

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



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22.01.2018 by Company for approval for creation of RESPV which is yet to be approved.

46. Meanwhile, the Hon'ble Supreme Court in its order dated 11.09.2017 of **Chitra Sharma and Ors. v. Union of India and Ors., W.P.(C) 744 of 2017 ("Chitra Sharma")**, directed the Corporate Debtor to deposit Rs. 2,000 crores and issued specific orders regarding the non-alienation of assets and the creation of third-party security interests by JAL.

47. Subsequently, in accordance with the interim injunctions imposed as per the order, the security creation on sustainable debt could not be completed. The applicant further submitted that a scheme of arrangement for transferring of unsustainable debt to a separate real estate SPV was duly approved by the shareholders and creditors. However, the Scheme is pending for approval before this Adjudicating Authority due to which demerger could not be completed.

48. The ICICI Bank Ltd. initiated insolvency proceedings against the holding company of the Corporate Debtor

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under the IBC, 2016. The ICICI Bank vide letter dated 29.08.2018 submitted a note with respect execution of Debt Realignment Plan and requested to grant 107 days to complete the further process. However, RBI declined to accept the request.



49. It is stated by the Applicant that JAL submitted Revised Restructuring Proposal on 25.05.2023 by retaining the basic features of the original DRP. It stipulated the continuation of MRA and repayment of due with divestment of cement assets. Copy of the Final revised restructuring proposal has been annexed as Annexure-3 with the Rejoinder.

50. This shows that DRP sanctioned in 2017 was not executed completely including transfer of debt extended by lenders in the books of JAL.

51. Applicant asserts that such transfer of book balance of JCCL lenders in the books of JAL and creation of security interest in their favour is in violation of Hon'ble Apex Court.

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52. Applicant further assert that Applicant/Financial Creditor has not shifted JCCL exposure to JAL. Out of 14 lenders of JCCL, only 04 lenders namely PNB, Punjab & Sind Bank, Vijaya Bank and Corporation Bank have shifted their exposure to JAL. These 4 lenders shifted their exposure prior to the Hon'ble Supreme Court order dated 11.09.2017.

53. Further, with regard to the plea of the Corporate Debtor that entire debt was settled in the light of the approved CRRP. Applicant contends that this plea is factually incorrect. It is submitted that the restructuring under DRP was approved by the bank on 14.06.2017. Under DRP, Debt was bifurcated in 3 Buckets.

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.

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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.

b. As regards Bucket 2a is concerned, 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' Share being Rs.180.00 Crs.).

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

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having value of Rs.14,156.00 Crs. (Financial Creditor's Share: Rs.6,209 Crs.).

54. It is stated that lenders have approved the creation of Real Estate SPV (RESPV) for this purpose an application was filed before this tribunal on 22.01.2018 by the JAL for approval for creation of RESPV which is yet to be approved. Thus, the contention raised by the Corporate Debtor that debt has been settled on the part of JCCL is entirely baseless.

55. With regard to the contention raised by the Corporate Debtor about MRA, it is submitted that due to non-completion of security creation on MRA security, the implementation of overall DRP could not be done. The revised DRP submitted on 25.05.2023 stipulates the execution by all the lenders in October 2017 with improved features including accelerated repayment of lenders' dues through divestment of cement assets.

56. The Corporate Debtor has failed to repay the outstanding liability owed to the Financial Creditor. therefore, being at



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default, CIRP should be initiated against the Corporate Debtor by admitting this application.

57. Both the parties have filed written submission in compliance with the order dated 04.06.2024 which have been taken on record.

FINDINGS AND ORDER

58. We have heard the Ld. Counsel on behalf of the Applicant/Financial creditor and further perused the averments made in the application, reply filed by the Corporate Debtor, rejoinder and written submission presented by Financial Creditor and Corporate Debtor.



59. Having heard the Learned Advocates appearing for the parties and on perusal of the records, exhibits/annexures and after considering arguments advanced by respective Learned Advocates, the main issues before us to be decided in respect of the present Application u/s 7 are:

- i. **whether the present application is filed within the limitation period.**
- ii. **Whether there is existence of debt and default to meet the criteria of Section 7 Application.**

- I. **The issue for consideration is whether the present application is filed within the limitation period**

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60. As regards to this issue, we have been shown by the Applicant that due to non-repayment of Term Loans, the loan account of the Corporate Debtor was classified as NPA on 08.03.2016 by the Financial Creditor. After this, the Corporate Debtor acknowledged this financial debt in its Balance Sheet for the year ending 31.03.2017. Subsequently in the year 2017, the debt towards Financial Creditor SBI has been acknowledged in various meetings of JLF held in respect of restructuring of the debt of the Corporate Debtor JCCL and MRA dated 31.10.2017.

61. As MRA dated 31.10.2017 could not be given effect to due to various pending cases in the court mainly in case of **Chitra Sharma and Ors. v. Union of India and Ors., W.P.(C) 744 of 2017 ("Chitra Sharma")** in the Hon'ble Supreme Court, the Corporate Debtor later issued letter of acknowledgment dated 27.05.2020, 21.06.2021 and 30.05.2022 wherein the Corporate Debtor has acknowledged the outstanding liability towards the Financial Creditor i.e State Bank of India. The relevant paragraph of the said letters are reproduced below: -



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We confirm having executed the required transaction documents including the facility agreements between Jaiprakash Associates Limited ("JAL") and State Bank of India ("SBI"/"Bank") and between Jaypee Cement Corporation Limited ("JCCL") and State Bank of India ("SBI"/"Bank") from time to time and having created the securities in favour of the Bank as stipulated in the respective transaction documents for due repayment by us of the outstanding amounts under the below referred loan / credit facilities availed by us from the Bank and existing as on date in the books of your Bank. The documents executed are in full force and effect and that the security there under is also in full force and effect.

It may be noted that while we fully acknowledge our indebtedness in below mentioned outstanding amounts as on March 31, 2022 against various facilities provided to JAL and JCCL by your Bank, the said outstanding amounts have been bifurcated into Bucket 2A and Bucket 2B in the financial statements of JAL in a manner envisaged under MRA dated October 31, 2017 and the Scheme filed on 23rd January 2018 with National Company Law Tribunal, Allahabad Bench (NCLT) and pending for final approval.

While the treatment of debt for various facilities might vary in the books of JAL, JCCL and your Bank, however we confirm the correctness of the referred outstanding amounts and acknowledge our indebtedness in the said amount(s) to the Bank under the said account(s), to extend the period of limitation under section 18 of the Limitation Act, 1963. We also acknowledge the Bank's charge on the properties and assets belonging to JAL/JCCL which are mortgaged and charged the Bank as security in terms of the



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*aforesaid transaction documents or otherwise for similarly extending the period of limitation.
....."*

62. As per Section 18 of the Limitation Act, 1963, the Corporate Debtor acknowledged in its Balance Sheet for F.Y. 2016-17 the debt outstanding towards the Financial Creditor is shown in head Long Term Borrowings and subsequently, the outstanding debt has been acknowledged in letter of acknowledgment dated 27.05.2020, 21.06.2021 and 30.05.2022.

63. The Hon'ble Supreme Court in **Laxmi Pat Surana vs. Union Bank of India & Anr. Appeal No. 2734 of 2020** has held that if there is an acknowledgement of debt in writing within a limitation period, a fresh limitation period as per section 18 of Limitation Act commences from the date of the acknowledgement of debt. Therefore, by no stretch of imagination, the application is barred by the law of limitation.

64. In view of our above findings, we are satisfied that the application is filed within limitation period and meets the requirement of limitation.

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II. Whether there is existence of debt and default to meet the criteria of Section 7 Application.

65. As regards the second issue, there is no dispute on the existence of debt as claimed in Part-IV of application U/s 7 of the Code i.e. Rs.363.79 Crore. However, as regards the default on its repayment, the Ld. Sr. Counsel appearing for the Corporate Debtor tried to present before us that the entire debt of the Corporate Debtor was transferred to its 100% holding company JAL under a restructuring plan implemented through MRA dated 31.10.2017. In this regard, it is submitted that a Joint Lender Forum (JLF) comprising of all Banks/ Financial Institutions, which financed the projects/ operations of the Corporate Debtor JCCL and holding company JAL, was constituted on 18.12.2014 in terms of RBI circular dated 26.02.2014. The JLF approved a composite Debt Restructuring Proposal (DRP) on 18.05.2017 making an appropriate restructuring plan for both companies i.e. JAL and Corporate Debtor *herein* JCCL to overcome the liability of stressed debts faced by them. This DRP was subsequently approved by an Independent Evaluation Committee (IEC) on 19.06.2017 and subsequently



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approved by the members of JLF in the meeting held on 22.06.2017. The approved DRP has been said to be a Comprehensive Reorganization & Restructuring Plan (CRRP). It has been shown by the Ld. Sr. Counsel that the said CRRP envisaged transfer of crystalized amount of debts of JCCL to JAL, and such debts were trifurcated into three Buckets. The details of such trifurcation are already discussed in the order in para no.20 while discussing the submissions made by both the parties i.e. the Financial Creditor and Corporate Debtor during the hearing of the case. In Bucket 1, JCCL debt is Rs.183.09 Crore, Bucket 2a, JCCL debt is Rs.180.50 Crore and Bucket 2b, JCCL debt is Rs.15.59 Crore. Thus, the total debts of JCCL after restructuring come to Rs.379.18 Crore. It has been further shown to us that after approval of CRRP, the competent authorities of the respective banks/ financial institutions of JLF (including SBI) issued fresh sanction letter. The fresh sanction letter was issued by SBI on 20.06.2017, sanctioning the existing RTL facilities to JAL and JCCL under three Buckets are as under: -



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Transfer to Ultra Tech (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

66. The details of trifurcation of the debt of JAL as well as JCCL under three Buckets are as below: -

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

67. To give effect to the above restructuring plan, a Master Restructuring Agreement (MRA) was executed on 31.10.2017, of which SBI (Financial Creditor) is also a party through deed of accession executed on 04.12.2017.

68. By referring to above details and documents available on record, it has been argued by the Ld. Sr. Counsel that the entire debts of JCCL were transferred to JAL in terms of the restructuring plan and accordingly the same has been reflected in the books of account of JCCL as well as JAL.

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Subsequently, JCCL has been consistently showing "nil" dues to consortium lenders (including SBI) in its books of accounts, and JAL has also included JCCL's debts in its loan liabilities consequent upon transfer of such debts to it. He also pointed out that the statement of accounts for each of eight loan accounts of JCCL filed by SBI at petition page nos.301, 306, 311, 315, 320, 325, 329 and 333 also show that there has been no transaction in any of these loan accounts after 30.06.2017. In view of the fact that CRRP was approved on 22.06.2017 and new sanction letter was issued by the SBI on 20.06.2017, and accordingly JCCL did not operate these loan accounts, which stood transferred to JAL. In view of the Ld. Sr. Counsel, the fresh sanction letter dated 20.06.2017 issued by the SBI, the MRA dated 31.10.2017 have not been revoked and the said documents are still operative and in full force, and so far JAL or JCCL were never served any notice of withdrawal of above approval/ sanction or revocation of MRA.

69. It has also been pointed out by the Ld. Sr. Counsel that after restructuring of debt of JCCL and having been

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transferred to JAL, the following actions have been taken for settling these debts under three Buckets: -

- (a) Debt of **Rs.183.09 Crore** was placed in Bucket 1 and fully repaid long back out of sale consideration of identified cement plants to UltraTech Cement Limited.
- (b) Debt of **Rs.180.50 Crore** was placed in Bucket 2a and transferred to JAL and in lieu thereof, SBI granted Facility A-4 & A-5 to JAL under the Master Restructuring Agreement.
- (c) Debt of **Rs.15.59 Crore** was placed in Bucket 2b and transferred to JAL and is in the process of transfer to SPV.

70. After presenting the above details and documents, the Ld. Sr. Counsel finally argued that after taking into account the above facts and details, JCCL no longer owes any debt to SBI, and hence the question of any default by JCCL in repayment of non-existent debt does not arise, and therefore the present petition filed U/s 7 is not maintainable.

71. Per Contra, the Ld. Counsel for the Financial Creditor argued that that the submissions made by the Corporate Debtor that there is no debt from JCCL due to the State Bank of India and that the debt has ceased to be the debt of JCCL, are completely baseless and without any basis.

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He vehemently argued that such claim is made with a dishonest intention of withering away from their pecuniary liability towards the applicant

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

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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"

73. It has been specifically pointed out by the Ld. Counsel for the Financial Creditor that the total Amount of Debt Due as on 15.02.2023 is Rs. 363.77 crores. In this regard, he referred to various Letter of Acknowledgement of Debt issued by the Corporate Debtor including letters dated 27.05.2020, 21.06.2021 and 30.05.2022 thereby admitting and acknowledging the outstanding debt and admitting its liabilities to pay the dues of the Applicant Bank in this Application.



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74. In this regards, he also pointed out that the Corporate Debtor at all times was aware of it's default and non-completion of security creation on MRA security, pursuant to which implementation of overall DRP could not be done, as such, it is highly, misleading to assert that an independent recall notice was a mandatory requirement to be served on the corporate debtor for initiating the present proceedings u/s 7 of IBC 2016

75. He specifically mentioned in his argument that the Ld. Sr. Counsel for the Corporate Debtor devoted his entire submissions on the incorrect assumption of debt of JCCL having been transferred to debts of JAL, whereas, it is a matter of record that the implementation of overall DRP was never done. It is also a matter of record that JAL has also submitted final revised restructuring proposal on 25.05.2023 by retaining basic structure in earlier approved Debt Realignment Plan. Revised restructuring proposal envisages continuing of MRA executed by all lenders in Oct 2017 with improved features including accelerated repayment of lenders' dues through divestment of cement assets. Further, transfer of



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unsustainable debt to Real Estate SPV scheme will continue to be implemented same as proposed in earlier Debt Realignment Plan. Company has considered proposed implementation date as 31.12.2023. However, the revised restructuring proposal could also not take off.

76. He finally argued that admittedly the debt exists and also, there is a clear default in payment by the Corporate Debtor which is more than the threshold limit, the application is well within the prescribed period of limitation and the same is complete in all respect including proposal of resolution professional in terms of statutory provisions of Section 7(3)(b). Hence, the Corporate Insolvency Resolution Process is liable to be initiated and the Hon'ble Adjudicating Authority may be pleased to admit the present application and direct a moratorium in terms of Section 7 of the Insolvency and Bankruptcy Code.



77. We considered the arguments advance by the Ld. Counsel for the Financial Creditor as well as Ld. Sr. Counsel for the Corporate Debtor. While hearing the Ld. Sr. Counsel representing the Corporate Debtor and in view of our

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foregoing discussions, we find that much emphasis has been laid by the Ld. Sr. Counsel representing the Corporate Debtor on the MRA, which has been executed on 31.10.2017. According to him, since the entire debt of the Corporate Debtor stands transferred to JAL, therefore no debt of the present Corporate Debtor in any manner survives, and therefore the present petition would not be maintainable in the present form.

78. We are not satisfied with the submissions made by the Ld. Sr. Counsel representing the Corporate Debtor on the point of transfer of debt of the Corporate Debtor to JAL, in view of the fact that creation of a security interest was a *sine qua non* in terms of clause 5.8 of the aforesaid MRA. The relevant part of clause 5.8 of the aforesaid MRA pertaining to creation of security interest is worth reproducing hereunder :-



5.8. Security

(a) The Borrower certifies that all Security Documents when executed delivered and registered (where necessary or desirable) and when appropriate forms are filed as required under Applicable Law, shall create the Security expressed to be created thereby over the Charged Assets.

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(b) No Security Interest exists or has been promised to be created upon any of the Charged Assets in favour of any Person other than as permitted by the Lenders prior to the execution of this Facility Agreement.

(c) The Borrower shall make out a good and marketable title to its properties to be secured in favour of the Secured Parties to the satisfaction of Secured Parties and, comply with all such formalities as may be necessary or required for the said

79. The factum of the security interest having not been created is clearly visible from the meeting of JLF held on 15.10.2018, wherein in its para no.19, it has been observed that the creation of security was not fully implemented, and therefor creation of the security in terms of MRA was put on hold until a way forward could be ascertained with respect to the CIRP application. The relevant part of the minutes of the meeting of JLF dated 15.10.2018 would also be relevant to be extracted as under: -

19. Thereafter, Mr. Basu updated the lenders about the requirement to amend a few provisions of the already executed MRA. He listed out some of the amendments that in ICICI's opinion would be required to be effected in the MRA. Axis Bank, in its capacity as the lead lender to JCCL was requested to provide an update with respect to the originally proposed debt transfer (along with transfer of associated security) at an appropriate time post,

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emergence of a clearer direction with regard to the ongoing NCLT proceedings at their earliest convenience. The attendees were also updated on the status of the security creation as envisaged in the MRA- that the Deeds of Hypothecation (DOH) for JAL & JCCL lenders had been executed in January 2018 and charge on the same had been filed with the ROC in October 2018; Personal Guarantee of Shri Manoj Gaur was executed in December 2017; that charge over immovable assets (properties included within the aegis of the Structured Security Trust Arrangement or "SSTA" prior to the execution of the MRA) already exists for JAL lenders while charge on the Sadhwa Khurd cement grinding unit and the Jaypee Golf & Spa Resort were yet to be created as per the stipulated MRA terms. The lenders were also informed the securities pending creation needs to be put on hold until a way forward can be ascertained w.r.t. CIRP application filed by ICICI Bank with NCLT.

80. Another point has been raised by the Ld. Sr. Counsel for the Corporate Debtor that the Applicant/ Financial Creditor has not adhered to the provisions of MRA particularly with respect to the manner in which the notification of default was to be issued by the Financial Creditor and the remedies which were available for the borrower to be exhausted in case of default prior to initiating any legal proceedings against the Corporate Debtor. The Ld. Sr. Counsel has referred to the clauses 7.23 and 7.24 of the aforesaid MRA dated 31.10.2017.



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81. The contention raised by the Ld. Sr. Counsel representing the Corporate Debtor has been countered by the Ld. Counsel representing the Applicant/ Financial Creditor on the same very ground that the MRA executed on 31.10.2017 was never given effect to in so far as the present Applicant/ Financial Creditor is concerned. Since security interest was not fully created and put on hold, the MRA never came to be enforced and as a result the provisions requiring Applicant/ Financial Creditor to issue notification of default or taking remedies in case of an event of default would also not arise. For the sake of reiteration, we need to emphasize that creation of the security interest was a *sine qua non* for the purpose of commencement of the MRA itself. The effect that the said MRA dated 31.10.2017 in so far as the Applicant/ Financial Creditor is concerned could not commence, would also be evident from the fact that another amended Restructuring Plan was sought to be brought in the year 2023, and it would be evident from the fact that another restructuring proposal was brought through letter dated 23.05.2023. The bringing into the said restructuring



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proposal was necessitated only in view of the fact that the earlier MRA dated 31.10.2017 could never see the light of the day in so far as the Applicant/ Financial Creditor is concerned. It also needs to be noted that even this restructuring proposal of 2023 also could not materialize and could never take off.

82. Therefore, the observance of the procedural requirement or otherwise as envisaged under the MRA, would not result into any deficient action on the part of the Applicant/ Financial Creditor.

83. It is also worth to note that as the MRA has not been given effect to due to security interest having not been fully created as far as Financial Creditor herein is concerned, no such transfer of debts of the Corporate Debtor to JAL has been effected in the books of the Financial Creditor and it is still being shown in the books of the Financial Creditor as outstanding debts payable by the Corporate Debtor.

84. It is also to be noted that the acknowledgement of debts has continued in as much as the Corporate Debtor has

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issued letters from time to time acknowledging the debts. The acknowledgement communications therefore have been made by the Corporate Debtor on different occasions mainly on 27.05.2020, 21.06.2021 and 30.05.2022, wherein the Corporate Debtor has acknowledged the outstanding liability towards the Financial Creditor i.e. the present Applicant/ Petitioner. The contents of one such communication as aforesaid i.e. for 30.05.2022 are worth reproducing hereunder :-

".....

We confirm having executed the required transaction documents including the facility agreements between Jaiprakash Associates Limited ("JAL") and State Bank of India ("SBI"/"Bank") and between Jaypee Cement Corporation Limited ("JCCL") and State Bank of India ("SBI"/"Bank") from time to time and having created the securities in favour of the Bank as stipulated in the respective transaction documents for due repayment by us of the outstanding amounts under the below referred loan / credit facilities availed by us from the Bank and existing as on date in the books of your Bank. The documents executed are in full force and effect and that the security there under is also in full force and effect.

It may be noted that while we fully acknowledge our indebtedness in below mentioned outstanding



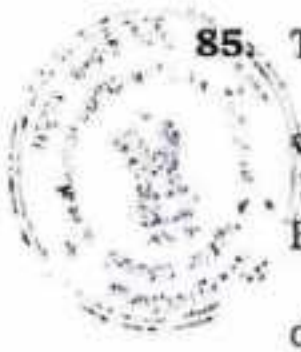
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amounts as on March 31, 2022 against various facilities provided to JAL and JCCL by your Bank, the said outstanding amounts have been bifurcated into Bucket 2A and Bucket 2B in the financial statements of JAL in a manner envisaged under MRA dated October 31, 2017 and the Scheme filed on 23rd January 2018 with National Company Law Tribunal, Allahabad Bench (NCLT) and pending for final approval.

While the treatment of debt for various facilities might vary in the books of JAL, JCCL and your Bank, however we confirm the correctness of the referred outstanding amounts and acknowledge our indebtedness in the said amount(s) to the Bank under the said account(s), to extend the period of limitation under section 18 of the Limitation Act, 1963. We also acknowledge the Bank's charge on the properties and assets belonging to JAL/JCCL which are mortgaged and charged the Bank as security in terms of the aforesaid transaction documents or otherwise for similarly extending the period of limitation.

....."



85. The continued acknowledgment by the Corporate Debtor would also affirm the contention made on behalf of the Financial Creditor that effectively there was no transfer of debt of the Corporate Debtor and that the debt has continued to be vested with the Corporate Debtor only, and as per the acknowledgement the Corporate Debtor remained liable for its repayment. Therefore, in our

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considered opinion, debt and default in the present case is clearly established in respect of the second issue.

86. Further, as stated hereinabove, the debt of the Corporate Debtor was trifurcated in three Buckets namely Bucket 1, Bucket 2a and Bucket 2b. The debts falling in the category of Bucket 2a and 2b are admitted to have not been repaid. Even with respect to Bucket 1, though the contention was raised by the Ld. Sr. Counsel representing the Corporate Debtor that it stands paid in view of certain pre-arrangements with the UltraTech Cement Ltd. However, the contention has been rebutted by the Ld. Counsel representing the Financial Creditor that even the amount which was liable to be retrieved as per the alleged arrangement has not been received in view of some dispute concerning the clearance from the forest department, and therefore the amount which was to come from the UTCL has still not been received and the debt even with respect to Bucket 1, continues to be in default.

87. It is pointed out that though the matter is before the Arbitral Tribunal, and therefore would not result in any

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definite or ascertainment of repayment by the Corporate Debtor as of now.


88. Another plea of the Corporate Debtor is that default on repayment of debt of Rs. 15.59 Cr. which was placed under bucket 2b is in the process of transfer to SPV vide scheme of Arrangement which is pending for approval before this tribunal. In this regard it is important to enlighten that this scheme has been dismissed vide order dated 03.06.2024 passed in CP (CAA) NO.19/ALD/2018, CA (CAA) NO.174/ALD/2018 (Second Motion) in view of the admission of section 7 application filed by the ICICI Bank against the JAL.

89. The objection has also been taken on behalf of the Corporate Debtor that the concerned person, who has filed the present petition and verified the same by way of an affidavit is not a competent authority to present the petition. We have perused the affidavit filed by the Assistant General Manager (AGM) of the Applicant Bank. It has been deposed by the AGM that he is competent to sign, verify and institute all legal proceedings for and on behalf of the Applicant in terms of Regulations 76 and 77

of the State Bank of India Regulations, 1955 framed in exercise of powers conferred U/s 50(3) of the State Bank of India Act, 1955 and notifications issued thereunder from time to time read with Gazette notification dated 02.05.1987.

90. We see from the affidavit sworn in by the aforesaid AGM that he has acted in accordance with the provisions of Regulations 76 and 77 of the State Bank of India Regulations, 1955 read with Gazette notification dated 02.05.1987 and such a declaration has been made by a duly sworn in affidavit.

91. We therefore not in agreement with the objection raised by the Corporate Debtor with regard to the authority of the person instituting the present petition.



92. After considering the entire facts of the case so far discussed and taking into account the decision of the Apex Court in the above mentioned cases, we find that in the present case, default has occurred and State Bank of India's Section 7 Petition is complete providing all the details of debts and default as required in Part IV of the

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Application and attaching all the necessary supporting documents including ROD from NeSL as required in Part V of the Application and there is no disciplinary proceeding against the proposed IRP. Considering that all the above elements are fulfilled as required under IBC, we find that this Application deserves to be admitted u/s 7 for starting CIRP against the Corporate Debtor.

93. In view of our above findings, we are satisfied that the Applicant/Financial Creditor has proved the debt and the default, which is more than the threshold limit of Rs. 1 crore the limit applicable at present. The application is also filed within limitation period and complete in all respect and a resolution professional is also proposed as per section 7(3)(b). Accordingly, the present application under Section 7, has been found fit to be admitted as per Section 7(5) of the I & B Code, 2016.

94. The Financial Creditor has proposed the name of new IRP in Part-III of the Application, the Financial Creditor has proposed the name of Ms. Deepika Bhugra Prasad as Interim Resolution Professional. Her Registration Number is IBBI/IPA-003/IP-N00110/2017-2018/11186, R/o 202,

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Samrat Ashok Enclave, Sector-18A, Plot No. 6, Dwarka, New Delhi, National Capital Territory of Delhi, 110075, Email: deepika.bhugra@gmail.com. She has duly given the consent in Form No.2 dated 07.12.2022 annexed as **Annexure A-6 with the Application**. The Law Research Associate of this Tribunal, Ms. Ankita Sharma, has checked the credentials of Ms. Deepika Bhugra, and found that there are no disciplinary proceedings pending against the proposed interim Resolution Professional and also there is nothing adverse against her. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 24th November, 2024. After considering these details, we appoint Ms. Deepika Bhugra having registration No. IBBI/IPA-003/IP-N00110/2017-2018/11186, as Interim Resolution Professional (IRP).



95. In the given facts and circumstances of the case as per our above findings, the present application u/s 7 being complete in all respect and having established the default in payment of the Financial Debt for the default amount being above the threshold limit and an IRP also having been appointed as per above para 94, **the application is**

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admitted in terms of Section 7(5) of the I & B Code, 2016 against the Corporate Debtor i.e. Jaypee Cement Corporation Limited. and accordingly, moratorium is declared in terms of Section 14 of the Code.

96. The IRP is directed to take steps as mandated under section 13 and 15 of the IBC for making public announcement about the commencement of CIRP against the Corporate Debtor and moratorium against it u/s 14, and also take necessary actions as per sections 17, 18, 20 and 21 of IBC, 2016.

97. The IRP shall after collation of all the claims received against the Corporate Debtor and the determination of the financial position of the Corporate Debtor constitute a Committee of Creditors and shall file a report certifying the constitution of the Committee to this Tribunal on or before the expiry of thirty days from the date of his appointment, and shall convene the first meeting of the Committee within seven days of filing the report of Constitution of the Committee. The Interim Resolution Professional is further directed to send regular progress reports to this Tribunal every month.



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98. As a necessary consequence of the moratorium in terms of Section 14, the following prohibitions are imposed, which must be followed by all and sundry:

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) Transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) The recovery of any property by an owner or lessor, where such property is occupied by or in the possession of the corporate debtor.

(e) It is further directed that the supply of essential goods or services to the corporate debtor as may be specified, shall not be terminated or suspended or interrupted during the moratorium period.

(f) The provisions of Section 14(3) shall, however, not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator and to a surety in a contract of guarantee to a corporate debtor.

(g) The order of moratorium shall have effect from the date of this order till completion of the corporate insolvency resolution process or until this Bench approves the resolution plan under sub-section (1) of Section 31 or passes an order for liquidation of the corporate debtor under Section 33 as the case may be."



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99. We direct the Financial Creditor to deposit a sum of Rs.2,00,000 with the Interim Resolution Professional, to meet out the expenses to perform the functions assigned to him in accordance with Regulation 6 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016. The amount, however, is subject to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

100. A certified copy of the order shall be communicated to both the parties. The learned counsel for the petitioner shall deliver a certified copy of this order to the Interim Resolution Professional forthwith. The Registry is also directed to send a certified copy of this order to the Interim Resolution Professional at his e-mail address forthwith.



FREE OF COST

101. List the matter on 27th August, 2024 for filing of the progress report/further proceeding.

*Compared by Me
Mahesh Sahai
29/7/2024*

**-Sd-
(Ashish Verma)
Member (Technical)**

**-Sd-
(Praveen Gupta)
Member (Judicial)**

Date : 22nd July, 2024

**CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL**

CP (IB) NO.26/ALD/2023 With IA No.583/2023
IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

B. K. Asthana
29-07-2024
V. K. Asthana
Deputy Registrar
National Company Law Tribunal
Allahabad Bench, Prayagraj (U.P.)

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