

**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

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

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 *interalia* 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/Default Interest
1.	Shahabad Facility Loan account number: 64103873564	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

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

#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)	264,62,42,343064	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, FITL, 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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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

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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.

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

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

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

Date : 22nd July, 2024