

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 1565 of 2024**

[Arising out of order dated 22.07.2024 passed by the Adjudicating Authority  
(National Company Law Tribunal, Allahabad Bench, Prayagraj), in C.P. (IB)  
No.26/ALD/2023 with IA No. 583/2023]

**IN THE MATTER OF:**

**Mr. Alok Gaur**  
**Suspended Board of Director of**  
**Jaypee Cement Corporation Limited**

Having its Residence at:  
394, Sector-29,  
Noida, Uttar Pradesh – 201303.

**...Appellant**

**Versus**

**1. State Bank of India**

Having its Office at:  
Stressed Assets Management Branch – II,  
11<sup>th</sup> Floor, Jawahar Vyaapar Bhawan,  
1 Tolstoy Marg,  
New Delhi – 110001.

**...Respondent No. 1**

**2. Ms. Deepika Bhurga,**  
**Interim Resolution Professional for**  
**Corporate Debtor**

Having its Office at:  
202, Samrat Ashok Enclave,  
Sector – 18A, Plot No. 6,  
Dwarka, New Delhi – 110075.

**...Respondent No. 2**

**Present:**

**For Appellant** : **Mr. Abhijit Sinha, Sr. Advocate with Mr. Abhishek Anand, Mr. Karan Kohli, Mr. Krishna Sharma, Ms. Palak Kalra, Ms. Ridhima Malhotra, Mr. Aditya Shukla and Ms. Heena Kochar, Advocates.**

**For Respondents** : **Mr. Ankur Mittal, Ms. Yashika Sharma and Mr. Jayesh Gupta, Advocates for SBI.**

**Mr. Krishnendu Dutta, Sr. Advocate with Ms. Swechcha Mishra, Advocate for R-2.**

## **ORDER**

**ASHOK BHUSHAN, J.**

This Appeal has been filed challenging the Order dated 22.07.2024 passed by the Learned Adjudicating Authority (National Company Law Tribunal, Allahabad Bench, Prayagraj) by which Order Section 7 Application filed by the State Bank of India ('SBI') against the Corporate Debtor, Jaypee Cement Corporation Ltd. has been admitted. Aggrieved by the Order, this Appeal has been filed.

**2.** Brief facts necessary to be noticed for appreciating the submissions advanced by Learned Counsel for the Parties are as follows:

- i. The Jaypee Cement Corporation is a subsidiary of M/s. Jaiprakash Associates Ltd., the Holding Company.
- ii. The present Appeal arises out of debt claimed by SBI with respect to two Cement Plants of the Corporate Debtor, namely:
  - (1) Balaji Cement Plant Project situated at Jaggyapeta Town, District Krishna in Andhra Pradesh; and
  - (2) Shahabad Cement Plant situated at Shahabad, District Kalaburagi in Karnataka.
- iii. Several Financial Facilities were extended by Lenders with respect to aforesaid two Plants, including the exposure of SBI and its subsidiaries which subsequently merged into the SBI by Notification dated 22.02.2017.
- iv. The performance of the Corporate Debtor and its Holding Company started deteriorating from Financial Year 2014-15, in view to overcome the liquidity problems, the Holding Company and Corporate Debtor finalized an appropriate Resolution Plan making Joint Lenders Forum

(‘JLF’) comprising of all the Banks/Financial Institutions which has financed the Projects/operations of the Corporate Debtor and its Holding Company, Jaiprakash Associates Ltd.

- v. JLF conveyed its approval on 18.05.2017 to a Composite Restructuring Plan for Corporate Debtor and Holding Company which was subject to approval by the Independent Evaluation Committee (‘IEC’), which also approved the restructuring package.
- vi. JLF on 22.06.2017 approved Composite Restructuring Plan. The various loan granted by SBI including loans granted by erstwhile subsidiaries to the Holding Company and Corporate Debtor outstanding as on 30.09.2016, were restructured, the CRPP envisaged transfer of crystallised debt of the Corporate Debtor to Holding Company and payment of combined debts into three Buckets was done.
- vii. Part one included part of debts of all Lenders in which share of the SBI was ₹ 2833.82 Crores (Holding Company’s debt ₹ 2650.73 Crores and Corporate Debtor’s debt ₹ 183.09 Crores). The debt was to be settled by transfer of identified Cement Plants of Holding Company and Corporate Debtor, including the Plant of Balaji Plant to UltraTech Cement Ltd.
- viii. Bucket 2a included debt of all lenders which was treated as sustainable debt. The share of SBI in the Bucket 2a was ₹1069.66 Crores (Holding Company debt of ₹ 889.16 Crores and Corporate Debtor debt is ₹ 180.50 Crores). The entire debt of all lenders became the debt of Holding Company in Master Restructuring Agreement to be executed.
- ix. Bucket 2b included the debt out of which share of SBI was ₹3049 Crores (Holding Company debt of ₹ 3033.41 Crore and Corporate Debtor’s debt

of ₹15.59 Crores). The Bucket 2b debt was to be transferred to a Real Estate SPV.

- x. Consequent to the approval of the restructuring Plan, the Balaji Plant of the Corporate Debtor and certain other Plants were sold to UltraTech Cement Ltd. and debt of SBI stood discharged by payment received from sale of Plants.
- xi. Debt of Bucket 2 was shown in the Balance Sheet of Holding Company and in the Balance Sheets of the Corporate Debtor from Financial Year 2017-18 onwards, the debt was shown as NIL. With regard to debt of Bucket 2, a Scheme was submitted before the Adjudicating Authority for transfer of debt to the SPV as contemplated in the debt restructuring.
- xii. Application for approval of the Scheme was submitted before the Adjudicating Authority which remained pending and came to be rejected by the Adjudicating Authority on 03.06.2024, which Order has already been challenged by filing an Appeal in this Tribunal which Appeal is pending consideration.
- xiii. The Corporate Insolvency Resolution Process (`CIRP') against another subsidiary of the Holding Company namely `JIL' of the Holding Company (`JAL') was put into insolvency by Order, on an Application filed by ICICI Bank by an Order passed by the Adjudicating Authority in the year 2017. The challenge to the CIRP of the `JIL' was made in the Hon'ble Supreme Court by means of **Writ Petition(s) (Civil) No. 744/2017**, in the matter of **`Chitra Sharma & Ors.' Vs. `Union Bank of India & Ors.'**, which Writ Petition was filed by Homebuyers of `JIL' and `JAL'.

- xiv. In the said Writ Petition, the Hon'ble Supreme Court has stayed the Order of CIRP of 'JIL' and has issued various directions including the directions to 'JAL' to deposit an amount of ₹ 2000 Crores.
- xv. Master Restructuring Agreement was entered between 'JAL' and Lenders on 31.10.2017, which also provided creation of security interest to secure the lending.
- xvi. It is also relevant to notice that SBI has issued Sanction Letter dated 20.06.2017, which provided for bifurcation of debt of Holding Company 'JAL' and Corporate Debtor.
- xvii. It appears that on account of directions passed by the Hon'ble Supreme Court in '**Chitra Sharma & Ors.**' (*Supra*), security interest could not be created by the Holding Company.
- xviii. The issue came before the JLF Meeting where it was noted that security interest could not be created due to several reasons and decision was taken to hold till way out is found.
- xix. Section 7 Application was also filed against the Jaiprakash Associates Ltd. by ICICI Bank Ltd. in the year 2018 in which Application, an Order has been passed on 03.06.2024, admitting Section 7 Application, which Order is under consideration in Appeal filed by the Suspended Director of the Jaiprakash Associates Ltd., being *Comp. App. (AT) (Ins.) No. 1158 – 1162 of 2024*.
- xx. In the year 2023, the SBI filed Section 7 Application against the Corporate Debtor, Jaypee Cement Corporation Ltd. claiming a default of an amount of ₹363,77,98,167.08/-. 'Date of default' was mentioned as 03.03.2016. In the Section 7 Application Notices were issued and the Corporate Debtor filed its Reply. Corporate Debtor in its Reply *Comp. App. (AT) (Ins.) No. 1565 of 2024*

pleaded that there is no debt in existence against the Corporate Debtor, since as per Restructuring Agreement dated 31.10.2017, debt of Bucket 1 with regard to exposure of Lenders, including the SBI has already been fulfilled by payments made out of sale of Plants including Balaji Plant of the Corporate Debtor to UltraTech Cement.

- xxi. With regard to Bucket 2a, it was pleaded that the entire debt of Corporate Debtor has been transferred to 'JAL' entire debt is transferred (Financial Creditor shares in Corporate Debtor was ₹183.09 Crores).
- xxii. With regard to Bucket 2b, it was stated that debt as per the Master Restructuring Agreement, it was decided to transfer to separate Real Estate SPV. Financial Creditors shares of debt payable by Corporate Debtor under Bucket 2b was only 15.59 Crores to the SBI.
- xxiii. It is submitted that for transfer to SPV Scheme, Application was filed before the NCLT, which was admitted.
- xxiv. In reply to Section 7 Application, the Financial Creditor has pleaded that restructuring which was approved by JLF could not be implemented because security as per restructuring could not be created by Holding Company. It was pleaded that restructuring was never implemented hence the entire dues of the Lender are still in default and Section 7 Application has been filed for debt and default which is still due on the Corporate Debtor.

**3.** Adjudicating Authority, heard the Parties and by Order impugned dated 22.07.2024, admitted Section 7 Application. Challenging the Order this Appeal has been filed.

**4.** We have heard Mr. Abhijeet Sinha Learned Sr. Counsel appearing on behalf of the Appellant and Mr. Ankur Mittal Learned Sr. Counsel appearing on behalf of the Respondent.

**5.** Mr. Abhijit Sinha Learned Sr. Counsel, in support of the Appeal submits that by virtue of Restructuring Agreement which was approved by JLF after due deliberations no debt remain due on the Corporate Debtor. It is submitted that debt of Corporate Debtor as well as the Holding Company was restructured and under the restructuring Bucket 1, the debt was to be discharged, which included the debt of Corporate Debtor of ₹183.09 Crores, by sale of Cement Plant including the Plant of Balaji Cement Plant to UltraTech Cement Ltd., which transfer was approved by the Adjudicating Authority by Order dated 02.03.2017 for completing the transfer of various Cement Plants to UltraTech Cement Ltd. From the consideration received from the sale of Cement Plants including Balaji Plant, the debt of SBI was fully paid and nothing is due in Bucket 1.

**6.** It is submitted that the debt of Bucket 2a including the debt of Corporate Debtor of ₹ 180.50 Crores which alongwith the debt of Holding Company was transferred to Holding Company for which Sanction Letter dated 20.06.2017 was issued by the SBI and no debt remained to be paid by the Corporate Debtor after the transfer of the debt. In the Balance Sheets of the Corporate Debtor, no debt is reflected due to the above and Balance Sheets have been duly submitted by Holding Company to SBI from time to time and at no point of time any objection was raised. Bucket 2b debt also including debt of ₹15.59 Crores of the Corporate Debtor, which alongwith the debt of Holding Company was decided to be transferred to Real Estate SPV and for transfer to the SPV Applications were filed before the NCLT which was *Comp. App. (AT) (Ins.) No. 1565 of 2024*

approved in the first motion by all the Lenders. However, on second motion, the Scheme was rejected by Order dated 03.06.2014 against which Appeal has already been filed and pending.

**7.** It is submitted that when no debt is due on the Corporate Debtor, hence Application filed under Section 7 was not maintainable. It is submitted that Restructuring Agreement was never revoked by Lenders. After the restructuring an amount of ₹11,600 Crores has been paid by the Holding Company to Lenders. Lenders had power to revoke the restructuring which was never exercised and parties acted and changed their circumstances after the approval of the restructuring. It is submitted that 'JAL' has already put in insolvency by Order passed by the Adjudicating Authority dated 03.06.2024, against which also an Appeal is filed, being **Comp. App. (AT) (Ins.) No. 1158-1162 of 2024** in the matter of '**Sunil Kr. Sharma, Suspended Board of Directors of Jaiprakash Associates Ltd.' Vs. 'ICICI Bank Ltd. & Anr.'**, which is pending consideration. The issue pertaining to restructuring done with regard to debt of Corporate Debtor and Holding Company is also under consideration in the said Appeal.

**8.** Mr. Ankur Mittal Counsel for the SBI refuting the submissions of the Counsel for the Appellant submits that the restructuring which was although approved by all Lenders could not be implemented because of the Holding Company failed to provide for security which was contemplated to be provided under the Restructuring Agreement. Mr. Mittal has referred to and relied on the Order passed by the Hon'ble Supreme Court in **Writ Petition(s) (Civil) No. 744/2017, 'Chitra Sharma & Ors.' (Supra)**. Counsel for the SBI has referred to the Order of the Hon'ble Supreme Court passed on 11.09.2017 in the aforesaid Writ Petition where 'JAL' was directed to deposit an amount of *Comp. App. (AT) (Ins.) No. 1565 of 2024*



₹ 2000 Crores in the Court. Mr. Mittal has also referred to the Order of the Hon'ble Supreme Court passed on 10.01.2018, where 'JAL' was enjoined to create any kind of third-party interest in the Asset. Mr. Mittal also referred to the Letter of Reserve Bank of India ('RBI') dated 30.08.2018, which was addressed to the Executive Director of ICICI Bank where RBI has expressed the opinion that restructuring was null and void. It is submitted that RBI mentioned that implementation condition not satisfied, the RBI also in the said Letter has written to the ICICI Bank to initiate CIRP against the 'JAL'. Mr. Mittal further submits that both 'JAL' and Corporate Debtor time and again has acknowledged the debt. He has referred to the Letter issued by 'JAL' which was also signed by the Corporate Debtor. He has referred to one of the Letters dated 27.05.2020 which contains the acknowledgement by Holding Company as well as the Corporate Debtor. Mr. Mittal further submits that restructuring having not been implemented the entire debt prior to restructuring stand revived and the Corporate Debtor, admittedly owed debt to the SBI prior to restructuring of the debt, hence the debt and default continue the Adjudicating Authority did not commit any error in admitting Section 7 Application.

**9.** We have considered the submissions of Counsel for the Parties and perused the record.

**10.** The materials on the record indicates that JLF was constituted in pursuance of the Orders issued by RBI and JLF approved the restructuring proposal of the debt of Holding Company as well as the Corporate Debtor. The JLF has approved the Composite Debt Restructuring Proposal in JLF Meeting held on 18.05.2017. Master Restructuring Agreement was also executed on 31.10.2017. Adjudicating Authority in the Impugned Order has noted the *Comp. App. (AT) (Ins.) No. 1565 of 2024*

pleas which was submitted by the Corporate Debtor before the Adjudicating Authority. Corporate Debtor in its Reply, given all facts and the relevant details and data. Financial Creditor has also filed its Rejoinder and it is useful to notice the plea taken by Financial Creditor in its Reply. Adjudicating Authority has noticed in Paragraph 45 the plea which was advanced by the Financial Creditor with regard to restructuring in three Buckets. Paragraph 45 is as follows:

*“45. It is further submitted that the lenders gave in-principal approval to the restructuring of DRP on 14.06.2017, under which the debt was divided into three buckets; namely Bucket 1, Bucket 2A, and Bucket 2B, which were explained by the Applicant as follows:*

*I. Bucket 1: Partial Debt of Rs. 11,689 Crs. (Financial Creditor’s Share Rs. 2,534.05 Crs.) to be cleared from the sale of cement assets to UltraTech. The transaction was completed in Oct, 2017. Total deal amount of Rs. 11,689 Cr. Includes sale proceeds of JCCL Balaji Cement Plant divestment to UTCL of Rs. 1,170.13 Crs. Financial Creditor’s Share is Rs. 183.09 Crs. and the same has been received and adjust towards bank dues.*

*II. Due to forest land clearance, holdback amount of Rs. 1,000.00 Crs (Financial Creditor’s Share : Rs. 264.56 Crs) (part of Rs. 11,689.00 Crs.) pertaining to JP Super Plant is yet to receive from UTCL. As per contract, last date of receiving amount was 30.06.2022. As holdback amount was not received, JAL has invoked arbitration claim against Ultratech.*

*III. Bucket 2A: Sustainable Residual Debt of Rs. 5,072.00 Crs. (Financial Creditor’s Share : Rs. 1,069.01 Crs.) to be serviced from the cash flow from the operations of residual business of JAL. It also envisaged shifting of JCCL’s Shahabad Cement Plant exposure of Rs. 1,178.00 Crs to JAL (Financial Creditor’s Share being Rs. 180.00 Crs.)*

*IV. Bucket 2b : Unsustainable Debt of Rs. 13,590.00 Crs. (Financial Creditor’s Share : Rs. 3,049.11 Crs.) to be transferred to a separate Real*

*Estate SPV against OCDs for 20 years @ 9.50% p.a. simple interest redeemable from 16th years onward backed by land of 1039 acres (already mortgaged to lenders) of the company having value of Rs. 14,156.00 Crs. (Financial Creditor's Share : Rs. 6,209 Crs.)*

*V. Lenders approved creation of Real Estate SPV (RESPV). Application was filed before this Hon'ble Tribunal on 22.01.2018 by Company for approval for creation of RESPV which is yet to be approved."*

**11.** After noticing the submission of both the Parties, Adjudicating Authority in the Order in detail has noted the respective submissions advanced by both the Parties and findings of the Adjudicating Authority are contained in Paragraph 58 to Paragraph 93. Findings entered in Paragraph 72 with regard to three Buckets are as follows:

*"72. As contended by the Ld. Counsel for the Financial Creditor, the alleged settlement of entire debts as approved under CRRP is incorrect and wrong. He provided following details showing that the debts of JCCL put in three buckets are still not settled.*

***"a. As regards Bucket 1:***

*Partial Debt of Rs 11,689 Crs (Financial Creditor's Share Rs 2,534.05 Crs) to be cleared from the sale of cement assets to Ultratech. The transaction was completed in Oct 2017. Total deal amount of Rs 11,689 crores includes sale proceeds of JCCL Balaji Cement Plant divestment to UTCL of Rs 1,170.13 crores. SBI share is Rs 183.09 crores and the same has been received and adjust towards bank dues.*

*Due to forest land clearance, holdback amount of Rs 1,000.00 Crs (Financial Creditor's Share : 264.56 Crs) (part of Rs 11,689.00 Crs) pertaining to JP Super Plant is yet to receive from UTCL. As per contract, last date of receiving amount was 30.06.2022. As holdback amount was not received, JAL has invoked arbitration claim against Ultratech.*

***b. As regards Bucket 2a***

*Sustainable Residual Debt of Rs.5,072.00 Crs (Financial Creditor's Share : Rs.1,069.01 Crs) was to be serviced from the cash flow from the operations*

*of residual business of JAL It also envisaged shifting of JCCL's Shahabad cement plant exposure of Rs. 1,178.00 Crs to JAL (Financial Creditor's Share being Rs.180.00 Crs). Thus, it is wrong to allege that the debt has ceased to be the debt of JCCL.*

**c. As regards Bucket 2b**

*Unsustainable Debt of Rs. 13,590.00 Crs. (Financial Creditor's Share : Rs. 3,049.11 Crs) to be transferred to a separate Real Estate SPV against OCDs for 20 years @ 9.50% p.a. simple interest redeemable from 16th years onward backed by land of 1039 acres (already mortgaged to lenders) of the Company having value of Rs.14,156.00 Crs (Financial Creditor's Share : Rs.6,209 Crs).*

*Lenders approved creation of Real Estate SPV (RESPV). Application was filed with NCLT, Allahabad on 22.01.2018 by Company for approval for creation of RESPV which is yet to be approved. Thus, it is wrong to allege that the debt has ceased to be the debt of JCCL”*

**12.** When we look into the findings as contained in Paragraph 72, it is clear that “SBI share ₹ 183.09 Crores and the same has been received and adjusted towards Bank dues”, thus payment under Bucket 1 appears to have been accepted, whereas Financial Creditor case was that whole amount pertaining to Jaypee Super Plant is yet to receive from UTCL. The above prima facie proves that insofar as exposure of Balaji Plant of the Corporate Debtor, the amount stands paid to the SBI.

**13.** With regard to Bucket 2a in restructuring, the Appellant's case is that after the restructuring the Corporate Debtor's Balance Sheet mentions the debt as NIL, which is continuously shown in the Balance Sheet and submitted to the SBI by the Holding Company and at no point of time any demand or Letter was received from the SBI from 2017 to 2023, to the Corporate Debtor that it is liable to make payment. It is submitted that Financial Creditor was also under clear understanding that amount has to be paid now by Holding Company.

**14.** The submission of the Financial Creditor's Counsel is that security having not been created as per Clause 5.8 of the Master Restructuring Agreement, the restructuring has not been implemented. It is further submitted that Adjudicating Authority has also noted that 'JAL' has submitted a final revised restructuring proposal on 25.05.2023, which indicates that 'JAL' itself is aware that restructuring could not been implemented. It is submitted by the Counsel for the Bank that debt of Corporate Debtor is still reflected in the records of the Financial Creditor, and it has not been deleted.

**15.** We have noted above that the insolvency has already commenced against the Holding Company 'JAL' by an Order passed by the Adjudicating Authority dated 03.06.2024 against which Order, the Appeal has been filed in this Tribunal being **Comp. App. (AT) (Ins.) No. 1158-1162 of 2024** in the matter of '**Sunil Kr. Sharma, Suspended Board of Directors of Jaiprakash Associates Ltd.' Vs. 'ICICI Bank Ltd. & Anr.'**, in which both the Parties have appeared and Appeal is being considered. Some of the issues which are sought to be raised in this Appeal, especially the restructuring which was approved by JLF and the Restructuring Agreement dated 31.10.2017 are sought to be canvassed in the said Appeal.

**16.** It is also contended by the Appellant Counsel that SBI has never revoked the restructuring which power is specifically conferred under the Clause of Master Restructuring Agreement. As far as Bucket 2b is concerned, the entire debt of the Holding Company of Corporate Debtor was to be transferred to the Real Estate SPV admittedly, the debt of Corporate Debtor towards Bucket 2b was ₹15.59 Crore. It is submitted that with regard to transfer to the SPV of debt, an Application was filed before the Adjudicating *Comp. App. (AT) (Ins.) No. 1565 of 2024*

Authority which was approved by the Lenders in the first motion. However, in the second motion Lenders did not grant the approval, hence the Application stand rejected on 03.06.2024, which Order is also being filed and challenged by the Holding Company. After restructuring till filing of the Section 7 Application, there is no material to indicate that Financial Creditor were of the view that restructuring having not implemented, the Corporate Debtor is to discharge its obligation for long 6 years till filing of Section 7 Application in 2023. Corporate Debtor was never asked to discharge its debt.

**17.** Learned Counsel for the Financial Creditor submitted that both Holding Company of Corporate Debtor has acknowledged the debt from time to time. There cannot be any dispute that there is acknowledgement by both Company and the Corporate Debtor, but Corporate Debtor's case throughout has been that its debt has been dealt in the Master Restructuring Agreement and debt of Bucket 1 have already been paid off and debt of Bucket 2 has been transferred to the Holding Company and it is the Holding Company which has to discharge accepting the aforesaid. The SBI has issued a Sanction Letter dated 20.06.2017, where transfer of debt has been acknowledged.

**18.** In the facts of the present case, where insolvency against the Holding Company has already commenced by Order dated 03.06.2024, which is under challenge in **Comp. App. (AT) (Ins.) No. 1158-1162 of 2024** in the matter of **'Sunil Kr. Sharma, Suspended Board of Directors of Jaiprakash Associates Ltd.' Vs. 'ICICI Bank Ltd. & Anr.'**, which is under consideration and another Order passed on 03.06.2024, rejecting the Application for approval of the Scheme for transfer of debts as contained in Bucket 2b an Appeal has been filed and pending consideration.

**19.** We are of the view that before proceeding further in this Appeal, we need to await the Orders of this Tribunal in the aforesaid Appeal. We after hearing the parties on 09.08.2024, while reserving this Order has already directed that Committee of Creditors (‘CoC’) be not constituted. Appellant has made out the prima facie case for issue of Notice and continuance of Interim Order.

**20.** Issue Notice.

**21.** Let Reply be filed within two weeks. Rejoinder, be filed within two weeks thereafter.

List this Appeal ‘For Admission’ on **17<sup>th</sup> September, 2024**. In the meantime, the CoC in pursuance of the Impugned Order shall not be constituted, however, the IRP shall ensure that Corporate Debtor is run ‘as a Going Concern’.

**[Justice Ashok Bhushan]  
Chairperson**

**[Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**13<sup>th</sup> August, 2024**

*himanshu*