

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

CP (IB) NO.26/ALD/2023 With IA No.583/2023

(In the matter of Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

STATE BANK OF INDIA

Having its Corporate Centre At:

Madame Cama Road
Nariman Point, Mumbai

Having one of its Branch at:

Stress Asset Management Branch- II,
11th Floor, Jawahar Vypar Bhawan,
1, Tolstoy Marg, New Delhi- 110001

.....APPLICANT/FINANCIAL CREDITOR

Versus

JAYPEE CEMENT CORPORATION LIMITED

Having registered & Corporate Office at:

SECTOR 128, NOIDA- 201304, Uttar Pradesh

Address where books of account and papers are maintained :

64/4 Site- 4 Industrial Area Sahibabad Ghaziabad 201010

CIN: U74999UP1996PLC045701

.....CORPORATE DEBTOR

AND IN THE MATTER OF:

JAYPEE CEMENT CORPORATION LTD.

..... APPLICANT/CORPORATE DEBTOR

Versus

STATE BANK OF INDIA

.....RESPONDENT/FINANCIAL CREDITOR

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Order pronounced on 22.07.2024

Coram:

Mr. Praveen Gupta : Member (Judicial)
Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Sandeep Arora, Adv. : *For the Financial Creditor & Res.
in IA No.583/2023*
Sh. R. P Agarwal Sr. Adv. : *For the Corporate Debtor &
assisted by Applicant in IA No.583/2023*
Sh. Abhishek Tripathi, Adv.

ORDER

IA No.583/2023

This IA is filed by the Corporate Debtor for placing on record additional document i.e. minutes of meeting of JLF dated 15.10.2018. The IA is allowed and the document is taken on record.

CP (IB) NO.26/ALD/2023

1. The State Bank of India (hereinafter referred as the "**Applicant/Financial Creditor/SBI**") has filed the present petition on 18.03.2023 under Section 7 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred as "**IBC**") seeking initiation of the Corporate

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Insolvency Resolution Process (herein after referred as "**CIRP**") against M/s Jaypee Cement Corporation Limited (hereinafter referred as "**Respondent/Corporate Debtor/JCCL**") read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules 2016 in Form 1 containing all the information as required in Part I, II, III, IV and V of the Form showing a total financial debt of Rs.363,77,98,167.08/- (Rupees Three Hundred and Sixty three Crores Seventy Seven Lacs Ninety Eight Thousand One Hundred and Sixty Seven and Eight paise only) under default with date of default being mentioned as 03.03.2016 in respect of various loans under five different facilities for which details have been provided in **Annexure 35** attached with Vol. IV (Pg 533-617) and Annexure 50 attached with Vol. V (Pg 725-760) of the Application.

2. The Applicant is a body corporate constituted under the State Bank of India Act, 1955. Vide the gazette notification dated 22nd February 2017, w.e.f. 01.04.2017, the Applicant with the sanction of the Central Government and the Reserve Bank of India has acquired by way of



amalgamation, the business including the assets and liabilities of *inter alia* State Bank of Bikaner and Jaipur, State Bank of Hyderabad, State Bank of Mysore, State Bank of Patiala, State Bank of Travencore and Bharatiya Mahila Bank. These banks earlier being subsidiaries of SBI had provided financial facilities to the Corporate Debtor JCCL.

3. The Corporate Debtor i.e. Jaypee Cement Corporation Limited (JCCL) has been incorporated on 31st July, 1996 with registered Office at Sector 128, Noida. It is engaged in the business of manufacturing, processing, preparing, refining, importing, exporting, purchasing and selling all kinds of Cement and various other business activities.

4. The Applicant/Financial Creditor sanctioned various loans facilities to the Corporate Debtor. They are as under:

- I. Term loan to the tune of Rs. 1310,00,00,000/- (Rupees One Thousand Three Hundred and Ten Crore Only) ("Facility 1") under the Common Loan Agreement dated September 23, 2011 (referred herewith "Existing Facility").

- II. Term loan to the tune of Rs. 1050,00,00,000/-
(Rupees One Thousand and Fifty Crore Only)
("Facility 2") under the Common Loan Agreement
dated June 24, 2015 read with Addendum No. 1 to
Common Loan Agreement dated April 22, 2014
Addendum No. 2 to Common Loan Agreement dated
June 24, 2015 (collectively "JBCP Loan Agreement");
- III. Rupee term loan to the tune of Rs. 145,00,00,000/-
(Rupees One Hundred and Forty-Five Crore Only)
("Facility 3") under the Common Loan Agreement
dated June 24, 2015 (referred herewith "COP Loan
Agreement");
- IV. Rupee term loan to the tune of Rs. 913,00,00,000/-
(Rupees Nine Hundred and Thirteen Crore Only)
("Facility 4") read with Common Loan Agreement
dated September 5, 2011 (referred herewith "Existing
Facility");
- V. Term loan to the tune of Rs. 618,00,00,000/- (Rupee
Six Hundred and Eighteen Crore Only) ("Facility 5")



under Supplementary and Amendatory Loan Agreement dated September 22, 2015.

5. Details of the loans under the five facilities in respect of which the Corporate Debtor has defaulted in repayment and the default amount as mentioned in the Application are provided at Sl. No. 1 of Part IV of the Application. In support of his contentions showing that the Corporate Debtor has defaulted on repayment of loans under these five facilities, the Financial Creditor has also annexed the computation relating to default amount, dates of default and days of default as **Annexure 24** in Vol II (pg 337) to the Application. The same has been reproduced hereunder:



Total amount of default

Xcb Sr. No.	Facility	Total Overdue (as on February 15, 2023) (INR)		
		Principal Overdue	Interest Overdue	Penal/Defa ult Interest
1.	Shahaba d Facility Loan account number: 6410387 3564	46,40,25,237	31,70,21,199.48	3,33,70,652



2.	Shahabad Facility Loan account number: 67196678199	42,24,43,987.98	28,86,12,965.64	3,03,80,312.17
3.	Shahabad Facility Loan account number: 62243315912	39,08,13,245.82	26,70,02,900.03	2,81,05,568.42
4.	Shahabad Facility Loan account number: 65153418362	51,90,49,270.00	35,46,13,518.93	3,73,27,738.84
5.	JBCP Facility Loan account number: 64175768498	6,74,39,314.94	13,35,13,941.81	1,40,54,099.14
6.	JBCP Facility Loan account number: 64172247923	86,33,206.98	1,70,91,714.17	17,99,127.81
7.	JBCP Facility Loan account	6,74,39,372.96	13,35,14,055.31	1,40,54,111.08

	number: 6127690 7768			
8.	JBCP Facility Loan account number: 6126592 4357	86,23,351.06	1,70,72,201.76	17,97,073.87
Total		3,63,77,98,167.08		

6. Details of Security Interest available in respect of these loans under five different facilities are provided at Sl. No. 1 of Part V of the Application. Copies of loan agreements along with details of securities, repayments schedules, interest payment schedules etc. in relation to above mentioned five loan facilities have been attached with the Application in **Annexure 37 Vol IV (pg. 620-636)** and **Vol. II (pg. 260-285)** of the Application. Copies of documents with dates and details of all disbursements in relation to each of these facilities have been attached to the Application as **Annexure 16 to 23 Vol. II (pg. 301-336)**.
7. In **Annexure 8 Vol. II (pg. 151-199)**, the Applicant has also attached the "**Record of Default (ROD)**" in Form D issued by Information Utility i.e. National E-Governance

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Services Limited (NeSL) in respect of the default committed by the Corporate Debtor JCCL on repayment of outstanding debts. A number of Forms D issued by NeSL in respect of default on repayment of debts under various financial facilities have been enclosed in this Annexure. One of such Forms D is reproduced below showing default which is more than the threshold limit of Rs. 1.0 crore: -

Date of Submission	26-02-2021 14:02:17
Type of Submission	Default Submission
Submission ID	28
Submitted by (CREDITOR)	M/s STATE BANK OF INDIA.
Debtor	M/s JAYPEE CEMENT CORPORATION LTD.
Default Amount	422443987.00
Date of Default	03.03.2016
Status of Authentication by Debtor	DEEMED TO BE AUTHENTICATED
In case Authentication is Performed by the Debtor, date of completion of authentication	03-01-2022 10:23:18

8. In Annexure 10 to 12 Vol. II (pg. 242-246), the Applicant Bank/Financial Creditor has also attached copies of Acknowledgement Letters dated 27.05.2020, 21.06.2021 and 30.05.2022 executed and signed by Corporate Debtor,

confirming its indebtedness in the said amount(s) to the Bank.

9. After reliance having been placed on all the details and documents in the Application as discussed above, the Applicant/Financial Creditor has pleaded that the Corporate Debtor has defaulted in making payment in excess of Rs. 1,00,000/- to the Financial Creditor, hence this Application to be admitted and order for initiating the CIRP under section 7 of IBC read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority Rules 2016 may be passed.

REPLY ON BEHALF OF THE CORPORATE DEBTOR

10. In response to the above application, the Corporate Debtor has filed reply on 24.07.2023 stating that the Corporate Debtor is wholly owned subsidiary of Jaiprakash Associates Limited (hereinafter referred to as "JAL").
11. Being a public limited company, the Corporate Debtor has diverse business portfolio. It is engaged in the business of Civil Engineering Construction; manufacture & marketing of Cement; manufacture, supply and repairing of various



hydro mechanical gates and equipment meant for dams, barrages etc. in its Heavy Engineering Workshop; production of different kinds of Hi-tech Castings; Hospitality and Real Estate business, etc.

12. It is further stated in the reply that a consortium of lenders sanctioned various credit facilities for the purpose of financing the projects of the Corporate Debtor namely, JCCL's Balaji Cement Plant Project located at Jaggyapeta Town, District Krishna in Andhra Pradesh of 10500 TPD Clinker Capacity and 5.00 MMTPA Cement Capacity along with 35 MW coal fired power plant and Shahabad Cement Plant which is located at Shahabad, District Kalaburagi in Karnataka of 1.20 million MTPA Grinding Unit and 60 MW Captive Power Plant capacity.



13. It is further stated that the State Bank of Bikaner and Jaipur, State Bank of Hyderabad, State Bank of Mysore, State Bank of Patiala, State Bank of Travancore and Bharatiya Mahila Bank, which later merged with State Bank of India with all their assets and liabilities with effect from 01.04.2017 vide Gazette Notification dated 22.02.2017 have sanctioned and disbursed the loans from

2012 to 2015, which became NPA on 08.03.2016. In the present petition u/s 7, prayer has been made for initiation of CIRP against the Corporate Debtor JCCL on account of default of repayment of outstanding amount out of the above loan facilities.

14. As further stated in the reply, the performance of JCCL and JAL started declining from the financial year 2014-15 because of reasons which was beyond the control of management. Consequently, there was pressure on liquidity which resulted in delays in meeting the obligations towards the lenders and others, though the assets base remained considerably higher than the liabilities.



15. In order to deal with liquidity crunch of JCCL and its holding company JAL and finalize an appropriate Resolution Plan for the two companies, a Joint Lenders Forum (hereinafter referred to as "JLF") comprising all the banks/FIs which had financed the projects/operations of JCCL and JAL, was constituted on 18.01.2014 in terms of RBI Circular dated 26.02.2014. The RBI Circulars and JLF constituted thereunder have a statutory mandate.

16. The first meeting of JLF took place on 18.12.2014. After extensive discussions in various JLF meetings and its Core Committee, a comprehensive Resolution Plan (referred to as "DRP") for JAL and JCCL was approved during the JLF meeting on 18.05.2017.
17. It is further stated that the composite Debt Restructuring Proposal (DRP) was approved in the JLF Meeting held on 18.05.2017, but was subject to approval by the Independent Evaluation Committee (hereinafter referred to as "IEC"). As per clause 28.3.3 of the Master Circular dated 01.07.2015 issued by the Reserve Bank of India, the IEC comprises of independent professionals drawn from various professional institutes like Institute of Engineers, Institute of Valuers, Institute of Cost Accountants of India and Institute of Company Secretaries of India. As per RBI Techno Economic Guidelines, the basic role of IEC is to evaluate the Techno Economic Viability (TEV) study, restructuring package and viability aspects to ensure that the terms of restructuring are fair to the lenders. A copy of RBI Master Circular dated 01.07.2015 has been annexed as **ANNEXURE - R- 3** with the Reply. In the Second IEC



meeting held on 19.06.2017, DRP was approved by IEC and termed it as Comprehensive Reorganization & Restructuring Plan (CRRP).

18. After approving the CRRP, the IEC scheduled its meeting on 22.06.2017 which was attended by the lenders of JAL as well as JCCL. In the said meeting, the ICICI Bank, being the leader of the Consortium, made a presentation and placed all relevant facts before the lenders to enable them to vote on the composite DRP. The plan was put to vote separately by the lenders of JAL and by the lenders of JCCL. The Plan was approved by both the groups of lenders. The finally approved DRP is known as Comprehensive Reorganization & Restructuring Plan (hereinafter referred to as "CRRP").



19. After approval of the CRRP, different credit facilities were granted by the SBI (including loans granted by erstwhile subsidiaries of SBI) to JAL and JCCL. The due date of outstanding debt as Master Restructuring Agreement dated 31.10.2017 is 30.09.2016 along with interest due up to the aforesaid date.

20. It is stated that the CRRP envisaged transfer of above crystalized debts of JCCL to JAL and trifurcation of such combined debt into three Buckets -

(i) **Bucket 1:** Part of Debts of all lenders aggregating Rs. 11189.00 Cr. (JAL's debt of Rs. 10018.87 Cr.+ JCCL's debt of Rs. 1170.13 Cr.) were placed in this Bucket. The share of SBI in this Bucket 1 debt was Rs. 2833.82 Cr (JAL's debt of Rs. 2650.73 Cr. and JCCL's debt of Rs. 183.09 Cr.). This debt was to be settled by transfer of identified cement plants of JAL/JCCL to Ultra Tech Cement Limited.

(ii) **Bucket -2a:** Part of Debts of all lenders aggregating Rs. 5072.00 Cr. (JAL's debt of Rs. 4293.90 Cr.+ JCCL's debt of Rs. 778.10 Cr.) was treated as "sustainable debt" and placed in this Bucket. The share of SBI in this Bucket 2a debt was Rs. 1069.66 Cr (JAL's debt of Rs. 889.16 Cr. and JCCL's debt of Rs. 180.50 Cr.). The entire debt of Rs. 5072.00 Cr was to become the debt of JAL in terms of Master Restructuring Agreement to be executed.

(iii) **Bucket-2b-** Part of Debts of all lenders aggregating Rs. 13590.02 Cr. (JAL's debt of Rs. 12929.53 Cr.+ JCCL's debt

of Rs. 660.49 Cr.) was treated as "other debt" i.e. unsustainable debt. The share of SBI in this Bucket 2b debt was Rs. 3049 Cr (JAL's debt of Rs. 3033.41 Cr. and JCCL's debt of Rs. 15.59 Cr.). The Bucket 2b debt with equivalent security was to be transferred to an SPV.

21. The outstanding dues as on 30.09.2016 and bifurcation into three Buckets in terms of the approved CRRP is summarized below in the Table:

(Rs. in Crs.)

Description	Outstanding dues of all lenders			SBI's share		Total
	JAL	JCCL	Total	JAL	JCCL	
Bucket 1	10018.87	1170.13	11189.00	2650.73	183.09	2833.82
Bucket 2a	4293.90	778.10	5072.00	889.16	180.50	1069.66
Bucket 2b	12929.53	660.49	13590.02	3033.41	15.59	3049.00
Total	27242.30	2608.72	29851.02	6573.30	379.18	6952.48

22. Upon final approval of CRRP, the Financial Creditor issued three fresh Sanction Letters addressed to JAL which were accepted. The details of the fresh Sanction Letters issued by the Financial Creditors are given below: -

S.N.	Date/ Ref No. of Sanction Letter	GIST OF TERMS OF SANCTION LETTER
1	CAG-II/AMT2/2017-18/65 dated 20.06.2017	For TL of Rs.2834.33 Crs. (- Bucket- 1 Transferred to UTCL), -2a – Rs. 1069.01 Crs. (MRA debts to be serviced by the Company), Bucket 2b- Rs. 3049.11 Crs. To be transferred to Real Estate SPV.
2	CAG-II/AMT2/2017-18/66 dated 20.06.2017	For Working Capital Term Loan (WCTL) of Rs. 80 Crs.
3	CAG-II/AMT2/2017-18/67 dated 20.06.2017	For Holdback (CP-1) amount of Rs. 264.62 Crs. (out of total receivable of Rs. 1000 Crs. From UTCL)

23. In the instant petition, only first sanction letter no. CAG-II/AMT2/2017-18/65 dated 20.06.2017 is relevant and hence a copy this sanction letter only is annexed hereto and marked as **ANNEXURE- R- 11**. Annexure B to the above Sanction Letter, the SBI has confirmed that *"The existing RTL facilities sanctioned to the Company (inclusive of erstwhile Associate Banks' exposure) to JAL and JCCL shall be divided into buckets as mentioned below:*



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Transfer to UltraTech (UTCL) (Bucket 1)	Residual Business of JAL (RTL Facility) (Bucket 2A)	Transfer of Real Estate SPV (Bucket 2B)#
Rs.2834.33 Crores	Rs.1069.01 Crores	Rs.3049.11 Crores

#Bucket wise figures are tentative and are subject to closing adjustments. Any remaining debt post transfer to UTCL (Bucket 1) and Residual business of JAL (Bucket 2A) shall be transferred to Bucket 2B."

The Corporate Debtor further confirmed vide item no.7 of the annexure-B "waiver of interest on Bucket 2B from 01.10.2016 till 31.05.2017 (appointed dated for formation of SPV is 01.06.2017)".

24. It is stated that in the above Sanction Letter dated 20.06.2017 (a) Amount of **Rs.2834.33 Crores** shown under the Column "Transfer to UltraTech (UTCL) (Bucket 1)" includes **JCCL's debt of Rs. 183.09 Crores;**
- (b) Amount of **Rs.1069.01 Crores** shown under the Column "Residual Business of JAL (RTL Facility) (Bucket 2A)" includes **JCCL's debt of Rs. 180.50 Crores;** and



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(c) Amount of **Rs.3049.11 Crores** shown under the Column "Transfer of Real Estate SPV (Bucket 2B)" includes **JCCL's debt of Rs. 15.59 Crores.**

The Sanction Letter issued by the Corporate Debtor confirms that consequent upon approval of DRP by the JLF, the debts of JCCL stood transferred to JAL and became the debts of JAL.

25. As emphasized in the Reply, the debts placed in three Buckets as above (including SBI's debts to JCCL), stand already settled in terms of the approved CRRP as under:

(a) **Settlement of Bucket 1 debt:** The Bucket 1 debts (including SBI's share for **JCCL's debt- Rs. 183.09 Crores**) stand fully repaid long back out of sale consideration of identified cement plants of JAL/JCCL to UltraTech Cement Limited. The transfer of various Cement Plants to UltraTach Cement Limited was completed through a Scheme of Arrangement which was sanctioned by this Hon'ble Tribunal vide **order dated 02.03.2017** (as corrected on 09.03.2017), passed in CP No. 49 of 2016. Thus, no part of the debt owed by JCCL to SBI, which was



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placed in Bucket 1 (**Rs. 183.09 Crores**), can be claimed to be outstanding.

(b) **Settlement of Bucket 2a debt:** The debt of JCCL (**Rs. 180.50 Crores**) placed in this Bucket stood transferred to JAL and in lieu thereof, SBI granted Facility A-1 & A-4 under the Master Restructuring Agreement. Thus, this part of the debt has ceased to be the debt of JCCL. Further, details in respect of this debt are given in subsequent paragraphs.

(c) **Settlement of Bucket 2b debt:** As stated in earlier paragraphs, the JCCL's debt of **Rs. 15.59 Cr** (out of SBI's total debt of Rs. 3049 Cr. Placed in this Bucket) also stood transferred to JAL and in turn the entire debt of **Rs. 13,590.02 Crores** placed in Bucket 2b (subject to adjustment of separate debt-asset swap opted by some lenders) is in process of transfer to SPV along with equivalent security (land parcels) by JAL under a Scheme of Arrangement, which is pending for sanction before this Tribunal. It may be noted that JCCL is not an applicant/petitioner in the above proceedings because its debts stood transferred to JAL in terms of CRRP. Thus,

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this part of the debt has also ceased to be the debt of JCCL.

26. Further, it is clearly mentioned in para 21 of the minutes of the meeting dated 18.10.2018 that upon implementation of the CRRP, the debts of JCCL was transferred to JAL. The relevant extract to the minutes is reproduced below:-

"21. A few lenders enquired about the implementation of the restructuring by the lenders within their system. It was informed that a legal opinion on effectiveness of the MRA has been circulated by Lenders Legal Counsel (AZB & partners). Also, Personnel Guarantee and Deed of Hypothecation (DOH) has also been executed. Therefore, the lenders may proceed with implementation of restructuring as envisaged. It was also informed that an amendment to MRA shall be circulated to lenders which will cover some amendments with regards to JCCL lenders who have shifted loans to JAL and some amendments in the Schedules to MRA".

A Copy of the Minutes of Meeting dated 18.01.2018

has been annexed as **Annexure-R-14** with the Reply.

27. As pointed out in the Reply, the fact of debt of JCCL having been transferred to JAL is also evident from the contents of the MRA which is reproduced below:-



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a. Schedule II starting from Page 98 of the MRA, gives details of "Existing Financial Facilities". At Serial No. 26 on Page 135 of MRA details of facilities sanctioned by SBI are mentioned. The outstanding debts of JCCL owed to SBI as on the cut-off date (30.09.2016), amounting to Rs. 40.87 Crores, Rs. 45.42 Crores, Rs. 50.90 Crores, and Rs. 40.87 Crores (**total- Rs. 178.06 Crores**), are shown at Serial No. 26 as part of "Existing financial Facilities" granted by SBI to JAL.

b. Clause 2.4 of the MRA (at MRA Page 23) provides that the principal amounts and interest thereon, outstanding as on the Cut-off date 30.09.2016 shall stand reconstituted into Facility A1, Facility A2, Facility A3 & Facility A4. The bank wise details of reconstituted facilities are given in Schedule IIIA to IIIE of MRA (at Pages 156 to 172). From the details of new facilities allowed to by SBI to JAL as per MRA are compiled in the following table:

Description of the Facility	Sanctioned Loan Amount (Rupees in Crs.)
A-1 (Residual JAL)	370.19

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A-1 (Undevolved Coal BG)	418.38
A-2 (Holdback)	264.62
A-3 (Core Area)	22.50
A-4 (Shahbad)	178.06
A-5 (FITL)	67.82
WCTL	80.00
TOTAL	1401.57

28. From the above Table, it is pointed out in the Reply that constituting part of A-1 facility & A-4 Facility granted by SBI to JAL represents the transferred amount of SBI's debt to JCCL which was placed in Bucket 2a. This fact is admitted by the bank specifically in para 18 of the synopsis of the instant petition which is mentioned below:-

"18. JCCL Balaji Cement Plant Disvestment to UTCL

a. JCCL was earlier operating a 5 MMTPA integrated cement plant Jaypee Balaji Cement Plant and 1.14 MMTPA Shahabad cement plant apart from ancillary units of asbestos Sheets, HEW and Casting Centre.

b. As part of Comprehensive Debt Restructuring Plan, JAL-UTCL deal was completed in June 2017. Under the deal UTCL took over 17.20 MTPA capacity including 5 MTPA Balaji Cement Plant of JCCL.

c. Out of the JAL-UTCL transaction in June 2017, an amount of Rs. 183.09 crore was received for adjustment of principal of Rs. 165.25 Crore and 17.84 crore towards and residual debts of Rs. 15.58 of JCCL had been proposed to be approved for transfer to Bucket 2B of Comprehensive



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Restructuring Plan of JAL and JCCL as per arrangement letter 20.06.2017.

d. As per Restructuring Plan of JAL and JCCL, JCCL gross outstanding of Rs. 379.16 Cr. (Balaji & Shahabad units together was treated in the following manner:

- i. SBI share of Rs. 183.09 out of total allocation of Rs. 1170.13 Cr. Of which 165.25 cr. Adjusted towards principal and 17.84 cr. Towards interest.*
- ii. Shahabad debts of Rs. 180.49 Cr. Had been proposed to be transferred to JAL under Bucket B1 as sustainable debt against the appropriation of Balaji proceeds towards JAL's debts.*
- iii. Residual debts of 15.58 cr. Of JCCL had been proposed to be transferred to JAL under Bucket 2B as unsustainable debts component as per arrangement letter dated 20.06.2017".*

29. Respondent has contended that Annual Accounts of FY 2017-2018, 2018-19, 2019-20, 2020-21 and 2021-22 submitted before the ROC shows the debt owed to the various lenders as NIL. Certified copies of the Annual Accounts FY 2017-2018, 2018-19, 2019-20, 2020-21 and 2021-22 have been annexed as Annexure-15,16,17,18 and 19 respectively. The Audited Accounts of the JAL forms the part of Jal which is the holding company of the Corporate Debtor.



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30. Respondent also contends that Revised Sanction Letter dated 20.06.2017 issued by the Financial Creditor as per the approved CRRP and MRA dated 31.10.2017 has been executed by various lenders including the Financial Creditor and the same has not been revoked and still in force.
31. Respondent further contend that Mr. Vikram Jha, AGM who is the authorized representative of the SBI is not entitled as per Regulation 76 and Regulation 77 of the SBI Regulations, 1955. Such authorized officers for initiating legal proceedings needs to be authorized by the Central Board or Executive Committee by notification in the Official Gazette.
32. Furthermore, Respondent contends that the Corporate Debtor does not owe any debt to the Financial Creditor. The alleged debt amount of Rs. 363,77,98,167.08/- as on 15.02.2023 stated in Part-IV of the Petition sanctioned from 24.09.2012 to 08.04.2015. This can also be ascertained from the computation of debt, the break-up of the claim made by the SBI is as under:-



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Bucket wise claim details	SBI's debt to JCCL as on 30.09.2016	Debt claimed to be due in the Petition		
		Account due as on 30.09.2016 as per approved CRRP	Interest/Penal Intt 01.10.2016 to 15.02.2023	Total claim as on 15.02.2023
Bucket 1	183.09	0	0	0
Bucket 2a	180.50	180.50	167.69	363.78
Bucket 2b	15.59	15.59		
Total	379.18	196.09	167.69	363.78

33. Thus, after the approval of CRRP on 22.06.2017, the issuance of new Sanction Letter dated 20.06.2017 to JAL and execution of master Restructuring Agreement on 30.10.2017 by JAL and the Lenders (including SBI), the entire outstanding dues of the Corporate Debtor stood settled to JAL. Therefore, the Corporate Debtor does not owe any debt to the Financial Creditor. The settlement of JCCL's debt is stated as under:-

a. Debt of **Rs. 183.09 Crore** owed by JCCL to SBI was placed in Bucket 1 in terms of CRRP/ Sanction Letter dated 20.06.2017. It was fully repaid long back out of sale consideration of identified cement plants to UltraTech Cement Limited through a Scheme of Arrangement which was sanctioned by

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this Hon'ble Tribunal vide order dated 02.03.2017 passed in CP No. 49 of 2016. Thus, no part of the debt, which was placed in Bucket 1 can be claimed to be outstanding.

- b. Debt of **Rs. 180.50 Cr.** Owed by JCCL to SBI was placed in Bucket 2a in terms of CRRP/ Sanction Letter dated 20.06.2017. This part of the debt stood transferred to JAL and in lieu thereof, SBI granted Facility A-1 & A-4 to JAL under the Master Restructuring Agreement. Thus, this part of the debt has ceased to be the debt of JCCL.
- c. Debt of **Rs. 15.59 Cr.** Owed by JCCL to SBI was placed in Bucket 2B in terms of CRRP/ Sanction Letter dated. 20.06.2017 This part of the debt also stood transferred to JAL and in turn the entire debt of **Rs. 13,590.02 Cr.** (after adjustment of direct debt-asset swap opted by some lenders) owed by JAL to all lenders (including the above transferred debt of JCCL) was placed in Bucket 2b. In terms of the CRRP, the above debt is in the process of transfer to SPV along with equivalent security (land parcels) by JAL under a Scheme of Arrangement. The Scheme was approved by all stakeholders (including SBI) in January, 2018. The second motion Petition (CP19/2018) for sanction of the Scheme was filed in January, 2018 and since then it has been pending before this Tribunal for final sanction. The Scheme, when sanctioned will take effect from 01.07.2017. Thus, this part of the debt also ceased to be the debt.



34. In view of the aforesaid settlement, the alleged debt owed to the Financial Creditor has been settled on 30.09.2016 which is the cut-off date of the MRA. Therefore, the

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question of repayment of the debt to the Financial Creditor does not arise. As a consequence of which Applicant and the Respondent does not share the Creditor and Debtor relationship.

35. Furthermore, in relation to the alleged debt the Financial Creditor has not provided details pertaining to the nature of default, relevant terms of the contract which are invoked against the debt. The Financial Creditor has even failed to serve to the Corporate Debtor any notice of default for treating alleged debt as NPA from retrospective effect. Therefore, this application is devoid of materials facts and evidences.

36. Respondent further contends that debt prior to the cut-off date 30.9.2016 stood waived as per clause 2.2 and 2.3 of the MRA. These clauses are reproduced below:-

"2.2 Waiver of Existing Events of Defaults

Subject to Section 8.3 (Consequences of Revocation), each of the Lenders hereby waives any Existing Events of Defaults relating to such Lender and any and all rights, remedies and powers that may have arisen in connection therewith. For avoidance of doubt, it is hereby clarified that the Lenders do not waive their right to recover their respective Facilities in accordance

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with the terms of this Agreement. In the event any Lender had already commenced any action against the Borrower and/or its guarantors, unless such action is brought to a close through consent terms or otherwise pursuant to the Restructuring Documents such action shall not abate but shall continue against the Borrower and/ or the Personal Guarantor as the case may be."

"2.3 Waiver of Liquidated Damages/ Interest/ Further Interest

Each Existing Lender hereby waives the obligation of the Borrower to pay any outstanding interest together with compound interest, default interest or any other fees and charges thereon under the Existing Finance Documents and Existing Security Documents to the extent such documents relate to only the Existing Loans being restructured under this Agreement and do not relate to the Real Estate Debt in excess of 9.5% p.a. (nine decimal point five percent per annum) simple interest payable for the period commencing from April 1, 2016 till the Cut Off Date."

["Cut Off Date" has been defined in Clause 1.1.23 (MRA Page 6) as "September 30, 2016"]

37. Further, the Financial Creditor has even failed to exercise right of revocation for revoking the outstanding due as stated in Clause 8.2 of the MRA.
38. With regard to the contention of the Applicant that "due to non-completion of security creation on MRA Security, the implementation of overall DRP could not be done" it is

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argued by the Corporate Debtor that when the entire alleged debt stood transferred to the JAL, the execution of terms and conditions set out in the Security Documents becomes futile in the light of the said fact. Moreover, the Corporate Debtor did not receive any notice in this regard.

39. The alleged debt of the Corporate Debtor of Rs. 183.09 cr. has been paid out of the sale of consideration of the identified cement plants of JAL and JCCL to UTCL. Another Debt of Rs. 180.50 cr. which is owed to the Financial Creditor under Bucket 2a was transferred to the Jal in terms of MRA. Thus, this debt also stood settled. Article 1 (clause A) of the MRA states that
- EFFECTIVENESS: -**

The terms and conditions of this Agreement shall be binding upon and effective as between the Parties executing this agreement on this date, with effect from date hereof. As regards the remaining Parties, the terms and conditions of this Agreement shall be binding upon and effective from the respective dates of execution of the Deed of Accession by such other parties. The term "effective Date" shall be construed according to the date on which a Lender has executed this Agreement."

40. The Financial Creditor executed Deed of Accession on 04.12.2017. therefore, MRA continues to be effective and binding and not being revoked.

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41. The debt of Rs. 15.59 cr. owed to the Financial Creditor formed the part of Bucket-2b was transferred to SPV along with equivalent security. This was approved by all the stakeholders including Financial Creditor and is now pending before this tribunal.

42. The acknowledgement letters dated 27.05.2020, 21.06.2021 and 30.05.2022 were issued by the JAL on its letter head. The Corporate Debtor has merely counter signed and have clarified the factual position which is stated as under:-

"Debt Realignment Plan (DRP) of Jaiprakash Associates Limited (JAL) and Jaypee Cement Corporation Limited (JCCL) was approved by Independent Evaluation Committee (IEC) on 19.06.2017 and Joint Lenders Forum (JLF) on 22.06.2017 State Bank of India also conveyed its sanction on overall DRP vice its LOI Nos.

(1) CAG-II/AMT2/2017-18/65 dated 20.06.2017

(2) CAG-II/AMT2/2017-18/66 dated 20.06.2017

(3) CAG-II/AMT2/2017-18/67 dated 20.06.2017

Master Restructuring Agreement (MRA) for sustainable debt has been executed by all lenders on 31.10.2017, including State Bank of India vide Deed of Accession to MRA dated 04.12.2017. the completion of other legal formalities (including



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Statutory approval of the Scheme of Arrangement between JAL and Jaypee Infrastructure Development Limited, part of overall DRP) are under process. The implementation of overall DRP is yet to be effected by some lenders (including State Bank of India) in their books of accounts due to non-completion of security creation on MRA security and pending approval of JAL-JDL Scheme of Arrangement by NCLT. Hence, the above outstanding balances is based on pre-restructure facilities.

JAL has implemented the approved scheme in books of accounts and accordingly outstanding balances appeared in our books (including debt transferred from JCCL) as on 31.03.2022 are as under:

(Amount in INR)

MRA (sustainable) Debt/ Type of Facility	Sanctioned Amount	Outstanding Amount*
Residual JAL (A1), Core Area Project Loan (A3) & Shahabad Project Loan (A4)	570,75,00,000.00	385,54,72,345.11
Residual JAL (Part of A1 Facility)- Mandla (North) Coal BG (Not devolved yet)	418,38,00,000.00	
Holdback (A2)	264,62,42,343.064	264,62,42,343.64
FITL (A5)	67,82,00,000.00	54,21,80,873.81
Working Capital Term Loan (WCTL) Not Disbursed	80,00,00,000.00	0.00



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Real Estate SPV Debt (B2b) as on 01.07.2017 (Appointed date) (O/s. Balance^ is as per Scheme Filed with NCLT for demerger)	3049,11,00,000.00	3248,41,00,000.00
Working Capital Facilities -		
Fund Based - Cash Credit (inclu. Int.)	46,84,00,000.00	64,46,47,342.69
Non Fund Based - LC and BG	828,10,00,000.00	388,85,26,145.00
Residual JAL (Part of A1 Facility)- Mandla (North) Coal BG (Not Devolved yet)	-	418,38,00,000.00
Grand Total (Fund Based and Non Fund Based)	5325,62,42,343.64	4824,49,69,050.25



* excluding Interest overdue on Residual JAL, FTTL, Holdback and Real Estate SPV Debt.

^Interest on RBI debt added upto June 17

The above balances are as per books of account of JAL and the same is subject to reconciliation with State Bank of India."

The Balance Sheet of the FY 2017-2018 reflects the transfer of debt from JCCL to JAL after the approval of CRRP on 22.06.2017 and execution of MRA on 31.10.2017.

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REJOINDER ON BEHALF OF THE FINANCIAL CREDITOR

43. In response to above Reply, a Rejoinder has been filed by the Applicant on 06.10.2023 countering all the contentions raised in the Reply of the Corporate Debtor about there being no default on repayment of the loan after the approved Comprehensive Reorganization & Restructuring Plan. In the rejoinder, it has been specifically stated that the Applicant has misrepresented and presented distorted facts before this Tribunal to prove default on part of the Corporate Debtor. Any averment made to that effect by the Corporate Debtor in the reply should be rejected.

44. It is submitted that the lenders of the Corporate Debtor had been providing various credit facilities to the Corporate Debtor periodically. However, the Corporate Debtor defaulted on these loans, causing the Applicant to declare the Corporate Debtor as a Non-Performing Asset (NPA). The Corporate Debtor had acknowledged its indebtedness towards the Applicant/Financial Creditor as on 31.03.2021 and 31.03.2022 against various facilities



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provided to Jai Prakash Associates Limited and Jaypee Cement Corporation Limited.

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



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