Bank, namely, Central Bank of India evinced interest to partake in the

consortium and support fruition of the US-FDA object of the project. However, that was thwarted with the vested interest sponsored by Banks parking money to impose a condition of payment of Term Loan instalment as a precondition to cede *pari passu* charge in favour of Central Bank of India even though admission of new member would have *ipso facto* taken care of Term Loan Instalments.

47.In these circumstances, the account came to be classified as NPA and commercial operations also came to a halt. On 15.04.2012, the Petitioner submitted revised request for sanction of Rs.30 crores Working Capital under Corporate Debt Restructuring ['**CDR**'], the mechanism promulgated by RBI for revival of viable stressed accounts through an impartial inter-banks mechanism.

48.According to the petitioner, while this was put under cold storage, US-FDA introduced GDUFA fee that substantially increased the cost and gestation for US-FDA approval. Finally, when the matter was escalated to Banking Secretary, Bank of India re-structured the account still declining to grant CDR funding for US-FDA approval. As against genuine requirement of Rs.30 crores, inadequate sum of Rs.6.5 crores got sanctioned (the sum equivalent to amounts taken towards Term Loan repayment even prior to establishment of plant) with stringent conditions defeating the original purpose of the project to secure US-FDA approval to eke FE Revenue. According to the petitioner, the Petitioner was also forced to give letters withdrawing grievances against the Bank Official. As against this Rs.6.5 crores too, only Rs.3.70

crores came to be disbursed with the remaining going towards processing fee, interest and adjustment of a crore as against non-sharing of LC devolvement by NABARD etc.,

49.According to petitioner, with such meagre funding also, all resources were ploughed in, requisite licenses have been secured and the products given in the project list were all manufactured by January 2014. However, domestic off take for the products could not be ensured on account of restrictive tender conditions such as pre-existence and prior turn over running into crores followed in Public Procurement. The petitioner has contended that in the cancer segment, Public Procurement constituted the singular source for an entrant player without huge marketing outlay like the Petitioner. On account of these restrictions and without level playing field, its valuable stocks could not be sold.

50.In these circumstances, after numerous appeals to the rank and file of the Banks, when Petitioner appealed to PMO office, a Committee was constituted by the Banks for quick appraisal. But after evaluating the facilities and prospects and after expressing commendation and assurances, the representation got declined after some months on insignificant reasons even while acknowledging that the facility funded by them is completely established.

51.The Petitioner would further contend that while it persisted with its genuine

requests for restructuring and revival under CDR mechanism with requisite cash flows, the Banks kick started recovery measures. They have filed O.A before Debt Recovery Tribunal wherein the Petitioner has apprised the facts and taken time to lodge its Counter Claim. The Banks also commenced SARFAESI proceedings putting up the assets for Sale at scrap value.

52.The Petitioner would state as to how, amid all adversities, the viability of the project was being conserved by resilient maintenance and the succour it could bring to scores of ailing million if provided appropriate revival through CDR mechanism promulgated by Reserve Bank of India for resolution of stressed assets on a neutral platform of all member banks.

53.In these circumstances, alleging arbitrariness and malafides on the part of the Respondent Banks on various grounds, the Petitioner filed a Writ Petition in W.P.No.9610 of 2016 seeking a Writ of Mandamus directing the Banks to conduct Financial Audit and Valuation Audit of the petitioner including its Intellectual Properties by a nominated International Agency of repute and thereupon, refer the case of the petitioner for Corporate Debt Restructuring. However, it is seen that the Banks did not file a counter in this Writ Petition.

Outcome in W.P.No.9610/2016

54.According to the Petitioner, during the course of hearing in the said Writ

Petition, the Banks came forward to give an objective fresh look to its CDR plea and the Petitioner consenting for the same, confined its relief accordingly. Hence, the Writ Petition came to be disposed by an order dated 27.04.2016 directing the Banks to consider the further representation of the Petitioner for Corporate Debt Restructuring on merits and in accordance with law.

55. It is the case of the Banks that in the order passed on 27.04.2016, it is only recorded that the Petitioner has sought to confine its prayer in the Writ Petition and the Petitioner's claim as if the Banks have come forward to provide objective consideration of its CDR plea with expert evaluation and therefore, it restricted its relief is unfounded and that it establishes how the Petitioner has approached this Court with unclean hands.

56.The veracity of these rival submissions would be tested later. Suffice to note at this point that the Banks have not filed any counter opposing this Writ Petition and the order passed in WP.No.No.9610 of 2016 discloses that the Banks were heard before passing orders and it does not mention any objection on the part of Banks.

57.On 27.04.2016, this Court passed an order in WP.No.9610 of 2016 directing the Banks to consider the representation of the Petitioner dated 10.03.2016 for Corporate Date Restructuring on merits and in accordance with law, within a period of three weeks.

WP.No.4178 of 2017

58.WP.No.4178 of 2017 is the second Writ Petition that came to be filed by the Petitioner. It is seen that pursuant to the orders passed in WP.No.9610 of 2016, Banks have called for different expert evaluations on the Petitioner and on the basis of the reports that unanimously pointed to dedicated efforts and State of the Art facilities and the further clarifications received from the Petitioner, the Banks have issued an 'In Principle' sanction proposal dated 23.01.2017 to consider restructuring of the loan account and provide sanction of Rs.35.30 crores for US-FDA approval process under CDR.

59.However, petitioner filed WP.No.4178 of 2017 for waiver/relaxation of the terms and conditions mentioned therein as onerous, against assurances of the Banks consequent to which the promoter has made sacrifice of his valuable personal asset and to effect sanction as sought for in its further representations to the Banks dated 04.02.2017 and 10.02.2017. It has been the case of the Petitioner that after this Court passed orders in WP.No.9610 of 2016 as stated above, the Respondents convened Joint Lenders Forum meeting on 18.05.2016. On the question of promoter's contribution for CDR, it has upfront been explained how all margins were already infused into the project in establishing and maintaining the facilities State of the Art.

60.Further, it had been explained that being a know-how venture, it is essential

for promoter to retain control stakes and that in the present conditions, the value of the Company has to be first regained thorough CDR sanction for USFDA license and revival of operations for any fruitful endeavour in sourcing revenues, debt or any other fund raising.

61.In W.P.No.4178 of 2017, the Banks have filed a Counter Affidavit. According to Banks, with regard to the directive of the Court in W.P.No.9610 of 2016, the Banks have undertaken Techno-Economic Viability study, Assets Valuation by experts and held discussions and thus, complied with the directives. The TEV report has many shortcomings with assumptions and financial ratios not properly accounted for. The request of borrower for considering CDR sanction does not merit acceptance, since there are many non-compliance issues in the account. CDR is a voluntary non-statutory mechanism and the Petitioner cannot demand CDR without fulfilling the criteria stipulated in RBI guidelines/Master Circular for CDR.

62.The CDR for petitioner involving sanction of Rs.98 crores as fresh and restructured loan is a tough commercial call in view of (i)No revenue generation happening in Company and shortcomings in TEV report (ii)Uncertainty in obtaining necessary approvals for selling the products that would be manufactured by the Company (iii)No concrete revenue/business model as of date (iv) suit filed account. The Banks have prayed that the Writ Petition may be dismissed as not maintainable.

63.While W.P.No.4178 of 2017 was pending, the Banks have also issued a communication with reference to the representations of the Petitioner dated 04.02.2017 & 10.02.2017. By communication dated 08.03.2017, the Banks have advised the Petitioner that Petitioner has to bring Rs.5.30 crores as upfront margin for restructuring and additional term loan by banks to ensure that project does not suffer shortage of funds and Rs.1.46 crore realized through SARFAESI sale of Nanganallur property cannot be treated as margin money. The Banks have further stated that upfront Margin, FITL interest, NPV sacrifice, financial viability, assured revenue stream were all mandatory for CDR under RBI guidelines that cannot be termed as onerous and that the accrued interest with existing exposure in the books coupled with further FITL would render security inadequate, alter cash flows and profitability assumptions of the company. Regarding stocks of value of Rs.41.25 crores, TEV experts have only assigned NIL Value as they cannot be sold in tenders and the petitioner cannot claim CDR as of right which is a voluntary non-statutory mechanism, when there are issues related to non-compliance, notice sent for classification of wilful default, suit filed before DRT as also no clarity on the business revenue model in the account.

64.When that being so, on 22.03.2017, this Court passed the following order in WP.No.4178 of 2017:

" *After some arguments by both sides, it is clear that here is an Indian who is involved in research and development activities with an intention to*

obtain licence for marketing its innovative medicine for cancer. According to the learned Senior Counsel for the petitioner, the petitioner is waiting for approval of the United States Food and Drugs Administration (USFDA) authority for approval of his application for license and once it is approved, the petitioner's innovation would be of extraordinary value. However, for want of fund, the projects of the petitioner have been stalled. In such circumstances, the learned Senior Counsel for the petitioner only seeks to issue a Mandamus to consider his representation for Corporate Debt Restructuring as mandated by Reserve Bank of India.

The learned Counsel for the respondent would only contend that the respondent is not unwilling to extend financial assistance to the petitioner company. However, at the same time, they are obliged to follow the guidelines issued by the Reserve Bank of India in this regard. In fact, a meeting was also convened in the presence of the petitioner on 18.05.2016 to explore the possibility of rendering financial assistance and it is under consideration of the respondents.

Having regard to the above submission of counsel for both sides, this Court can only direct the respondents to sympathetically consider the claim of the petitioner for corporate debt restructuring as mandated by the Reserve Bank of India as requested by the petitioner in its representations

dated 04.02.2017 and 10.02.2017 taking into consideration that the petitioner is engaged in innovative research activity in developing a medicine to cure cancer so as to enable the petitioner to revive the industry. Such an exercise shall be completed by the respondents on merits and in accordance with law within a period of two weeks from the date of receipt of a copy of this order. With the above direction, the writ petition is disposed of. No costs."

65.Meanwhile, the petitioner had also approached Government of India placing its grievances against denial of level playing field and opportunities to genuine Good Manufacturers of the country in public procurement that caused assigning NIL value by banks to its stocks worth Rs.41.25 crores. Thereafter, the petitioner came forward with this Writ Petition before this Court in WP.No.11777 of 2017 praying that Quota/Preferential Buy should be provided for domestic Good Manufacturers of API in a feasible way and the petitioner be enabled to avail the benefit by applying the concessional measures recommended by Dr.V.M.Katoch Expert Committee to its case as per its representation to Government of India.

66.The various contentions raised in W.P.No.11777 of 2017, the response of the Government, the developments since filing of the Writ Petition and the various further evaluations to which this Court subjected the Petitioner and their respective outcome have already been discussed *supra.*

W.P.No.16622 of 2017

67.While so, two further communications dated 03.05.2017 and 21.06.2018 received by Petitioner from its Bankers viz., Bank of India & NABARD led to filing of WP.No.16622 of 2017 by the Petitioner against the Banks.The Banks have issued the aforesaid two communications with reference to the directives issued to them by this Court in WP.No.4178 of 2017.

68.Bank of India had issued the letter dated 03.05.2017 stating that the representations of petitioner dated 04.02.2017 and 10.02.2017 were already replied on 08.03.2017 and that this reply is pursuant to orders of this Court in W.P.No.4178 of 2017. The Bank has advised that (i).Restructuring is possible for the existing exposure only (ii).2% of the book outstanding or 20% of the NPV sacrifice whichever is higher, will be brought upon by the borrower company as borrower contribution for restructuring as upfront; it is not as and when required (iii).New FITL to be created on account of proposed restructuring and repayment thereof shall be determined on the basis of future cash generation capacity of the company (iv).TEV study report to be relooked into by Bank for its acceptability and will test check the financial parameters for its workability (v).The company to withdraw all petitions before any Court or Forum.

69.The other co-financier, NABARD has issued a separate communication

dated 21.06.2017 to the Petitioner stating that the High Court of Madras vide its order dated 22.03.2017 directed Bank of India and NABARD to sympathetically look into Petitioner's request for Corporate Debt Restructuring (CDR) in terms of RBI guidelines and letters of Petitioner dated 04.02.2017 and 10.02.2017 and that having considered the representation for Corporate Debt Restructuring in a fair and transparent manner, based on due diligence done in assessing the TEV Report, they regret to inform that they are unable to accede to the restructuring proposal in r/o the above limit.

70.As stated above, the Petitioner has challenged the aforesaid two communications dated 03.05.2017 and 21.06.2017 together with the preceding communication dated 08.03.2017 by filing WP.No.16622 of 2017. As seen above, WP.No.16622 of 2017 came to be filed during the pendency of WP.No.11777 of 2017, wherein NABARD and Bank of India were impleaded by *suo moto* orders dated 15.06.2017 and 05.07.2017 respectively. The Banks were also issued with further directives by this Court in WP.No.11777 of 2017 as explained *supra*.

71.The Writ Petition in W.P.No.16622 of 2017 has been filed with NABARD Mumbai and Chennai offices as Respondents 1 and 2 and Bank of India, Chennai as Respondent No.3. In the said Writ Petition, the Petitioner has prayed for quashing of communications dated 08.03.2017, 03.05.2017 & 21.06.2017 issued by Banks and direct them to reckon the stocks of the Petitioner valued at Rs.41.25 crores by experts

nominated by Banks and the sum of Rs.1.46 crores realized by Sale of Promoter's Personal Asset towards Margin Contribution for the Corporate Debt Restructuring and extend to the Petitioner Sanction in terms of the Banks' letter dated 23.01.2017 with further concessions in interest as per the recommendations of Expert Committee. The petitioner has also prayed for direction for expeditious disbursement to be able to partake in the then tender procurements of the Government. Further, the petitioner has reiterated its case pleaded in WP.Nos.9610 of 2016 and 4178 of 2017.

72.The Writ Petitioner has further contended that the Banks issued the first of the impugned communications dated 08.03.2017 in this Writ Petition having the effect of interdicting the issues before the Writ Court in W.P.No.4178 of 2017 and thereafter filed counter before the Court on 22.03.2017. The said petition also narrates a series of further communications by petitioner to the respondents and how the Petitioner also made its appeal to the Union Government and filing of WP.No.11777 of 2017 before this Court and its subsequent communications to the Banks apprising these developments and about the avenues that were opening up by virtue of 'Make in India' policy announced by Government of India by way of Standing Order for Public Procurement (Preference to Make in India) bringing margin value to the stocks.

73.While so, according to the Petitioner, Bank of India sent its impugned communication dated 02.05.2017 where instead of waiving upfront margin demand,

the Bank declined the sanction itself and offered to provide bare restructuring again insisting for margin contribution by the petitioner and so on. On the other hand, NABARD, after some more weeks, issued its communication dated 21.06.2017 to the Petitioner where they claimed to altogether reject the CDR request of the Petitioner. The Petitioner would also contend that this communication of NABARD came to be issued no sooner than being impleaded in WP.No.No.11777 of 2017 by this Court.

74.The petitioner would contend that the Banks omitted to look into any of the positive developments submitted for their consideration and have also set out to reinvent the wheel with regard to reports of independent experts on the petitioner after accepting and acting upon the same. Alleging arbitrariness and vindictiveness on the part of the respondent Banks on various grounds, the Petitioner sought for effectuating the sanction letter dated 23.01.2017 by the respondents reckoning the stocks and sale proceeds of Nanganallur asset as sufficient margin besides applying appropriate concessions on interest as per recommendation of Expert Committee constituted for revival of self-reliance in API. The petitioner has also prayed for expeditious disbursement of the sanction.

75.The sum and substance of the counter affidavits filed by Bank of India and NABARD in W.P.No.16622 of 2017 is as follows:-

(a).The Bank of India & NABARD have filed similar affidavits in response to the writ petition. According to Banks Writ has become infructuous. Petitioner omitted

to participate in tender despite orders of this Court. The CDR scheme of RBI has also ceased to exist.

Preliminary Objections

Their Preliminary objections, *inter alia,* include:

1.Disputed questions of fact are sought to be agitated in Writ Jurisdiction.

2.CDR is a voluntary non statutory mechanism over which Court directions would not lie. Petitioner is non compliant to its norms.

3.Banks have complied with directives issued in WP.No.9610/2016 & 4178/2017 in a fair and transparent manner.

4.Banks are entities regulated by RBI. Commercial Wisdom of the Creditors cannot be the subject matter of judicial review as held by Supreme Court.

5.CDR mechanism under which Petitioner seeks relief has ceased to exist.

Reply on merits

(b).The Banks have stated that the Petitioner approached Banks seeking term loan for its unit at Thiruvallur. According to Bank of India, Rs.1216.50 lakhs was sanctioned on 17.05.2017. Interest not serviced. On 10.08.2009, Rs.442.62 lakhs due by way of interest restructured as Funded Interest Term Loan. In June 2013, there was further restructuring granting Rs.52.57 crores by way of Additional Facilities. NABARD have given their data of exposure in their reply. The Banks submit that the Petitioner again failed to service interest as contemplated in loan agreement and account got classified as NPA. That the Banks were always considerate towards the

Petitioner.

(c).The Petitioner had stopped its production in 2014. Originally, the Petitioner has been selling API in both domestic as well as countries like Egypt, Greece, Turkey, Belaras and Argentina till 2005. The Petitioner has entered into an agreement with the leading Pharma players in India like Sun Pharma, Dabur India, CIPLA etc., and took up the interest of vinorelbine as a drug in India by entering into a buyback arrangement with the Petitioner. Certain regulatory concerns arose since 2005.

(d).The Banks contend that the Petitioner claims to have applied for US-FDA approval since 2008 which has not materialized. Even according to petitioner, it will take 3 more years. Hence, the project is not viable.

(e).On 10.03.2016, request for restructuring under CDR mechanism was made. JLF meet was convened on 18.05.2016 and it was decided to conduct TEV study post realization of sale proceeds under e-auction and take a view on viability and likelihood of CDR depending upon the outcome of the project. The request of the Petitioner for CDR mechanism was considered by the Respondents in the light of their various letters and the JLF meeting. By their letter dated 23.01.2017, the Banks advised the Petitioner that its requirement for additional term loan of Rs.30.00 crores can be considered for sanction process subject to approval by the competent authority and fulfilment of various terms and conditions more fully set out in the letter. It had

been stated in no uncertain terms in the said letter that the proposal does not constitute an explicit consent for CDR since the guidelines of RBI and the lending policy of co-financing institution need to be fully satisfied based on the response of the Petitioner.

(f).The Petitioner, in turn, addressed letters dated 04.02.2017 and 10.02.2017 praying for construing sale proceeds of Nanganallur property as margin for first year and accept *pro rata* margin tied to disbursements for subsequent years and seeking waiver of condition of upfront margin. The Petitioner also simultaneously filed WP.No.4178 of 2017 in this regard which was disposed on 23.02.2017.

(g).During the interregnum, this Respondent which is the Lead Bank has issued a reply to the letter of the Petitioner, *inter alia*, mentioning:

a) Inability of the respondents to adjust Rs.1.46 crores realized through sale of Nanganallur property towards margin money.

b) CDR mechanism is governed by RBI guidelines which stipulates contribution of upfront margin money.

c) The fact that MITCON in its TEV study has considered 'Nil' value for the stocks.

d) CDR mechanism is a voluntary non statutory mechanism and cannot be demanded as a matter of right.

(h).The writ Petition was filed in June 2017. On 10.11.2017, this Respondent

addressed a detailed letter to the Managing Director of the Petitioner wherein the banks brought to notice directives in WP.No.No.11777 of 2017, that clarifications were received from RBI on 03.11.2017 and 05.11.2017, that after taking into account the clarifications issued by Reserve Bank of India, the CDR proposal could not be considered.

(i).The Bank as a good corporate law abiding citizen considered the request of the Petitioner. It has also complied with orders in prior writs in a fair manner. It is denied that Bank took five years to take up CDR request contrary to RBI norms and seek to decline CDR citing interest added in the interregnum. Bank reiterates its submissions so far. CDR is a voluntary non-statutory mechanism. All pros and cons have been considered and a commercial decision has been arrived at. It cannot be a subject matter of Judicial Review.

(j).The Banks have further stated that the averments relating to merits and relevance of the petitioner to the nation are factual issues and have no bearing on them. The Banks also denied that they came forward to fund the upgradation of API and installation of FDI facility by the Petitioner for securing license by USFDA to be eligible to export to USA. On the other hand, the Banks have contended that the Petitioner wanted to avail certain additional assistance and accordingly, they had financed the project jointly.

(k).Banks have also denied allegations of systemic delays in processing loan proposal/disbursement having caused cost and time overrun of the project and that the same cannot be considered by Writ Court. Banks have stated that the Petitioner cannot question the lending policies of NABARD nor the decision of Bank of India in the absence of arbitrariness. The banks have denied the allegation of discord in consortium causing damage to the project and that in any event, the commercial wisdom of the creditors cannot be the subject matter of scrutiny by this Court.

(l).The allegations of foul play pertaining to an official of the Bank officiating Promoter Divestment were also denied as false and beyond the purview of this Court. Further, it has been submitted that CDR is not in vogue today and that it is not relevant for the Petitioner to question the Banks for extending CDR to others.

(m).With regard to averment that the Petitioner is not having a great managerial team, the Banks would state that as a Creditor, it is always open to them to consider the basic norms of appraisal of the Projects. The fact remains that the account has become NPA and the operations are stopped and these are all guiding factors for any creditor to take a decision on extension of further facilities. It is always open to the creditors to take appropriate action for recovery of the debts due to it and the Respondents herein are custodian of public funds. All other allegations have been denied as devoid of merits.

(n).The Banks have taken strong exception to the plea of Petitioner that it restricted its relief in WP.No.9610 of 2016 upon assurance by Banks to evaluate its proposal with positivity and objectivity. In support of their contention, the Banks referred to the order passed in the said Writ Petition and submitted that the petitioner has not come before this Court with clean hands.

(o).The Banks have stated that the TEV study was considered by the Respondents and *vide* letter dated 23.01.2017 the Petitioner was informed about its requirement of additional requirement of Rs.35.30 cores will be considered subject to certain conditions. It was also made clear in the said letter that it would not amount to express consent for consideration under CDR. Banks have contended that they are well within their rights to negate the plea of the Petitioner for adjusting the *pro rata* margin in lieu of upfront margin. One of the conditions in letter dated 23.01.2017 is upfront margin of Rs.5.30 crores. The Banks have claimed that in this connection, DRT has only given liberty to parties to agitate their respective rights and contentions at an appropriate time if warranted on the SARFAESI action of secured creditor.

(p).Banks have stated that the CDR was not finalised and only when the package was approved by the CDREG and after the execution of necessary documents like MRA, Inter Creditor Agreement, then the question of binding nature of CDR would come into the picture. Banks have stated that Petitioner has not serviced interest from the beginning and account became NPA. There is no

arbitrariness. The Petitioner did not comply with conditions. The Banks have considered representations in the light of the fact that the account got re-structured thrice in the past.

(q).The Banks have further submitted that disputed questions of fact cannot be agitated before this Court and the petitioner has no right to question the credit policy of Banks. Banks have acted in line with the credit policy and as per the instructions issued by Reserve Bank of India and not vindictively. It has been denied that Banks are trying to take advantage of their own wrong. Banks have not committed any wrong. It is wrong to contend that Banks took five years to take up the representation. The other grounds have been denied as being devoid of merits.

Thus, the Banks have prayed that the Writ Petition be dismissed with costs.

76. The sum and substance of the Rejoinder Affidavit filed by the Petitioner in W.P.No.16622 of 2017 is as follows:-

(a).The Writ Petitioner has filed a common rejoinder affidavit to the Banks' Affidavits in WP.No.16622/2017.

(b).The petitioner has sought to explain how the Writ petition is subsisting, that issues agitated are transactions borne by admitted reports and records and Banks cannot prevent their arbitrariness, vindictiveness and *mala fides* being considered with such plea. The Petitioner has contended that Banks cannot preclude the Court

from considering the pleas that Banks seek to hold against the petitioner, that the facts are borne by materials available on record. The Petitioner has submitted that Banks cannot take advantage of their own time delays, that members who have opted to join CDR are bound by guidelines, they have to extend support under revised norms and this Court can mould reliefs.

(c).The Petitioner has reiterated that Banks have acted in wilful disobedience of orders passed in various proceedings and that Banks are bound by Promissory Estoppel having caused distress sale of promoter asset towards sanction margin under CDR.

(d).The petitioner would state that the restructurings that the Respondents are talking about were without any cash flow to the petitioner and rather to clean their accounts of any accruing NPA and on account of intervening situations brought about by their time delays and factors beyond the control of management. Instead of placing its case under the common forum of Corporate Debt Restructuring, the petitioner contends that banks kept making internal restructurings that were mere accounting restructurings by way of Funded Interest Term Loans that only capitalized the interest component without cash flow for the Company to pursue US-FDA approval, knowing fully well that the project could eke revenues only when funded and enabled to apply for and secure USFDA approval. Later, even after divestment and remittances on terms demanded by them, without supporting fruition of the

project, they caused it deviation with the lead bank providing meagre assistance to produce for domestic market. Such conduct being unjustifiable in a project funding, the respondents have now gone to the extent of denying the very fundamental of their funding, namely, USFDA project and claim that their funding was an additional Term Loan facility sought by the Promoter. The petitioner has contended that this by itself is a case of patent *mala fides*. The petitioner reiterated its allegations of various instances of *mala fides* against the Banks by referring to Government reports, Court directives and the Banks' endeavour to feed regulator with false and negative input on the petitioner and so on.

(e).The petitioner reiterated that the time delay and huge-cost escalations to the project and consequent restructurings without cash flow were all a fall out of Banks' inaction, indifference and *inter se* discord. Though the petitioner has created valuable assets and viable project amidst all such constraint, Banks continue to act unjustly and vindictively.

(f).The petitioner further pointed out how Banks have flouted directives issued in WP.No.No.4178 of 2017 and shied away from even mentioning the phrase '*to enable the petitioner to revive*' while quoting the order in their impugned communications.

(g).The petitioner has contended that the Banks cannot renege on construing

Rs.1.46 crores from sale of asset as margin and ascribe NIL value to stocks. According to the petitioner, had the banks acted fairly and reasonably to its CDR requests in 2011-12, the account would have courted lot less interest burden, lesser outlay and the project would have already earned approval and repaid the dues.

(h).According to the petitioner, the respondents digressed from facts, expert views, orders of this Court and natural justice in their subsequent actions and communications to the regulator. The petitioner also alleges how the banks have remained selective in quoting and acting on the responses from the Regulator as though they are rejecting the proposal on account of clarification received from regulator while, in fact, the clarifications were facilitative.

(i).Further, the petitioner states about an affidavit shared with them ~~in soft form~~ that discloses a further letter sent by Banks to RBI dated 06.12.2017 that the banks have desisted from bringing on record. The petitioner states that the Banks secured and utilized subsequent proposal with *mala fides* and that their reasons for rejection are also flawed. For instance, Banks have found fault that in the first year Sanction request, US-FDA fee component is absent whereas the US-FDA application itself could be made by end of first year only after taking validation batches as per prescribed procedure. The petitioner has also elaborated how the query on Raw Materials is also untenable with petitioner having to take only validation batches for ANDA/Dossier for US-FDA approval besides having valuable stocks and materials.

(j).The petitioner would state that the exposure for US-FDA approval in the nature of US-FDA fee and operating the plants and engaging professionals for taking validation batches to prepare ANDA/Dossier for USFDA approval are integral component of the project outlay and cannot be termed as working capital and in any event, it cannot be held against national and agrarian interests. The petitioner has also gone on to state how the letter dated 10.11.2017 issued by banks to the petitioner is the outcome of arbitrary, malicious actions on their part acting in wilful disobedience of the orders of this Court.

(k).The petitioner has pointed to the two variant communications issued by the two banks on the same directives to support its contention on discord in consortium having been a factor damaging the project and has assailed the further stance of the Banks that this Court has no jurisdiction to consider such aspects.

(l).The petitioner would state that when Banks cite noncooperation of petitioner to further divest equity as suggested by Banks as the reason for their rejection, they cannot preclude this Court from considering how they brought about the original divestment and its consequences on the petitioner.

(m).On the allegation that the petitioner did not partake in tenders despite orders of this Court, the petitioner submits that the banks are choosy in making the

submission without divulging that they declined to support which was also part of the directive of this Court and has submitted how the petitioner could not participate in tenders without support from banks and that this stalemate led this Court to pass further orders for one more proposal with direction to banks to consider it positively.

(n).On the requisites of Managerial teams and other compliances, petitioner would submit that the same could be complied when the venture is on its feet. The petitioner has elaborated on its contentions that the actions of the Banks in this case are not born of commercial wisdom but outright malice.

(o).The petitioner has reiterated its contention on how it came to restrict its prayer in W.P.No.9610 of 2016. The petitioner has submitted that the Banks cannot dissociate themselves from the developments in W.P.No.11777 of 2017 wherein they were participating and enabled by Court directives to provide revival to the petitioner in national interest with the Government supporting the cause in unequivocal measure. The petitioner, in addition to reiterating its contentions in the writ petition, sought to draw attention to proceedings before DRT where Banks got Tribunal's order to uphold the sale notice for Nanganallur asset on solemn undertaking to treat the proceeds as upfront margin.

(p).The petitioner further contends that the then extant guidelines are an obligation cast upon member banks to act fairly and reasonably to extend CDR to

viable corporates in time and justifying non adherence thereto on technical pleas would not be of avail to the banks being Instrumentalities of State. The Petitioner reiterated the contentions and stated how, all along time lines were made to operate only against the Petitioner in a linear way resulting in the Petitioner being penalized for every of the Banks' delays. The Petitioner stated how the Banks have realized crores by way of repayment even before commercial take off could be possible and how they sponsored and dealt with divestment of Promoter's stakes with ulterior designs.

(q).The petitioner then contended that the banks are pitting their commercial privilege as against national interest to justify their *mala fide* refusal to revive a viable project and that the banks cite past restructurings as the reason to deny revival to petitioner but at the same time seek to preclude the Court from examining their rationale. The petitioner has also explained its reasons as to why the communication dated 10.11.2017 by Banks did not call for a separate challenge.

(r).The petitioner has also alleged *mala fides* in the joint inspection report filed by senior officials of both the Banks and elaborated on how their subsequent contention that their views are unaided by experts views is also a false submission before the Court. The petitioner described in detail the clarifications and guidance provided by Drug Controllers of the State and Union Governments to the Bank Officials.

(s).The petitioner contended how banks have sought to prejudice the regulator also with deliberate misinformation and did nothing to undo the damage even after the evaluation report of Government of India Task Force came to be filed. The petitioner also contends that the banks have unjustly attributed Wilful Default to it on the basis of a notice that was dropped and that Wilful Default arises in cases of diversion of bank funds and/or non-repayment of loan dues despite having the wherewithal to pay which allegations are unconscionable as against the scientist promoter who has committed his life time energy and resources to the project.

(t).The petitioner reiterated its grounds on having made appeals for Corporate Debt Restructuring ever since 2011-12 and the attitude and actions of banks having been arbitrary and vindictive.

Thus, the petitioner has prayed for allowing of the Writ Petition.

77.<u>Point-Wise Reply by Petitioner to Joint Inspection Report of Senior Officials of Bank of India & NABARD</u>

The petitioner has also filed its Point Wise Reply to the allegations putforth in the Joint Inspection Report of the Banks in the light of Expert Reports. The sum and substance of the reply are as follows:-

(a)The Banks are knowingly and deliberately seeking to mislead the Court as if the products of petitioner would not qualify for USFDA requirement. It is mischievous and in stating so, the Banks are going against the very project funded by them.

(b)The figures shown by Banks in their report show that their net exposure to be Rs.43.23 crores against which Rs.15.74 crores has also been realized from petitioner before project off take.

(c)They got valuable project assets, promoter margins and collaterals far beyond their exposure.

(d)The Banks caused delays, stalemate even after petitioner did everything within its power to complete the project and comply with their demands including divestments in favour of channel sponsored by them on terms dictated by them, however the Banks have set to derail the fundamental core of the project, namely, USFDA approval.

(e)Banks refused to support the valuable, viable, completed project for no fault of the petitioner. They further delayed and declined resolutions and are blaming the consequences on the petitioner.

(f)The petitioner has sought to dispel the cloud cast by Banks upon the know-how, technology, facilities, stocks, licenses and scope of the petitioner with reference to expert reports and explanations on deliberations during inspection and its plan of actions.

(g)The petitioner has set out to establish how the report of the Banks is malicious and has elaborated how it is choked on account of its strife to maintain the facilities all

through and that they would be in a position to make good the compliances upon revival.

(h)The petitioner has expressed angst at being attributed with fraud and wilful default by banks being fully aware of the passion and sacrifice of the promoter who has laboured all his life to establish know-how, technology and world class facilities to serve humanity through science.

(i)The petitioner has also clarified with regard to allegations of Banks on what transpired during the inspection.

78.On their part, the Banks have contended that the petitioner has not filed any reply to their report despite directives of the Court. However, it could be seen from the file and proceedings dated 09.09.2019 that the Petitioner has filed this Point-Wise reply after due service.

Counter Affidavit of the Banks in W.P.No.No.11777 of 2017

79.The Banks also filed one other counter affidavit in W.P.No.11777 of 2017 on 17.09.2019. In this affidavit, the Banks have reiterated their contentions made in Counter Affidavit in W.P.No.4178 of 2017. The contentions raised in nutshell are as follows:

(a).The Banks have contended about petitioner being issued with notice for being classified as a Wilful Defaulter, account being a suit filed account, Company being in lay off, non compliant to statutory requirements, making losses. They also

assailed the components of loan requirements being majorly for salary, no money being required for USFDA fee in year one, non requirement for raw materials, downsizing of loan estimate made by TEV experts. The Banks stated that salary estimates are inflated, company cannot bring margin or service interest until USFDA approval. They have accused the petitioner of making false pleas of mission to support poor cancer patients of the country and inflated claims on providing livelihood to farmers to make emotional appeal to the Court. They have asserted that petitioner is not a pioneer or innovator and that its claims of sales to Overseas countries as API maker are unsubstantiated. They have averred that petitioner could not access domestic market and failed to participate in tenders despite orders for relaxation passed by this Court and that there is no certainty for securing USFDA approval or making sales thereafter. The Banks have alleged that petitioner is not amenable to co-operative endeavours for business tie ups and refused to further divest stakes as suggested by banks and questioned how Petitioner can sell anti cancer drugs at cheap rates in US after spending on USFDA Fee, Marketing, Consultant Fee etc., The Banks have also alleged that all 23 medicines of petitioner are medicines that are available with USFDA, the Valuation report of nominated expert agency is unacceptable, company is in losses, it failed to meet up its projections, that restructuring package was arbitrarily downsized with no clear commitments and roadmap for interest on FITL.

(b).That, in pursuant to the directives of the Court, officials of both the Banks

jointly considered the proposal in detail in the light of statutory guidelines and commercial prudence. That Corporate Debt Restructuring (CDR) is a voluntary non-statutory mechanism for restructuring of multiple advances of lenders outside legal proceedings and inapplicable to Wilful defaulters.

(c).The banks go on to state that Bank of India has written to RBI seeking its views on the CDR proposal in the above circumstances. In response to the said letter, RBI *vide* its letter dated 03.11.2017 has clarified that any restructuring without looking into cash flows of the borrower and assessing the viability of the projects/activity financed by banks would be treated as an attempt at ever greening a weak credit facility and would invite supervisory concerns/action and that Promoters must bring additional funds in all cases of restructuring. Additional funds brought by promoters should be a minimum of 20 per cent of banks' sacrifice or 2% (two per cent) of the restructured debt, whichever is higher. The promoters' contribution should invariably be brought upfront while extending the restructuring benefits to the borrower.

(d).The Banks have further submitted that the Banks (BOI and NABARD) have also filed a petition to invoke the provisions of Insolvency and Bankruptcy Code in the petitioner account in the year 2017 and that the Banks after evaluating the proposal of the 1st Petitioner Company are of the considered view that the loan accounts of the 1st Petitioner does not comply with restructuring norms due to the

following reasons:

i.The CDR proposal of Vinkem Labs does not merit acceptance as per the prudential Norms prescribed by RBI for want of compliance of CDR guidelines.

ii.Banks' credit policy does not have provision for putting good money after bad money (NPA Account). The petitioner account is an NPA account for almost 5 years now, suit filed, NCLT referred as also provided 100% provisions in the books of the Banks.

iii.Banks do not have confidence that the company will turn around in the circumstances detailed in earlier averments.

iv.The borrower is not amenable to suggestions made by the lenders for turnaround of the company.

(e).The Banks then submit that Bank of India (Respondent No.9) *vide* its letter dated 06.12.2017 has indicated to RBI that CDR may be considered for the petitioner's account, subject to compliance with the CDR guidelines and that the said letter in no way suggests an explicit consent for CDR by the Banks and that it only clarifies the position that CDR is subject to compliance of its guidelines by the petitioner company. It is to be noted here that this letter has not been placed on record before this Court for consideration.

(f).The Banks have contended that as trustees of public money, it cannot put good public money after NPA account, without sound, certain and credible

commercial rationale. RBI instructions state that banks have to observe due diligence and financial prudence. Any violation thereof will be a supervisory concern and will attract regulatory action by RBI. The Banks have acted in compliance with RBI guidelines and in accordance with law and justly so as not to infringe on the constitutional rights of the Petitioner.

(g).Further, it has been submitted that the Banks have considered the Petitioner's request as per the order of this Court and have also obtained clarification from RBI and that the Banks are of the firm view that the CDR/restructuring proposal is not a financially viable proposition for the Banks.

80.For the aforesaid averments made in the Counter Affidavit filed by the Banks, a Reply Affidavit has been filed by the petitioner.

The petitioner submitted that this affidavit was being filed by Banks for the first time in the proceedings only on 17.09.2019 and not earlier as contended by Banks. The petitioner has provided its explanations for rationale questioned by the Banks. The petitioner has also pointed out how banks not only contradict the conclusions of different domain experts but also contradict their own admissions in other pleadings. The petitioner has referred to inconsistencies and conflicting averments made by banks differing from one pleading to another and also referred to communications and documents adduced by Banks and expert reports and judicial proceedings that would substantiate its pleas.The petitioner sought to establish that

the Banks have acted with *mala fides* and vindictiveness, wilful breach of directives of the Courts and that they have abdicated their role as Instrumentalities of State by reference to the aforesaid materials.

Submissions made by learned *amicus curiae*

81.Mr.N.L.Rajah, learned Senior Counsel who has been appointed as *amicus curiae* in the matter and assisted this Court in many hearings also made a detailed presentation at the time of final hearing. The sum and substance of his contention is as follows:

(a).The learned *amicus* submitted that we spend crores of rupees in defence. It is imperative for us to guard against subtle forms of invasions too.

(b). The learned *amicus* took the Court through the sections of his report that have dealt with the issues of excessive imports of Active Pharmaceutical Ingredients, the crisis that developed on account of the same, the issues of sub-standard, spurious drugs and scarcity of drugs that arise consequent to such imports, the security concerns for our country that came to be escalated by National Security Advisor.

(c).The learned *amicus* then pointed out that the Government has not disputed these issues. On the other hand, it has constituted Committee and Task Force to address the issues.

(d).The learned *amicus* pointed that the report of Dr.V.M.Katoch Committee is over four years old and it requires guiding hand of Court under Article 226 to become effective. The learned *amicus* took the Court through the various recommendations of Dr.V.M.Katoch Committee and pointed that its recommendations on interest subvention would be of particular relevance to the petitioner company. He pointed that the recommendations made by the Committee are yet to be implemented and that Ministry of Commerce has been taking steps in that direction.

(e).The learned *amicus* elucidated how the report of State Government also affirms his statements in relation to benefits to *vinca rosea* farmers and that China is emerging as a competitor in that sphere too by growing the herb in their landscape.

(f).The learned *amicus* then presented detailed facts submitted in his report regarding the petitioner Company. He explained the basis for his conclusions by pointing to his factory visits, study of expert reports of Government of India and State of Tamil Nadu and about the other literature examined by him for making his report to Court.

(g).The learned *amicus* submitted that these days, DSIR (Department of Scientific & Industrial Research) is not extending funding assistance whereas State Government through State Planning Commission will have to consider the case of the petitioner favourably. He pointed out that though TIDCO (Tamil Nadu Industrial

Development Corporation) has been made a party pursuant to his recommendation, the Governing Board of TIDCO has not given an opportunity to the petitioner yet. Hence, without prejudice to the other remedies sought for by the petitioner, the Petitioner including its Banks may be provided an opportunity to make a presentation before the Board, who, in turn, may be directed to place their recommendations before the State Government that could be directed to consider the same.

(h).The learned *amicus* emphasized that considering the scientific and agrarian value that the industry provides, the Tamil Nadu Government should consider buying the existing stock of medicines made by Vinkem. The learned *amicus* pointed out as to how tender procurements are driven by cost war. With the cost incurred for making medicines to the highest bench marks making tender competition a tough call for Vinkem, the *amicus* would submit that the TN Government should consider direct buying of the stock of medicines from Vinkem on a reasonable pricing. This would provide the much needed liquidity to the Company to satisfy its Bankers as well. The learned *amicus* would further submit that though, in general, the Government has to make its procurement through competitive tenders, in this instance, since medicines/intermediaries made to best standards and lying with the Company would largely benefit the patients and also benefit revival of the Company in larger interests of the Country, this Court may pass suitable directives for direct utilization of the stocks invoking Article 21 of the Constitution of India.

(i).The learned *amicus* also made submissions on the powers of the Court and instances of Court directing implementation of Committee Report by Government. He also referred to authorities and submitted how uncontroverted Committee Reports and Parliamentary Reports could be relied on in judicial proceedings. He would submit that Hon'ble Supreme Court is both a Court of Appeal and a Constitutional Court. The purpose of Article 142 is cognate to Article 136 so that even in appeals under Article 136, Hon'ble Supreme Court could exercise wider powers invoking Article 142. He would, therefore, submit that Article 142 does not restrict or dilute Article 226 in any manner.

(j).The learned *amicus* also went on to submit that the Government being concerned with welfare of people, though the support that is rendered to the petitioner Company at present might be one in furtherance of welfare, once the company secures US-FDA approval, they will also see great returns for their investment.

(k).The learned *amicus* took this Court through salient features of the Report of the API Task Force of Government of India. The learned *amicus* submitted that the composition of the expert Committee comprised of highly respectable people and that they posed incisive queries and made detailed evaluations during their visit to satisfy themselves. He pointed out that the said Expert Committee has certified that the petitioner is the only Company in India for five molecules of *vinca* alkaloids that go into making primary medicines for treatment of various types of Cancer.

(l).The learned *amicus* concluded his submissions by pointing to the conclusion and recommendation of Committee of Experts of Government of India recommending that to revive the petitioner would be to conserve significant benefits for the nation and therefore, each party should come forward to provide its due share towards this end without treating this as an adversarial litigation.

Submissions on behalf of 1st Petitioner in W.P.No.11777 of 2017 and the petitioner in W.P.No.16622/2017

82.Mr.Om Prakash, learned Senior Counsel appearing on behalf of the petitioner had putforth the following contentions:

(a).The learned Senior Counsel referred to the prayers in the Writ Petitions and made detailed submissions on galloping spread of cancer with facts and figures, protection of right to health under Constitution of India with reference to various Articles of the Constitution, on the manner and extent to which our nation's health security has been compromised and the consequences that grapple our nation on account of loss of self-reliance.

(b).The learned Senior Counsel made submissions on the merits, significance and relevance of the petitioner to the country in the above context. Thereafter, he chronicled the various facts and circumstances that led to filing of various writ petitions by the petitioner before this Court commencing from WP.No.9610 of 2016

till WP.No.16622 of 2017 as also other collateral proceedings between the parties.

(c).The learned Senior Counsel for the petitioner took the Court through the orders passed in each proceeding and the consequent developments thereto. Further, he took the Court through the purport and contours of WP.No.11777 of 2017 as also that of WP.No.16622 of 2017 in detail.

(d).This court was also taken through the contentions of various parties with extensive reference to various pleadings, reports and orders passed from time to time. The learned Senior Counsel has also read through various communications that were relevant to the contentions. A report on Chinese Medicines by a consumer watch dog "SUM Of US" was also placed and referred to.

(e).The learned Senior Counsel further proceeded to elaborate how each contention of the petitioner in WP.No.11777 of 2017 got unanimous affirmation from all parties except the Banks.

(f).Thereafter, the learned Senior Counsel set out to explain as to how the various contentions raised by the Banks as against the petitioner are untenable, unjust, arbitrary, smack of vindictiveness, *mala fides* drawing references to pleadings, documents and orders. The contentions made in its various pleadings have also been reiterated referring to documents and court orders. The learned Senior Counsel

catalogued its allegations of arbitrariness, bias, *mala fides* against the Banks as (i)*Mala fides* regarding the project (ii)Breaches of Court orders with impunity (iii)Misleading representations to Court against the petitioner (iv)Misleading the Regulator (v)Rejecting CDR since inception on inequitable grounds (vi)Giving a go bye to expert reports (vii)Suppression of material facts (viii)Collusion with a third party investor (ix)Attempt to sell assets for a pittance (x)Foregoing the tenets of nationalization abdicating role and responsibilities as Public Sector Units ignoring national interest

(g).In support of these contentions, the learned Senior Counsel took this Court through various pleadings, reports and communications of the Banks that are matters of record pointing to inconsistencies, misstatements and false representations deducible on record and prayed for necessary reliefs, emphasizing yet again on the extraordinary scientific value that the petitioner beholds for the nation.

Submissions on behalf of the 2nd Petitioner in WP.No.11777 of 2017:

83.Mr.T.Saikrishnan, learned counsel appearing on behalf of the Association of Farmers from Virudunagar District, where the medicinal herb *vinca rosea* is stated to be grown at a large scale had putforth the following contentions:

(a).The learned counsel took this Court through the contents of their affidavit in the matter explaining how their district is drought laden, backward in economic strata, identified as an aspirational district. The counsel referred to their affidavit on

the medical relevance of the herb *vinca rosea* in cancer care and how farmers in their belt have developed specific agronomical practices in cultivating and processing the produce in a suitable manner.

(b).The learned Counsel pointed to their affidavit stating that the herb consumes less water and that the primary income from this plant has arisen on account of exports. He drew further reference to report filed by the State Government and pointed out that though the report does not directly speak about their dwindling share of exports, the report confirms that the area under cultivation of the herb is now 267 ha with total production of 550 tonnes and that this confirms their submission that the area of *vinca rosea* cultivation in the State has shrunk from over 1500 tonnes in the past to 500-550 tonnes on account of erosion of their export markets. The counsel submitted that this huge shrinking of share in global market is on account of loss of exclusivity in cultivation with countries like China developing captive cultivation and also emerging as competitors to the petitioners.

(c).The learned counsel submitted that the loss of livelihood for the native farmers on account of this could be best addressed by promoting domestic procurement support and that on that front, the 1st petitioner would emerge as the singular large procurer if it is revived and enabled to foray into global market. The learned counsel referred to the affidavit of the 2nd petitioner about the support that they have received from the 1st petitioner during its years of operations even as an

API unit and submitted that supporting the venture to become a global formulations player would translate into protecting and promoting the source of livelihood for scores of farmers in the backward drought laden aspirational southern districts of the State of Tamil Nadu who get too little rainfall to be able to thrive on rain fed crops. Thus, the learned counsel appealed to this Court to protect their livelihood and welfare.

Submissions on behalf of Union & State Governments:

84.Mr.G.Karthikeyan, learned Assistant Solicitor General of India representing Union of India *vis a vis* some of the Respondents in WP.No.11777 of 2017 and the fourth Respondent in WP.No.16622 of 2017 led the arguments. He would submit to the Court that the experts who visited the facility for evaluation are all eminent persons in their domains and highly respected in their ranks. He submitted that in deference to the orders of the Court, the learned *amicus* as also Counsels for the both the Governments, viz., himself & Mr.T.M.Pappiah, learned Special Government Pleader representing on behalf of the State were all present during the evaluation by the delegates who commanded deep knowledge on the subject. The learned Assistant Solicitor General endorsed the submission of learned *amicus* that the evaluation process by Government experts was incisive and empirical and that every part of the labs and facilities and records were inspected for the entire day and how the Expert Committee led by Chief Scientist made thorough evaluation of claims of the

petitioner by examining the materials and extensive questioning of the Promoter. He read from relevant parts of the report and pointed out that the Committee also offered expert guidance to the promoter on patent filing etc., He then took the Court through the conclusions of the expert Committee and submitted that this Court may pass suitable orders in the light of the findings and recommendations of the Task Force to revive the Petitioner in furtherance of national interest.

85.Mr.T.M.Pappiah, learned Special Government Pleader representing the State of Tamil Nadu impleaded as Respondents in the W.P.No.11777 of 2017 submitted that the State adopts the arguments of learned *amicus curiae.*

86.Mr.Srinivasa Moorthy, learned ACGSC representing Union of India as some of Respondents in WP.No.11777 of 2017 referred to the Counter Affidavit of the 2nd respondent and submitted that the Court may consider the averments and various efforts of the Government to combat import dependence for essential medicines brought out in the Counter Affidavit of the 2nd respondent and that the Court may pass orders in the matter taking into account the submissions putforth in the said Counter Affidavit and in furtherance of the report of the API Task Force of Government of India on the petitioner.

Submissions on behalf of Reserve Bank of India

87.Mr.C.Mohan, learned Standing Counsel made his submissions on behalf of Reserve Bank of India and also assisted this Court with clarifications on other attendant aspects. The submissions putforth by him in nutshell is set out hereunder:

(a).At the outset, he made it clear that Reserve Bank of India does not stand in the way of the Court deciding this case in larger public interest brought out by report of the Government.

(b).The learned Counsel submitted that there are two Writ Petitions and RBI was made a party in WP.No.11777 of 2017 as R-12. He pointed out that this is the third round of litigation between the Petitioner and the Banks. The 1st and 2nd rounds were directly against Banks but in the third round, the petitioner has sought reliefs as against the Government praying reliefs to remove road blocks in its revival due to State policies. RBI was *suo moto* impleaded by the Court and asked to provide clarifications.

(c).The learned Counsel for RBI then referred to sequence of correspondences between Banks and RBI. He referred to reply letter from RBI to Banks' letter dated 06.10.2019 and explained that the sticky issue in this case was margin contribution by promoter. RBI has only clarified that promoter need not bring in cash but by conversion of unsecured loan into equity, it could have been done. If sharing pattern, assets, etc., are schemed in such a way, margin requirement could be satisfied.

(d).The learned Counsel referred to the subsequent letter to RBI by Bank of India on behalf of both lenders and that RBI has written back to them very clearly that Credit related decisions are decisions to be taken by Banks on the merits of each case. The learned Counsel submitted that RBI is a regulator and a policy maker. Micro management for a particular account is not the look out of RBI and that RBI has only been facilitative in this matter.

(e).The learned Counsel for Reserve Bank of India further submitted that since all these deliberations have taken place in the year 2017, on 12th of September, 2019 he has obtained latest instructions and that there is no prohibition on the Banks to extend support to the petitioner even under the present guidelines that are, in fact, facilitative.

(f).On the question of stalemate persisting in the matter despite that, the learned Counsel for RBI responded that the Banks may have considered norms, regulations, prudence etc., but do not seem to have kept public interest in their zone of consideration. He pointed that the litigation in this case being not adversarial and that though, initially, Government sought to file a counter making contentions on the merits of the matter, in subsequent stages, they participated proactively, especially, through evaluation reports by their own regulators and experts. The Government being the cent per cent stakeholders in both Bank of India and NABARD, he stated that their findings and conclusions would bind the Banks as well.

(g).On the powers of this Court to issue directives, he clarified that from the perspective of Art 47 providing for public health read with Article 21, this Court could issue suitable directives by co-joining the Government and the Banks for this purpose and that the Government could also consider extending financial support to the petitioner under schemes related to health as may be applicable. The learned counsel clarified that this Court could issue Mandamus to R2-R5 (Government of India) along with R6 & R9 (Banks) to put in place a mechanism for financial support and such other measures to revive and support the venture and that such Committee of Government and Banks could be given with facilitative role under Court supervision. The operative freedom to Promoter would be fully protected and the petitioner could not have an objection to such enabling guidance that would ensure transparency for all stakeholders while ensuring all requisite support for fruition of the objectives. He drew reference from road accident case where directives were issued for constituting a PM headed Committee.

(h).The learned Counsel also provided clarifications to this Court on the mandate of Public Health enshrined in Article 47 shifting from welfare approach to rights approach with reference to Aadhar Case, *Ashok Lenka V Rishi Dikshit & Others* and other decisions of Hon'ble Supreme Court that dealt with issues of Passive Smoking, Electromagnetic radiation from Mobile Towers, Medical expenses for Government Employees, Right to safe food and the obligation to provide medical

care to citizens free of charge in corporate Hospitals referring to cancer being a far more vicious menace.

88.This Court records its hearty appreciation to learned Counsel Mr.C.Mohan for his unbiased valuable assistance to this Court through the proceedings.

Submissions on behalf of Bank of India & NABARD

89.Mr.T.Ravichandran, learned Counsel representing Bank of India and NABARD arrayed as Respondents 6 & 9 in WP.No.No.11777 of 2017 and Respondents 1 to 3 in WP.No.No.16622 of 2017 made his submissions on behalf of the Banks. The sum and substance of his contention is as follows:

(a).He submitted that the banks would be making their submissions in W.P.No.16622 of 2017. He said that the contentions of the petitioner broadly fall under three heads (i)agitating disputed questions of fact (ii) claiming entitlement with regard to CDR mechanism which is a voluntary, non-statutory mechanism that has even ceased to exist (iii) on the ways in which Banks have not complied with the directives of the Court making factually incorrect statements on oath.

(b).On point (i), the learned counsel submitted that the contentions by petitioner that contrary to norms, the banks took more than 5 years to take up its CDR proposal, that the petitioner has been led and back-stabbed in the divestment front by executive official of the Bank etc., are all disputed questions of fact that could not be

looked into by the Writ Court. On point (ii), viz., relief under CDR mechanism, the learned counsel submitted that the mechanism is not in vogue. It is a mechanism whereunder the promoter will have to take the first hit. It is a voluntary non-statutory mechanism where before execution of documents such as Inter-Creditor Agreement, Debtor-Creditor Agreement, legal obligations would not arise. The petitioner relies upon a letter dated 23.01.2017 which is only an 'In Principle' approval. On point (iii), viz., allegations of non-compliance by banks to Court directives, the learned counsel read through paragraphs 42 & 43 of the petitioner's affidavit in relation to the manner in which orders came to be passed in WP.No.9160 of 2016 and referred to the order dated 27.04.2016 in the said Writ Petition and submitted that a perusal of the order would make it very clear that the petitioner has set out to canvas false pleas on oath.

(c).The learned Counsel for Banks also submitted a List of Dates of Events, Written Submissions, Citations and argued that while the petitioner made its request for Corporate Debt Restructuring ['CDR'] as distinct from requests for restructuring and additional funding only on 10.03.2016, it has fallaciously accused the Banks of not considering its requests under CDR for five long years. The Banks have nothing to mention on the reports filed in WP.No.11777 of 2017 and that the reliefs therein having been sought against the Government, this Court may pass any order on the basis of reports filed by Government and the learned *amicus*. The Banks, however, wanted the Court to advert to the fact that the petitioner, despite orders of this Court opening opportunities for it to participate in tender procurements did not opt to do so

and that despite directives of this Court to file a point-wise reply to the Joint Inspection Report filed by the Banks in W.P.No.11777 of 2017, the petitioner did not file any such reply.

(d).The learned Counsel for the Banks then made his submissions in WP.No.16622 of 2017. He adverted to paragraph 63 of the petitioner's affidavit in WP.No.16622 of 2017 assailing the communications of the Banks dated 08.03.2017, 02.05.2017 and 21.06.2017 impugned in the Writ Petition as being arbitrary, vindictive, in breach of judicial proceedings and in violation of fundamental rights and submitted that there is no vindictiveness or arbitrariness in those communications as alleged by the petitioner. The learned Counsel read over the communications dated 08.03.2017, 03.05.2017 and 21.06.2017 and submitted that Bank of India did not shut down the petitioner even after its non-compliance to terms and conditions. He submitted that it is wrong for the petitioner to contend as if it is entitled to restructuring and it is false for it to contend as if, there had been any arbitrary, mala fide exercise by the Banks.

(e).The learned Counsel referred to RBI guidelines on Corporate Debt Restructuring ['CDR'] dealing with eligibility criteria and legal basis for CDR and reiterated that under clauses 4.1 & 4.3, only when a proposal for CDR gets referred to the CDR Cell by the Banks, gets further considered therein culminating in execution of ICA, DCA etc., binding obligations could arise between parties and that in the

instant case, the petitioner has nothing to show except for the 'In Principle' sanction proposal dated 23.01.2017.

(f).The learned Counsel submitted further that the CDR mechanism itself does not exist as on date. The circular of RBI issued in February 2018 has been set aside by Supreme Court and under the circular issued in June 2019, the case of the petitioner is not within the threshold. He would further submit that on the question of compliance to Court orders and directives, the petitioner has made false and untrue allegations as against the Banks.

(g).The learned Counsel for the Banks took the Court through averments in paragraph 43 of the affidavit of the petitioner in WP.No.16622 of 2017 wherein the petitioner has averred that it restricted its prayer in WP..No.9610 of 2016 on the assurance given by Banks to consider its CDR representation with positivity and objectivity. The learned counsel submitted that such a statement is not reflected in the Court's order and not borne out by records anywhere. The learned Counsel for Banks submitted that similarly, in paragraphs 53 and 54 of its affidavit, the petitioner has contended as if during pendency of WP.No.4178 of 2017, the Banks have issued communication dated 08.03.2017 with knowledge of WP.No.4178 of 2017 which is also not borne out of records. The fact is at that point of time, the Banks have not received notice of the said Writ Petition before this Court and it is a deliberate accusation.

(h).The learned counsel for Banks read through the orders of Debt Recovery Tribunal III, Chennai dated 03.10.2016 and 28.10.2016 that dealt with the issue of sale proceeds of personal asset of promoter counting for margin money and contended that in subsequent communications this issue is not discussed at all and the petitioner is aware that the proceeds had been adjusted otherwise.

(i).The learned counsel for Banks then referred to *suo moto* impleading of Banks in WP.No.11777 of 2017 and directives to the Petitioner and to the Banks dated 10.08.2017 passed in the said Writ Petition directing petitioner to give one more proposal and directing the Banks to consider it positively. The learned Counsel for Banks submitted that even the petitioner has agreed in its revised proposal that Banks have called for Upfront Margin, Security Cover and Business Plans *vide* their letter dated 23.01.2017.

(j).It is submitted that from the directive of the Court dated 10.08.2017 to consider the proposal of the petitioner 'positively', the word 'positively' came to be deleted by subsequent order, though he could not show any such order.

(k).The learned Counsel for Banks read from letter dated 06.10.2017 from the Banks to Reserve Bank of India referring to how restructurings have been done in the loan account of the petitioner, that NABARD would not provide Working Capital and

pointed that despite opportunity accorded by the Court, the petitioner did not partake in tender procurement and that the promoter scaled down the outlay as against TEV report.

(l).The learned Counsel for Banks then read parts of letter dated 06.11.2017written to RBI by Bank of India on behalf of both the Banks. The Counsel for Banks submitted that since RBI *vide* its letter dated 03.11.2017 stated that the letter dated 06.10.2017 did not seek any clarifications, the Banks have written this further letter dated 06.11.2017 to Reserve Bank of India.

(m).The learned Counsel for Banks read out reply of Reserve Bank of India at page No.447 of Additional Typed Set of the Petitioner. The learned Counsel then read to the Court the communication dated 10.11.2017 issued by Banks to the Petitioner and contended that the Petitioner has not challenged this letter. He relied on several contentions from the letter and contended that this letter not having been challenged, nothing survives for consideration.

(n).The learned Counsel for the Banks submitted that the petitioner has started the injectable facility in 2008 itself and there has been no fee for USFDA until October 2012.He submitted that the TEV projections have not been worked out on any verifiable data and also referred to the page on Disclaimers in the report to assail reliance on it. The learned Counsel relied on the statement in the said report that the

stocks of the petitioner valued at Rs.41.25 crores by Devan & Co., will have to be assigned only 'NIL' value on account of tender restrictions that denied off take for the medicines.

(o).The learned Counsel for the banks submitted that the Banks have felt that the project of the petitioner is unviable, that the Banks have been considerate and that the Banks have also complied with the orders of the Court. Thus, the learned Counsel for the Banks summed up his arguments stating

1.This court cannot issue writ of mandamus in matters of restructuring which is purely the domain of the lenders as held by MP High court and Delhi high court.

2.Commercial wisdom of creditors cannot be the subject matter of review.

3.CDR mechanism itself is not in existence today.

4.The respondents have acted in line with the circular issued by RBI and there is no arbitrary exercise of power and no *malafide* intention.

5.The Petitioner has not complied with the requirements of the in principle sanction.

6.The impugned orders communications have subsumed into the reply dated 10.11.2017 of the respondents and admittedly no *mala fides* or arbitrariness is alleged.

7.Disputed questions of fact viz., (a) margin money issue (b)collusion and mala fides about the DGM of the bank (c) value of stocks.

90.The common written submissions and list of dates submitted on behalf of Banks corresponds to the oral submissions made by their Counsel. In the list of dates and events, it has also been stated that the petitioner sought CDR from the Banks only on 10.03.2016 but has set out to claim as if its CDR requests were ignored for very long which is a blame worthy conduct on the part of the petitioner. In his oral submissions, the learned Counsel for Banks made one more submission that is pertinent. He has submitted that the notice to classify the petitioner as a Wilful Defaulter has been withdrawn. He submitted that after some communications between the Banks and the Petitioner, the notice that was issued proposing to classify the petitioner as Wilful Defaulter has been withdrawn.

91.In support of his contentions, the learned counsel for the Banks placed reliance on the following decisions:

1.Division Bench decision of High Court of Madhya Pradesh dated 22.06.2018 in WP.No.12620/2018 in the matter of M/s.Kesar Multimodal Logistics Ltd., V Union of India & Ors

2.Decision of a Single Judge of High Court of Delhi dated 24.08.2018 in WP.No.(C)8814/2018 in the matter of Amira Pure Foods Pvt Ltd., V Canara Bank & Ors

3.Decision of Hon'ble Supreme Court dated 02.04.2019 in Transferred Case (C) No.66 of 2018 & Transferred Petition (C) No.1399 of 2018 in Dharani Sugars & Chemicals Ltd., V Union of India & Others

92.Mr.E.Om Prakash, learned Senior Counsel representing the Writ Petitioner submitted how the Banks have only been blowing hot and cold without *bona fides* in the matter and that they would also circulate Written Submissions meeting their contentions. He pointed that the Banks which contend that the petitioner is wrongly accusing them of sending an impugned communication with knowledge of WP.No.No.4178 of 2017 during its pendency are shying away from stating on their part the date on which they received notice of the writ petition. Such contentions having been raised for the first time at the time of oral submissions by banks, the learned Counsel for petitioner sought leave to submit along with its written submissions materials with regard to points raised for the first time in submissions. Thereupon, the Court reserved the matters for orders granting liberty to parties to circulate Written Submissions.

93.It is seen that the Petitioner has filed Common Written Submissions in WP.No.16622 of 2017 and in WP.No.11777 of 2017 with reference to the contentions of the Banks. To this the petitioner has annexed copy of the POS & Vakalat of Banks in WP.No.4178 of 2017 and a communication from Bank of India dated 10.10.2014 that would affirm the oral submission of Counsel for Banks regarding withdrawal of Notice issued to petitioner for classification as wilful defaulter.

94.The petitioner has also placed reliance upon various decisions of Hon'ble

Supreme Court & Hon'ble High Courts under the heads (a)Judicial Review of Administrative Action & Scope of Article 226 (b) Jurisdiction of Constitutional Courts where Public Law Involved (c) Objectives of Nationalization (d) Framing of guidelines by the Court (e)Mala fides, Abuse of Process of Law, Approbate-Reprobate, Taking Advantage of One's Own Wrong, Suppression of Material Records, Fraudulent Misrepresentation, Wilful disobedience of orders of Court (f)Promissory Estoppel (g) A Class by Itself (h) Right to Health (i) Obligation to protect Farmers' Welfare

Issues for Consideration

95.Many significant issues have arisen for consideration of which significant ones have been addressed by proactive responses on the part of the Union Government and the State Government. Their expert reports have been considered *supra*. At this point, this Court records its hearty appreciation to Mr.G.Karthikeyan, learned Assistant Solicitor General and Mr.T.M.Pappiah, learned Special Government Pleader for their able assistance to this Court in the proceedings and for having discharged their responsibility as Officers of the Court in a fair and sincere manner. Mr.Srinivasa Moorthy, ACGSC also rendered good assistance since beginning in this matter and this Court appreciates him for the same.

96.The issues that remains contentious in the matter primarily arises from the *lis* between the Petitioner and the Banks. Especially, the petitioner bases its claims in

WP.No.16622 of 2017 on allegations of arbitrariness, bias, vindictiveness and *mala fides* on the part of the Banks and the Banks have, among others, raised counter allegations and pleas that would preclude the jurisdiction of this court to consider certain issues and limit its powers to issue directives.

97.The issues that require consideration for rendering a decision in these writ proceedings would be:

Issue 1: Whether India is in a massive state of dependence on imports for its life saving essential drugs?

Issue 2: What is the state of measures taken to curb excessive import dependence for Active Pharmaceutical Ingredients?

Issue 3: What is the extent of menacing spread of the dreaded disease Cancer?

Issue 4: Whether the 1st Petitioner constitutes a class by itself with unique know-how essential to protect self- reliance in Cancer Care in the country?

Issue 5: Are there other merits and distinctions that would prove beneficial to the nation if the petitioner is provided with revival?

Issue 6: What is the compliance by various parties *vis a vis* the directives so far

issued by this Court in WP.No.No.11777 of 2017?

Issue 7: Whether this Court is precluded from adverting to issues claimed as disputed questions of fact by the Banks?

Issue 8: What is the veracity of allegations such as *mala fides,* wilful disobedience, abuse of process of law and fraudulent misrepresentations made against the Banks by the Petitioner and Counter Allegations by the Banks against the Petitioner?

Issue 9: Are the banks justified in differing with and discarding reports of Independent Experts?

Issue 10: Are the banks justified in declining CDR to petitioner citing non-cooperation of promoter for further divestments as suggested by the banks?

Issue 11: Are the Banks precluded by RBI norms and clarifications from according relief to the petitioner?

Issue 12: Does Promissory Estoppel arise and apply in this case?

Issue 13: Whether the Petitioner has falsely misrepresented as though it has

represented for CDR from the years 2011-12?

Issue 14: What are the merits and demerits of other contentions of the Banks to decline CDR to the petitioner?

Issue 15: Are the communications impugned in WP.No.No.16622 of 2017 fair and sustainable?

Issue 16: Has WP.No.No.16622 of 2017 become infructuous by reason of communication dated 10.11.2017 as contended by the Banks?

Issue 17: Whether the Banks have conducted themselves in abdication of objectives of nationalization in this case?

Issue 18: Scope of Judicial Review of Administrative Action & objections thereto by Banks on grounds of Credit Wisdom

Issue 19: Framing of guidelines by Court to protect fundamental rights, especially, Right to Health & Farmers' Livelihood as concomitants of Right to Life

Issue 20: What are the reliefs to be granted with attendant safeguards in the facts and circumstances of the case?

98.Issues **(1)** viz., near total import dependence for essential medicines leading right upto Sovereign concerns has already been dealt with at the outset and the Court also received expert reports confirming the said facts. As rightly pointed out by the learned Senior Counsel appointed as *amicus curiae* in this matter, we spend crores of rupees in defence and it is imperative for us to guard against subtle forms of invasions too.

99.**Issue (2):*What is the state of measures taken to curb excessive import dependence for Active Pharmaceutical Ingredients?***

As stated *supra*, in order to formulate a long term policy and strategy for promoting domestic manufacture of APIs/Bulk Drugs in the country, a High Level Committee headed by Dr.V.M.Katoch, the then Secretary, Department of Health Research was set up which submitted its Report in February, 2015. Significant recommendations have been made by the above Expert Committee that includes,

1.**Establishment of Large Manufacturing Zones (LMZs)/Mega Parks for APIs with Common facilities maintained by a separate Special Purpose Vehicles (SPV) to be provided at a concessional rate and preferably free of cost. This will help in "competing with the other countries" and also generating large employment**.

2.Six large API intermediate clusters in five to six states are expected to transform the nation. **Keeping in view the urgency, it would be necessary to start with at least**

two fully financed clusters (one focused on fermentation and other on APIs) in the immediate future, this process may be driven by an Empowered Committee for taking decisions in a time bound manner. One such functional cluster can bring benefit of around one billion dollar / Rs.60 billion per year. It is felt that three clusters may succeed in wiping out dependence in the area of APIs.

3.The modalities for making the clusters lucrative for API manufacturing have also been spelt out in detail calling for coordinated approach from various limbs of Governments.

4.Revival of public sector units such as IDP has been recommended with **infusion of capital (about 500 crores each) is recommended to these units to start manufacturing important APIs in the very near future.**

5.In order to ensure single window clearance to manufacturers and provide common facilities and other support, the **Department of Pharmaceuticals should have an institutional mechanism which could work in synergy with other important Departments such as** Ministry of Coal, **Department of Financial Services**, Department of Revenue and others have units co-located at this site.

6.Incentivising import of machines , equipment, technology have also been recommended.

7.**Fiscal and Financial Incentives: (i)** Immediate financial investment for cluster development **(ii) Waiver of all State and Central duties, levies etc., (iii) Soft loans to the Industry** through interest subvention upto 7.5%, at least at par with interbank lending rates **(iv)** Capex loan to the manufacturers of APIs for high priority identified

drugs, with a moratorium of 10 years for repayment **(v)** cut in margin requirements with 85% debt ratio **(vi)** tax free status and tax rebates/incentives for 10 years for manufacturing companies for each product (vii) Tax Benefits in the form of proper indirect taxes.

8.The Committee has recommended that

(a).A long term strategy keeping a goal of strengthening API sector by involving Ministry of Commerce as well as other regulatory authorities is required with

(i) Judicious and liberal use of measures like anti-dumping, safeguards/duties, reciprocation and application of rules of origin is suggested.

(ii) Based on risk analysis, a minimum of one or two inspections per month must be carried out for manufacturing facilities (by Indian regulators) located outside India.

(iii) Creation of advance testing lab infrastructure at all Indian ports / air ports in a time bound manner to subject imports to risk- based testing.

b) Incentives such as reduction on service tax on the clinical trials for drugs developed in India.

c) **Assured percentage of procurement from domestic bulk drug manufacturers from mega parks in conformity with WTO norms.**

RESEARCH AND DEVELOPMENT

100.Committee recognized that investment in R&D is essential to ensure

competitive edge. Measures recommended are:

1.Stronger industry-academia interaction by facilitating the to-fro movement of scientists between industry and academic institutions.

2.Institutional mechanism for Ministry of Human Resources, and various Science departments/agencies like DST, DBT, CSIR, ICMR etc to work together/ in synergy on R&D relevant for best procedures of production.

3.Innovation should be measurable and **awards to the scientists/industry who contribute to the development of improved processes relevant to bulk drug industry**. Technology development financing – to be repaid.

4.Import Duty Exemption on import of Capital goods In respect of research and development (R&D) and Manufacturing of Vaccines / APIs.

5.**Other tax benefits/financial incentives/support from Govt for R&D for development of improved strains; alternate raw materials and improved/competitive technologies**.

101.Of the aforesaid recommendations, it has been reported to this Court by way of Counter and Typed Sets, that the Governments could take a few steps that are however inadequate in proportion to the magnitude of problem to be addressed. At least one cluster for APIs with advanced features to be implemented in a time bound manner that was underlined as an urgency in the report is yet to see the light of the day on account of logistics and fund allocation issues as stated in the Counter Affidavit filed on behalf of 2nd Respondent in WP.No.11777 of 2017. The

dependence on imports for essential medicines continued to haunt and the issue came to be debated in the parliament. In such circumstances, Government of India felt it appropriate to constitute a High Level Inter-Ministerial Committee to comprehensively address the issue of reviving self-reliance and promoting Active Pharmaceutical Ingredients in the country. By Memorandum in No.31026/48/2016-PI-II dated 18.04.2018 of Department of Pharmaceuticals, Ministry of Chemicals and Fertilisers constituted the high level Multi -Ministerial Task Force of 12 members from departments across the ministries with the following mandates:

(i).The Task Force will formulate a Roadmap for the sector with implementable recommendations. The interventions recommended will include that concerning the Central Government, State Government and Regulatory Bodies where applicable. The role of industry may also be clearly delineated.

(ii).The specific areas may include , but may not be limited to the following

(a).Research & Development

(b).Acquisition & Commercialization

(c).Application and adoption in specific sectors

(d).Development of the Industry

(e).Regulatory Framework

(f).Potential Impact on industry, job creation, investments, contribution to the economy, technology infusion, exports, integration with value chains etc.

(iii).The Taskforce may study global practices and interact with relevant stakeholders

as required.

(iv).The Taskforce came into existence from 18.04.2018 and shall continue till the final report is accepted by the Government.

102.It is this Task Force that has heeded to the call of this Court pursuant to recommendations of learned *amicus curiae* to evaluate the facilities and contentions of the 1st Petitioner in WP.No.11777 of 2017, deputed a committee of delegates from various departments including its Chief Scientist & Head, Process Chemistry Division, Department of Drug Research of Government of India who submitted their report and recommendations as aforesaid.

103.The Department of Pharmaceuticals have further provided to this Court, in a sealed cover, the report of Dr.V.M.Katoch Committee whose recommendations are under consideration through its Standing Counsel Mr.Srinivasa Moorthy who also assisted the Court in this matter. The Department of Pharmaceuticals have further been issued with directive of this Court to forward documents and records to the ministry concerned from where reliefs will have to flow for the petitioner as per the recommendations of its expert committee.

104.Conservation is the first step in preventing extinction and this Court records its hearty appreciation to the Union Government for having taken such a proactive approach in a case, even though, filed against it as a respondent by

considering the importance of issues. This Court feels that the kind of fairness and genuineness that has been exhibited by the Government/Respondent in this case is worthy of very high commendation and emulation in cases to come.

105.In this backdrop, this Court would consider the aspect of issuing directives and framing guidelines as per the recommendation of the learned *amicus curiae* that the issue requires the guiding hand of a constitutional court under Article 226 of the Constitution.

106.Issue 3:*What is the extent of menacing spread of the dreaded disease Cancer?*

The concern in this case is protecting self-reliance in medicines needed to treat Cancer. Hence, it has become necessary to advert to the incidence of Cancer in India.

107.As captured hereinabove and brought out by the learned *amicus curiae* in his report, Cancer patients are at an alarmingly high number in India. We are losing scores of women, children and young adults to this dreaded disease. Every 13th Cancer patient in the world is an Indian and every day over 50 kids succumb to this disease in our country. The numbers and ratio is only set to grow as captured in the initial parts of this judgment which makes it even more incumbent to conserve their treatment options.

108.**Issue 4:** ***Whether the 1st Petitioner constitutes a class by itself with unique know-how essential to protect self- reliance in Cancer Care in the country?***

This issue is also answered in the affirmative.

109.Though this Court has more than one evaluation report on the Petitioner on this aspect, the following observations from the report of Expert Committee of API Task Force of Government of India would conclude the issue:

"*To the best of our knowledge Vinkem labs Ltd. is the only company in India having in-house knowhow for isolation of vinca alkaloids complying the regulatory norms*"

"*Manufacturing of API namely Vinorelbine can contribute to self-reliance because they are the only known API manufacturer having in house know-how for isolation of Vinca alkaloids from Vinca Rosea in India*"

Case Laws

In the case of Chiranjith Lal Chowdhury v Union of India & Ors. reported in AIR 1951 SC 41, one of the shareholders of the company challenged the Sholapur Spinning & Weaving Company (Emergency Provisions) Act, 1952 on several counts including violation of Art 14 of the Constitution. In that regard, the Hon'ble Supreme Court held as follows:

"*66.It must be admitted that the guarantee against the denial of equal*

protection of the laws does not mean that identically the same rules of law should be made applicable to all persons within the territory of India in spite of differences of circumstances and conditions. As has been said by the Supreme Court of America, "equal protection of laws is a pledge of the protection of equal laws(')," and this means *"subjection to equal laws applying alike to all in the same situation(')." In other words, there should be no discrimination between one person and another if as regards the subject-matter of the legislation their position is the same. I am unable to accept the argument of Mr. Chari that a legislation relating to one individual or one family or one body corporate would per se violate the guarantee of the equal protection rule. There can certainly be a law applying to one person or to one group of persons and it cannot be held to be unconstitutional if it is not discriminatory in its character. It would be bad law "if it arbitrarily selects one individual or a class of individuals, one corporation or a class of corporations and visits a penalty upon them, which is not imposed upon others guilty of like delinquency." The legislature undoubtedly has a wide field of choice in determining and classifying the subject of its laws, and if the law deals alike with all of a certain class, it is normally not obnoxious to the charge of denial of equal protection; but the classification should never be arbitrary. It must always rest upon some real and substantial distinction bearing a reasonable and just relation to the things in respect to which the classification is made; and classification made without any' substantial basis*

should be regarded as invalid."

Applying the ratio of the aforesaid, the Petitioner Company would also constitute a class by itself in the light of confirmation by Experts.

110.Issue 5:*Are there other merits and distinctions that would prove beneficial to the nation if the petitioner is provided with revival?*

In addition to the know-how uniqueness of the petitioner, this Court has also considered the other merits and distinctions claimed by the petitioner of constituting value for the nation.

111. In this regard, the report of the Drug Regulators dated 14.03.2018 and that of Task Force of Government of India filed on 23.01.2019 point to State of the Art dedicated Oncology Facilities having been established by the Petitioner. The report of Government of India would, *inter alia,* commend the following:

i.**Robust Know-how:** The petitioner has robust in-house know-how and technology for isolation, purification and formulation of naturally occurring oncology alkaloids from indigenous plant namely *Vinca Rosea* and that the promoters have developed some other natural products in pure form from the other plant extracts which are also licensed to be manufactured at their API facility.

ii.**WHO GMP Certification:** That the promoters have also secured WHO GMP certificate for manufacturing of the above said APIs and formulations.

iii.**Environmental Compliance:** That the manufacturing units and formulation units performing orange zone activity and conforming regulations related to environment pollution.

iv.**State of the Art R&D facility with DSIR Recognition:** Vinkem Labs Ltd. have state of art R&D facility at API manufacturing unit for development of technology related to isolation and purification of natural products in pure form from plant extracts. This centre has DSIR recognition for custom duty and excise exemption.

v.**State of the Art Injectable Facility:** That the petitioner has established State of Art formulation unit for injectable formulation of Vinorelbine, Vinblastine and Vincristine in addition to other oncology products either as liquid injection or lyophilized powders for injection with WHO GMP approval.

vi.**Capacity in the entire chain – (i) R&D (ii) API manufacture & (iii) Formulations:**The report of the Expert Committee has pointed to remarkable capacities that include capacity of extraction of 1 ton plant at a time.

vii.**Advanced Equipment available in the facilities:**The equipment available in both the facilities are also confirmed to have been sourced from world leaders, custom made and maintained in good condition as per the report of Deputy Drug Controller (I), CDSCO (SZ), Govt of India & Director of Drugs Control, Government of Tamil Nadu.

viii.**Equipment installed to Standard Operating Procedure**: The Expert Committee has opined that the equipments have been installed in conformity to Standard Operating Procedures.

ix.**Commendable capacities and maintenance:** The capacities, unique designs and features and upkeep and maintenance of the facilities have all been commended by the experts.

x.**Scope for further in-house R&D:** The Committee has also opined that based on the past Research Experience and Expertise, the promoters could foray into further R&D activities.

xi.**Range of Medicines:** The Committee has certified that the medicines manufactured by the promoter are used in variety of cancer treatment and are prescription drugs as formulations.

xii.**Foreign Exchange Potential:** The expert Committee has also opined that since both the facilities have been WHO GMP Certified, their products would be accepted by other countries drug regulators as well upon the petitioner complying with their licensing protocols/procurement norms.

xiii.**On the Petitioner's capacity to be a catalyst on the standards of health care and self-reliance in health care:**On account of capacities and the care with which every step has been designed in the entire chain of manufacture from R&D to Finished dosage form, the Expert Committee has stated that the petitioner could be a valuable player in ensuring self-reliance and standard health care for cancer patients in the country.

xiv.**Conclusions & Recommendation of the API Task Force:** The Expert Committee of API Task Force has stated that the petitioner has scientific merit and capabilities to be a significant player in Cancer related Health Care related to vinca

alkaloids. It has further recommended that on account of huge time and financial outlay that would be involved if similar facilities with similar know-how were to be created afresh in the specialized area of low volume high cost natural products for cancer therapy from inception, it would bring significant benefits for the nation to revive the 1st Petitioner. The expert committee has emphasized such recommendation in the light of its observations on the know-how, technology and facilities of the petitioner and also on account of flagship thrust by Government of India to revive domestic manufacture of Active Pharmaceutical Ingredients that has since become a pressing need.

112.It is, therefore clear that the facility established by the petitioner is valuable and to create a similar facility with similar know-how, the country will have to incur huge time and financial outlay. The petitioner has also established that it could supply candidate materials to the world bench mark setter, namely, US Pharmacopeia from its existing stocks even as of 2018. The Government of India Expert Committee has also certified the capacity of the petitioner to foray into the global segment. The fact that US Pharmacopeia itself has sourced 30 grams of material from the petitioner for a sum of US$ 66000 even at this stage is a pointer to the FE earning potential of the venture once it earns US-FDA approval. While making his presentation, the learned *amicus curiae* also pointed out that while it may be a measure of benevolence for the State to extend support to the petitioner at this juncture, but, once it garners approval from US-FDA, the investment value would be

extraordinary.

113.One other crucial aspect to be considered in providing revival reliefs to the Petitioner would be the benefits it could bring to the poverty stricken farm labourers and farmers of drought laden aspirational southern districts of the State of Tamil Nadu if revived and enabled which is considered by way of a separate issue *infra*.

114.Hence, it would be necessary, useful and beneficial in many respects to provide the petitioner with revival, direction and facilitations so that the benefits of an extraordinary scientific venture would avail to the nation.

115.**Issue 6:*What is the compliance by various parties vis a vis the directives so far issued by this Court in WP.No.11777 of 2017?***

As stated hereinabove, taking into account the issues involved in the matter and the affirmative response of the Union and State Government to the issues in hand, this Court has *suo moto* impleaded a number of respondents in WP.No.11777 of 2017 and also issued directives from time to time.

116.**Directive 1:To Union Government to report on the claim of petitioner to possess unique know-how**

The first of the directives was issued on 05.07.2017 to Union of India to ascertain and report on the claim of the petitioner to possess exclusive know-how in

relation to 7 molecules that are used for manufacturing finished cancer drugs. This exercise has been undertaken by delegation of expert members by Task Force of Government of India who have evaluated the claim of the petitioner in relation to *vinca* alkaloids and they have validated the contention of the petitioner by reporting that to the best of their knowledge, the petitioner is the only company in India having in-house know-how for isolation of all vinca alkaloids complying the regulatory norms.

117.<u>Directive 2:</u>For testing of medicines, tender participation and fund support by Banks to the petitioner

On 12.07.2017, this Court issued further directives to both Union Government and the State Government (i) to test the medicines manufactured by the Petitioner (ii) to permit the petitioner to participate in the forthcoming tenders by relaxing conditions in relation to prior turn over etc.,. Since it was represented that the benefit of the order cannot fructify unless the petitioner is able to get back on its feet with sanction from its banks, this Court also directed that the petitioner would meet the officials of the Banks and seek assistance in accordance with law.

118.It is seen that the petitioner has furnished samples to the Governments and that they have also approached the banks seeking sanction of funds that has, however, been declined by the banks. The petitioner has submitted that on account of such denial, it did not quote in the tenders as any inability to supply after successful bid

would entail black listing. On the directive for testing of medicines, it has been reported that the medicines manufactured by the petitioner are of standard quality and the test report of Central Drug Testing Laboratory has also been filed by way of Typed Set before this Court.

119.<u>Directive 3:</u> Directive to the Banks (Bank of India & NABARD) to receive loan proposal from the petitioner and consider it 'positively'

The next directive of this Court came to be issued on 10.08.2017. The purport of this directive and compliance thereto are traceable to three proceedings in WP.No.No.11777 of 2017 and two sets of communications by Banks with Reserve Bank of India that are usefully reproduced herein below:

120.<u>Proceedings of this Court dated 10.08.2017 in WP.No.No.11777 of 2017</u>

"*The petitioner shall, with regard to the queries raised by Bank of India and how it could be got over as well as with regard to other details, give a detailed proposal to Bank of India, with a copy marked to the Reserve Bank of India. After receipt of the said proposal and also, after getting clarification from Reserve Bank of India, the Bank of India and NABARD could consider the proposal* ***positively***

Delete the name of Mr.Poornam for R12 and post on 4th September 2017".

121.<u>Proceedings of this Court on 12.09.2017 in WP.No.No.11777 of 2017</u>

"It is represented by Mr.S.Sathyanarayanan, Learned Counsel for Bank of India and the Learned Counsel for Reserve Bank of India that a detailed proposal as per earlier order of this court dated 10.08.2017, has been given by the petitioner to the Bank of India and it is being considered by Bank of India as well as NABARD

Call on 05.10.2017"

122.<u>Proceedings of this Court on 05.10.2017 in WP.No.No.11777 of 2017</u>

"*This Court already directed the Bank of India and NABARD to consider the proposal given by the Petitioner* ***positively*** *in consultation with Reserve Bank of India. However, it is stated by Mr.S.Sathyanarayanan, learned Counsel for Bank of India that it is being considered at the Bank level itself.*

In view of that, the Bank is directed to consider it, at the earliest and if any clarification is needed, the same is directed to be obtained from Reserve Bank of India at the earliest, so that the result on the proposal could be placed before this Court by 09.11.2017"

123.Subsequent to this, the Banks have made correspondences with Reserve Bank of India. It is seen that the Banks have addressed to RBI a letter dated 06.10.2017 to which RBI has sent its response dated 03.11.2017. The Banks have sent a further letter dated 06.11.2017 to which RBI has sent its response dated 08.11.2017.

124.In letter dated 06.10.2017, the Banks have described the Project as below:

i.Setting up of state of the art facilities for production of anti-cancer drugs as per USWFDA norms at Kakkalur Village. Thiruvallur district Tamil Nadu and at Sulurpet, Mambattu, Tada Mandal, Nellore District, Andhra Pradesh.

ii.Injectable unit with the capacity of 120 lakh vials per annum.

iii.Raw material: Vinca rosea (catharanthus roseus) leaves – sourced through contract farming.

125. The Banks have then chronicled various list of dates and events in relation to the petitioner commencing from Loan Proposal up to directives of this Court in WP.No.No.11777 of 2017.

126.With reference to the directives of this Court and their response, the Banks have submitted as follows to Reserve Bank of India:

"The Hon Judge passed an interim order directing Tamil Nadu Medicine procurement Corporation to allow Vinkem to participate in tender without insisting on turnover criteria subject to final outcome of WP.

On 19.07.2017, in a meeting convened by Bank of India, the banks informed Vinkem Labs that no further lending was possible.

The Honorable court of Madras vide Order dated 10.08.2017 directed the petitioner to give a proposal to Bank of India and NABARD with a copy to

RBI and directed BOI and NABARD to obtain clarification. Further, the court stated that after receipt of the said proposal and also after getting clarification from RBI, the BOI and NABARD could consider the proposal positively.

Vinkem Labs vide letter dated 24.08.2017 have submitted a proposal for CDR. However the CDR proposal is being asked by them at their own terms without complying Bank /RBI guidelines in this respect. We summarise some of the points which is in non– conformity with the Policy guidelines on restructuring.

i. The account is NPA since 31.03.2012 and Asset Code is 33 with 100% provision The unit is closed and non-functioning, only maintenance of the unit is being carried out by the company

ii. A fresh funding of Rs.30 crores has been sought by the company Whereas the company is claiming to have stocks worth of Rs.40.25 crores.The funding is required for the purpose of DMF and ANDA for USFDA certification. Entire assumption of company cash flow generation is based on USFDA certification. Looking into USFDA Stringent norms for inspection there is no certainty that unit will qualify for the same.

iii. The borrower company is not ready to bring any upfront contribution on

margin for the purpose of restructuring.

iv. As per the TEV report conducted the requirement of funding is shown as 55 crores which is scaled down to 30 crores by the company without any justification.

v. There is no concrete business plan for a steady revenue generation sustained operations and servicing of debt/repayment obligations.

vi. The company is not ready to ensure/provide adequate collateral/security for proposed restructuring which will cover all the existing loans accrued interest additional interest, if any in the books of the accounts of Co-Financers as also proposed additional loan and interest approval during moratorium period"

127.Reserve Bank of India has responded to this letter *vide* its reply dated 03.11.2017. RBI has referred to the directives of this Court and observed that the Banks have not sought any specific clarification from RBI as directed by Court. Hence, they have extracted the extant instructions on CDR referring to their Circular dated July 01, 2015 on "Master Circular – Prudential norms on Income Recognition, Asset classification and provisioning pertaining to Advances" which provides that

"*No account will be taken up for restructuring by the banks unless the*

financial viability is established and there is a reasonable certainty of repayment from the borrower, as per the terms of restructuring package. Any restructuring done without looking into cash flows of the borrower and assessing the viability of the project/activity financed by banks would be treated as an attempt at ever greening a weak credit facility and would invite supervisory concerns / action. Banks should accelerate the recovery measures in respect of such accounts. The viability should be determined by the banks based on the acceptable viability benchmarks determined by them, which may be applied on a case–by-case basis depending on merits of each case Illustratively, the parameters may include the Return on Capital Employed, Debt service coverage Ratio, Gap between the Internal Rate of Return and cost of funds and the amount of provision required in lieu of the diminution in the fair value of the restructured advance. As different sectors of economy have different performance indicators, it will be desirable that banks adopt these broad benchmarks with suitable modifications. Therefore it has been decided that the viability should be determined by the banks based on the acceptable viability parameters and benchmark for each parameter determined by them. The benchmarks for the viability parameter adopted by the CDR Mechanism are given in the Appendix to part – B of this master circular and individual bank may suitably adopt them with appropriate adjustments, if any, for specific sector while restructuring of accounts in non-CDR cases" Abovementioned circular contains indicative

benchmarks for financial viability.

There should also be reasonable certainty of payment from the borrower under restructuring package. Viability should be determined by the banks based on the acceptable viability parameter and benchmarks for each parameter determined by them.

Further, paragraph 24.2 (ii) of circular dated February 25, 2016 on "Review of Prudential Guidelines – Revitalising Stressed Assets in the Economy" state that "Promoters must bring additional funds in all cases of restructuring. Additional funds brought by promoters should be a minimum of 20 percent of banks sacrifice or 2 percent of the restructured debt, whichever is higher. The promoter's contribution should invariably be brought upfront while extending the restructuring benefits to the borrowers. Promoter's contribution need not necessarily be brought in cash and can be brought in the form of conversion of unsecured loan from the promoters into equity".

RBI has advised the Banks to take a view on the proposal of the petitioner keeping in view extant RBI guidelines on restructuring.

128.In response to this communication, the Banks have again written a letter dated 06.11.2017 to Reserve Bank of India. The contents of this letter are crucial with regard to the compliance by banks of the directives of the Court, inputs fed by them

to the Regulator and the factors relied on by the Banks for rejecting the proposal of the petitioner. In this letter, the Banks have claimed to act in furtherance to the directives of this Court. They have gone on to state that the Petitioner has been thrice approved for restructuring and the following important and vital information are missing in the writ petition filed by the Petitioner before this Court. (i) That it has been sent with notice for classifying it as Wilful Defaulter as per RBI guidelines (ii) that the Company has made a counter claim of Rs.4949.92 crores in the OA filed by the Banks before Debt Recovery Tribunal and that the Banks have gratuitously lent their helping hand even thereafter. The Banks have stated that directions were issued for the Tamil Nadu Drugs Procurement Department to buy drugs of the company even though the company is unable to fulfil primarily any of their tender norms and that the Company held its AGM and filed Balance Sheet only upto 2014.

The Banks have claimed that both the Banks have given due respect to the Order of the Hon'ble High court in the WP No. 9610 of 2016 and accordingly undertook a Techno Economic Viability study of the project, undertook valuation of assets and stock, conducted several rounds of discussions with the lender, which is admitted by the Company. That the TEV report has many short coming with assumptions and financial ratios not properly accounted for.

The Banks have stated that the Banks have restructured the loan accounts of the company already three times in the past. That they have given fair and transparent consideration to the revival proposal though the account was classified as NPA right

in 2012. That the request by the borrower for considering sanction of CDR does not merit since there are many non-compliance issues in the account.

On the proposal of the Petitioner , the Banks have stated that in their proposals for both their Active Pharma Ingredient (API) and Injection facilities, the expenditure plan does not include any amount to be spent for procuring Raw Material and that the company projecting itself for producing LIFE SAVING CANCER CURE DRUGS, does not want to procure fresh Raw Material/supplies. The Banks have claimed that in the first year proposal, no expenditure is contemplated for actual fee to be remitted to USFDA. That the proposal of the company has requested recognizing sale of property at Naganallur under SARFAESI and that the same has already been appropriated towards unrealized dues of the company as margin for further lending. The Banks have claimed that when the Banks' component of CDR is being termed by the company in definite terms, the company's contribution is left open for exploring different means of financing.

The Banks have gone on to add that the claims of the Petitioner of having made API sales in domestic & international markets were not founded by evidence, that Rs. 51.00 crores required in the TEV report of MITCON has been arbitrarily down sized to Rs.35.30 crores by the Company by restricting certain controllable expenditure. In support of their stance, the Banks have given a table of Projected Financials *vs* *A*udited Actuals of the past years. The Banks have given a chronology of developments in the loan account and have contended that non service of interest till USFDA accords its approval is unacceptable. The banks have further assailed the

estimates in the loan requirements and have contended that the Company could not manufacture injectables until 2012 and that they could not penetrate domestic segment and that their medicines are all medicines that are already available in Cancer Care Drugs Lists being sold by other drug manufacturers.

On the margin front, the Banks have complained that the Promoter is unwilling to dilute his stakes further as suggested by the Banks. The Banks have gone on to add that the company's products can be sold in the US market only with strict Good Manufacturing Practice (GMP) guidelines in place for pharma companies are complied over and above USFDA approval.

In their communication, the Banks have emphasized in bold letters that "... **the company is NOT an innovator/ Pioneer".**

The Banks have again questioned the Raw Materials' values, shelf life and so on and have contended that the Company cannot be able to give competitive pricing when it proposes to incur such huge expenditure on USFDA Fee, SALARY, CONSULTANT FEE and MARKETING.

The Banks have assailed the ratioale of conclusions of independent expert studies caused by the Banks consequent to orders in W.P.No.9610/2016. Among other things, they have also raised questions regarding the marketing and tie up difficulties of the Petitioner.

In final, the Banks have concluded their communication stating:

"The company has resorted to filing a Writ Petition to coerce us into accepting a CDR package as per the company's terms and conditions and in violation of the RBI

guidelines. The banks are the custodians of public money and they have to exercise caution and should make judicious decision for lending of the funds based on commercial viability after thorough study as the company's case does not straight away qualify for such lending under CDR. For the co-financiers, the value of the intellectual capital, licenses, opportunity cost and potential earning prospects of the company cannot be translated into tangible and realizable value.

In view of the foregoing, as the CDR proposal is not financially viable, we seek confirmation of our action in declining the same.*"*

129.To this letter, RBI vide letter dated 08.11.2017 has replied as under:

"We have since received another communication from Chennai MCB forwarding therewith their letter dtd November 06,2017 requesting confirmation of their action of declining the petitioner's proposal. In this regard we reiterate that credit related decisions (sanction rejection) are business decisions that are to be taken by the bank based on the merit of each case and keeping in view applicable regulatory instructions. As regards the instant matter we have already reiterated the RBI guidelines on restructuring vide letter dt. November 03, 2017 (attached for ready reference)"

130.**<u>Analysis of compliance to Directive - 3:</u>**

It could, thus, be seen that this Court by its order dated 10.08.2017 called upon

the Respondent Banks (NABARD & Bank of India) to consider the proposal of the Petitioner **positively** taking requisite clarification from the regulator RBI in this regard.

131.In its proceeding dated 05.10.2017 also, this Court has reiterated the said direction in the following words:

> *"This Court **already** directed the Bank of India and NABARD to consider the proposal given by the Petitioner **positively** in consultation with Reserve Bank of India. However, it is stated by Mr.S.Sathyanarayanan, learned Counsel for Bank of India that it is being considered at the Bank level itself.*
>
> *In view of that, the Bank is directed to consider it, at the earliest and if any clarification is needed, the same is directed to be obtained from Reserve Bank of India at the earliest, so that the result on the proposal could be placed before this Court by 09.11.2017"*

132.As against these, in their first letter to the regulator, the Banks are seen to have given their version of the loan account narrative of the petitioner with the following conclusions:

i.The account is NPA since 31.03.2012 and Asset Code is 33 with 100% provision The unit is closed and non-functioning, only maintenance of the unit is being carried out by the company.

ii.A fresh funding of Rs.30 crores has been sought by the company Whereas the

company is claiming to have stocks worth of Rs.40.25 crores. The funding is required for the purpose of DMF and ANDA for USFDA certification. Entire assumption of company cash flow generation is based on USFDA certification. Looking into USFDA Stringent norms for inspection there is no certainty that unit will qualify for the same.

iii.The borrower company is not ready to bring any upfront contribution on margin for the purpose of restructuring.

iv.As per the TEV report conducted the requirement of funding is shown as 55 crores which is scale down to 30 crores by the company without any justification.

v.There is no concrete business plan for a steady revenue generation sustained operations and servicing of debt/repayment obligations.

vi.The company is not ready to ensure/provide adequate collateral/security for proposed restructuring which will cover all the existing loans accrued interest additional interest, if any in the books of the accounts of Co-Financers as also proposed additional loan and interest approval during moratorium period.

133.As seen above, after receiving reply dated 03.11.2017 from RBI to this letter, the Banks have sent a further letter dated 06.11.2017 to RBI. The very opening of this letter of the Banks to RBI is "the company has been sent a notice for classifying as **wilful** defaulter as per the Reserve Bank of India (RBI) guidelines". It is pertinent to note here that **wilful** defaulters as distinct from simple loan defaulters would be ineligible for CDR revival whereas at the time of final hearing, it has been

conceded on behalf of the Banks that such a notice to the petitioner in this case stood withdrawn by the Banks. More particularly, in the second letter, the Banks have repeated in different places and conveyed to the regulator in bold and in block letters that "**the company is NOT an innovator/ Pioneer"** , "the company is NOT AN INNOVATOR"

134.These statements are contrary to the very reason why the Banks have been directed to consider the proposal of the petitioner positively in the first instance.The veracity and *bona fides* of such conclusions of the banks are subject matter of another issue. The issue taken for consideration here is compliance of Banks of the directive of this Court to consider the proposal of the petitioner, **positively**. As party respondents, the Banks were aware that this Court has directed the petitioner to submit further proposal and called upon the Banks to consider it **positively**, keeping in mind,

i.the prior developments in the matter, namely, various expert studies on the petitioner caused by the Banks upon directives of this Court in WP.No.No.9610/2016, their recommendations and sanction proposal issued by banks consequent thereto, the further submission in WP.No.No.4178/2017 by banks that they are keen to support the revival of the petitioner by strengthening it financially, the consequent directive of the Court taking note of their submissions that the Banks would, within the framework of RBI guidelines, consider sympathetically the further requests of the petitioner so as to enable the Company to revive on account of its innovative

scientific value; and

ii.the affirmative response by the Governments to the contention of the petitioner in WP.No.No.11777 of 2017 on the criticality of domestic API know-how for our nation's health-security.

135.While so, it could be seen that the Banks have opted to digress extensively on these aspects and have approached the proposal with utter negativity. The word 'positively' denotes something to be done with an affirmative disposition.

136.A bare reading of the letters extracted hereinabove would show that they were nowhere positive but filled with all sorts of negative statements on the project of the petitioner. In fact, the Banks are seen to have concluded their letter to the regulator stating "*The company has resorted to filing a Writ Petition to coerce us into accepting a CDR package as per the company's terms and conditions and in violation of the RBI guidelines. The banks are the custodians of public money and they have to exercise caution and should make judicious decision for lending of the funds based on commercial viability after thorough study as the company's case does not straight away qualify for such lending under CDR. For the co-financiers, the value of the intellectual capital, licenses, opportunity cost and potential earning prospects of the company cannot be translated into tangible and realizable value. In view of the foregoing, as the CDR proposal is not financially viable, we seek confirmation of our action in declining the same*".

137.It cannot be understood how a writ proceeding could be termed by an instrumentality of the State as coercion. Further, there are legitimate legal ways to challenge the orders of a Court by a party who is unable to agree. But, the Banks in this case have courted a directive from this Court to consider the proposal of the petitioner 'positively' and have set out to do the exact opposite in purported compliance of the very directive. The Banks have acted in wilful breach of the orders of this Court.

138.The ratio of **Patel Rajnikanth Dhulabai v. Patel Chandrakanth Dhulabai & Ors.** reported in (2008) 14 SCC 561 would be applicable to the facts and circumstances of this case. A submission has been made stating that this Court has deleted the word 'Positively' from the order dated 10.08.2017. But, no such deletion was made. On the other hand, the sequence of proceedings extracted hereinabove would clearly show that this Court has only reiterated its direction to consider the proposal 'positively' in its subsequent proceeding dated 05.10.2017. For this Court that was considering the issues of public health security that has arisen in the matter, there was no reason to hold otherwise.

139.The banks have also sought to address the directive to report compliance to this Court in a unique manner. After writing a letter to regulator on 06.11.2017, without waiting for a response or for the hearing on 09.11.2017 where the Banks had

to report their compliance of directives to this Court, the Banks have opted to file a petition in National Company Law Tribunal against the Petitioner invoking the IBC Code in the interregnum and sought to report it before this Court on 09.11.2017. However, this Court thought it fit to conserve the writ proceedings in larger interest by directing both parties to seek deferment of the said NCLT proceedings.

140.<u>Directive 4:</u> Directive to Senior Officials of Banks with decision making powers to visit and assess the facilities of the Petitioner alongside Drug Controllers

This Court has issued further directives calling upon senior ranking officials of both the Banks with decision making powers to visit the factories of the petitioner in person to do a first-hand assessment. Bank of India filed a memo to the effect that they do not find anything good in the petitioner to support but are willing to abide by the orders of the Court to visit the facilities in larger public interest without prejudice to their rights and contentions. Orders were passed by this Court. On 02.03.2018, Senior Officials of both the Banks have visited the facilities and submitted a report to this Court on 14.03.2018 that has been extracted *supra*. The Drug Controllers of the Center and the State who were asked to form part of the facility visit have also duly visited the facilities with their respective team of officials and have submitted their report to this Court on the same day, that is, 14.03.2018. The correctness and *bona fides* of the reports would be subject matter of another issue. Suffice for the present to hold that the directive to visit the factories of the petitioner and submit report to this

Court has been complied with by the Banks.

141.Other Directives:

For the reasons captured *supra,* this Court also passed orders appointing *amicus curiae* and on his recommendations, issued further directives calling upon the API Task Force of India to evaluate and report on the petitioner to this Court. There were also endeavours on recommendations of learned *amicus* to enable the petitioner through Department of Scientific & Industrial Research of Ministry of Science and Technology and through the Tamil Nadu Industrial Investment Corporation of India that have not witnessed sufficient progress yet. It is apt to point out here the contribution of learned *amicus curiae.*

142.Mr.N.L.Rajah, learned Senior Counsel has been appointed as *amicus* in this matter and he has assisted this Court in an exemplary manner. He has graciously done this assignment *pro bono* and made his valuable time and expertise available to this Court. He has done a commendable job of his assignment by studying the matter, visiting the facilities, consulting and coordinating with both Union and the State Governments, filing a detailed report and further making submissions and recommendations from time to time. On his recommendation, API task force of Government of India deputed a delegation of its experts and the learned *amicus curiae* also made himself present and interacted with the Committee. This Court places on record its hearty appreciation to the learned Senior Counsel Mr.N.L.Rajah

for all his efforts and valuable assistance.

143.As mentioned above, the high level expert committee of Task Force that evaluated the petitioner has also duly complied with the directives of this Court and have submitted a detailed report that has greatly enabled this Court to appreciate and decide the issues in the Writ Petitions.

144.<u>Issue 7:</u>*Whether this Court is precluded from adverting to issues claimed as disputed questions of fact by the Banks?*

The contentious issues in these Writ Petitions have arisen between the Petitioner and its Banks. The Banks, namely, Bank of India and NABARD, while denying most of the grievances levelled against them have also levelled counter allegations against the Petitioner. While so, the Banks have also repeatedly contended that this Court, in its writ jurisdiction cannot foray into disputed questions of fact.

145. However, could one of the interested parties to the *lis* preclude the Court from looking into issues relevant to decide the writ by terming them as disputed questions of fact? Could one party level allegation against the other party as reasons justifying its decision making and then preclude the court from examining the correctness of it by terming it as a disputed question of fact? The answer is in the negative.

146. The discretion of this Court in the interests of justice is very wide. In this case, there are contentions on either side with allegations of *mala fides,* abuse of process of law and so on. Complete justice would not be possible without considering those issues **by reference to materials available on record**. The same would not amount to adjudication of disputed questions of fact by this court or exceeding its jurisdiction.

Case Laws:

147. In the case of **ABL International Ltd. and Anr. v Export Credit Guarantee Corporation of India & Ors.** reported in ***(2004) 3 SCC 553*****,** the Hon'ble Supreme Court, after analysing the facts and law exhaustively held that an Instrumentality of State that is found to have violated the tenets of Article 14 cannot take umbrage from a Writ Proceeding alleging that the facts are in dispute.

148. In the case of **Zonal Manager, Central Bank of India v Devi Ispat Ltd. & ors.** reported in ***(2010) 11 SCC 186*****,** the Hon'ble Supreme Court, following ABL International held that High Courts can entertain writs even if it involves disputed questions of fact and in contractual matters wherein Public law element is involved and accordingly, agreed with the decision of the learned Single Judge affirmed by the Division Bench and dismissed the appeal of the bank.

149.In the case of Surya Construction v State of UP & Ors. reported in

(2019) SCC Online SC 447**,** Hon'ble Supreme Court yet again applied the ratio of ABL International Ltd., (Paragraph 3)

The ratio of the aforesaid decisions fully apply to the facts of this case and the argument of the Respondent Banks that the issues labelled by them as disputed questions of fact cannot be looked into by this Court does not hold ground. This court has to consider the allegations and counter allegations that have a bearing on the matter with reference to materials available on record.

This issue is decided accordingly.

150.**Issue 8:** ***What is the veracity of allegations such as mala fides, wilful disobedience, abuse of process of law and fraudulent misrepresentations made against the Banks by the Petitioner and Counter Allegations by the Banks against the Petitioner?***

The Writ Petitioner has alleged arbitrariness, vindictiveness, *mala fides,* inconsistency, material suppressions, misrepresentations and breach of undertakings/directives as against the Respondent Banks. The petitioner in the Writ Petitions allege that the Banks have set out to act arbitrarily and vindictively against it activated by bias and *mala fides.* According to the petitioner, the same would be borne and evidenced by the inconsistencies, material suppressions, deliberate misrepresentations and breach of undertakings/ disobedience to court directives by the Banks from time to time. Against the Bank, the petitioner has alleged (i) *Mala fides* regarding the project (ii) breaches of Court orders with impunity (iii)Misleading

representations to Court against the petitioner (iv) Misleading the Regulator (v)Rejecting CDR since inception on inequitable grounds (vi)giving a go bye to expert reports (vii)suppression of material facts (viii)collusion with a third party investor (ix)taking advantage of their own wrongs (x) foregoing the tenets of nationalization abdicating role and responsibilities as Public Sector Units ignoring national interest.

151.On their part, the Banks have alleged that the petitioner lacks *bona fides* and has wantonly abused the process of this Court in several ways so as to invoke the sympathy of this Court to suit its purposes.

152. The aforesaid allegations are exclusive in some respects and overlapping in others. Hence, the same could be considered more beneficially by considering seriatim the allegations and counter allegations between the parties with reference to specific instances which would be:

(**a**).Whether the Banks have made intentional misrepresentations on the know-how, innovation and project of the Petitioner to the regulator and to the Court?

(**b**).Whether the petitioner wrongfully contends that the project funded by banks was for USFDA approval?

(**c**).Whether the Banks have wrongfully portrayed the Petitioner as a wilful defaulter to the regulator and to the Court?

(**d**).Whether the petitioner is misstating on oath, the facts in relation to prior judicial

proceeding in WP.No.9610 of 2016 to garner sympathy from Court as alleged by Banks?

(**e**).Whether the Petitioner has falsely attributed knowledge of proceedings in WP.No.4178 of 2017 to Banks while they issued letter dated 08.03.2017?

(**f**).Whether the petitioner committed wilful breach and dereliction in relation to directives issued in WP.No.11777 of 2017 as contended by Banks?

(**g**).Whether petitioner has made false claims to this Court to make emotional appeal without any program or intention to serve patients of the Country?

(**h**).Has the Petitioner made false and exaggerated claims regarding its support value to farmers to make emotional appeal as contended by the Banks?

153.**Instance (a):** Whether the Banks have made intentional misrepresentations on the know-how, innovation and project of the Petitioner to the regulator and to the Court?

All through, the Banks have denounced the claims of innovative and pioneering research accomplishments canvassed by the Petitioner. Right up to the time of making submissions in the matter, the Banks have assailed the know-how, quality parameters, upkeep, licenses etc., and also cast heavy cloud upon the feasibility of the project to secure approval from US-FDA. But, at the time of submissions, Banks have sought to make a concession that in WP.No.11777/2017, the prayers are against the Government and hence, directives could be issued as per Government Report and the *amicus* report without saddling the Banks.

154.However, for WP.No.16622 of 2017, notwithstanding such reports of the Government, the Banks continued to file and adopt pleadings that contain scathing assault on the know-how and technology of the petitioner to justify and defend their decisions. More particularly, the Banks have set out to denounce the know-how, innovation and project of the petitioner in their communications to the regulator dated 06.11.2017 and by way of Joint Inspection Report dated 14.03.2018 and an affidavit filed in WP.No.11777 of 2017 adopted and incorporated in their affidavits filed on 13.08.2019 in WP.No.16622 of 2017. Further, responses of regulator to their letters dated 06.10.2017 and 06.11.2017 had been the fulcrum of submissions of Banks. Therefore, it is necessary to first consider the *bona fides* of the statements made by Banks on the merits of the know-how and project of the petitioner in their letters to the regulator seeking response.

Misleading the Regulator:

155.At the time of writing letters dated 06.10.2019 and 06.11.2019 pursuant to the directives of this Court, the expert opinions that the Banks had benefit of the Techno-Economic Study of MITCON Agencies, the independent expert nominated by Banks pursuant to directives in WP.No.9610 of 2016.

156.One of the lenders, NABARD is also seen to have studied and made a presentation on this TEV study in the Joint Lender Forum meet held on 28.10.2016.

In addition, the Banks, as bankers that have evaluated and sanctioned the loan facilities to the petitioner originally, had their in-house knowledge of certain facts which could be seen from the averments in their affidavits and written submissions. The *bona fides* or otherwise of the statements made to regulators by the Banks are, therefore, examined here with reference to some of the statements made by Banks in their letter to RBI dated 06.11.2017 in the light of the aforesaid expert the techno-economic study and the bank's affidavits in the Writs.

157.<u>Statement 1:</u>

"*The company claims that it is the first in India and second in the world after the original innovator for developing this commercial product of Vinorelbine Tartrate. The company claims that after getting the first manufacturing licence for manufacturing Vinorelbine, it sold its product to Dabur India Ltd., (no copy of such sale claim produced for verification) We attach FDA approved list of Vinorelbine Tartrate producer (Annexure VI) which are pierre Fabre Actavis Totowa Pharms Dr.Reddys Labs Ltd., Fresenius Kabi USA, Hospira, Jinagsu Hansoh Pharm Mylan Labs Ltd., Teva Pharms USA and west-ward Pharms int. In the year 2019 Principal Assistant Registrar of Trade Marks of pierre and Navelbine is an active ingredient of Generic Medicine Vinorelbine. As Vinelbine is a trivial variation of Vinorelbine it is an International Non-proprietary Name (INN) The registrars also noted that INNNs are meant to be Non-proprietary so that they are universally*

available and can be used without restriction, they are refusing Trade Marketing to Dabur (Annexure VII) This proves that the company is NOT AN INNOVATOR."

158.This incorrectness of the aforesaid allegation stands established by report of Government of India API Task Force which states, ***"… the petitioner could be a valuable player in ensuring self-reliance and standard health care for cancer patients in the country. Manufacturing of API namely Vinorelbine can contribute to self-reliance because they are the only known API manufacturer having in-house know-how for isolation of Vinca alkaloids from Vinca rosea in India"***

159.However, what is relevant here is the *bona fides* of statements made to the regulator that will have to be examined with reference to knowledge that the Banks have had while writing such letters. That is deducible by Banks' statement in their Affidavit in WP.No.16622 of 2017.

Paragraph 13: *"The petitioner had entered into an agreement with the* ***leading pharma players in India*** *like Sun Pharma, Dabur India, CIPLA etc.,* ***and took up the interest of Vinorelbine as a drug in India by entering into buy back arrangement with the petitioner"***

160.Thus, knowing fully well that the drug Vinorelbine was sought to be developed as a medicine in India by all leading pharmas with the Active

Pharmaceutical Ingredient developed by the petitioner, the Banks have sought to mislead the regulator with contrary statements and extraneous materials to claim that the Petitioner is NOT AN INNOVATOR in Vinorelbine. In fact, even after the report by Export Committee of API Task Force of Government of India extracted above, the Banks have persisted with their contention by way of an affidavit before this Court.

161. **<u>Statement 2:</u>**

The company has given a full list of 23 molecules it intends to produce. All the 23 molecules are already been enlisted as ANDA and available as medicines even before 1.10.2012. We attach herewith the list of all the drugs which have been numbered under Generic names as Abbreviated New Drugs Application (ANDA) by USFDA and also approved by Central Drugs Standard Control Organisation (CDSCO) of India (Annexure II). All approvals are prior to 2012. ***So the company is NOT an innovator/ Pioneer.***

162.Whereas, the presentation made in JLF by NABARD included the following highlights from TEV Report:

The only company which makes 23 oncology APIs under one roof with technology developed by their in-house R&D laboratory which is a DSIR recognized lab. It is a dedicated oncology facility where no other category of drug is manufactured.

The TEV report contains many other highlights on the Innovative/Pioneering

capabilities of the Petitioner, that includes

For developing new technology for the isolation of the latest cancer medicine namely Vinflunine which is still under patent, DSIR / TDB has granted Rs. 40 lakhs under their Technology Development Fund. The project has been completed and the molecule is ready for commercial production.

Hence, it is clear that the Banks have knowingly sought to portray the scientific distinctions of the Petitioner in poor light to the regulator without *bona fides*.

163.**Statement 3:**

Yet another point strenuously canvassed by Banks before Regulator as reason to reject the CDR proposal was by casting cloud on US-FDA approval prospects of the petitioner.

164.In this regard, in their communication dated 06.10.2017, the Banks have stated that the CDR proposal of petitioner may not hold good because "*A fresh funding of Rs.30 crores has been sought by the company. Whereas the Company is claiming to have stocks worth Rs.40.25 crores. The funding is required for the purpose of DMF and ANDA for USFDA Certification. Entire assumption of the Company cash flow generation is based on USFDA Certification. Looking into USFDA stringent norms for inspection there is no certainty that unit will qualify for*

the same.

165.In the following letter, the Banks go a step further to claim that US-FDA approval, even if secured, might not be of avail.

"*As all the 23 molecules which the company claims to have facility to manufacture belong to ANDA (Abbreviated New Drug Application) category And/ Or already available for therapeutic use (Annexure II) the company's products can be sold in the US market only with strict Good Manufacturing Practice (GMP) guidelines in place for pharma companies. As per World Health Organisation (WHO) Good Manufacturing Practice (GMP) is a system for ensuring that products are consistently produced and controlled according to quality standards. It is designed to minimize the risks involved in any pharmaceutical production that cannot be eliminated through testing the final product. The main risk are unexpected contamination of products, causing damage to health or even death: incorrect labels on containers, which could mean that patients receive the wrong medicine; insufficient or too much active ingredient, resulting in ineffective treatment or adverse effects. GMP covers all aspects of production from the starting materials, premises and equipment to the training and personal hygiene of staff. Detailed written essential for each process that could affect the quality of the finished products. There must be systems to provide documented proof that correct procedures are consistently followed at each step in the*

manufacturing process – every time a product is made. WHO has established detailed guidelines for good manufacturing practice. Many countries have formulated their own requirements for GMP based on WHO GMP. Other have harmonized their requirements, for example in the Association of South-East Asian Nations (ASEAN) in the European Union and through the pharmaceutical Inspection Convention. Even while supplying after obtention of USFDA nod, the company may be banned if GMP is found violated at any point of time. It may be inferred from the above that the obtention of USFDA approval and marketing of the drugs thereafter in the regulated markets is highly uncertain."

166.These statements are seen to have been made on the face of and without reference to the findings of the technical expert on technical feasibility of the project. The TEV experts have clearly stated in their report that "*The facility is well designed as per the WHO GUIDELINES, MEETING THE CGMP GUIDELINES"*. The experts have also stated that the site was already approved by WHO-GMP that could be renewed on revival of operations. The report details in many places as to how the designs, technology, equipment and erections have been made to very high bench-marks and points to several readiness indicators that poise the petitioner for US-FDA approval as also the huge avenues that would open up in the cancer drugs segment when US-Market opens up to the petitioner.

167.It is seen that while writing to RBI, the Banks are seen to have selectively enclosed one single page from out of this report that suits their purpose discarding the rest. We have seen that the report of TEV experts that stand corroborated by subsequent Government Reports. Be that as it may, the action of the Banks in feeding the regulator with their own negative inputs on the project fundamentals without adverting to and in supersession of the views of domain experts establishes their lack of *bona fides*.

168.**Statement 4:**

The next statement made by Banks before the Regulator is

> "*The company in its Demand and Supply Analysis says that it has been selling its API in both domestic and international markets such as Egypt, Greece, Turkey, Belarus, Argentina, Mexico etc till 2005, The company has not produced/attached any evidence supporting the sales as Purchase Invoice, Sales invoices for the earlier period when the company had recorded sales.*"

169.This is in contrast to the statement made in the TEV Report "*Vinkem has been selling API in both domestic market as well as to countries such as Egypt, Greece, Trukey, Belarus, Argentina etc., till 2005*". One would also wonder how sanctions could have been made in the year 2007 without examining claims of prior sale records up to the year 2005.

170.What is even more revealing is the statement made by Banks in their own affidavits in WP.No.16622 of 2017 (paragraph 13). The Banks have stated therein that "*Originally, the petitioner was selling API both domestic as well as to countries like Egypt, Greece, Turkey, Belarus and Argentina till 2005".* It is, thus, evident that the Banks have projected to the Regulator a fact that was very well within their knowledge as if it were a self-serving claim of the petitioner.

171.Thus, the banks have acted with clear bias, *mala fides*.

Misleading the Court:

172.As discussed hereinabove, even after being provided with expert report of Government of India, the Banks have continued their assaults against the project merits by adopting and reiterating their earlier contentions.

173.However, a matter of much more serious concern is the statements in the Joint Inspection Report of the Senior Officials of both the Banks that has been filed after inspecting the facilities of the Petitioner as per directives of this Court. In the said report, it may be seen that the Banks have altogether denounced technology, approvals, upkeep and prospects of the petitioner in very strong terms. The report has been extracted hereinabove. Some sample statements would be:

(a)The list of 23 molecules which the Company intends to produce are already

enlisted as ANDA and available as medicines even before 01.10.2012. The Company therefore is not an innovator/pioneer.

(b)During the inspection it is reported that the unit is manufacturing drugs out of plant extract and wish to apply for USFDA license. As per IPR Act, anything derived from plant origin cannot have patent right over it.

174.The aforesaid observations are contrary to facts and expert reports. When this Court asked for response, it was informed that the views were unaided by experts.

175.However, it transpires that this is a false statement. First of all, the Banks had the report of TEV Experts. The extracts from the said report in the initial part of this judgement would clearly show that the Banks have knowingly contradicted the experts. Further, the Point Wise Reply to the Joint – Inspection Report of the Banks filed by the petitioner and the Joint Report filed by Drug Controllers confirm that at the time of their inspection, the Bank Officials have indeed been guided by the Drug Controllers who are experts on the US-FDA approval process for the petitioner. Hence, the misleading statements in the report have been made to this Court with knowledge and deliberateness which could have led to gross miscarriage of justice. The deliberate motive of the Banks is also borne by letter of Banks to RBI dated 06.10.2017 wherein the project funded is described as 'For Setting Up of State of the Art Facilities for Production of Anti-Cancer Drugs as per USFDA norms with the

Raw Material **Vinca rosea** (catharanthus roseus) **leaves.'** Hence, the disparaging statements made by Senior Officials of both the Banks in their Joint-Inspection Report such as 'The unit is manufacturing drugs out of plant extract and wish to apply for USFDA license. As per IPR Act, anything derived from plant origin cannot have patent right over it' are misstatements calculated to mislead the Court.

176.This would amount to fraudulent misrepresentation in the eye of law.

Case Laws

177.The Hon'ble Apex Court has laid guidelines on what would constitute Malafides/Malice and Fraudulent Misrepresentation in the following cases:

Malafides/Malice

(i) Smt.S.R Venkatraman v Union of India & Anr reported in **(1979) 2 SCC 491** – (Paragraph 5)

(ii) State of Punjab and Anr. V. Gurdial Singh and Ors. Reported in **(1980) 2 SCC 471** – (Paragraphs 9)

(iii) Ratnagiri Gas & Power Limited v RDS Projects Ltd. & Ors. Reported in **(2013) 1 SCC 524** – (Paragraphs 30-32)

(iv) Uddar Gagan Properties Ltd. v Sant Singh &Ors. reported in **(2016) 4 SCC 378** - (Paragraph 19)

(v) Rameshwar &Ors. v State of Haryana & Ors reported in **(2018) 6 SCC**

215 – (Paragraphs 30)

The ratio laid down in the aforesaid decisions squarely applies to the facts of the present case and this Court is of the view that Respondent banks are blameworthy on the above aspect.

Fraudulent Misrepresentation:

(i) Ramachandra Singh v Savitri Devi & Ors. reported in **(2003) 8 SCC 319** – (Paragraphs 16 – 27)

(ii) Satluj Jal Vidyuth Nigam Limited v Rajkumar Rajinder Singh (Dead) through legal heirs and Ors reported in **CDJ 2018 SC 989** – (Paragraph 66).

178.It is to be noted that but for the simultaneous report provided by the Drug Regulators commending the facilities of the Petitioner, the false representations in the aforesaid Joint Report of Banks would have led to gross miscarriage of justice. It is clear that the statements were not made *bona fide* or even recklessly but with knowledge of their falsehood. **Therefore, the ratio laid down in the aforesaid decisions apply to the facts of the instant case and this court is of the considered view that banks have made 'fraudulent misrepresentations' before this Court and as such, their action is bad in law.**

179.**Instance (b):** Whether the petitioner wrongfully contends that the project

funded by banks was for USFDA approval?

It is the case of the Petitioner that even after the Petitioner established the USFDA project funded by them State of the Art, the Banks hampered its Take Off. However, the Banks have set out to assail the USFDA worthiness of the project as also the know-how built for the same. They have also gone one step further and contended that the project funded by them was not one for USFDA at all but some additional term loan facility requested by the Petitioner. Both the Banks have taken this plea in their affidavits filed on 13.08.2019 in WP.No.16622 of 2017 that their funding to the Petitioner has not been for USFDA approval and the claim of the petitioner to that effect is false.

180.However, the letter by Banks to the Regulator RBI dated 06.10.2017 consequent to directives of this court, in its very opening, describes the project as follows:

"**Project:**

Setting up of state of the art facilities for production of anti-cancer drugs as per USWFDA norms at Kakkalur Village. Thiruvallur district Tamil Nadu and at Sulurpet, Mambattu, Tada Mandal, Nellore District, Andhra Pradesh"

181.In the same letter, a revision to this sanction is also stated to have been provided for adherence to US-FDA specifications.

Hence, the contention putforth on behalf of the Banks does not merit acceptance. The Banks are seen to have resorted to such a false plea hoping to extricate themselves of their failure to lend support for culmination of USFDA approval for the project that the Petitioner has established State of the Art.

182.**Instance (c):** Whether the Banks have sought to wrongfully portray the Petitioner as a wilful defaulter to the regulator and to the Court?

The next question that beckons consideration of this Court is whether the Banks have sought to wrongfully portray the Petitioner as a wilful defaulter to the regulator and before the Court.

183.Before considering the said question, it would be useful to consider what is meant by 'wilful defaulter'. Wilful Defaulters are borrowers who commit deliberate acts of siphoning, diversion with respect to their borrowings and a classification as Wilful Defaulter entails civil consequences. It is a mark on a one's reputation and brings restrictions to further credit access.

184.In paragraph 11 and 12 of the Counter Affidavit of the Banks in WP.No.4178 of 2017, the Banks have spoken about such a notice having been issued to the petitioner in the following words:

"*11. I humbly submit the Corporate Debt Restructuring (CDR) is a voluntary non-statutory mechanism for restructuring of multiple advances of lenders.*

The objective of the CDR framework is to:

a. Ensure timely and transparent mechanism for restructuring the corporate debts of ***non-wilful defaulters*** *and viable entities facing problems, outside of the purview of BIFR, DRT and other legal proceedings, for the benefit of all concerned.*

b. In particular, the framework will aim at preserving viable corporate that are affected by certain internal and external factors and minimize the losses to the creditors and other stakeholders through an orderly and coordinated restructuring programme.

12. I submit that the Petitioner has been sent notice for classifying as wilful defaulter as per RBI guidelines. ....”

185.Hence, the notice for classification as wilful defaulter is the reason adduced by banks for non-grant of CDR to the petitioner since 2012.

186.The following are the other manner in which the Banks have reiterated the said contention:

“*While so, the proposed CDR package of the Petitioner poses grave risk to the co-financiers as the Petitioner has been sent for classification as* ***wilfull defaulter*** *by the 1st Respondent as per the guidelines of the RBI as there is a suit filed for recovery of dues payable to the Respondents before DRT-II,*

Chennai." - (Paragraph 13 of Counter in WP.No.4178 of 2017)

"*I submit that the petitioner has supressed the following important and vital information in the Writ Petition before this Hon'ble Court: (a) the* ***Petitioner has been sent notice for classifying as willful defaulter*** *as per the Reserve Bank of India (RBI) guidelines". - (Paragraph 4 of Counter in WP.No.4178 of 2017)*

"*The following relevant information is submitted, in this regard—(a) ... (b) The Petitioner has been sent notice for classifying as* ***willful defaulter*** *as per the RBI guidelines by Respondent No.9." (Paragraph 6 of Affidavit in WP.No.11777 of 2017)*

"*It is submitted the Petitioner has been sent notice for classifying as* ***willful defaulter*** *as per the RBI guidelines by Respondent No.9."- (Paragraph 27 of Affidavit in WP.No.11777 of 2017)*

"*While, so the proposed CDR package of the Petitioner poses grave risk to the co - financiers as the Petitioner has been sent for classification as* ***willful defaulter*** *by the 9th Respondent as per RBI guidelines, since there is a suit filed for recovery of dues payable to the Respondents before DRT – II Chennai." - (Paragraph 28 of Affidavit in WP.No.11777 of 2017)*

"*Please note that any restructuring under CDR Mechanism is a voluntary, non-statutory mechanism framework by the lenders and it cannot be demanded as matter of right when there are issues related to non-compliance, notice sent for* ***classification of wilful default****, suit filed before DRT, as also no clarity on the business revenue model in the account*" -. *(Letter dated 08.03.2017 by Banks to Petitioner – Para 6)*

"*The company M/s Vinkem Labs Limited has been thrice approved for restructuring and the following are the important and vital information missing in the writ petition filed before the Honourable High Court of Judicature at Madras. (a) The company has been sent a notice for classifying as* ***wilful defaulter*** *as per the Reserve Bank of India (RBI) guidelines.*" - *(Letter dated 06.11.2017 from Banks to Reserve Bank of India – Paragraph 1)*

Submission in Oral Arguments:

187.However, during oral submissions, it has been stated that the show cause **notice** that has been sent to Petitioner for classification as Wilful Defaulter **has been withdrawn** after discussions between the parties.

188.The letter produced by the petitioner consequent to this submission viz.,

letter dated 10.10.2014 addressed by Bank of India to the Petitioner reads: "*We refer to your letter dated 03.10.2014 addressed to our CMD raising various issues with regard to operation and conduct of the account of the Company. We clarify that our Bank has* ***never reported your account as Wilful Defaulter*** *to RBI. Your allegation on the subject is baseless.*"

189.Therefore, this is yet another instance of wilful misrepresentation on the part of the Banks against the Petitioner that establishes their *mala fides*.

190.Instance (d): Whether the petitioner is misstating on oath, the facts in relation to prior judicial proceeding in WP.No.9610 of 2016 to garner sympathy from Court as alleged by Banks?

The Petitioner has submitted that at the time of hearing in the earlier WP.No.9610 of 2017, the Banks acceded to consider the representation of petitioner for CDR with positivity and objectivity and that thereupon the petitioner restricted its relief accordingly as against its original prayer for evaluation of its facility by an expert international agency for reference to CDR. This, according to the Banks, is a false statement on oath by the petitioner. The Banks refer to the order of the Court in WP.No.9610 of 2016 and contend that as per the order, it is the petitioner who restricted its prayer and there is nothing in the order to indicate that such restriction was made on account of any assurance by the Banks. The Banks have submitted that this establishes as to how the petitioner can go to any extent to even file an affidavit

containing false statements just to attain sympathy of this Hon'ble Court.

191.With reference to this plea, this Court has already observed that the order in WP.No.9610 of 2016 which is an order passed in cases of mandamus to consider representation shows that the Banks have been heard and makes no mention of any objection having been made by the Banks. It is also admitted that the Banks have not filed a counter to that Writ Petition. The Banks have levelled this allegation against the petitioner not by stating what transpired from their end in the said Writ Petition but by engaging a deductive reasoning of the order passed in the said writ petition.

192.However, a reference to the Counter affidavit filed by Banks in the prior writ petition, viz., WP.No.4178 of 2017 would tear through this deductive logic. In the affidavit filed in WP.No.4178 of 2017, in paragraph 16, the petitioner has narrated about its prayer in WP.No.9610 of 2016 for its evaluation through an accredited expert international agency for extending CDR. The petitioner has then proceeded to state "*All the while, the petitioner getting more and more choked in meeting the month on month expenses for maintaining the stocks and facilities in state of the art condition without corresponding operations/income. While so, when it was represented after few hearings on behalf of the Banks that the Banks are willing to give an objective fresh look into the CDR request with requisite expert evaluation, the Petitioner consented for the same and confined its relief accordingly*".

193.In reply thereto, the same Banks have submitted that "*I humbly submit that the averments in Para No.16, 17 deserve no comments* ***as they are admitted facts*****.**"

194.Therefore, it becomes clear that having admitted to the facts pleaded by Writ Petitioner in the previous proceeding, it is the Banks that have *mala fide* intention to mislead this Court on what transpired in WP.No.9610 of 2016.

195.**Instance (e):** Whether the Petitioner has falsely attributed knowledge of proceedings in WP.No.4178 of 2017 to Banks while they issued letter dated 08.03.2017?

Yet another plea by Banks engaging deductive logic is that it is deliberate for the petitioner to impute knowledge of pendency of WP.No.4178 of 2017 to them while they issued one of the communications impugned in WP.No.16622 of 2017 dated 08.03.2017. According to Banks, since petitioner has not adduced documents in proof of notice and the said letter is silent about WP.No.4178 of 2017, this is an unjust, false imputation on them made by the petitioner.

196.This plea having been raised by the banks at the time of their oral submissions for the first time, the petitioner has taken leave of this Court and submitted with its Written Submissions, the proof of service and Vakalat filed on behalf of Banks in W.P.No.4178 of 2017 which was as early as 22.02.2017. It could also be seen from chronology of events given in the letter dated 06.10.2017 written

by Banks to the regulator that the Banks have convened JLF and wrote letters to the Petitioner and to the independent experts who have given reports on the petitioner after the petitioner filed W.P.No.4178 of 2017.

197.This Court observes that wherever absence of records or references is perceived, it is unjust for a litigant to seek to exploit such gaps in a judicial proceeding. This would weaken the credibility of the party as also the effectiveness of justice deliverance. After making such pleas knowingly, there is also no substance in the further assertion of the Banks that in any event, this court cannot look into that aspect.

198.**Instance (f) :** *Whether the petitioner committed wilful breach and dereliction in relation to directives issued in WP.No.11777 of 2017 as contended by Banks?*

In WP.No.11777 of 2017, the Banks have sought to make a concession that since prayers therein relate to the Government, based on reports from Government, this Court may issue directives to the Government. However, the Banks have gone on to add that the Petitioner is a wilful litigant who desisted from participating in tender despite directives given by this Court relaxing tender conditions and that the petitioner has not cared to file a point-wise reply to the Joint-Inspection report of the Banks despite directive of this Court to do so.

199.Here also there is *suppressio veri* on the part of the Banks. It is seen that the Petitioner did file reply to Joint-Inspection report of Banks after serving copy which filing is also recorded in proceedings on 09.09.2019. On the allegation that the petitioner did not participate in tender despite orders passed by this Court directing relaxation of the tender norms to enable the petitioner to partake, it is to be noted that while passing such directives, this Court also directed that the petitioner would meet officials of the Banks and seek financial assistance. This was to enable petitioner to get back on its feet to be able to make supplies.

200.It is seen that while the Governments have responded positively to the directives of this Court and the petitioner has duly approached the Banks citing the orders, the Banks have declined to extend financial support. This aspect is reflected in detail in Pages 25 and 26 of the proposal submitted by the Petitioner to the Banks and also confirmed by letter dated 06.10.2017 from Banks to RBI where in the chronology of events, the Banks refer to the aforesaid directives and state that on 19.07.2017, in a meeting convened by Bank of India, the banks informed the petitioner that no further lending was possible.

201.The petitioner has also submitted before this Court that since any failure to meet out supply obligations after quoting in a tender would entail black listing, it could not quote in the tender. Subsequent to this only, this Court passed directives to Banks to accept a detailed proposal from the petitioner and consider the same

positively which has been discussed *supra*.

202.Hence, wilfulness could not be attributed to the petitioner.

203.**Instance (g) :** Whether petitioner has made false claims to this Court to make emotional appeal without any program or intention to serve patients of the Country?

The Banks make an allegation against the petitioner that the objective it professes to supply cancer medicines to poor Indian patients are all emotional ploys of the Petitioner to mislead the Court and not born of any genuine intentions. In their joint-inspection report, the Banks would submit that during their facility inspection, they have been informed that the Company cannot make any profit unless it sells in the international market. According to Banks, this clearly negates the social cause and serving the poor cancer patients in the country. The Banks have also filed an affidavit on 17.09.2019 in WP.No.11777 of 2017 wherein it is stated "*In the present CDR proposal dated* ***25.08.2017****, the Petitioner has not mentioned about marketing the drugs in the domestic market. The petitioner has been resorting to making false claims of his mission to provide succour to the poor cancer patients of India. This is intended to mislead the Hon'ble Court and make an emotional appeal on false grounds"*

204.However, a perusal of the CDR proposal dated **23.08.2017** by the

petitioner to the Banks brings out that the petitioner did advert to the national benefits in the following terms:

"*The company was promoted in 1994 with the objective of providing affordable cancer care to patients by developing cost effective commercially viable manufacturing technologies of niche generic cancer molecules for which India largely depends upon imports or where such technology is available only with the innovator.*"

Demand Supply Analysis:

"*It is estimated that every 13th minute one dies of breast cancer. Every 13th patient in the world is an Indian. By 2030, the number of cancer patients estimated in our country would be equal to that of the population of Denmark. Purity/quality of medicine, aseptic manufacturing determines the cure / life extension/reduction of side effects for this dreaded disease. It is the singular reason for the better quality of life of Patients in the West. Vinkem facility is one such few in the world. It is our endeavor not to see it go to the drains.*

India's self-reliance in Health Care is also threatened on account of Chinese onslaught. Vinkem is a crucial player in this regard in as much as India would be totally dependent on imports for seven molecules and a number of dosages of such seven molecules without Vinkem. Further, the Promoter when enabled to revive can bring much more breakthroughs in generic

research placing our Country to an Advantage."

205.Even in its very first Writ petition before this Court, the contention of the petitioner had been "*Right from day – 1, the proposal was given only for setting up an USFDA approved facility. The high investment was called for only towards this end. And the anticipated Sale was only in US and regulated markets, namely, US, Europe, Japan, Australia & NZ. For Indian cancer patients the objective was to provide free or cost to cost products only (On free basis to poor patients)*.

206.**Therefore, in the considered opinion of this Court, the proposal of petitioner committing to repay its debts to the Banks out of income from overseas sales as per the project funded by them, namely, US-FDA does not militate against its social objective as sought to be portrayed. Hence, the petitioner cannot be said to have indulged in emotional ploys to mislead the Court.**

207.Be that as it may, the petitioner has filed WP.No.11777 of 2017 before this court claiming to be of critical relevance to health security and health standards in the country. It has also placed on record that though on account of in-house know-how and technology, its cancer medicines are very affordable in the global segment, in the domestic segment, their products made to world's best processes and standards could not beat the cost quoted by players who offer minimum or sub-minimum qualities.

The petitioner has, therefore, prayed for level playing field through Quota as recommended by expert committee so that the benefit of best medicines is not lost to the nation in the quest for cheap medicines. The petitioner has submitted its willingness to supply to Government procurement with wafer thin margins. The petitioner has also submitted that once it forays into global segment and reaches break even, it would be able to supply cost to cost and even free medicines to patients of poor strata across frontiers. With the affirmative response from the Governments, the court is seized of the issue.

208.This Court agrees with the submission of amicus curiae that on account of processes conforming to International Standards, the Petitioner is unable to be competitive at the Government Tenders where minimum costs are achieved through minimum standards. However, taking into account that the Petitioner is the sole player who could protect API self reliance for five critical molecules as reported by Government of India and the Petitioner's submissions to supply its high quality medicines to the domestic public procurement with even wafer thin margins, this Court would put in place an effective mechanism to balance self-reliance with cost factors so that the Petitioner could be able to effectively participate in tender procurements and protect our nation's self reliance for critical cancer drugs. Such a scheme will have to be drafted with the assistance of Government Respondents and the learned *amicus curiae* after hearing them further. However, before passing any such orders for tender quotes and supply,

this Court wants to see that the petitioner gets back on its feet and thereafter enabled to participate in the public procurement with prices meeting its manufacturing cost so that such an order could be effective.

209.**Instance (h):** Has the Petitioner made false and exaggerated claims regarding its support value to farmers to make emotional appeal as contended by the Banks?

It is not in dispute that the petitioner is a source to protect livelihood of poor farmers of a drought laden aspirational district. The farmers of the said district have also come on board praying to provide revival to the petitioner pleading that their export market has been fast shrinking owing to captive cultivation and export competition from nations that were earlier their importers. Their contentions on the extent to which the volumes have shrunk is corroborated by report filed by State Government.

210.While so, it is seen that the Banks, more particularly, the Apex Bank for farmers has sworn to an affidavit that "*The 1st petitioner has claimed in his writ that procurement of vinca rosea leaves, the raw materials for manufacture of his products, is benefitting one lakh farmers. Till 2010, the company was procuring vinca leaves from only about 100 farmers spread over 29 villages in Virudhunagar District through a coordinating agency, M/s.Avinash Enterprises. In its CDR proposal dated 25.08.2017, the company has stated that it is procuring vinca leaves from 10,000*

farmer families who in turn engage about one lakh labourers in the process. The petitioner has made false and highly inflated claims of livelihood to one lakh farmers in order to make an emotional appeal to this Hon'ble Court."

211.However, it is seen that in their affidavit filed in WP.No.11777 of 2017, the petitioner has not claimed that it had benefitted one lakh farmers. The petitioner has only stated that 10000 farmer families who further engage 1 lakh farm labourers in the district depend upon this crop and providing the petitioner with revival would be protective of their lives and future. Likewise in their CDR proposal also, the petitioner has only provided statistics of farmers engaged in cultivation of the crop and has claimed that in the years to come, when export volumes for them plummet further, the petitioner could prove to be their singular support. The Apex bank is making such a contention providing statistics that pertains to a period prior to even establishment of the current project by the Petitioner. What Banks are adverting to is only the past buys of API unit. Whereas, the petitioner is speaking about its potential to be a source of livelihood for farmers who are losing their ground to international competition once the petitioner emerges as a competitor in its own right in the international market in future.

212.The project is one seed funded by SFAC. The TEV experts engaged by Banks, *amicus curiae* of this Court, association of farmers have all stressed on the agrarian benefits that would accrue on account of revival of the petitioner.

But the Apex bank for farmers states it is after all 100 families from 29 hamlets that have benefitted so far. The true relief to farmers is not in extending sops but in protecting their source of livelihood even if it is that of one single farmer. This is what is reiterated time and again by our Hon'ble Supreme Court.

213.On this count also, the attack on petitioner by the Apex bank for farmers, namely, NABARD is only demonstrative of their bias and *mala fides* as against the Petitioner.

214.***Issue 9:*** ***Are the banks justified in differing with and discarding reports of Independent Experts?***

The petitioner in this case has laid itself open to every evaluation all through. In fact, it has filed its very first Writ Petition before this Court praying that it be evaluated by an accredited expert International Agency on all parameters and that its plea for CDR relief be considered on the basis of findings of such study. Thereupon, the Banks have agreed to undertake the evaluations themselves and consider the CDR proposal.

215.It is an admitted fact that consequent to directions in WP.No.9610 of 2017, the Banks nominated independent Techno Economic Experts to evaluate the petitioner to which the petitioner rendered all co-operation. The Banks have also nominated other experts and each of these reports by different experts have

recommended the merits and viability from their perspectives. In the words of the Banks in their affidavit filed in WP.No.11777 of 2017 [Paragraph 6(d)] had stated, "*Both Bank of India and NABARD have given due respect to the Order dated 27.04.2016 of the Hon'ble High Court in WP.No.9610 of 2016 and accordingly we undertook a Techno Economic Viability study of the project, undertook valuation of assets and stock, conducted several rounds of discussions with the lender, which is admitted by the Petitioner Company*".

216.However, unfortunately, such respect has ended then and there. In the very next sentence, the Banks have submitted that they found the said TEV report to have many shortcomings with assumptions and financial ratios not properly accounted for. Hence, the fact remains that after submitting to court to consider the representation of the petitioner through objective neutral independent studies, one of the interested parties has opted to receive such studies with one hand and discard it with the other.

217.It is also seen from pleadings, documents and communications to regulator by Banks that the Banks have sought to dispute the reports after examining and acting upon them. It is borne by records that the Banks have received a presentation of the TEV study from the TEV experts, examined the same, in the Joint Lender Forum, NABARD official made a further presentation on the findings of the TEV Experts and that in pursuant to the same further discussions were held and clarifications availed from the Borrower and an 'In Principle' sanction came to be issued on

23.01.2017 after examining such clarifications as well.

218.It is these expert studies that are sought to be tossed by banks under varied pretexts. The Banks have set out to do so upon coming to know of the petition filed against them in WP.No.4178 of 2017 during its pendency. In their letter to RBI dated 06.10.2017, the Banks have stated, "*Vinkem Labs filed a Writ Petition No.4178/2017 in the High Court of Madras. It was decided to issue a joint reply by the Banks to the letters dated 04.02.2017 and 10.02.2017 of Vinkem Labs. As decided at the JLF held on 07.03.2017, joint letter dated 08.03.2017 was issued to Vinkem Labs in reply to its letters dated 04.02.2017 & 10.02.2017. Joint letters dated 27.02.2017 were issued to the consultants, MITCON (TEV Study) and ITCOT (Valuation of Assets) seeking clarification in r/o their respective reports.*

219.Valiant attempts have been made on behalf of the Banks to contend that the petitioner is falsely imputing knowledge of pendency of WP.No.4178/2017 to the Banks at the time when such communication got issued. However, as seen above, the Banks not only got notice of the writ proceedings but have filed their Vakalat by 22.02.2017 itself in the said matter.

220.It has also been seen how the Banks have sought to contradict the expert views on the know-how and techno eligibility of the petitioner for US-FDA approval on extraneous and false premises. From the Joint report of the Central & State

Regulators and that of the Task Force of Government of India, it could very well be seen that the independent Techno Economic Experts nominated by the Banks have done a sincere and professional study of feasibility of the petitioner on several parameters.

221.For the aforesaid reasons, this Court holds that the objections sought to be introduced by the Banks against findings and recommendations of independent expert studies caused by them does not merit acceptance.

222. Also, even the reasons set out by the banks to denounce expert views are seen to be *ex facie* unreasonable and the conclusions arrived at unilaterally without any reference to the petitioner. For instance, the TEV experts and the Banks in their presentation of report of TEV experts have clearly discussed that the petitioner will have to do revalidation of equipment and facility and thereafter take validation batches and conduct stability tests with which DMF & ANDA will have to be prepared and verified by experts before filing with US-FDA. While the timelines contemplated against these processes easily extend beyond 1 year after which only USFDA application and fee could arise, the Banks denounce the cost estimates approved by experts stating that in the first year requirement, there is no fee quotient contemplated for US-FDA approval. Similar are the other disagreements on cost estimates on salaries, raw materials etc., for which break ups or rationale are available. It is also pertinent to note that these decisions have been made unilaterally.

223.It is further worthwhile to note here that the Petitioner has been able to supply 30 grams of candidate materials to US-Pharmacopeia for a sum of US$ 66000 even in its present condition after the Banks have termed its stocks obsolete and of no value. When petitioner holds such distinction in the target market even before applying for its approval, it is strange for the Banks to decry the commercial viability by pushing it to the domestic segment which is admittedly afflicted on account of policy lapses and various other factors. When even the Government is coming forward with fair reports to Court to revive domestic segment, the respondent Banks cannot fight against their own masters. In all their pleas, the Banks that denounce the US-FDA worthiness of the project are conspicuously silent on the proven record of the petitioner supplying candidate materials to US-Pharmacopeia which is the bench mark setter for US and 140 other countries.

224.This issue is decided accordingly.

225.**<u>Issue 10:</u>** ***Are banks justified in declining CDR to petitioner citing non-cooperation of promoter for further divestments as suggested by the banks?***

Another oft repeated allegation against the petitioner has been that the promoter was not amenable to further divestment of his stakes as suggested by the Banks. The following are some of the averments of the Banks in this regard:

"*I humbly submit that with respect to the averments in Para No.25 of the Writ Petition, the promoter is not willing to dilute his stake any further to mobilize the funds for providing additional security as suggested by the Respondents.*"- *[Counter Affidavit in WP.No.4178 of 2017 para 22]*

"*Further, the Company is not willing to dilute its stake. It is keen on tie-ups which will ensure the lion's share to itself. The Company has not heeded to the suggestions given by the banks in this regard.*" - *[Joint Inspection Report filed on 14.03.2018 in WP.No.11777 of 2017 – para 6]*

"*The promoter is not willing to dilute his stake any further to mobilize funds for providing additional security as suggested by the co-financiers*" - *.[Affidavit on behalf of Banks filed on 17.09.2019 in WP.No.11777 of 2017 – para 12]*

"*It is submitted that the promoter is not willing to dilute his stake any further to mobilize funds or providing additional security as suggested by the Respondents.*".*[Affidavit on behalf of Banks filed on 17.09.2019 in WP.No.11777 of 2017 – para 32]*

226. After making such repeated allegations, the Banks would further contend that this Court should not look into the reason and justification given by petitioner in

this regard. The petitioner has contended that originally, when its loan account was pushed to stress on account of systemic delays of the Banks, the dealing executive of the Bank who took charge of its account exploited the situation and got the promoter to divest his stakes on inequitable terms and induced structuring documentations in favour of an interested third party. The petitioner has elaborated on how such vested interest sought to wrestle controlling stakes and not succeeding in that endeavour, has finally sought to bring the curtains down on the petitioner by misuse of the structuring arrangements secured through the Bank Official. In support of its contentions, the petitioner has also sought to produce certified copies from collateral proceedings wherein the investor is stated to have fudged the records submitted to Court and Tribunal to support its false pleas. The petitioner has contended that the allegations of greed and non-cooperation as against the promoter are unjust and unfounded and being a know-how venture, it cannot expose its know-how to peril and could enter into any deal only after regaining its strength whereupon it would be in a position to identify and negotiate with genuine players on equitable terms.

227.On their part, the Banks place a denial on these allegations and contend that these are disputed questions of fact that cannot be looked into by this Writ Court. This would militate against the tenets of Natural Justice. The Banks cannot level an allegation against the petitioner that the Promoter is not co-operating to further dilute the stakes as suggested by them and yet preclude this court from examining the justness of it.

228.On the issue of collusion and fraud alleged by the Petitioner in the prior divestment, in as much as the third party investor in whose favour the Bank is said to have colluded is not before this Court, this Court is not inclined to traverse further into that aspect. This does not, in any manner, disable the petitioner from working out its remedies against any foul play by such third party. If at all the petitioner is sought to be victimized by a party submitting fudged records before a court of law as sought to be contended, the petitioner could very well highlight the same in the respective proceedings. No Court/Tribunal of this land would spare a litigant who seeks to canvass its case by submitting fudged records before it. For records stated to be fudged and submitted before the High Court, the High Court would take appropriate note and act in the proceeding concerned. Similarly, for any records said to have been fudged and submitted before the National Company Law Tribunal, the Tribunal would pay utmost heed and respond, since fraud vitiates all actions. As held by our Hon'ble Supreme Court in the matter of ***Embassy Property Developments Pvt Ltd., V State of Karnataka*** **in Civil Appeal No.9170/2019**, the National Company Law Tribunals are very much clothed with jurisdiction to consider and act upon any fraud attempted on its process and visit the party with appropriate consequences. The petitioner will have to allege and establish fudging of records before this High Court and the National Company Law Tribunal where the said frauds are stated to have taken place. In this proceeding, in the absence of the third party who would also be visited with consequences by any finding of this Court, this Court does not deem it fit

to look into the contentions and materials submitted by the petitioner. It is also not found necessary to travel to such an extent to decide this issue here which could be decided from materials available on record.

229.The banks contend that the promoter is not amenable to further dilute his stakes as suggested by the Banks. First of all, this court is left to wonder whether Bankers have such rights to insist that a promoter should effect divestment/further divestment of his stakes as per their suggestions. Secondly, the Banks that plead here that the promoter refused to further divest as per their suggestion has pleaded differently in a collateral proceeding. A perusal of their pleading in the O.A before the Debt Recovery Tribunal regarding divestment shows "*The Applicant Banks considered the holdings of the Promoters equity in the First Defendant and funded the project. The Applicant Banks reserve its right to take appropriate legal action against the Second Defendant for diverting its equity shares, without proper notice to the Applicant Banks"*. Thus, on a single issue, the Banks are seen to be taking two opposing stances to meet the exigencies in each case which cannot be the case.

230.For the aforesaid reasons, the contention by the Banks that they would not extend CDR relief to the petitioner owing to unwillingness of its promoter to further dilute his stake as suggested by the Banks does not hold ground. It only brings out the lack of *bona fides* on the part of Banks.

231.**Issue 11:** ***Are the Banks precluded by RBI norms and clarifications from according relief to the petitioner?***

The Banks have submitted that they could not fund the project of the petitioner on account of prudential norms of RBI. The order in WP.No.4178 of 2017 clearly records that in their submissions, the Banks only cited prudential norms of RBI to be standing in the way of CDR sanction for the petitioner.

232. In such circumstances, this Court impleaded the Regulator RBI as a party and facilitated the Banks to take clarifications from RBI and consider the revival proposal of the petitioner positively in larger public interest. Instead, the Banks assailed know-how and technology of petitioner, wrongfully termed it a wilful defaulter and sought confirmation from RBI for their decision to reject the proposal stating that the petitioner is seeking to coerce the Banks to extend CDR on its own terms by filing writ petitions. One is left to wonder how filing of a writ petition would be coercion on the Banks.

233.Be that as it may, the Banks would contend that by virtue of clarifications received from the regulator in response to such letters, no relief could be extended in favour of the petitioner. The Banks would further add that by virtue of the circulars of RBI issued in February 2018 (which has been set aside by Hon'ble Supreme Court) and June 2019, the CDR mechanism itself has ceased to exist and the relief canvassed by the petitioner has become infructuous.

234.First of all, the Banks are seeking to rely on clarifications obtained by feeding deliberate incorrect inputs. Further, in its reply dated 03.11.2017, the Regulator has categorically stated that the Banks have not sought any clarification from them as directed by the court. Therefore, they called upon the banks to refer to their extant guidelines reproduced therein. The Banks have also sought to selectively refer to the contents of the letter from RBI omitting their advise that promoter margin could be reckoned from converting unsecured loans of promoter to the Company into equity and so on.

235.In this regard, the submissions on behalf of regulator would put all controversies to rest. The regulator have clarified before this Court that they have only facilitated the cause and that the Banks did have and continue to have leeway to extend requisite support to the petitioner by prudent application of extant norms that have, in fact, become more enabling and facilitative now.

236.It is also inequitable for the Banks to contend that CDR scheme is not in vogue after dragging their feet since 2012. They are bound to consider the revival proposal under the present scheme, as in law, no one can take advantage of one's own wrong. The ratio laid down in ***Ashok Kapil v Sana Ullah (dead) & Ors*** reported in ***(1996) 6 SCC 342***, ***State of Bihar & Ors. v Kalyanpur Cement Ltd*** reported in ***(2010) 3 SCC 274*** apply to the facts of this case and banks cannot take advantage of

their own wrong in denying CDR to the Petitioner stating that CDR Scheme has expired.

237.**Issue 12:** ***Does Promissory Estoppel arise and apply in this case?***

Another contention by the Banks is that Corporate Debt Restructuring is a voluntary, non-statutory mechanism. The Banks would submit that the petitioner, in this case, has nothing to show other than their 'In Principle' sanction dated 23.01.2017 that did not progress further to execution of Inter-Creditor Agreement or Debtor-Creditor Agreement etc., for the petitioner to be able to claim enforceable legal rights.

238.The petitioner, on the other hand, would contend that the mechanism is voluntary only for the banks to opt for the membership but once a bank takes membership of the mechanism, it has to follow the norms and guidelines. This Court also notes that the Banks having courted sequence of directives from this Court on the petitioner's representation for CDR, if their actions do not measure up to the directives on the touchstone of Article 14, the consequences cannot be brushed aside on this score.

239.The petitioner has also contended that at the outset, the banks have taken upfront margin through auction sale of promoter asset for the proposed CDR sanction. The promoter having altered his position to detriment, namely, giving

consent for vacating of order of *status quo* in his favour and sufferance of distress sale of his asset and the banks having concluded the sale and received the proceeds on explicit undertaking before Debt Recovery Tribunal that the proceeds would account for margin for CDR sanction, it is the contention of the petitioner that Promissory Estoppel applies.

240.On the other hand, the Banks have denied making any such assurance and stated that the sale proceeds of promoter's personal asset does not count for margin and have been adjusted towards the dues.

241. However, from a perusal of the SARFAESI Appeal proceedings before the Debt Recovery Tribunal, Chennai, it is seen that the order of Status Quo in favour of the petitioner got vacated by Banks on the following submissions:

"… *It* ***is also admitted that*** *consequent to the sale notice,* ***the property at Nanganallur was duly disposed*** *and* ***bank could realise a sum of Rs.1.4 Crores which is considered as the upfront money for the proposed CDR …***" (Proceedings dated 03.10.2016 of Debt Recovery Tribunal III Chennai in SA 150/2016)

"… ***the appellants have conceded to the sale of the property situated at Nanganallur, the sale proceeds of which are requested to be taken up as***

upfront money for the proposed CDR, which is also acceded to by the bank" (Proceedings dated 28.10.2016 of Debt Recovery Tribunal III Chennai in SA 150/2016).

242.It is thus clear beyond doubt that the Banks secured vacating of interim orders of *status quo* and accomplished the sale of promoter asset on the promise of the proceeds constituting Upfront Money for the proposed CDR. In fact, the Banks got the Tribunal to vacate its interim order on submissions that they are satisfied of the *bona fides* and sustained efforts of the petitioner, that the expert studies taken by them certify the merits of the petitioner and that they propose to take an Enterprise Evaluation of the petitioner by ITCOT to consider its CDR proposal. To again quote the SA proceedings:

Proceeding dated 03.10.2016:

"*Consequent to the issuance of the status quo order by this Tribunal, both parties have negotiated their subsisting issues and today a memo of affidavit by the Appellant came to be filed into the Court suggesting that the initial studies and techno-economic viability study has already been concluded which establish that the unit is viable commercially but requires some more strengthening by the Respondent Banks as a secured creditor. It is also admitted therein that as against the working capital limits of Rs.8.5 crores,*

stocks are now valued at Rs.40 crores, thus establishing the bona fides of the Appellant herein. ***Whereas, it is also the case of the Respondent Bank that they are willing to consider the representations and sustained efforts of the Appellants and consequently consider their representations for a CDR, whereas both parties admit that the Respondent Bank has called for an enterprise evaluation by ITCOT which is a Government Agency and basing on that report, would like to consider the proposal of CDR. It is also admitted*** *that consequent to the sale notice, the property at Nanganallur was duly disposed and* ***bank could realise a sum of Rs.1.4 Crores which is considered as the upfront money for the proposed CDR*** *".*

243.Therefore, in the facts and circumstances of the case, promissory estoppel is squarely attracted and the Banks cannot deny revival relief to the petitioner on the submission that CDR is a voluntary mechanism. Further, this court is not impressed with the contention made by banks that the issue of upfront margin is a disputed question of fact. No party could be heard to contend that a solemn undertaking given by it and recorded in a judicial proceeding is a disputed question of fact. The plea of disputed question of fact cannot be engaged as a tool of convenience. The bank's attempt to put some kind of strained construction on the orders of DRT so as to undo their promise is also equally unimpressive.

244.The Banks have further sought to contend that as per banking norms, such

proceeds could not count as upfront money for CDR. Such a contention would only hold against the banks as the same would mean that the Banks have fraudulently misrepresented before a court of law that such proceeds would count as upfront margin money to have its interim orders vacated. RBI has already clarified on the flexibility of its norms and clarifications that only enable lender's discretion.

245.Hence, there is no merit in the contention of Banks that there are no crystalized rights under CDR for the Petitioner to agitate. There could also be no acquiescence arising against the petitioner regarding adjusting of sale proceeds against existing dues in as much as the demand for upfront margin in violation of the promise has been challenged by petitioner by filing WP.No.4178 of 2017.

246.The ratio of the Supreme Court in its decisions in **Motilal Padampat Sugar Mills v. State of UP & Ors.** reported in **(1979) 2 SCC 409, State of Bihar & Ors. v. Kalyanpur Cement &Ors.** reported in **(2010) 3 SCC 274 on Promissory Estoppel apply to the facts of this case and the Banks cannot contend that CDR revival is voluntary non-statutory in the light of directives of this Court and after having realized upfront Margin from the Promoter.**

247.This issue is answered accordingly.

248.**<u>Issue 13:</u>** ***Whether the Petitioner has falsely misrepresented as though it***

has requested for CDR from the years 2011-12?

The Banks have denied that representations have been made by the Petitioner for five long years but not taken up for fair consideration until the petitioner had to bring up WP.No.9610 of 2016 before this court.

249.Also in their List of Dates submitted during submissions, it has been stated "*10.03.2016 – The petitioner requested for restructuring under the CDR mechanism. Please see the affidavit of the petitioner at paragraph 4 as if the respondents have taken more than five years for taking up the CDR. This speaks volumes about the conduct of the petitioner.*"

250.This contention was reiterated by the Banks in their submissions. It was contended on behalf of the Banks that though the petitioner has asked for additional funding, the request to place its case in the common forum of Corporate Debt Restructuring has been made for the first time only on 10.03.2016 and that the petitioner has sought to mislead this Court. Whereas, in the affidavit of the petitioner in WP.No.9610 of 2016 at paragraph 21, the petitioner has averred that "*On 15.04.2012, we have submitted our revised request for sanction of WC Rs.30 crores with CDR package…*"

251.The petitioner has also produced the letter dated 15.04.2012 where it is requested "*What we need is summarized below: We request you to take a holistic*

view and restructure our account under CDR on the basis of expected cash flows and consider the following ...". Hence, there is no misrepresentation on the part of petitioner of having requested for CDR package since 2012. This aspect is significant since it is the consequent burdens of this time lapse that the Banks primarily seek to hold against the petitioner as reasons to negate CDR to the petitioner. The tenability of the contention of the Banks of the relief sought by petitioner having become infructuous with the lapse of CDR mechanism also has to be weighed in this context.

252.**Issue 14***: What are the merits and demerits of other contentions of the Banks to decline CDR to the petitioner?*

(i).The loan account of the Petitioner Company has been restructured three times already (2009 – 2013) due to delay in commissioning of the plant and commercial production.

It is not in dispute that the project sought to be funded by banks have been completed State of the Art. The Banks only attribute delay in commissioning of the plant and commercial production, a fact incidental to project funding. The experts have analysed these in detail and recommended revival funding after which only 'In Principle' sanction dated 23.01.2017 came to be issued by banks.

253.In this regard, the petitioner has made detailed contentions on how it is the huge systemic delays on the part of banks at each stage that led to substantial cost and time escalations in implementation of the project and how the Banks sought to

penalize the petitioner for all of it. According to petitioner the restructuring exercises were by way of Funded Interest Term Loans ['FITL'] which is capitalization of interest dues. The petitioner has contended how the delays had cascading effects such as delay in original sanction leading to plea for escalation and the huge delay in escalation necessitating plea for further escalation and the huge additional costs that the promoter had to shoulder due to intervening factors such as revision in bench marks, recession, currency fluctuation and so on and how the project envisaged to be completed in 2009 went up to 2012 and USFDA introduced GDUFA fee running into crores only in 2012. The US-FDA approval process got stranded as the Banks unjustly declined support for the same citing these restructurings.

254.On their part, the Banks seek to acquit themselves that these are disputed questions of fact that this Court cannot look into.

255.The CDR exercise by Banks had been pursuant to Court directives. The banks want to retract from the 'In Principle' sanction issued consequent to such directives citing the initial project establishment delays as the reason. The Court will have to be satisfied of the justness of it. Also, the issue could be considered with the materials available on record.

256.The first of these records is report of the neutral experts who studied the Techno Economic Viability of the project for CDR. The TEV experts state the

following:

"**Reasons for present state of affairs"**

Vinkem Labs Ltd., approached bank Of India & NABARD in the year ***2006*** *for term loan to put up a USFDA approvable API and injectable facilities as a step towards commercialization of their manufacturing technologies developed by the R&D facility. ...The project was appraised jointly by NABARD and Bank of India and term loan was sanctioned under a consortium in 2007. Disbursement of Term Loan commenced in* ***2008*** *with a condition that repayment of term loan will commence after 12 months from the date of sanction.*

The project was fully implemented and first commercial production was taken in January 2012. The project implementation was spread over 48 months from 2008 to 2012 on account of several reasons which were beyond control of the company (force majeure) reasons as briefly outlined below:

1. Project cost escalated from Rs.33.40 cr to 66.89 cr due to combination of cascading reasons such as ***delayed consideration and sanction*** *of additional term loan, spiraling cost of inputs during the rescission times, adverse fluctuation of Euro value going from Rs.51/- to Rs.70/-, rise in prices of SS steel by 60% etc.*

2. Revisions in USFDA regulations for mandatory compliance to 21CFR and

SCADA rules. This necessitated modification in machinery selection. Bosch machine was selected to meet 21CFR and SCAD guidelines. Hence, there was revision in plant & machinery cost.

3. There were two additional term loan sanctions during this period and one institution has not participated in additional term loan exposure.

4. Commencement of repayment of term loan even before arrival and installation of the main manufacturing line from Bosch of Germany. Bosch filling line is custom made and takes 18-24 months for delivery and further 6 months for installation and IQ/PQ validation.

5. The company has remitted about Rs.7.00 cr during this period by way of repayment of installments although the project had not started commercial operations.

6. Introduction of GUDFA fee structure by USFDA for filing of ANDA and DMF. Till 2012 filing of ANDA and DMF was free of charges. As the fees levied are exorbitant, Vinkem was unable to go for USFDA registration process without financial assistance."

Hence, it is clear that the Petitioner had to undergo the past restructurings owing to

the aforesaid reasons only and not otherwise.

257.The letter dated 06.10.2017 by Banks to RBI read with *NABARD's sanction letter* is a further indicator. It shows the time taken for sanction as against each loan application. It could be seen that for the proposal received on **22.09.2006**, Bank of India has given sanction on **17th May 2007** and NABARD on **21st August 2007**. Likewise, for the proposal to meet cost escalation given on **12thAugust 2008**, the sanction is dated **10th August 2009**. Of course, one needs to add the disbursement period to this.

258.It is seen that there has been a time lapse of over three months even for sanction of one lender to follow that of the other. This is letter by Banks themselves and hence the contention of the petitioner that on account of huge time delays in loan processing, sanction, disbursement, several other factors intervened that made the cost and time lines spiralled cannot be *ex facie* brushed aside. It is also validated by the TEV Experts. It is unfortunate that the Banks thought it fit to deny CDR consideration for so many years citing these inevitable restructurings made in the past during establishment of the project. The then extant guidelines extracted by Banks in their affidavits, contemplated CDR relief for viable corporate accounts affected even due to factors internal expeditiously in the interest of every stakeholder. The account has been found to be viable and the assets valuable when neutral evaluations were

called for even after so many years. The Banks may contend that the RBI advice is directory but indifference to those guidelines on the part of the Banks brings out their unreasonableness. In any event, when the Petitioner has made such sincere efforts and established the know-how, facilities and production world-class, the Banks ought not to have disowned the culmination of USFDA approval citing such delays which has effectually stranded the project as well as their recoveries.

259.Hence, the Banks cannot reject the revival proposal of the petitioner for the aforesaid reason.

260. (ii). The petitioner company has not given any roadmap or commitment in meeting repayment of interest payable on FITL as envisaged in the TEV report (Affidavit of Banks dated 17.09.2019 – paragraph 31)

One other contention of the Banks that centres on delay is the interest payable on FITL. This is an interest on interest component. It is stated that on this interest on interest component that the petitioner has sought moratorium to pay after US-FDA approval when cash-flows are expected to commence. According to Banks this inability to pay interest during implementation of the CDR package made them to negate the revival proposal.

261.On the other hand, the petitioner would contend that the Banks not only

caused delays in initial stages but cold shouldered their pleas for Corporate Debt Restructuring for five years contrary to extant guidelines of RBI (cited above). This has caused the burdens to mount and it is unjust for the Banks to reject the proposal citing non-servicing of interest on interest during implementation period. The Borrower points to how the project has been maintained State of the Art and found to be viable even after so many years and that the Banks cannot seek to kill it with such onerous conditions when this project could eke substantial revenues once the US-FDA approval is secured.

262.The Banks have resisted this on three counts:

(a). CDR request has been made only on 10.03.2016

(b). Petitioner issued with notice for classification as Wilful Defaulter & suit filed account.

(c). CDR is a voluntary non-statutory mechanism.

263.It has already been established that Petitioner has made its request for CDR in 2012 itself. On notice for classification as Wilful Defaulter, the Banks, after making repeated allegations to the Court and the Regulator submitted during the course of arguments that such notice **has been withdrawn** by consensus after discussions. Hence, the Banks cannot be permitted to take advantage of their own wrong. The Respondents that are instrumentalities of State ought to conduct themselves fairly and reasonably. Their failure to adhere to guidelines of regulator to

provide timely resolution to viable accounts under CDR mechanism and their further endeavours to explain it away with false reasons as seen above establishes the absence of fairness and reasonableness.

264.It is seen that in the TEV report, the experts have adverted to the cash flow prospects of petitioner being confirmed post US-FDA approval and recommended to the Banks to consider for funding the interest on FITL or some other mode of payment as per their policy. RBI also permits sector specific adaptations. Therefore, for the loan account of the petitioner that has been found to be viable even after so many years, the revival cannot be declined for the aforestated reason.

265.One more factor to be usefully adverted to here is that consequent to orders in WP.No.9610 of 2016, Banks have taken up the CDR exercise and in the first JLF meet that has been held on 18.05.2016, the petitioner has upfront conveyed its constraints for any additional infusions or divestment. The promoter has cited his previous investments, divestment, contribution for building stocks of value and current position. It is only thereupon, that the consent for sale of non-project asset came to be taken and the very CDR exercise has commenced. The application for promissory estoppel to the facts and circumstances of this case has already been considered.

266. (iii). Rs.51 crores was required in the TEV report of MITCON. It has

arbitrarily been downsized the outlay to Rs.35.30 crores by restricting certain expenditure. The petitioner is likely to seek further funding in future.

This contention of the Banks is also a U-turn and lacks merit. The TEV outlay has been deliberated and rationale and prudence of restricting number of products to be applied for in the first instance explained in the letters of petitioner have been examined and accepted by the Banks.

267. The 'In Principle' sanction has begun with the following statement,

"*Please refer to your letters dated 01.11.2016 & 01.12.2016 clarifying respectively on the issues regarding the proposed CDR package at the Joint Lenders Forum Meetings held on 28.10.2016 and 30.11.2016. After examining your proposal and the clarifications given thereon, we advise that your requirement for additional term loan of Rs.30.00 crores can be considered for sanction process, subject to approval by competent authority ...*"

268. There is also no merit in the submission of banks that the petitioner may approach the Banks for further funding. The expertise and dedicated efforts of the promoter in establishment and upkeep of the project stand vouched by experts again and again. If such a meritorious project is dragged farther and farther without justification, the cost assumptions are bound to alter in the interregnum. Instead of plugging it with adequate, time bound support, such pleas cannot be canvassed as a

means to bury the cause.

269. (iv) The petitioner is lagging in compliances such as ROC, Excise etc., The banks have alleged corporate & ROC non-compliances, non-payment of excise duty etc., against the petitioner.

270.In the facts and circumstances of this case, these concerns voiced by the banks will have to be resolved with proactive approach and a helping hand. It stands established that there has been no let up or deliberate omissions on the part of the petitioner in establishing the project or securing approvals. The experts of both Union and State Governments have commended the strenuous upkeep of the facilities even in a lay off state for so many years as a huge attainment. Unlike a typical NPA borrower, the promoter herein has been holding on to the venture with hope and sacrifices for years possible only by scientific passion and spirit. Therefore, any lapses or burdens that have accumulated in the interregnum should be viewed in context.

271. The expert committees such as Dr.V.M.Katoch Committee exhort how scientific talents in this domain should be honoured, rewarded and enabled by all means by the State to harness their capabilities for the benefit of the country at large. The said expert Committee has, *inter alia,* recommended import Duty Exemption on import of Capital goods. In terms of the recommendations of the said expert

committee, this Court would direct waiver/exemption of levies and duties by Governments in favour of the petitioner It has also further recommended that there is a need to come out with procedures of implementation which are efficient and effective that would include aligning the provisions of the Acts and rules regarding pollution, quality control, custom and excise duty, exports bodies (DGFT), coal allocating bodies, electricity authorities by mandating such authorities to have a cell in the mega complexes proposed for the bulk drugs. The Committee has, therefore, contemplated single window clearance to manufactures and to provide common facilities and other support with specific recommendations for units of various departments of government should be located at the manufacturing cluster or site. The same should be borne in mind holistically by all concerned. The Government of India thought it fit to constitute a multi-ministerial Task Force with high level representatives from several ministries for this segment only to bring about concerted efforts to harness the know-how and capacities in this segment. This Task Force constituted with representatives from a number of ministries that has placed its evaluation and recommendations to this Court is a Task Force given with extensive mandates to chalk recommendations specifically for revival and support to domestic API segment. Their report and recommendations to this Court would be accorded due regard by authorities in furtherance of the objective of the nation to conserve and develop API self-reliance. This court is of the view that the valuable know-how built on painstaking research over the years shall avail for the nation and the reliefs that it is granting for it to fructify may not be derailed for other reasons. For this reason, the

petitioner ought not to be penalised in any manner but rather provided with time, exemptions, extensions, waivers and other facilitations to be able to make good any compliance requirements and/or overdue obligations upon becoming a running unit and eke revenues in the global market. A committee is going to be constituted by this Court that would comprise of representatives from both Government of India and the State Government. **Hence, both the Union Government as well as the State Government would extend requisite recommendations through their Committee member to enable the petitioner to claim requisite extensions, exemptions, waivers, reversals and such other reliefs wherever it becomes necessary on a case to case basis or the Governments may consider issuing requisite G.O's to facilitate such exercise. Wherever it becomes necessary, the Governments as well as banks would also extend requisite facilities to enable the petitioner to catch up or comply the statutory mandates during the tenure of moratorium with provision for due repayment upon commercialization. Also, in the light of what is said above, this Court is of the view that on critical matters like this, the various limbs of Government will have to act in harmony and there could be no contradictions. Therefore, this Court is of the view that the various authorities concerned with and adjudicating matters in relation to the petitioner would advert to the issues grappling our nation that is the subject matter of the Writ Petition and comprehend the context, reasons and the directives issued in this order in the light of Expert Reports and recommendations of the Government of India for the API segment in general and for the petitioner in particular and**

harmoniously exercise their discretion with due regard for the same. In order to facilitate this, this Court would issue directives for due circulation of this order. The Authorities would also have the facility of accessing the order from the Web-Portal of Madras High Court and a certified copy from the petitioner.

272.This issue stands concluded with the aforesaid directives.

273.***Issue 15: Are the communications impugned in WP.No.No.16622 of 2017 fair and sustainable?***

In the communications issued pursuant to the directive of this Court in WP.No.4178/2017, while Bank of India negated further funding but agreed for restructuring with condition to bring further margin, NABARD has sent a cryptic communication that it has evaluated TEV report and considered the case of the petitioner fairly and transparently and are rejecting the restructuring plea of the petitioner as a result. This by itself is a major divergence.

274. Further, the communications are in pursuant to directives issued by this Court in WP.No.4178 of 2017 where it was submitted on behalf of the Banks that the Banks are not unwilling to extend financial assistance to the petitioner but are obliged to follow guidelines of RBI in this regard. The directions to consider petitioner's further representations came to be issued pursuant to the said submission. This Court is seen to have reckoned the scientific relevance of the petitioner for cancer care in

the country in the context of the aforesaid submission and has directed that within the framework of RBI guidelines, the representations shall be considered by the Banks so as to enable the petitioner to revive. Hence, any consideration ought to have been in furtherance of the 'In Principle' sanction already in place so as to address the difficulties expressed by petitioner in its representations *vis a vis* the margin conditions but not to negate the sanction itself which was the case here. It is also seen that the Banks omit to quote this phrase so as to enable the petitioner to revive while referring to the directive of the Court.

275. All other contentions of Banks in support of their communications impugned in the Writ have been considered *supra* as part of the earlier issues which do not further the case of the banks. Further, there has been a further directive of this Court dated 10.08.2017 in WP.No.No.11777 of 2017 to receive proposal from petitioner and consider it positively on which the Banks have been held to have acted in wilful breach. Hence, the impugned communications also become non-est together with their communication dated 10.11.2017.

276.Further, the communications of Banks pursuant to directives of this Court on 10.08.2017 did not even rest with letter dated 10.11.2017 as contended by Banks which would be considered infra. Above all, the national interest in conserving and advancing the cause of the petitioner having been established beyond question, this Court would be issuing directives for the same.

277.For the aforesaid reasons, the communications impugned in WP.No.16622 of 2017 as well as the communication dated 10.11.2017 are unsustainable

278.This issue is answered accordingly.

279.**Issue 16:** ***Has WP.No.16622 of 2017 become infructuous by reason of communication dated 10.11.2017 as contended by the Banks?***

It is the contention of banks that their communications dated 08.03.2017, 03.05.2017 & 21.06.2017 impugned in WP.No.16622 of 2017 are subsumed in their further communication to the Borrower dated 10.11.2017 about rejection of its proposal by both the Banks. Since, there is no separate challenge to this communication, nothing survives further.

280.There are two reasons why this contention is bad. The Banks have issued the aforesaid rejection in purported compliance to the directive of this Court on 10.08.2017 in WP.No.11777 of 2017 which is very much under consideration of this Court and it has been found that the banks have acted in wilful breach of the directives. Hence, a separate challenge is uncalled for.

281.**Letter dated 06.12.2017:** Also, through the affidavit filed on 17.09.2019, the Banks bring to light a further letter written to Reserve Bank of India by Bank of

India dated 06.12.2017. NABARD would state that Bank of India (Respondent 9) *vide* its letter dated 06-12-2017 had indicated to RBI that CDR may be considered for the petitioner's account, subject to compliance with the CDR guidelines. Apparently, there has been a subsequent communication. It is the contention of the Banks that the letter in no way suggests explicit consent for CDR by the Banks and only clarifies the position that CDR is subject to compliance of its guidelines by the petitioner company. Such contentions would not hold good when the Banks have suppressed this communication from records of this Court. This letter dated 06.12.2017 is integral to the series of their letters by Banks to the regulator consequent to the directives of this Court and it is stated to indicate that CDR revival could be accorded to the petitioner. The Banks ought to have brought this letter on record.

282.The Hon'ble Supreme Court in the case of **Gowrishankar v. Joshi Amba Shankar Family Trust,** reported in **(1996) 3 SCC 310** and **S.P. Chengalvaraya Naidu v. Jagannath** reported in **(1994) 1 SCC 1** has held that Suppression of a material document would also amount to a fraud on the court.

283.**Issue 17:** ***Whether the Banks have conducted themselves in abdication of objectives of nationalization?***

Answer to the above question emerges clearly from the discussions *supra.* While the Government keeps exhorting the Public Sector Banks to align with national priorities, in this case, the Banks did not pay heed to any of the concerns, evaluations

and proactive responses of their Government on the subject. They have continued to file and adopt pleadings attacking the know-how claims of petitioner even after certification by top level scientist and experts of Government of India. This unique cause relevant for Health Security and standard Health Care for cancer patients of our country would have long since seen the light of the day had the Banks aligned themselves with national priorities.

284.However, in this case, the Banks have sought to distance themselves calling themselves *"good corporate law abiding citizens"*. Dismissive statements were also made by NABARD on the welfare of farmers being guarded by the Petitioner. This Court is of the view that in so doing, the Banks have acted in derogation of the objectives of their establishment that were time and again emphasized by our Hon'ble Supreme Court. (**All India Bank Officers Confederation & Ors. v Union of India & Ors**. reported in (1989) 4 SCC 90)

285.**<u>Issue 18:</u>** ***Scope of Judicial Review of Administrative Action & objections thereto by Banks on grounds of Credit Wisdom***

It is well established that Judicial Review is a basic structure of the Indian Constitution. In the case of **Swaran Singh v State of UP & Ors** reported in **(1998) 4 SCC 75,** the Hon'ble Supreme Court held that all public power, including constitutional power, shall never be exercisable arbitrarily or mala fide, and

ordinarily guidelines for fair and equal execution are guarantors of valid play of power.

286.In the case of **Union of India v SB Vohra &Ors.** reported in **(2004) 2 SCC 150,** it was held by the Hon'ble Supreme Court that a High Court can, in the exercise of its jurisdiction under Article 226, issue a writ of mandamus and give directions to compel the performance in a proper and lawful manner of the discretion conferred upon the government or a public authority, and in a proper case, in order to prevent injustice resulting to the concerned parties, the court may itself pass an order or give directions which the government or the public authority should have passed or given had it properly and lawfully exercised its discretion.

287.In the case of **ABL International Ltd. & Anr. v Export Credit Guarantee Corporation of India & Ors. (referred supra),**the Hon'ble Supreme Court, has held that an instrumentality of the State cannot commit breach of a solemn undertaking to the prejudice of the other party which acted on that undertaking or promise putting itself in a disadvantageous position.

288.In **State of Tamil Nadu & Ors. v Elephant G Rajendran & Ors.** reported in **(2019) SCC Online SC 527** while discussing about the scope and ambit of Art 226, Hon'ble Supreme Court, after analysing precedents on the subject held that power given to the High Court under Article 226 is power of very vide nature

which does not contain any fetter except self-imposed restrictions.

289.Per Contra, the respondent banks relied on the following Judgements: Decision of the High Court of Madhya Pradesh, Jabalpur(DB) in WP.No.12620/2018 (**M/s.Kesar Multi Modal Logistics Limited Vs. Union of India and others**) and the decision of the High Court of New Delhi in WP.No.(c).8814/2014 and C.M.No.3380/2018 (**Amira Pure Foods Private Limited Vs. Canara Bank and others**);

290.In the case of ***M/s.Kesar Multi Modal Logistics Limited Vs. Union of India and others*** decided by the High Court of Madhya Pradesh, the facts were different. In that case, the Court found that the decision taken by the Banks was appropriate and accordingly, no interference was warranted in the commercial decision taken by the banks and hence such a decision does not warrant any interference from the High Court exercising its power of Judicial review.

291.So is the case of ***M/s.Amira Pure Foods Private Limited Vs. Canara Bank and others*** decided by Delhi High Court (referred supra), relied on by the Respondent Banks.

292.However, in the instant case, the banks have been held to have conducted themselves with bias, arbitrariness, vindictiveness, *mala fides* and have acted in

wilful disobedience of orders of the Court committing abuse of process of law. Hence, the claim of Lender discretion would not come to the rescue of the Respondent Banks.

293.In the case of Centre for **Public Interest Litigation & Ors. v Union of India** reported in ***(2012) 3 SCC 117***, the Hon'ble Supreme Court, referring to treatise of eminent jurist N.A. Palkhivala - Our Constitution: Defaced and Defiled held that in our Constitutional scheme, there is no room for any unfettered prerogative but only for discretion that has to be exercised fairly and reasonably.

294.The Respondent Banks have also produced the case of **Dharani Sugars and Chemicals Ltd versus Union of India and others** (Transferred case (Civil) No.66 of 2018 in Tranfer Petition (Civil) No.1399 of 2018 decided by the Hon'ble Supreme Court wherein RBI Circular dated 12.02.2018 was declared as ultravires of Section 35AA of the Banking Regulation Act, 1949. Whereas, the Banks have referred to subsequent circular issued in June 2019 and the regulator Reserve Bank of India has clarified that the said circular does not preclude or prohibit the Banks.

295.**<u>Issue 19:</u>** ***Framing of guidelines by Court to protect fundamental rights, more particularly, Right to Health & Farmers' Livelihood as concomitants of Right to Life.***

Case Laws on Framing of Guidelines by Courts

(i).In the case of **Vishaka & Ors. v State of Rajasthan & Ors.** reported in **(1997) 6 SCC 241,** writ petition was filed for the enforcement of fundamental rights of working women under Art 14,Art 19 & Art 21 of the constitution wherein detailed guidelines have been framed by the Supreme Court.

(ii).Similarly, in the case of **Vineet Narain & ors. v Union of India & Anr.** reported in **(1998) 1 SCC 226**, the Hon'ble Supreme Court has traced how Framing of Guidelines by Court has taken firm roots in our Constitutional Jurisprudence referring to precedents and Conventions and held that it is essential to fill the void in the absence of suitable legislation to cover the field.

296.In addition to the above Judgements, Learned Amicus has given various citations (referred supra) extracting their context and ratios which empowers Courts to lay down guidelines specific to the cases in hand which are also equally applicable.

297.It would also be useful to advert here to the primacy accorded by our Hon'ble Apex Court to Right to Health and Livelihood of Farmers through some important case laws on the topic.

Right to Health

(**i**).In the case of **Paschim Banga Khet Mazdoor Samity &Ors. v. State of**

West Bengal & Anr. reported in **(1996) 4 SCC 37,** where a seriously injured patient was not admitted to several state run hospitals, the Supreme Court deprecated the condition and held that it is a serious violation of right to life guaranteed under Article 21.

(ii). Similarly, in the case of **Paramanand Katara v Union of India & Ors.** reported in **(1989) 4 SCC 286**, where an injured person was directed to be taken to a hospital 20 kms away and the victim succumbed to injuries, the Hon'ble Supreme Court laid down various guidelines.

(iii).In **Vincent Panikulangara v Union of India & ors**. reported in **(1987) 2 SCC 165,** Hon'ble Supreme Court has stated the priority to be accorded by State for Public Health and domestic manufacture of medicines **(Paragraphs 16 to 22)**

(**iv**).In **Consumer Education Research Centre and Ors. v Union of India & Ors.** reported in **(1995) 3 SCC 42** where a PIL was filed regarding the occupational health hazards and diseases to the workmen employed in Asbestos Industries, the Hon'ble Supreme Court, referring to various precedents, held, among other aspects, that right to life includes right to health and medical facilities.

(**v**).In the Case of **K.S.Puttaswamy (Retired) & Another (Aadhar) Vs Union of India and Another** reported in **2018 SCC Online SC 1642,** the Hon'ble Supreme

Court acknowledged submission by Union of India that there is a paradigm shift from the welfare approach to a rights – based approach with directive principles remaining a source of inspiration.

(**vi**).In the Case of **Justice I.S.Israni (Retired) Vs Union of India and Others** reported in **2013 (2) WLC 602 SCC**, the Hon'ble High Court of Rajasthan, on considering the harmful effects of Electromagnetic Radiation from mobile towers, directed the State Government to remove all mobile towers from all school premises.

(vii).In the Case of **Murli S. Deora Vs Union of India and Others** reported in **(2001) 8 SCC 765**, the Hon'ble Supreme Court issued directions to Governments to protect people against passive smoking treating it as a component of Right to Life.

Farmers' Interest

(**viii**).In the case of **Tamil Nadu Centre For Public Interest Litigation, Rep by K.K.Ramesh Vs State of Tamil Nadu and Another., SLP(C) No.9839 of 2017,** the Hon'ble Supreme Court held that the State has to take curative measures to alleviate the sufferings of farmers treating it as a natural disaster.

(**ix**).In the case of **M.C. Mehta Vs Union of India and Ors** Writ Petition (Civil) No. 113029 of 1985, the Hon'ble Supreme Court has emphasized that Governments cannot ignore the interests of small and marginal farmers citing paucity

of funds.

The aforesaid decisions of the Supreme Court regarding the plight of farmers apply to Respondent Banks also being the Instrumentalities of 'State' and in particular to NABARD which is the Apex Bank relating to farmers' welfare. However, considering the conduct of NABARD in this case, this Court is of the view that NABARD has observed its duty in breach.

298.**Issue 20:** ***What are the reliefs to be granted with attendant safeguards in the facts and circumstances of the case?***

On the aforesaid facts and circumstances of the case, findings given on various issues and considering the submissions, reports and recommendations made by Union Government and the Reports and Submissions of the State Government (adopting the views of the Amicus curie) and taking into account the recommendations made by *amicus curiae* as well as submissions on behalf of the Regulator of the Banks, namely, Reserve Bank of India, this Court is of the view that these Writ Petitions are fit cases for interference by this Court.

299.The menace of cancer and cancer statistics are now undebatable. Safeguarding access to cancer medicines is a far more significant aspect of Public Health than many others.

300.What the court has been looking into in this matter is not recovery measures such as SARFAESI or DRT but the tenet enshrined in Art 47 imbued into Article 21 where solid solutions will have to be worked out. The Court is concerned with the larger issue of Public Health from this constitutional prism bearing in mind the expert evaluations and recommendations in relation to the petitioner, more particularly, that of the expert Committee of Government of India in the context of menace of excess dependence on Chinese drugs brought forth in the expert reports of Dr.V.M.Katoch and that of the learned *amicus curiae*.

301.No doubt, the Government is working for protection, revival and redevelopment of self-reliance in critical APIs through measures such as constitution of expert Committee of Dr.V.M.Katoch, High Level Multi Ministerial Task Force, Make in India circulars and so on. But at the same time, forging and implementations of effective solutions continues to await due to various constraints being expressed as seen through this case.

302.The High Level Multi Ministerial API Task Force of India has graciously heeded to the call of this Court to evaluate and report on the petitioner as a pilot case study. They have deputed domain experts from different departments who have done a commendable job. While the report of the Expert Committee of API Task Force certifies the distinctions of the petitioner on several aspects, this Court considers the following to be of significant relevance as to why it has to be treated as a class and

provided with reliefs:

1.That the petitioner is the only entity in India with requisite regulatory approvals to possess know-how for isolation of *vinka alkaloids* that are the primary molecules for prescription drugs for different Cancers.

2.That the know-how of petitioner is significant for our Country that is confronted with a pressing need for self-reliance in Active Pharmaceutical Ingredients.

3.That to recreate a facility like the petitioner with similar know-how and capacities would involve substantial cost and time efforts.

4.That its facilities are State of the Art conforming to high bench marks.

5.That the petitioner has also built unique designs and substantial capacities in its segment.

6.That it has secured regulatory approvals applicable in the country and scrupulously conformed to the regulations to earn WHO GMP Certifications.

7.That the petitioner has capacities in the entire chain commencing from R&D in APIs, manufacture of APIs as well as manufacture of Finished Dosage Formulations.

8.That the petitioner has the research back up to foray into further research that would benefit health care in a critical segment.

9.The report of the Drug Controllers of the Centre and State that the facilities boast of specialized equipment is also noted by this Court.

303.The reliefs to be granted in favour of the petitioner should be in the backdrop of the aforesaid factors in a manner to conserve and harness the benefits of the venture for the nation. This Court is of the considered view that the benefits of such an industry should not be lost on account of constraints expressed to fit its requirements in an existing framework or scheme by party respondents. Rather, the purposes will have to be accomplished by putting a mechanism in place. This Court is satisfied that this is a matter where complete justice needs to be done and inclined to issue necessary directives for the same.

304.On this aspect, this Court can take cue from the purposes and reference of the Task Force itself. The aforesaid API Task Force has been constituted by Government of India to address the predicament of import dependence for essential APIs by boosting Research & Development and manufacturing of Active Pharmaceutical Ingredients within the country to ensure integration along the value chain and harness the opportunities in the sector through concerted efforts. This Court would also form a Committee for such concerted efforts to tap and harness the potential of the petitioner. **On the points of references to be made to the Committee also, the Task Force memorandum shows the way. The facilitations for the petitioner would be concerning Union Government, the Banks that are its constituents, State Government, Regulatory Bodies where applicable and the areas of facilitation would also be in lines with Task Force references with necessary modifications that would, *inter alia,* include**

(a) Research & Development

(b) Commercialization

(c) Development of the Industry

(d) Supports for regulatory compliances

(e) Harnessing potential impacts of the industry including agrarian support, job creation, technology infusion, exports, domestic supply, contribution to the economy, integration with value chains and so on.

305.This Court would also apply the recommendations of eminent Committee headed by Dr.V.M.Katoch in passing its directives for revival of the petitioner.

306.As observed *supra,* there is no dearth for scientific research or talent with us. As seen above, the R&D in our API segment showed vigour and progress to serve the nation and also gained global relevance but had been made to fall to cheap imports. Unless we give all round back up and support at par with aggressively competitive nations who dominate the export segments, our players would be gobbled even in the domestic circle which is what has happened here.

307.It is also to be noted that providing support to this industry is not handing out a dole. The learned *amicus* stated how, upon securing US-FDA approval, the venture would bring rich dividends for the stakeholders. His statement is corroborated by wise words of the eminent Committee on APIs/Bulk Drugs headed

by Dr.V.M.Katoch that has exhorted that the Governments will have to create zones with all facilities and make them available to the API players at concessional rate, preferably free of cost and when so enabled, the industry would become globally competitive and be able to eke one billion dollar that is Rs.60 billion per year besides generating huge employment. The worth of the petitioner also will have to be understood form this FE & employment benefits perspective as well. All these are also benefits to the nation. Hence, the challenge here is not to ask the petitioner how you can do it but to ask ourselves how to facilitate them to do it.

308.On the Health Security front, Dr.V.M.Katoch Committee has recommended that at least few clusters have to be established on a war footing and establishment of three clusters is a must in wiping out dependence in the area of important APIs. The committee has even suggested the States that could prove to be the ideal ground that includes Tamil Nadu, but its suggestion remains a non-starter even after five years. The committee has further recommended infusion of Rs.500 crores each to revive each Public Sector Unit in the segment whereas, it is seen that the petitioner with unique capabilities and huge capacities could be enabled to take off with 1/10th of such cost. Credit should go to the promoter for conserving such possibility by holding on for so long with efforts and sacrifices.

309.Therefore, this Court would be issuing directives herein to (i)enable the petitioner to bounce back on its feet as a viable player applying to the petitioner

recommendations of Dr.V.M.Katoch Committee (ii)put in place a mechanism for guidance and facilitation on the Task Force model so that the petitioner would counter no further road blocks for succeeding in its project.

310.One other aspect that will have to be ensured is the way for reaching the world class medicines of the petitioner to the benefit of ailing poor patients of our country. This Court has already noted that good capacities and products should not be sacrificed to price war. Therefore, the petitioner should be enabled to effect supplies in domestic procurement with prices meeting its cost with some thin margins at least. The petitioner has submitted that whenever it breaks even, it would implement its mission of making cost to cost and free supplies to poor patients. This Court is of the view that neither the petitioner nor the patients of this nation should be made to wait for that long. Once the petitioner is enabled to be back on its feet and a mechanism is put in place for it to progress without further road blocks, this Court is of the view that necessary facilitation will have to be made for domestic procurement in a consultative process so that benefits of world class medicines manufactured by petitioner are made available to our patients in a sustainable way in the near future. The petitioner, on its part, while pitching for global segment should endeavour to fulfil its supply obligations in the domestic segment notwithstanding the meagreness of the margins. Framing of necessary guidelines for adopting and implementing the Dr.V.M.Katoch Committee recommendations on assured procurement, curbing of sub-standard merchandise in procurement etc., would be

considered so that good domestic manufacturers like the petitioner are not denied support and level playing field. The learned *amicus curiae* has already placed some suggestions. This court will have to hear the issue some more and frame guidelines thereafter. Therefore, while WP.No.16622/2017 could be disposed, WP.No.11777/2017 could be disposed in part with requisite directives but kept on board for the aforesaid purpose.

DIRECTIONS

311.In the light of the above, this Court is of the view that this is a fit case to invoke its constitutional powers taking into account the report & recommendations of Dr.VM Katoch expert committee for Bulk Drugs & the report & recommendations of Government of India, API Task Force for the petitioner, powers of the Union Government under section 8 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and Section 5(6) of The National Bank For Agriculture And Rural Development Act, 1981 , among others and directs the respondents to accord revival and facilitation to the petitioner as below:

(1) To ensure that the twin goals of enabling the Petitioner to become a global player eking Foreign Exchange for the Country and also ensure self-reliance of India in Cancer Drugs, a Committee shall be constituted comprising of (1)one Member not below the rank of Joint Secretary, Ministry of Pharmaceuticals, Union of India, (2)one Member not below the rank of Joint Secretary, Ministry

of Finance, Union of India, (3)Secretary, Department of Pharmaceuticals of Government of Tamil Nadu. (4) To have information and update on the petitioner and the Committee matters, the Banks, that is, Bank of India & NABARD are at liberty to have one nominee in this Committee who would be an official not below the rank of Senior General Manager from Bank of India or NABARD (5) Mr.N.L. Rajah, learned Senior Counsel appointed as *amicus curiae* by this Court shall also be part of this Committee to facilitate and co-ordinate the matters. This Committee would be formed and come into effect within 8 weeks from the date of issuance of a copy of this order.

(2) The Committee would facilitate all necessary requirements of the petitioner including fiscal and regulatory, for (a) Research & Development (b) Commercialization (c) Development of the Industry (d) Facilitations for regulatory compliances (e) Harnessing potential impacts of the industry including agrarian support, job creation, technology infusion, exports, domestic supply, contribution to the economy, integration with value chains and such other matters as may be deemed relevant and appropriate

(3) Every six months, this Committee shall be provided by the Company with reports of progress for the preceding six months and its plans for the succeeding 6 months, financial data as also its requests regarding, including but not limited to, fiscal, tax, subsidies and other benefits, licenses, exemptions, extensions,

refund, waivers reversals etc., This interval of six months is only indicative and the Committee and the Petitioner are at liberty to have more frequent interactions based on exigencies.

(4) The Committee would consider requests by the Petitioner and through its members who are representatives of the respective Governments, would make recommendations to the Government and other statutory Authorities for necessary sanctions, subsidy, interest concession, tax concession, licenses, compliance form filings, exemptions, extensions, enhancements, escalations and other benefits to the Company that would be considered positively and expeditiously and would further facilitate and expedite the necessary requirements of the Petitioner Company and remove any delays and difficulties including with regard to funding, escalations, enhancements and disbursement requirements of the Petitioner Company with necessary recommendations to the Banks.

(5) The aforesaid Committee is at liberty to interact and take decisions through Circulars and shall play its supervisory, facilitative and guiding role without in any manner impinging on the operational freedom and day to day affairs of the Petitioner while the Petitioner would at all times duly and diligently provide requisite information called for from the Company.

(6) This Court is of the view that it would be necessary to keep this matter as Court Monitored for due implementation of the directives to ensure attainment of the objectives. Mr. N.L. Rajah, learned Senior Counsel appointed as *amicus curiae* by this Court would act as Convenor and Coordinator for the above Committee. The Petitioner would also be at liberty to approach this Court for necessary directives.

(7) The communications, that is (i) Letter dated 08.03.2017 in Reg.No.Vinkem 2016-17 issued by the Deputy General Manager of NABARD and Assistant General Manager of Bank of India, (ii) Letter dated 03.05.2017 in Reg.No.CZ/ARB/MKS/09 issued by the Assistant General Manager of Bank of India & (iii) Letter dated 21.06.2017 in Reg.No.NB/T.N.DOR.1CD/ Cofinance/ 140/Vinkem Labs- 2017-18 issued by NABARD & (iv) Letter dated 10.11.2017 in Ref No: CZ/ARB/106 issued by Assistant General Manager of Bank of India, ARB, Chennai are hereby set aside.

(8) Based on the report submitted by API Task Force of Government of India, this Court is satisfied that the benefits of interest subvention, debt ratio, moratorium and other concessions recommended by Dr.V.M.Katoch Committee for API industries ought to be applied to the case of the petitioner to enable the Petitioner to revive and fructify its project. Hence, this Court directs that the Respondent 4 in WP.No.16622 of 2017, namely, Union of India, Ministry of

Finance, Department of Banking Affairs, in exercise of their powers under section 8 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 and Section 5(6) of The National Bank For Agriculture And Rural Development Act, 1981, would advise/direct the Respondents Bank of India & NABARD, to (i) release loan sanction to the Petitioner for US-FDA approval with requisite moratorium for the period of US-FDA approval and sale in US, (ii) waive conditions of margin, capital contribution, additional security, FITL interest or other repayments during project implementation or other upfront fund from the petitioner as a pre-condition (iii) apply interest subvention in the loan account to 7.5% per annum from the time of advance (iv) apply simple interest with waiver of penal and compound interest from the date of NPA (v) sanction requisite enhancements & (vi) release timely disbursement to the petitioner. The 4th Respondent would issue the aforesaid directions to the Banks expeditiously and preferably within a period of six weeks from the date of receipt of a copy of this order and report compliance thereof to this court.

(9) Much time has already been lost in this matter. Therefore, for the reasons stated in the order and in the light of emphatic stand taken and submission made before this Court to pass orders by Union of India and Reserve Bank of India, being the authorities contemplated under Section 8 of The Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980 & Section 5(6) of The National Bank For Agriculture And Rural Development Act, 1981, it is

made clear that the Bank of India & NABARD need not wait for receipt of advice stipulated in direction (8) which would follow in due course; Bank of India & NABARD, Respondents 6&9 in WP.No.No.11777 of 2017 and R1 to R3 in WP.No.No.16622 of 2017 are directed to apply the concessions above mentioned in directive (8) and process the Sanction Proposal dated 23.01.2017 and effect disbursements within a period of three weeks from the date of receipt of a copy of this order to enable the Writ Petitioner to revive and commence the necessary steps for production and US-FDA approval as contemplated in their loan proposal.

(10) There is a time lapse of more than 3 years from the sanction proposal dated 23.01.2017. Hence, the petitioner is at liberty to submit a request for enhancement to meet escalations and additions, if any, to its earlier estimates under copy to 4th respondent in WP.No.No.16622 of 2017 & 17th Respondent in WP.No.No.11777 of 2017, that is, Union of India, Ministry of Finance, Department of Banking Affairs within a period of 12 weeks from the date of receipt of a copy of the order. Within a further period of three weeks from the date of receipt of the request for revision/escalation, the said respondents would facilitate the request and through its representatives in the Committee constituted as per this order, direct the Banks to process and sanction the escalation in an expeditious frame of time to be stipulated in the direction. Any future escalations arising for subsequent reasons shall also be dealt with in the

same manner. It is made clear that Bank of India & NABARD, Respondents 6&9 in WP.No.No.11777 of 2017 and R1to R3 in WP.No.No.16622 of 2017 need not put on hold the sanction under directive (9) for this reason and can make any revision felt required by way of a supplementary sanction.

(11) With the scientific know-how and standards attained by the Petitioner being of significant value for the nation, it is in the fitness of things that in due course, the Governments, namely, Union of India & State of Tamil Nadu should be able to contemplate and partake in the financial exposure to the Petitioner Company through such of their programs for promotion of Health Care, Scientific Advancement, Farmers Welfare as would fit the Petitioner Company ; as and when such a program comes into effect, the Petitioner Company and the Banks would extend cooperation to the full extent to ensure and effectuate the said financial participation by the Governments including but not limited to sharing of information, sharing of security, according NOCs execution of guarantees and so on.

(12) In view of the orders passed herein, the petitioner and the Bank of India & NABARD, Respondents 6&9 in WP.No.No.11777 of 2017 and R1to R3 in WP.No.No.16622 of 2017 are directed to file a copy of this order under a Memo before Debt Recovery Tribunal, Chennai and the National Company Law Tribunal, Chennai where the collateral proceedings between the Petitioner and

the Banks are pending to enable the said Tribunals to dispose of the matters before them taking note of this order.

(13) For the reasons stated *supra*, the 2nd respondent in WP.No.No.11777 of 2017, that is, Department of Pharmaceuticals, Ministry of Chemicals would advise through Policy Exemption Committee of Government of India and/or the respective members of the Committee of Task Force as the case may be to waive all Central Levies and Duties for the Petitioner as has been recommended by Dr.V.M.Katoch Committee or in the alternative advise exemption to be extended till petitioner is able to effect sales in Overseas markets with USFDA approval and be enabled to pay the levies without penalty or interest thereon.

(14) For the reasons stated *supra*, the 2nd respondent in WP.No.11777 of 2017, that is, Department of Pharmaceuticals, Ministry of Chemicals would circulate a copy of this order to all member ministries of the API Task Force constituted as per Memorandum of Government of India dated 18.04.2018 and such other ministries as would be relevant for the case of the petitioner who would, in turn, notify their respective departments for due consideration and observance of directives in this order.

312.The writ petition in WP.No.16622 of 2017 stands allowed and disposed of with the above directions and WP.No.11777 of 2017 stands allowed in part.

Though there are facts and circumstances that warrant imposition of costs and further directives for departmental action on the Banks in the overall interests, it is directed that the parties will have to bear their respective costs.

313.We are witnessing with pain the global impact of COVID virus on all facets of human life. There cannot be a more critical time than this to reflect and act upon the issue of self reliance for essential drugs. The Hon'ble First Bench of this Court has recently observed that non availability of essential drugs is to be treated as National Emergency and called upon the Governments to hold discussions with all stakeholders to ensure their production within the Country holding both the Governments equally responsible. Hence, the Governments and its various limbs are called upon to approach the matter with sensitivity in this light and the petitioner is called upon to raise like a phoenix and accomplish its scientific mission to provide succour to ailing patients across the spectrum. The Petitioner has time and again expressed the difficulties that it has to encounter in upkeep and conservation without operations and revenues in the huge facilities. The petitioner has made best possible efforts for so many years in this direction and this Court is of the firm view that whatever further sufferance or set back that the petitioner had to undergo in this regard on account of time drag and the extraordinary situations that have arisen, the Petitioner ought not to be penalised in any manner and ought to be protected and supported by all concerned in earnest spirit to come back, revive and flourish so that its valuable scientific know-how benefits the cancer patients of our nation.

314.As stated above, the implementation of the directives to ensure due attainment of the objectives in this case will have to be court monitored and also to address the question of effective measures for the petitioner to supply in domestic tender procurement, to frame guidelines for level playing field and related matters for domestic supplies, the Writ Petition No.11777/2017 will have to be heard further.

315.Our Country is not investing much on research and researchers are not encouraged. In view of lack of support for research, experts are compelled to migrate to other countries where they are encouraged. We have already lost very capable brains to other countries by brain drain. Therefore, it is time to retain the experts/scientists like petitioner by giving required support, more importantly trained support.

316. Hence, Registry to list the matter on reopening of the Court for physical hearing for the Respondents to report compliance and for further hearing. The scientist – promoter of the Petitioner to appear before this Court on the said hearing.

30.09.2020

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To

1.The Secretary to Government,
Union of India,
Department of Pharmaceuticals,
Ministry of Chemicals & Fertilizers,
Shastri Bhavan, New Delhi.

2.The Secretary to Government,
Union of India,
Ministry of Commerce & Industry
Udyog Bhavan, New Delhi.

3.The Secretary to Government,
Union of India,
Ministry of Finance,
Department of Expenditure, Procurement Policy Division,
516, Lok Nayak Bhavan,
New Delhi.

4.The Secretary to Government,
Union of India,
Ministry of Health,
Nirman Bhavan,
New Delhi.

5.The Chairman,
NABARD, Plot No.C-24, G-Block,
Bandra Kurla Complex,
BKC Road, Bandra East,
Mumbai, Maharashtra 400 051.

6.The Secretary,
State of Tamil Nadu,
Health and Family Welfare Department,
Fort St. George, Chennai.

7.The Secretary,
State of Tamil Nadu,
Department of Agriculture,
Fort St. George,Chennai.

8.The Manager,
Bank of India,
Mid Corporate Branch,
Tarapur Towers, Anna Salai, Chennai.

9.The Managing Director,
Tamil Nadu Medical Services Corporation Limited,
No.417, II Floor, Pantheon Road,
Egmore, Chennai.

10.The Drug Controller of India,
New Delhi.

11.The General Manager,
Reserve Bank of India,
Banking Operations Division, Chennai.

12.ITCOT Consultancy and Service Ltd.,
50-A, Greams Road,
Chennai 600 006.

13.The Secretary,
Department of Scientific and Industrial Research,
Ministry of Science and Technology,
Government of India,
New Delhi

14.The Chairman & Managing Director,
Tamil Nadu Industrial Development Corporation,
19-A, Rukmini Lakshmipathy Road,
Egmore, Chennai 600 008.

15.The Chairman,
Nithi Aayog,
New Delhi.

16.The Principal Secretary,
Government of India,
Department of Financial Services,
Ministry of Finance,
3rd Floor, Jeeven Deep Building,
Sansad Marg, New Delhi 110 001.

N.KIRUBAKARAN, J

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W.P.Nos.11777 & 16622 of 2017

and

W.M.P.Nos.12750, 12751 of 2017 & 6775 of 2018

Dated:30.09.2020