NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI

Company Appeal (AT) (Insolvency) No.1565 of 2024
& I.A. No. 8141 of 2024

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

IN THE MATTER OF:

Alok Gaur, Suspended Board of Director of
Jaypee Cement Corporation Ltd. ...Appellant

Versus

State Bank of India & Anr ...Respondents

Present:

For Appellant	**:**	**Mr. Abhijeet Sinha Sr. Advocate with Mr. Abhishek Anand, Mr. Karan Kohli, Ms. Palak Kalra, Mr. Aditya Shukla and Ms. Heena Kochar, Advocates..**
For Respondents	**:**	**Mr. Ankur Mittal, Ms. Muskan Jain and Mr. Srijan Jain, Advocates for SBI.** **Mr. Rahul Gupta, Advocate for R2 a/w Ms. Deepika Bhugra Prasad- IRP in person.**

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal by Suspended Director of the Corporate Debtor ("**CD**") Jaypee Cement Corporation Limited has been filed challenging the order dated 22.07.2024 passed by National Company Law Tribunal, Allahabad Bench, Prayagraj admitting Section 7 Application filed by the State Bank of India ("**SBI**"). The Appellant aggrieved by the order admitting Section 7 Application and appointing Resolution Professional ("**RP**") has come up in this Appeal.

2. Brief facts of the case necessary to be noticed for deciding the Appeal are:

(i) Jaypee Cement Corporation Ltd. (hereinafter referred to as the "**JCCL**") is a wholly owned subsidiary of Jaiprakash Associates Ltd. ("**JAL**"). The JCCL availed various credit facilities from the SBI between 2012-15.

(ii) Under the Reserve Bank of India ("**RBI**" Circular a Joint Lenders Forum ("**JLF**") comprising of all the Banks was constituted with a view to overcome the liquidity crunch of JAL and finalize Corrective Action Plan. Both JAL and JCCL defaulted in payment of loans and Lenders including SBI declared JAL and JCCL as NPA with effect form 08.03.2016. A Composite Scheme of Debt Realignment Plan for debt of JAL and JCCL was proposed. As a part of composite restructuring, the loans of JAL and JCCL were proposed to be divided into three buckets, in following manner:

> "15. That a scheme of Debt Realignment Plan (hereinafter referred to as "DRP") for the combined debt of JAL and the Corporate Debtor was proposed and approved on 05.10.2016 which was divided into three different buckets:
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> i. Bucket 1: Divestment of substantial part of its cement business along with debt of Rs.11,689 crores (SBI's Share: Rs.2,534.05 Crs.) to UltraTech Cements Ltd. (hereinafter referred to as "UTCL"). The JAL-UTCL deal was completed on 29.06.2017 whereby, Rs.10,689 crores of debt liabilities (out of Rs.11,689 Crores) has been assumed by UTCL. The total deal

amount of Rs. 11,689 Cr. includes sale proceeds of Corporate Debtor's Balaji Cement Plant divestment to UTCL of Rs. 1,170.13 Crs. (SBI's Share: Rs. 183.09 Crs.) and the same has been received and adjust towards bank dues.

Due to forest land clearance, holdback amount of Rs. 1,000.00 Crs (SBI's Share: Rs. 264.56 Crs) pertaining to JP Super Plant is yet to receive from UTCL. As per contract, last date of receiving amount was 30.06.2022 which was not received by Respondent No. 1.

- A Master Implementation Agreement (MIA) dated 31.03.2016 was executed between UTCL, JAL and Corporate Debtor in relation to the "Bucket 1" debt.
- It is submitted that the divestment of a substantial portion of JAL and Corporate Debtor's cement business, along with a debt of INR 11,689 crores, to UTCL took place through a scheme of arrangement which was sanctioned by NCLT Allahabad vide order dated 02.03.2017, passed in C.P No. 49 of 2016.

The sale of cement assets was requirement in order to carry out any restructuring, as the cash flows of the JAL were not sufficient to justify restructuring of such huge debt, and therefore, the debt component was required to be brought down.

The residual debt of JAL and JCCL was bifurcated into two different buckets as follows:

ii. Bucket 2a: Sustainable Debt of Rs. 5,072 Crores (SBI's Share: Rs.1,069.01 Crores) including JCCL's debt of Rs. 778.10 crores (SBI's Share is Rs. 180.50 Crores) was to be retained under the residual

business of JAL 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. 778.10 Crs to JAL (SBI's Share being Rs. 180.50 Crs.)

A Master Restructuring Agreement dated 31.10.2017 and Deed of Accession dated 04.12.2017 was executed amongst JAL and lenders in relation to Bucket 2a.

iii. Bucket 2b: Unsustainable Debt of Rs.13,590 Crores (SBI's Share: Rs.3,049.11 Crores, out of this Rs.15.59 Crores relates to JCCL debt) was proposed 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. (SBI's Share: Rs. 6,209 Crs.) through Scheme of Arrangement.

The Scheme contemplates hiving off the remaining debt along with certain identified land parcels having equivalent value to a 100% SPV of JAL, namely Jaypee Infrastructure Development Limited."

(iii) The loan exposure of JAL and JCCL was to be reduced, as the cash flows of JAL and JCCl would not have otherwise supported any restructuring. Same was proposed to be done by carving out Bucket 1, wherein certain plants/ assets of JAL and JCCL were to be sold to UTCL (Ultra Tech Cement Limited). The remaining portion of debt of JAL and JCCL was to be further divided into two Buckets, i.e. sustainable

debt carved as Bucket 2A and unsustainable debt carved as 2B. The sustainable debt Bucket 2A was to be kept in JAL while unsustainable debt was to be transferred to a newly formed SPV Bucket 2B.

(iv) A Master Implementation Agreement dated 31.03.2016 was executed by UTCL, JAL and JCCL for Bucket 1. The Debt Realignment Plan was approved in-principle by Lenders. A scheme of arrangement was proposed for divestment of JAL and JCCL's cement business along with some portion of debt to UTCL. The NCLT vide order dated 02.03.2017 passed in C.P. No.49/2016 approved the first implementation. In the balance sheet of JCCL as on 31.03.2017 liability to pay debt towards SBI was acknowledged.

(v) Comprehensive Recorganization and Restructuring Plan ("**CRRP**") for JAL and JCCL was approved in JLF Meeting dated 18.05.2017. An Independent Evaluation Committee in its Meeting dated 19.06.2017 discussed that CRRP be prepared taking outstanding debt for JCCL Lenders into consideration.

(vi) On 20.06.2017, SBI issued Sanction Letter addressed to JAL with respect to Debt Realignment Plan. Annexure B to the letter noticed that RTL facilities sanctioned to the Company to JAL and JCCL shall be divided into Buckets as Bucket 1, Bucket 2A and Bucket 2B.

(vii) There has also been direction of the RBI to the ICICI Bank (Lead Bank) with regard to JAL directing that in the event that a viable Resolution Plan is not finalized and implemented before 31.12.2017, proceedings under IBC may be initiated.

(viii) There have been various orders of the Hon'ble Supreme Court in ***W.P. No.744 of 2017 – Chitra Sharma vs. Union of India*** with respect to JAL, which included direction to deposit Rs.2,000 crores and further for transfer of any property of JAL, leave of the Hon'ble Supreme Court be obtained.

(ix) On 31.10.2017, Master Restructuring Agreement was executed between Jal, ICICI Bank (Lead Bank) and other Banks. The SBI also acceded to MRA dated 30.10.2017.

(x) On 20.11.2017, JAL and JIDL (SPV) under Section 230-232 of the Companies Act, 2013 filed Company Application 174/ALD/2017 in first motion petition with respect to Bucket 2B. On 08.12.2017, the NCLT in first motion petition issued notices to various Authorities.

(xi) RBI in its letter dated 14.08.2018 directed ICICI Bank and other Lenders to initiate proceedings against JAL. The RBI further in its letter dated 30.08.2018 held that the restructuring has been rendered 'null and void'

(xii) In the year 2020 to 2022 JCCL and JAL executed various letters of acknowledgement of debt, admitting the liabilities to

pay dues to SBI and NESL record authenticated on 03.01.2022 wherein it is clearly recorded that JCCL has defaulted on 03.03.2016.

(xiii) SBI filed a Section 7 Application being CP (IB) No.26/ALD/ 2023 against JCCL seeking to initiate Corporate Insolvency Resolution Process ("**CIRP**") for default of debt that was prior to failed restructuring of debt of JCCL and JAL. In Part-IV of Section 7 Application, the SBI claimed total debt due and payable as Rs.363,77,98,167/- as on 15.02.2023. The date of default as per NESL certificate was mentioned as 03.03.2016. In Section 7 Application, notices were issued to the CD – JCCL, who filed its reply.

(xiv) By order dated 03.06.2024, the Application filed by ICICI Bank against JAL was admitted and CIRP commenced against JAL. On 03.06.2024, the NCLT passed an order in CP (CAA) No.19/ALD/2018 and dismissed scheme of arrangement. Suspended Director of JAL also preferred an Appeal, challenging the judgment dated 03.06.2024 passed in scheme of arrangement.

(xv) The NCLT vide judgment dated 22.07.2024 admitted CP(IB) No.26/ALD/2023 filed by the SBI, directing for initiation of CIRP against JCCL. The Adjudicating Authority noted that MRA (31.10.2017) has not been given effect to.

(xvi) This Tribunal vide its judgment dated 06.12.2024, dismissed Company Appeal (AT) (Ins.) Nos.1158-1162 of 2024, upholding the initiation of CIRP against the JAL. This Tribunal vide judgment of the same date i.e. 06.12.2024 dismissed Company Appeal (AT) (Ins.) No.197 & 199 of 2024, which Appeals were filed challenging the dismissal of second motion petition of scheme of arrangement. Appeal filed by Suspended Direction before the Hon'ble Supreme Court challenging the order of this Tribunal dated 06.12.2024 was dismissed by the Hon'ble Supreme Court on 10.01.2025, affirming the initiation of CIRP against JAL.

(xvii) Aggrieved by the order dated 22.07.2024, admitting Section 7 Application against JCCL, this Appeal has been filed by Suspended Director.

3. This Appeal was heard by this Tribunal on 13.08.2024. This Tribunal also noticed the pendency of Appeal and noticed the interim order passed in Company Appeal (AT) (Ins.) Nos.1158-1162 of 2024. In paragraphs 18 and 19 of the order dated 13.08.2024, following was observed:

> "**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.
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> 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."

4. Noticing the above, the notice was issued in the Appeal and interim order was passed that 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. The interim order was extended from time to time. After the dismissal of Company Appeal (AT) (Ins.) Nos.1158-1162 of 2024 on 06.12.2024 by this Tribunal, an Application was filed by the SBI for vacating the interim order/ hearing the Appeal. The Hon'ble Supreme Court also vide its order passed on 21.04.2025 in Civil Appeal No.5332 of 2025 directed to take up the Appeal/ Application for modification and decide either of them on expeditious basis positively within a period of two weeks. The Appeal was heard and the hearing completed within the time allowed by the Hon'ble Supreme Court on 16.05.2025.

5. We have heard Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant and Shri Ankur Mittal, learned Senior Counsel appearing for the SBI.

6. Shri Abhijeet Sinha, learned Senior Counsel appearing for the Appellant challenging the impugned order submits that Section 7 Application was filed by the SBI based on an alleged default dated 03.03.2016 (date of NPA) is misconceived, since the default stood waived under the restructuring framework as the Comprehensive Reorganization and Restructuring Plan was approved and subsequently ratified by the JLF. Thereafter, a Master Restructuring Agreement was executed on 31.10.2017, which categorically mentions waiver of earlier debt of JAL and JCCL. It is submitted that SBI also issued a Sanction Letter dated 20.06.2017 to JAL as borrower and incorporating terms of the restructuring. Under the Master Restructuring Agreement dated 31.10.2017, in terms of Clause 2.2, all prior default to the cut-off date of 30.09.2016, were waived. In view of the above, there was no default on 03.03.2016 and entire foundation of Section 7 Application was misconceived. Further, the entire debt of JCCL was transferred to JAL i.e. holding Company of the JCCL, which was approved by the JLF on 22.06.2017. Fresh Sanction Letter dated 20.06.2017 issued by the SBI and execution of Master Restructuring Agreement by Holding Company and the Lenders, all debt of JCCL stood transferred to Holding Company and there was no debt due on the JCCL to initiate any CIRP against JCCL. There is no default as per Section 7 of the IBC committed by JCCL. There being no default on the part of JCCL, Section 7 Application deserved to be rejected and the Adjudicating Authority's conclusion that JCCL remains liable for the debt due to the non-creation of security under

Clause 5.8 of MRA, is legally flawed. The execution and implementation of MRA has two distinct legal meaning. By execution of the MRA, the debt on the part of the JCCL, came to an end, which stood transferred to JAL. Failure to implement the creation of security, cannot invalidate the debt transferred under the MRA. It is submitted that by substitution of contract, which was entered into 31.10.2017, the MRA, the old contract, i.e. facilities extended by SBI came to be novated. With new terms and conditions in respect of the same loan, there being novation of contract, old contract, which was with SBI and JCCL, could not be given effect to. Learned Counsel has placed reliance on Section 62 of the Indian Contract Act, 1872. It is submitted that novation leads to discharge of parties from obligations under previous Agreements. Learned Counsel submits that effect of novation by execution of MRA and issuance of Sanction Letter dated 20.06.2017, results in novation, i.e. substitution of JAL as the sole borrower and discharges the JCCL of all prior obligations post novation. Once the original debt of JCCL stood transferred to JAL pursuant to duly approved restructuring and Sanction Letter, the original lending relationship between JCCL and SBI stood extinguished. The liabilities under the old Agreements cannot now be revived, directly or indirectly, under the guise of failed implementation. The petition under Section 7 was barred by the principles of estoppel and waiver. It is submitted that acknowledgment of letters referred by SBI cannot serve as a valid basis for establishing any liability against the JCCL. Non-transfer of debt from JCCL to JAL in the Lenders' Book, is not determinative. Failure of overall

restructuring does not constitute default by JCCL after novation. JCCL obligation was the divestment of Balaji Cement Plan, which has been fully performed and the SBI has received its consideration with respect to Bucket 1. The judgment of this Tribunal in Company Appeal (AT) (Ins.) Nos.1158-1162 of 2024 dated 06.12.2024 is clearly distinguishable on facts and has no application in respect of JCCL. It is submitted that in Section 7 Application filed by ICICI Bank, different facilities were under challenge. The entire basis of the judgment was on default by JAL and not by JCCL. The JAL and JCCL are distinct legal entities, hence, initiation of CIRP against JAL has no effect on initiation of CIRP against JCCL.

7. Shri Ankur Mittal, learned Counsel appearing for the SBI refuting the submissions of learned Counsel for the Appellant submits that there is no novation of JCCL debt by execution of MRA dated 31.10.2017. It is submitted that for applicability of section 62 of Indian Contract Act, the parties to a contract had to be same and they should agree to substitute with a new contract. The MRA dated 31.10.2017 was executed between the ICICI Bank as Lead Bank and the JAL. The JCCL was not even the party to the MRA. The assets of the JCCL, i.e. Shahbad Project continue to be with JCCL even today in its balance sheet. It is submitted that debts of JCCL were part of Composite Scheme of Restructuring in respect of debts of JCCL and JAL together. The Lenders never contemplated nor sanctioned any restructuring of JCCL's debt on a standalone basis. The restructuring of JAL and JCCL was to take place together with multiple

acts to be carried out as per the Agreement. The JAL restructuring has conclusively been failed, which has also been recognized by RBI, the regulatory body for all Banks, as well as NCLT and NCLAT by initiating CIRP against JAL on 03.06.2024 and 06.12.2024 respectively, which orders have also been affirmed by the Hon'ble Supreme Court. The JAL having been held to be in default for debts of the Lenders and restructuring having failed, it cannot be accepted that JCCL debts are not in default and merely by transferring of debt to JAL, the JCCL debt has been wiped out. In the Financial Statement of Lenders, the liability of JCCL is still continuing and restructuring of debt in their books of accounts, have not yet been made, since restructuring was not implemented. The restructuring contemplated trifurcation of debts of JAL and JCCL into different Buckets being Bucket 1, Bucket 2A and Bucket 2B, where the debts of JCCL and JAL were to be placed as part of Composite Scheme. There is no discharge of debts under the above Buckets, which is an accepted fact. By dismissal of application praying for sanction of Scheme of Arrangement for transfer of debt of JAL and JCCL in Bucket 2B to SPV, having been rejected by NCLT on 03.06.2024, which order has become final by dismissal of the Appeal on 06.12.2024 by this Tribunal, the debt of both JAL and JCCL are not discharged and default continues. With regard to Bucket 1, although SBI was made initial payment, however, due to dispute with Ultra Tech Cement and JAL, the rest of the payments have not been received by JCCL and dispute between the parties, is pending in arbitration. The debt in Bucket 2A,

which is sustainable debt, the JAL having gone into insolvency on 03.06.2024, prior to admission of Section 7 Application against JCCL, the entire substratum of the composite deal was lost and the scheme has fallen to the ground. JAL having been held to be in default in the debt covered in the three Buckets, JCCL default of discharge of its debts as was undertaken by JAL is fully established. In NESL record as authenticated on 03.01.2022, it is clearly recorded that the JCCL has defaulted with effect from 03.03.2016, i.e. prior to restructuring. Section 7 Application filed against JCCL in 2023 notices the date of default as 03.03.2016, due to failure of restructuring, which was noticed in Part IV of the Application. There is admitted failure to resolve the debt under Bucket 2A, due to breach of MRA. It is submitted that there were repeated acknowledgements by JAL and JCCL of their liabilities, which is reflected in several letters like letter of acknowledgment dated 27.05.2020, 21.06.2021 and 30.05.2022. The acknowledgement letters were issued both by JAL and JCCL. Security under MRA was not created and could not have been created, in view of the order of Hon'ble Supreme Court dated 10.01.2018 passed in Writ Petition (C) No.744 of 2017 in **Chitra Sharma**'s case. The Hon'ble Supreme Court has also noticed the distressed financial situation of JAL and allowed the application of RBI for initiation of CIRP against JAL. Non-creating of security in terms of MRA was noticed in JLF Meeting dated 18.01.2018 and 15.10.2018, which is an admitted fact. Securities having not been created, MRA has not been implemented. It is submitted that JAL after failure to implement the

MRA, has submitted a revised restructuring proposal dated 25.05.2023, where JAL has admitted that restructuring could not be implemented in entirety and JCCL debt has not been transferred to JAL in Books of Lenders. It is submitted that JAL insolvency has been affirmed up to the Hon'ble Supreme Court. JAL has undertaken to discharge the debt of JCCL, through Composite Realignment and Restructuring Plan, which has failed. The debt of JCCL continues to exist and the submission of the Appellant that debt of JCCL does not exist has no legs to stand.

8. We have considered the submissions of learned Counsel for the parties and have perused the records.

9. The Adjudicating Authority in the impugned order has framed two Questions – (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. Question No.(i) was answered by Adjudicating Authority, holding that application was well within time, which findings are not even questioned before us. On Question No.(ii), regarding existence of debt and default, the Adjudicating Authority has elaborately considered the submissions of the parties in paragraphs 65 to 93. The Adjudicating Authority has noticed the MRA dated 31.10.2017 and also noticed Clause 5.8 of the MRA, which provided for creation of security interest. The Adjudicating Authority returned a finding that security interest was not created as per relevant clauses of the MRA, which findings have been returned in paragraph 78 and 79, which are as follows:

"**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*
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> *(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.*
>
> *(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, 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."

10. The Adjudicating Authority has also noted that Revised Restructuring Plan was given by the JAL on 23.05.2023, which itself indicates that Restructuring Agreement dated 31.10.2017 has failed. The following observations have been made in paragraph 81:

"**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 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."

11. The submission of the learned Counsel for the Appellant that under MRA, the JAL undertaken to discharge the liabilities of JCCL, hence, the JCCL debt stood transferred to JAL and on failure of JAL to implement MRA, the CIRP against JAL has already commenced, in which proceedings, debt of both JAL and JCCL can be considered and appropriate resolution can be done. Hence, there is no basis for initiating Section 7 Application against JCCL. There can be no dispute that under the MRA, debts of both JAL and JCCL were trifurcated in three Buckets, which we have already noticed above. All the three Buckets, i.e. Bucket 1, Bucket 2A and Bucket 2B contained the debts of JAL and JCCL. With respect to Bucket 2B, scheme under Section 230-232 of the Companies Act was proposed by JAL and SPV, which scheme admittedly has finally been rejected by NCLT on 03.06.2024, which order has also been affirmed by this Tribunal on 06.12.2024. The debt of Bucket 2B, thus, admittedly has not been resolved and it is outstanding. By failure of Restructuring Agreement dated 31.10.2017, the debt, which was owned by JCCL to the Lenders, shall not be evaporated and the mere fact that JAL has taken the liability to discharge the debts of JCCL, does not in any manner shall prohibit the Lenders to take proceedings under Section 7 against JCCL, whose debts are in default, due to failure of restructuring proposal. Learned Counsel for the Appellant submitted that the date of default as claimed in Part IV, as 03.03.2016 and in view of subsequent debt restructuring approved on 22.06.2017, which resulted in MRA dated

31.10.2017, the debt which was owned by JCCL, stood discharged and the Lenders having waived the earlier default in the MRA, there was no debt, on which Section 7 Application could have been filed. Part IV, clearly mentions the date of default as 03.03.2016 as per NESL Certificate and restructuring has also been noticed and it was pleaded that despite this restructuring, the loan account of CD was classified as NPA considering the original debt prior to the restructuring. On the failure of restructuring, the debt, which was owed by the JCCL, shall stand revived and we do not find any error in taking date of default as 03.03.2016 as date of default, which was the date of default reflected in the Certificate of NESL, which was authenticated in the year 2022 on the basis of which the Application under Section 7 was filed. The submission of the Appellant that JAL having undertaken the liability to clear the debts and defaults of JCCL, hence, JCCL has no liability and no application was maintainable against JCCL, also does not commend us. Restructuring was a mechanism to discharge the entire dent of JAL and JCCL. Admittedly, restructuring has failed and neither the debt of JAL, nor the debt of JCCL have been discharged. Initiation of CIRP proceedings against JAL cannot be a ground to contend that no proceedings can be initiated against JCCL. JCCL has also given its securities for obtaining the various facilities from the SBI between 2012 to 2015. The Financial Creditor can always invoke the securities given by JCCL to realise the debt. The Financial Creditor has never shown the debt of JCCL to be transferred to the JAL in its Financial Statements and the fact that JAL

and JCCL in their Financial Statements have treated the debt to be discharged, is not binding on the Financial Creditors.

12. Learned Counsel for the Appellant has made submissions relying on the novation of the earlier contract between JCL and the Lenders. Section 62 of the Indian Contract Act, 1872 provides as follows:

> "**62. Effect of novation, rescission, and alteration of contract.—** If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract, need not be performed.
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> Illustrations
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> (a) A owes money to B under a contract. It is agreed between A, B and C that B shall thenceforth accept C as his debtor, instead of A. The old debt of A to B is at an end, and a new debt from C to B has been contracted.
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> (b) A owes B 10,000 rupees. A enters into an arrangement with B and gives B a mortgage of his (A's) estate for 5,000 rupees in place of the debt of 10,000 rupees. This is a new contract and extinguishes the old.
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> (c) A owes B 1,000 rupees under a contract. B owes C 1,000 rupees B orders A to credit C with 1,000 rupees in his books, but C does not assent to the arrangement. B still owes C 1,000 rupees, and no new contract has been entered into."

13. The Hon'ble Supreme Court had occasion to consider Section 62 of the Indian Contract Act in ***(2004) 1 SCC 252 - United bank of India vs. Ramdas Mahadeo Prashad & Ors.***, which judgment has been relied by learned Counsel for the SBI. In the above case, a MoU was signed by the parties of the original contract and it was contended that in view of the MoU, the earlier contract stood novated. The Hon'ble Supreme Court has

noted the question, which arose for consideration in paragraphs 3 and 4, which are as follows:

> "**3.** The primal question raised in these appeals, therefore, is centred around as to whether the MOU entered into between the parties on 18-5-1994 and forwarded by letter dated 20-5-1994 has been acted upon and complied with by the parties."
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> **4.** After considering the MOU, the Tribunal arrived at the following conclusion:
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> > "In order to resolve the dispute between the parties it is necessary to interpret the terms of compromise as conveyed by the appellant Bank by letter dated 20-5-1994. Since there was talk of compromise between the parties which actually took place on 18-5-1994 at 3.00 p.m., the consensus arrived at must be taken to be a new contract between the parties and in the event the terms of this contract are obeyed by any party, the other side cannot get away from them on the principle laid down in Section 62 of the Contract Act. Clause II of the enclosure containing the terms of the compromise fixes this settled amount at Rs 33.14 lakhs plus interest at 6% thereon till the date of liquidation which is fixed at 12 months from the payment of first instalment of Rs 12 lakhs which is to be paid within a month from the date of arriving at the MOU. From the series of correspondence which I have referred to earlier it is amply clear that the first instalment was paid by the opposite party in time and the liquidation of the agreed amount was also made within the terms of the MOU. So far as the bank guarantee is concerned, it is nobody's case that such guarantee has actually been invoked and as such the opposite party is under no obligation to pay the said sum to the Bank. The only question which remains in dispute is the calculation of interest, rather the date and time from which such interest is to be calculated. That MOU does not mention the time

from which such interest is to be calculated and as such in my opinion since a new contract was invoked by way of talk between the parties on 18-5-1994 the claim of interest cannot go earlier to the said period because the Bank actually waived its original claim of a much more higher sum by agreeing to remain contented with Rs 33.14 lakhs as suit amount. As such, the subsequent contention of the Bank as conveyed by letter dated 12-6-1995 enhancing the suit amount as Rs 47.22 lakhs cannot stand. It further appears that in spite of the fact that the opposite party actually obeyed the terms of MOU in toto, the Bank did not adhere to the terms of the said agreement and did not release the title deeds as claimed by the opposite party. It is surprising that in course of the written note it has even been alleged on behalf of the Bank that the MOU reveals the mind of one officer of the Bank alone and there was no resolution of the Board of Directors to that effect on the said date. It is true that there was some exchanging of letters between the parties after the MOU. But that does not mean that the MOU loses its legality and significance, rather such correspondence was made between the parties due to wrong interpretation given to the said MOU by one party and non-compliance with the terms by the Bank. Therefore, the MOU creating a new contract between the parties does not lose its force because of such correspondence. Accordingly, I come to the conclusion that the Bank is precluded from claiming any higher rate of interest or claiming the interest from the debt of the claim case in view of the terms of MOU. Accordingly, the decision of the Tribunal below granting repayment of further sum of Rs 12.75 lakhs cannot stand. Needless to say, the claim of the Bank for enhanced sum after calculating on the basis of enhanced rate of interest also does not stand since the opposite party complied with the terms of MOU by making payments strictly in conformity with the said agreement."

14. The MoU has also been extracted in paragraph 5. In paragraphs 6 and 7, the Hon'ble Supreme Court noticed that the conditions stipulated in MoU, have not been fulfilled. In paragraphs 6 and 7, following have been observed:

> "**6.** A fascicule reading of the conditions stipulated in the MOU clearly posits that the parties were to comply with the conditions stipulated by taking the following actions:
>
> (a) to withdraw the suit filed by them against the appellant;
>
> (b) to pay the guarantee liability of Rs 2.33 lakhs; and
>
> (c) to file a compromise petition in terms of MOU before an appropriate court.
>
> **7.** Undisputedly, the respondents did not withdraw the suit filed by them against United Bank of India, which is the condition precedent stipulated in clause (1) of the MOU. The respondents also did not pay the guarantee liability of Rs 2.33 lakhs. No compromise petition was filed before an appropriate court. Therefore, by no stretch of imagination can it be said that the terms and conditions stipulated in the MOU had been complied with and acted upon by the parties. Apart from what has been said, subsequent to the MOU there was also a lot of correspondence between the parties by exchanging letters giving offers and counter-offers, as would be revealed in the letters dated 16-6-1994, 23-12-1994, 12-6-1995, 15-6-1995 and 19-6-1995. All these correspondences would go to show that the parties failed to arrive at a consensus even on what were the terms of the MOU. Thus, it is clear that there was no concluded contract nor was there any novation."

15. Ultimately, the Hon'ble Supreme Court held in paragraph 9 that non-compliance with the terms and conditions of the MoU by the respondents and a party in breach can hardly seek to enforce contract.

The argument regarding novation of the contract was rejected. Paragraph 9 of the judgment is as follows:

> "**9.** Mr Ranjit Kumar, learned Senior Advocate contended that in view of the MOU signed by the parties the original contract stood substituted by the MOU and it is a fit case where Section 62 of the Indian Contract Act can be invoked. We have already said that there was no concluded settlement or novation. Even otherwise, there has been non-compliance with the terms and conditions of the MOU by the respondents and a party in breach can hardly seek to enforce a contract. Therefore, the MOU does not amount to novation of contract as envisaged under Section 62 of the Indian Contract Act. The contention of Mr Ranjit Kumar is, therefore, legally untenable."

16. Shri Abhijeet Sinha, learned Senior Counsel to distinguish the above judgment submits that the judgment in **United Bank of India** is factually and legally distinguishable and has no bearing. In the present case, the Master Restructuring Agreement dated 31.10.2017 was not executed between the parties, since JCCL was not the party to the Agreement. Thus, the first condition of the novation that it should be entered between the parties is missing. Further, the conditions of the MRA have not been fulfilled as held by a categorical finding recorded by the Adjudicating Authority on the materials on record. When the conditions contemplated in the MRA has not been fulfilled, we do not find any substance in the submission of the Appellant that Section 62 of the Indian Contract Act comes into any aid of the Appellant.

17. Learned Counsel for the Appellant has relied on judgment of the Hon'ble Supreme Court ***(2010) 12 SCC 458 – H.R. Basavaraj (Dead) by***

his Lrs. Vs. Canara Bank and Ors. In the above case, the Hon'ble Supreme Court while examining Section 62 of the Indian Contract Act, made following observation in paragraph 18:

> "**18.** Now let us examine Section 62 of the Act which reads as follows:
>
> > "62. *Effect of novation, rescission and alteration of contract.*— If the parties to a contract agree to substitute a new contract for it, or to rescind or alter it, the original contract need not be performed."
>
> This section gives statutory form to the common law principle of novation. The basic principle behind the concept of novation is the substitution of a contract by a new one only through the consent of both the parties to the same. Such consent may be expressed as in written agreements or implied through their actions or conduct. It was defined thus by the House of Lords in Scarf v. Jardine [(1882) 7 AC 345 : (1881-85) All ER Rep 651 (HL)] : (AC p. 351)
>
> > "… that there being a contract in existence, some new contract is substituted for it, either between the same parties (for that might be) or between different parties; the consideration mutually being the discharge of the old contract.""

18. No exception can be taken to the proposition as laid down by the Hon'ble Supreme Court in the above case, but the fact remains that to find out as to whether ingredients of Section 62 are fulfilled in a particular case or not has to be found out.

19. As noticed above, in the present case, conditions of MRA itself are not fulfilled and furthermore in the MRA, the JCCL was not even the party. The above judgment of the Hon'ble Supreme Court does not in any

manner comes to the aid of the Appellant. The Adjudicating Authority after considering all the relevant facts and circumstances, has come to the conclusion that debt and default on the part of the CD – JCCL is proved. When the debt and default is proved, the admission of Section 7 Application against JCCl, cannot be faulted. We, thus, do not find any error in the order of the Adjudicating Authority admitting Section 7 Application. There is no merit in the Appeal. The Appeal is dismissed. Interim order stands vacated. Pending IAs, if any, also disposed of. There shall be no order as to costs.

[Justice Ashok Bhushan]
Chairperson

[Barun Mitra]
Member (Technical)

NEW DELHI

30th May, 2025

Ashwani