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IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ

CP (IB) NO.330/ALD/2018 WITH IA NO.263 OF 2024
& IA NO.406 OF 2023

(An application under Section 7 read with Rule 4 of the Insolvency and Bankruptcy Code, 2016)

IN THE MATTER OF:

ICICI Bank Limited,

Having its registered office at:-

ICICI Bank Tower, Near Chakli Circle,

Old Padra Road, Vadodara 390007, Gujarat, India

.....APPLICANT/FINANCIAL CREDITOR

Versus

JAIPRAKASH ASSOCIATES LIMITED

Having its registered office at:-

Sector 128, Noida-201304, Uttar Pradesh

.....RESPONDNENT/CORPORATE DEBTOR

AND IN THE MATTER OF:

JAIPRAKASH ASSOCIATES LIMITED

Having its registered office at:-

Sector 128, Noida-201304, Uttar Pradesh

..... APPLICANT/CORPORATE DEBTOR

Versus

ICICI Bank Limited,

Having its registered office at:-

ICICI Bank Tower, Near Chakli Circle,

Old Padra Road, Vadodara 390007, Gujarat, India

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..... **RESPONDNENT/FINANCIAL CREDITOR**

AND IN THE MATTER OF:

ICICI BANK LIMITED

Having its registered office at:-

ICICI Bank Tower, Near Chakli Circle,

Old Padra Road, Vadodara 390007, Gujarat, India

..... **FINANCIAL CREDITOR**

Versus

JAIPRAKASH ASSOCIATES LTD

Having its registered office at:-

Sector 128, Noida-201304, Uttar Pradesh

.....**CORPORATE DEBTOR**

Order Pronounced On- 03 June, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Amit Saxena, Sr. Adv. assisted by Sh. Rahul Agarwal, Sh. Madhav Kanoria, Ms. Srideepa Bhattacharya & Ms. Aishwarya Gupta, Advs. : *For the Financial Creditor /Applicant in IA No. 263 of 2024 & Respondent in IA No. 406 of 2023*

Sh. R.P. Agarwal, Sr. Adv. assisted by Sh. Abhishek Tripathi, Adv. : Corporate Debtor/Res. in *IA No. 263 of 2024 & Applicant in IA No. 406 of 2023*

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ORDER

1. The ICICI Bank Limited (hereinafter referred as the "***Applicant/Financial Creditor***") has filed the present petition on 07.09.2018 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 Jaiprakash Associates Limited (hereinafter referred as "***Respondent/Corporate Debtor/JAL***") 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.1269,10,26,803.06/- (Rupees One Thousand Two Hundred and Sixty Nine Crores Ten Lacs Twenty Six Thousand eight Hundred and three and Six paise only) under default with dates of default being mentioned as 30.04.2016 and 15.05.2016 in respect of various loans under six different facilities for which details

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have been provided in **Annexure A-6** attached with Vol. IV (Pg 787-788) of the Application.

2. The Applicant is a company incorporated under the Companies Act, 2013 and a Banking company within the meaning of the Banking Regulation Act, 1949. The Applicant has appointed Mr. Abhinav Prakash (Manager) as the Authorized Representative in the present case vide Board Resolution dated 27 October 2017 annexed as **Annexure A-1 (Colly)** of the instant petition, who has signed the instant petition.

3. The Corporate Debtor i.e. Jaiprakash Associates Limited (JAL) has been incorporated on 15th November, 1995 with registered Office at Sector 128, Noida. It is engaged in the business of Civil Engineering Construction, manufacture and marketing of Cement, river valley development including construction of Hydro Power Projects and various other business activities.

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

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I. Rupee term loan to the tune of Rs. 400,00,00,000/- (Rupees Four Hundred Crore Only) ("Facility 1") under the Common Facility Agreement dated December 28, 2009 read with Amendment Agreement dated May 2, 2012, Amendment Agreement dated June 9, 2012 and Amendment Agreement dated August 28, 2012 (collectively "Facility Agreement 1");

II. Rupee term loan to the tune of Rs. 500,00,00,000 (Rupees Five Hundred Crore Only) ("Facility 2") under Facility Agreement dated March 31, 2011 read with Addendum Agreement dated March 31, 2011 (collectively "Facility Agreement 2");

III. Rupee term loan to the tune of Rs. 1300,00,00,000/- (Rupee One Thousand Three Hundred Crore Only) ("Facility 3") under Rupee Loan Facility Agreement dated March 31, 2011 read with the General Conditions GC-C-08 dated March 31, 2011 read with Addendum Agreement dated March 31, 2011 (collectively "Facility Agreement 3");

IV. Rupee term loan to the tune of Rs. 1200,00,00,000/- (Rupees One Thousand Two Hundred Crore Only)

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("Facility 4") under the Facility Agreement dated September 30, 2011 ("Facility Agreement 4");

V. Rupee term loan to the tune of Rs. 1200,00,00,000 (Rupees One Thousand Two Hundred Crore Only) ("Facility 5") as part of corrective action plan under Corporate Rupee Loan Facility Agreement dated May 25, 2015 read with the General Conditions GC-C-08 dated May 25, 2015 read with Addendum Agreement dated May 25, 2015 (collectively "Facility Agreement 5");

VI. Rupee term loan to the tune of Rs. 150,00,00,000 (Rupees One Hundred and Fifty Crore Only) ("Facility 6") to Jaypee Sports International Limited ("JSIL"), which was subsequently amalgamated into the Corporate Debtor pursuant to the Order of the Hon'ble High Court of Judicature at Allahabad dated September 14, 2015 approving the Scheme of Amalgamation between the Corporate Debtor and JSIL and their respective shareholders and creditors ("JSIL Scheme of Arrangement"). Facility 6 was granted under the Rupee Term Loan Facility Agreement dated June 30, 2012 read

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with the General Conditions dated June 30, 2012 (collectively "Facility Agreement 6"). Pursuant to the aforesaid Order sanctioning the JSIL Scheme of Arrangement, the debts of JSIL were transferred to the Corporate Debtor. The copy of the Order of Hon'ble High Court of Judicature at Allahabad dated September 14, 2015, is annexed as Annexure-3 to the petition.

5. Details of the loans under the six 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 six facilities, the Financial Creditor has also annexed the computation relating to default amount, dates of default and days of default as **Annexure 6** in Vol IV (pg 787-788) to the Application. The same has been reproduced hereunder:

Total amount of default and days of default

Sr. No.	Facility	Total Overdue (as on August 31, 2018) (INR)	Initial Date	Days of

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		Principal Overdue	Interest Overdue	Penal/Default Interest	of Default	Default till August 31, 2018
1.	Rupee Term Loan of Rs.400 Crores Loan account number: J005161002	-	363,946,960.23	148,739,147.00	15-05-2016	839
2.	Rupee Term Loan of Rs.500 Crores Loan account number: J005163001	-	462,447,559.32	282,771,778.90	30-04-2016	854
3.	Rupee Term Loan of Rs.1200 Crores Loan account number: J005165001	1,572,964,731.24	1,616,684,830.48	647,679,560.02	30-04-2016	854
4.	Rupee Term Loan of Rs.1200 Crores (under corrective	857,142,856.00	3,554,092,369.00	592,831,778.00	30-04-2016	854

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	action plan) Loan account number: 0000002297					
5.	Rupee Term Loan of Rs.1300 Crores Loan account number: J005164001	-	1,627,692,567.81	863,958,686.23	30-04-2016	854
6.	Rupee Term Loan of Rs.150 Crores Loan account number: 0000003165	-	41,436,058.00	58,637,920.83	30-04-2016	854
	Total	**1269,10,26,803.06**				

6. Details of Security Interest available in respect of these loans under six 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 six loan facilities have been attached with the Application in **Annexure A-4 Vol II (pg. 74-782)** and **Vol. III (pg. 401-782)**

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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 5 Vol. IV (pg 783-786).**

7. As averred in the Part IV of the Application, the Financial Creditor has also granted other Rupees Term Loan Facilities as well as Working Capital Facilities in the form of both fund based and non-fund based facilities (including letters of credit and bank guarantees issued on behalf of the Corporate Debtor) (Collectively termed as " Other Facilities") . However, no claim in respect of these Other Facilities have been made in the present application filed u/s 7 but its right to submit its claims or otherwise during CIRP stage if ordered, has been kept reserved.

8. Subsequent to filing of this Application, the Applicant filed a miscellaneous application dated 19.06.2020, to bring on record the **"Record of Default (ROD)"** of the Corporate Debtor from Information Utility i.e. National E-Governance Services Limited (NeSL). Relevant excerpts of the same have been produced hereunder:

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"2. It is humbly submitted that the Hon'ble National Company Law Tribunal vide Order dated May 12, 2020 had directed all concerned parties to file default records from the Information Utility ("IU") for all new petitions which are filed under Section 7 of IBC, as well as all cases which are pending for admission. Copy of Order dated May 12, 2020 passed by the Hon'ble National Company Law Tribunal with respect to Record of default from Information Utility is annexed herewith as ANNEXURE-1."

Date of Submission	23-01-2020 14:15:12
Type of Submission	Default Submission
Submission ID	8
Submitted by (CREDITOR)	M/s ICICI BANK LTD.
Debtor	M/s JAIPRAKASH ASSOCIATES LTD. (JAYPEE INDUSTRIES LTD)
Default Amount	590298047.20
Status of Authentication by Debtor	DEEMED TO BE AUTHENTICATED
In case Authentication is Performed by the Debtor, date of completion of authentication	Not Applicable

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Date of Submission	23-01-2020 14:15:12
Type of Submission	Default Submission
Submission ID	8
Submitted by (CREDITOR)	M/s ICICI BANK LTD.
Debtor	M/s JAIPRAKASH ASSOCIATES LTD. (JAYPEE INDUSTRIES LTD)
Default Amount	886160175.20
Status of Authentication by Debtor	DEEMED TO BE AUTHENTICATED
In case Authentication is Performed by the Debtor, date of completion of authentication	Not Applicable

Date of Submission	23-01-2020 14:15:12
Type of Submission	Default Submission
Submission ID	8
Submitted by (CREDITOR)	M/s ICICI BANK LTD.
Debtor	M/s JAIPRAKASH ASSOCIATES LTD. (JAYPEE INDUSTRIES LTD)
Default Amount	6182010312.00

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Status of Authentication by Debtor	DEEMED TO BE AUTHENTICATED
In case Authentication is Performed by the Debtor, date of completion of authentication	Not Applicable

9. In Part V of the Application, at Sl. No. 6, in respect of the documents to be furnished under the head "*A Record of Default As Available With any Credit Information Company*", it is mentioned that the status classification reports of the Corporate Debtor maintained by CIBIL could not be made available on account of technical issues and permission was sought to refer and rely upon such reports as and when available. Correspondence made with CIBIL have been attached at **Annexure A-36 in Vol. X (pg 2927- 2931)**. Later CIBIL reports for these loans have been filed along with the Rejoinder showing the number of days since when default in payment of these loans have been continuing

10. In **Annexure A-39 Vol. XIII (pg 4475-4481)** , the Applicant Bank/Financial Creditor has also attached copies of Demand Letters dated 01.04.2016 and 28.06.2016 issued to the

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Corporate Debtor in respect of various loans given under different facilities as mentioned in those demand letters , calling upon the Corporate Debtor to pay the amount which were already due for payment as the Corporate Debtor had been irregular in timely repayment of principal , interest and other charges in respect of these loans .

11. In **Annexure No. 41 Vol. XIII (pg 4528 to 4539)**, reference of a letter of RBI vide letter No. 1386/21.04.048/2018-19 dated 14.08.2018 has been mentioned giving direction to the Applicant Bank to initiate CIRP under I&B Code 2016 against the Corporate Debtor attaching the list of all the loans of the Corporate Debtor on repayment of which it has defaulted. In Annexure-41, a report generated on 03.09.2018 on Repayment History of the Corporate Debtor by Central Repository on Information on Large Credits ('CRILC') has been provided by the RBI giving status as on 09.03.2018. In this report, the Applicant Bank i.e. ICICI Bank Ltd. has been mentioned at Sl. No. 15 showing date of default as 30.04.2016 and status of loan as "*Moved to Default*". This report has been mentioned at Sl. No. 8 of Part V of the

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Application under the head *"List of Other Documents Attached to This Application In Order to Prove The Existence of Financial Debt , the Amount And Date of Default"*

12. 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

13. Against the Application filed by the ICICI Bank Ltd. as discussed above, the Respondent/Corporate Debtor filed the Reply/Counter Affidavit dated 16.09.2018, contending that there is no default as defined in section 3(12) of IBC, on part of the Corporate Debtor with respect to the alleged dues of the Applicant Bank, which may justify the filing of the present Application and it is alleged that the present

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Application has been filed under compulsion and reluctantly to avoid penal consequences for non-compliance with the direction dated 14.08.2018 given by the Reserve Bank of India (hereinafter referred as '***RBI***') under purported exercise of power under section 35AA of the Banking Regulation Act , 1949. The Corporate Debtor also alleged that in order to justify the maintainability of the instant Application, the Applicant Bank has made an incorrect averment in the Application about a default having been made on repayment of loan whereas the facts as per the Corporate Debtor, is that the Applicant Bank and other lender banks have taken unambiguous stand before the RBI that there is no 'default' and the case of Corporate Debtor should not be referred to NCLT under the IBC. It has also been alleged in the said Reply that the Applicant Bank has made an incorrect statement in para 2 of Part IV of the Application stating that the aggregate amount in default under the Loan Agreement as on 31.08.2018 is Rs. 1269,10,26,803, which includes the defaulted amounts of principal, interest and overdue interest. This allegation made in the Application has been vehemently

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denied in the Reply and it is reiterated that there is no amount in default. It is further submitted in the Reply that account statements filed by the Applicant are patently incorrect and liable to be discarded as this incorrect account statements have been prepared without giving effect to the approved and agreed term of Comprehensive Reorganisation & Restructuring Plan (hereinafter referred as '***CRRP***'), Sanction Letter dated 19.05.2017 etc. As per the Corporate Debtor, if the agreed terms of the sanction letter dated 19.05.2017 based on CRRP are given effect to and account statements are corrected to that extent, the corrected account statements will not show any default. It is further alleged that the Applicant has suppressed several material facts and documents with a view to get a favourable order from this Tribunal.

14. The facts and documents which are considered material by the Corporate Debtor for deciding this case, have been thereafter, submitted in the Reply in support of its contention of there being no default on repayment of loan as alleged in the Application. These facts supported with relevant

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documents as attached with the Reply, have been stated in Part-III of the Reply as under: -.

a. The operations of the Corporate Debtor are financed by various lenders including the Applicant Bank. The following Table shows the credit facilities sanctioned by each lender and their respective outstanding dues as on 31.03.2017 & 31.03.2018:

(INR in Cr.)

Sr. No.	BANK	Sanctioned Amount 31.03.17	Outstanding Amount as at 31.03.17	Sactioned Amount 31.03.18	Outstanding Amount as at 31.03.18
1	ICICI BANK LTD.	7,163.37	6,151.07	3,427.39	3,651.54
2	ALLAHABAD BANK	125.00	122.48	104.88	121.97
3	ANDHRA BANK	-	-	68.13	68.31
4	AXIS BANK	2,149.00	1,398.68	845.89	725.19
5	BANK OF BARODA	39.72	42.73	92.65	95.19
6	BANK OF INDIA	190.98	166.14	94.15	101.07
7	BANK OF MAHARASHTRA	880.71	990.48	578.45	636.71
8	CANARA BANK	1,078.80	963.32	645.45	622.25
9	CENTRAL BANK OF INDIA	30.00	33.50	27.73	29.09
10	CORPORATION BANK	132.00	114.34	48.14	66.22
11	DENA BANK	-	-	4.65	11.23
12	EXPORT IMPORT BANK OF INDIA	213.00	145.31	150.20	149.28
13	IDBI BANK LIMITED	4,021.00	3,108.69	2,023.26	2,132.76
14	IFCI LIMITED	800.00	654.99	533.76	476.36
15	INDIAN BANK	-	-	8.74	64.74
16	INDUSIND BANK LIMITED	540.00	551.87	77.15	78.12
17	L & T INFRASTRUCTURE FIN CO LTD	340.00	184.88	140.05	147.26

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18	LAKSHMI VILAS BANK	176.00	143.88	16.51	13.58
19	LIC OF INDIA	2,450.00	1,795.18	1,449.54	1,555.83
20	ORIENTAL BANK OF COMMERCE	169.67	210.05	114.89	116.83
21	PUNJAB NATIONAL BANK	0.50	0.51	102.38	134.27
22	PUNJAB AND SIND BANK	250.56	113.82	147.68	148.86
23	STATE BANK OF INDIA	6,429.90	6,729.23	4,497.27	4,465.76
24	SYNDICATE BANK	107.59	69.42	64.66	63.66
25	THE JAMMU AND KASHMIR BANK	237.65	155.36	189.56	193.70
26	THE KARNATAKA BANK LTD	305.00	279.70	232.85	246.63
27	THE KARUR VYSYA BANK LTD	275.00	133.90	191.38	97.54
28	THE SOUTH INDIAN BANK LTD	420.00	279.05	420.00	221.34
29	UCO BANK	775.00	534.27	440.19	469.39
30	UNITED BANK OF INDIA	202.50	209.59	167.38	179.53
31	VIJAYA BANK	-	-	39.53	39.67
32	YES BANK LIMITED	1,977.00	925.92	485.13	282.63
33	HDFC LIMITED	450.00	297.70	450.00	286.14
34	STANDARD CHARTERED BANK	2,117.00	1,442.52	1,213.34	895.43
35	SIDBI (UNSECURED)	429.52	151.82	125.58	123.18
36	INDIAN OVERSEAS BANK	10.70	8.85	10.70	7.90
37	UNION BANK OF INDIA	9.83	7.15	3.51	2.03
38	TATA MOTORS FIN LTD EQP	3.42	1.54	3.42	0.56
39	SREI EQUIPMENT FINANCE LIMITED	52.50	31.74	33.50	32.51
40	AKA EXPORT FINANCE BANK	114.12	27.44	28.89	9.30
41	BARCLAYS BANK	48.98	52.16	-	-
	TOTAL	**34,716.02**	**28,229.27**	**19,299.56**	**18,763.56**

b. The credit limit and outstanding liability are secured against the assets of the Corporate Debtor details of which are given below: -

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Sr. No.	Nature of security provided	Fair Value Rs. Crores
A	**Assets of the Corporate Debtor**	
1.	Assets forming part of fixed assets	14,573.28
2.	Assets forming part of current assets (Land inventory)	14,271.33
3.	Investments	752.91
	Total	**29,597.52**
B	**Assets of subsidiary companies of Corporate Debtor Co.**	
1.	Assets forming part of fixed assets	919.25
2.	Assets forming part of current assets (Land Inventory)	5,482.96
	Total	**6,402.21**
	Grand total (A+B)	**35,999.73**

c. The total outstanding liability of the Corporate Debtor including the outstanding dues of lenders shown in above table are as under:-

TABLE SHOWING TOTAL OUTSTANDING LIABILITITES OF THE CORPORATE DEBTOR AS ON 31.03.2018

Sr. No.	Nature of liability	Amount Rs. Crores
1.	Aggregate dues of Banks/Fis	18764
2.	Other loan liabilities (including FCCB, YEID etc.)	1528
3	Other Current liabilities (including Trade payables, Advances from Customers, statutory dues etc.)	5773

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	Total	**26065**

d. The Corporate Debtor is merely facing liquidity crunch for reasons that the performance of the Corporate Debtor started deteriorating from FY 2014-15 due to various reasons , beyond the control of management , such as general economic slowdown , change in Government Policy towards Hydro Power Projects , lower price realisation for cement due to excessive capacity in the market , time over run leading to cost overrun in project implemented by the Corporate Debtor due to time taken by various Regulators /Government Departments in giving various clearances /approvals , Coal Block cancellation by the Government for no fault of the Corporate Debtor on development of which it had invested large sums; prolonged litigation hampering the work relating to land acquisition for Yamuna Expressway and Real Estate development /being developed by the Corporate Debtor including various restrictions imposed by National Green Tribunal in respect of Real Estate Projects in Noida where the

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Corporate Debtor is developing township leading to time and cost overrun etc. Due to these factors and constraints came in the business of the Corporate Debtor, it suffered losses from FY 2014-15 onwards resulting into 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. It is also contended by the Corporate Debtor that it has a very large asset base and it is solvent. The fair market value of assets owned by the Corporate Debtor is substantially higher than the outstanding liabilities as reflected in the Table below: -

TABLE SHOWING FAIR MARKET VALUE OF ASSETS OF CORPORATE DEBTOR AS ON 31-03-2018

Sr. No.	Nature of Assets	Fair Value (APPROX) Rs. Crores
1.	FIXED ASSETS	14573
2.	INVESTMENTS	6211
3.	CURRENT ASSETS (LAND GIVEN A SECURITY)	14271
4.	OTHER CURRENT ASSETS	15516
	TOTAL	**50571**

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e. In view of liquidity problems and to finalise an appropriate CRRP for the Corporate Debtor, a Joint Lenders Forum (hereinafter referred as '***JLF***') comprising of all the Banks/FIs was constituted on 18.12.2014 as per the RBI Circular dated 26.02.2014. A draft CRRP was approved in the JLF meeting held on 18.05.2017 subject to final approval by the Independent Evaluation Committee (hereinafter referred as '***IEC***'), which is appointed by the RBI under Clause 28.3.3 of Master Circular dated 01.07.2015. The draft CRRP was considered by the IEC in its meetings held on 12.06.2017 and 19.06.2017 and it was finally approved by the IEC in its meeting held on 19.06.2017 with certain recommendations. The draft CRRP as approved/recommended by IEC was considered and finally approved by JLF in their meeting held on 22.06.2017.

f. The finally approved CRRP broadly envisaged bifurcation of the entire debt of the Corporate Debtor into 2 parts – "**Sustainable Debt**" and "**Other Debt**".

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While Sustainable Debt is to remain the liability of the Corporate Debtor, the Other Debt has been addressed through sale/transfer of assets of the Corporate Debtor. The CRRP has put the entire outstanding debt into three buckets and made provisions for settlement / continuance of each category of debt as under:

i. **Bucket 1 Debt of Rs. 11,689 crore** – being part of the "Other Debt" is to be discharged against sale of identified Cement Plants of the Corporate Debtor & JCCL* to Ultra Tech Cement Ltd.

ii. **Bucket 2A Debt of Rs. 6367 crores**-being "Sustainable Debt" will continue as debt of the Corporate Debtor

iii. **Bucket 2B Debt of Rs. 13,590 crores** -being part of "Other Debt" is to be transferred to a Special Purpose Vehicle (SPV) along with identified land of the Corporate Debtor of the equivalent value.

15. It is admitted position of Applicant as well as the Respondent that the present application has been filed with respect to loan/debt remaining outstanding in Bucket 2B. Therefore, in

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this order, we have considered all the arguments put forward in respect of payment of loan/debt in Bucket 2B and to examine whether there is any default or otherwise in its repayment by the Corporate Debtor. In respect of the debt of Bucker 2b, the Corporate Debtor in its Reply has submitted that out of the debt of Rs. 13,590 crores placed in this Bucket, the debt aggregating to Rs. 2543.55 crores stand settled through direct Debt Assets Swap. For the remaining debt of Rs. 11,833.55 crores (including interest), a Scheme of Arrangement has been framed in consultation and with the approval of Banks/FIs. Under this Scheme, as per the Corporate Debtor, this debt is to be transferred with equivalent security to SPV for which the Scheme of Arrangement has been filed to this Tribunal and in this respect, a Company Petition No. 19/ALD/2018, being second motion for final sanction of the Scheme of Arrangement is pending before this Tribunal. It is also stressed in the Reply that delay in sanction of the Scheme is not due to any negligence or lack of due diligence on the part of the Corporate Debtor. As mentioned in the Reply, this Scheme is

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effective from 01.07.2017 and in view of the Corporate Debtor, upon sanction of this Scheme, the entire loan and the land parcel of equivalent value will stand transferred to SPV. By referring to these facts, it is emphasised that even if there is delay in formal sanction of the Scheme, it does not nullify the fact that the settlement of Bucket 2B debt stands implemented since the Scheme of Arrangement is effective from 01.07.2017 irrespective of the date of formal sanction of the Scheme by NCLT.

16. Apart from arguing on taking all the steps for implementation of Bucket 2B debt under Other Debt category as per CRRP, it has also been submitted by the Corporate Debtor in its Reply that consequent upon the approval of CRRP by JLF, the competent authorities of the respective Banks/Financial Institutions have also approved it and issued formal sanction letters. In this connection, the present Applicant i.e. ICICI Bank Ltd. has also issued letter dated 19.05.2017, 2, which has been annexed as **Annexure-15** with the Reply. This sanction letter also gives details that loans of ICICI Bank Ltd. were put in these three different buckets. It is also pointed

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out that as per the Clause 6 of the letter makes it clear that in respect of debts put in Bucket 2B, the interest will cease with effect from 01.10.2016. By referring to terms of this sanction letter of ICICI, the Corporate Debtor further pointed out that the interest on this part of the loan i.e. Bucket 2B has ceased with effect from 01.10.2016 and no part of the debt is repayable as the entire amount is to be transferred to SPV in the terms of the approved Scheme of Arrangement, hence there is no question of any default in respect of this part of Loan.

17. In the Reply, the Corporate Debtor has further explained that from the facts as brought out in Part III of the Reply as discussed above, it is evident that the Lenders and the Corporate Debtor have performed their obligations and the CRRP stands implemented within the stipulated timeframe contemplated by the RBI in its Press Release dated 13.06.2017 , notwithstanding the pendency of the formal sanction of the Scheme of Arrangement by NCLT. It is also pointed out that the fact that the CRRP stands implemented has been confirmed by the Banks/Lenders and recorded in

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the minutes of JLF held on 18.10.2018 as recorded in the minutes that Shri Sharad Agarwal, Joint General Manager of ICICI Bank informed that "*ICICI Bank as the lead Bank had written to RBI regarding finalisation of DRP and successful implementation of the same*"

18. After explaining in the Reply that there is no default on the part of the Corporate Debtor in repaying the debt in Bucket 2B due to Scheme of Arrangement in this respect, has already been devised within the time limit provided by the RBI, the Corporate Debtor referred to a Writ Petition (Civil) No. 744 of 2017 in case of ***Chitra Sharma and Ors. Vs. Union of India and Ors*** filed to Hon'ble Supreme Court in which RBI moved an application dated 18.01.2018 praying that they should be allowed to follow the recommendation of the Internal Advisory Committee (hereinafter referred as '***IEC***') in accordance with the Ordinance dated 04.05.2017 as regards the Jaiprakash Associates Ltd. On disposal of this Writ Petition, vide order dated 09.8.2018, the Hon'ble SC allowed the above mentioned application of the RBI. A copy of this order dated 09.08.2018 has been annexed as Annexure-6 with the Reply.

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After referring to this order of the Hon'ble Supreme Court , the Corporate Debtor submitted that the permission granted by the Hon'ble Supreme Court is not direction to RBI to initiate CIRP against the Corporate Debtor. In view of the Corporate Debtor, the Hon'ble Apex Court has only permitted the RBI to take its own decision to initiate such proceeding as per the recommendation of IEC in accordance with the ordinance dated 04.05.2017.

19. In pursuance of the said order passed by the Hon'ble Apex Court, the Corporate Debtor in its reply further argued putting his view on the circumstances under which the present Application has be filled submitting that after the above order of Hon'ble SC had been passed, the RBI in purported exercise of its powers under sections 35A/35AA of the Banking Regulation Act , 1949, gave the impugned direction on 14.08.2018 to initiate CIRP against the Corporate Debtor within the period of 15 days from the date of such direction and the Applicant Bank , being statutorily bound to follow the directions of RBI , has filed the instant

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Application under section 7 of IBC before this Tribunal on 07.09.2018.

20. It is stated that Section 35AA and 35AB have been inserted in the Banking Regulation Act, 1949 vide Banking Regulation (Amendment) Ordinance 2017, No.1 of 2017 dated 04.05.2017, Reserve Bank of India formed Independent Advisory Committee (IAC) comprising of Independent Directors of RBI. IAC recommended that accounts with fund and non-fund based outstanding with greater than Rs. 5000 crores, with 60% or more shall be classified as Non-Performing Asset by the bank as on 31.03.2017. Accordingly, RBI issued a direction to initiate CIRP against the 12 stressed accounts. Now, Respondent contends here that Petitioner's Account is not covered in the criteria stated by the IAC. Copy of the Press release dated 13.06.2017 has been annexed as **Annexure-8** with the Reply. Para 4 of the Press release dated 13.06.2017 states the criteria for declaring the stressed accounts which is stated as under: -

"4. As regards the other non-performing accounts which do not qualify under the above criteria, the IAC recommended that banks should finalise a resolution

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plan within 6 months. In cases where a viable resolution plan is not agreed upon within six months, banks should be required to file for insolvency proceedings under the IBC. "

21. The Reserve Bank of India advised the banks to resolve such stressed accounts within six months (i.e. by 13.12.2017), failing which insolvency resolution proceedings under IBC should be initiated by 31.12.2017. It is contended by the Corporate Debtor that the lending Banks/FIs have finalized a resolution plan for the stressed accounts of the Corporate Debtor well before the timeline of 13.12.2017, as notified by the RBI. All the required steps were taken by the lenders and the Corporate Debtor well within the specified timeline of 13.12.2017. Thus, Resolution plan of the Corporate Debtor was implemented way before 13.12.2017.

22. In Para 6 of RBI's Press Release dated 13.06.2017, it was stated that *"the details of the resolution framework in regard to the other non- performing accounts will be released in the coming days."* Accordingly, RBI has issued circular dated 12.02.2018 - Resolution of Stressed Assets - Revised Framework. Para 18 of the said circular provides as under:

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"I. Withdrawal of extant instructions:

18. The extant instructions on resolution of stressed assets such as framework for revitalizing distressed assets, corporate debt restructuring scheme, flexible structuring of existing long term project loans, strategic debt restructuring scheme (SDR), change in ownership outside SDR, and scheme for sustainable structuring of stressed assets (S4A) stand withdrawn with immediate effect. Accordingly, the Joint Lenders' Forum (JLF) as an institutional mechanism for resolution of stressed accounts also stands TARY discontinued. All accounts, including such accounts where any of the schemes have been invoked but not yet implemented, shall be governed by the revised framework."

Copy of the 12.2.2018 circular has been annexed as **Annexure-21** with the reply.

23. Respondent further contends that the issue of the Corporate Debtor in view of the aforesaid provisions made in Para 18 of the aforesaid Press Release dated 12.02.2018, is not covered under the revised framework as the resolution plan for the Company had already been approved and implemented before the timeframe fixed by RBI, i.e. before 13.12.2017.

24. The Corporate Debtor pointed out that the Minutes of JLF dated 18.01.2018, show that sometime in December, 2017, members of the Core Committee of Lenders of the

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Petitioner/Applicant, i.e. ICICI Bank and other two banks i.e. SBI and IDBI Bank had approached Reserve Bank of India, inter-alia, confirming that the Resolution Plan in the case of Corporate Debtor has already been agreed upon and implemented and, therefore, the Corporate Debtor should not be referred to National Company Law Tribunal under IBC.

25. Respondent submits that RBI has given direction dated 14.08.2018 to ICICI Bank to initiate CIRP against the Corporate Debtor i.e. JAL. However, the copy of the impugned direction dated 14.08.2018 has been received by the Corporate Debtor only after the filing of the Application by the ICICI Bank under section 7 of IBC.

26. Respondent further contends that the impugned direction dated 14.08.2018 given by the RBI is against the interest of all the stakeholders of the Corporate Debtor, including large number of its shareholders, Banks/Financial Institutions and other financial and operational creditors, home buyers, clients/customers including Indian and foreign Government / Statutory Authorities/Government Undertakings, employees etc. Their rights and interest will be adversely

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affected if the Corporate Insolvency Resolution Process (CIRP) is permitted to commence against the Corporate Debtor.

27. In nutshell, the main argument of the Corporate Debtor against the Application is that the debt restructured to be put under the Bucket 2B , which has been accepted by the Applicant Bank i.e. ICICI Bank Ltd. as per its sanction letter dated 19.05.2017, is to be transferred to an SPV under the Scheme of Arrangement. The said scheme though finalised but pending for final approval before this Tribunal, is effective from 01.7.2017. Such restructuring of the loan facility was done in compliance of RBI Press Release dated 13.06.2017 under which the stressed accounts for which no resolution plan was finalised, the RBI advised the banks to resolve such stressed accounts within six months (i.e. by 13.12.2017), failing which CIRP under IBC should be initiated. All necessary steps were taken by the lenders and Corporate Debtors well within the specified time limit of 13.12.2017 and therefore, as per the criteria laid down by the IAC, the resolution plan for the stressed account of the Corporate Debtor was not only finalised and agreed upon but also acted

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upon and implemented well before 13.12.2017. In order to show that there is no default and resolution plan under CRRP has been successfully implemented , the Corporate Debtor has also relied upon certain internal correspondences of three main banks i.e. ICICI, SBI and IDBI with RBI wherein it has been stated that all the steps required towards the resolution of the loan accounts vide implementation of the JLF-approved CRRP have been completed and account may be considered as resolved and also stated that it may be considered that the resolution of debt for the captioned company i.e. Jai Prakash Associates Ltd. has been achieved and the same need not be referred to NCLT under IBC . It is also pointed out that as per clause 6 of the Sanction letter dated 19.05.2017, interest on this part of the loan had ceased w.e.f. 01.10.2016 and no part of the loan is repayable as the entire loan amount shall be transferred to SPV as per the Scheme of Arrangement after being approved by the NCLT , hence there is no question of any default and accordingly, this application filed on the direction of the RBI vide its letter dated 14.08.2018 is liable to be dismissed.

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Rejoinder Filed by the Financial Creditor (Applicant)

28. In response to above Reply, a Rejoinder has been filed by the Applicant on 24.09.2018 countering all the contentions raised in the Reply of the Corporate Debtor about there being no default on repayment of the loan after it is restructured and put in Bucket 2B. In the rejoinder, it has been specifically stated that the Applicant has not misrepresented or 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.

29. It is submitted that the lenders of the Corporate Debtor had been providing loans to the Corporate Debtor periodically. However, the Corporate Debtor defaulted on these loans, causing the Applicant and several other banks to declare the Corporate Debtor as a Non-Performing Asset (NPA). Due to liquidity stress faced by the Corporate Debtor, the Debt Realignment Plan (DRP) was initiated, which involved restructuring of JAL. It is stressed that the restructuring of loan itself implies that defaults had occurred and were continuing.

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30. It is further submitted that the lenders gave in-principal approval to the DRP on 05.10.2016, followed by several meetings. Ultimately, the final DRP was approved unanimously by all lenders in the JLF meeting held on June 22, 2017. This approval occurred well before the RBI issued its second list of defaulters on August 28, 2017, which included the Corporate Debtor. A copy of the defaulters' list circulated by RBI on August 28, 2017, is attached herewith and marked as "**Annexure 1**" **from pages 22 to 26 of the rejoinder**. In this letter, the Corporate Debtor i.e. M/s Jaiprakash Associates Limited has been shown as borrower of the Applicant Bank i.e. ICICI Bank Ltd. in which it is lead bank, with more than 60 percent of total outstanding having been NPA since 30.06.2016 and SDR time lines also exceeded and it has been advised to complete the resolution process and implement a viable resolution plan for these accounts before 13.12.2017 failing which , insolvency proceeding in respect of the concerned account may be initiated under the provision of the IBC before 31.12.2017, unless already initiated . It is also further advised in the said letter of the

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RBI that any resolution plan finalised in respect of the said accounts outside the IBC will be subject to a rating requirement i.e. in all resolution plans where the lenders continue to hold a portion of the debt, the residual debt must be rated as investment grade by two external credit rating agencies (CRAs) accredited by the RBI for bank ratings and in case the resolution plan is not able to get the required rating, such accounts shall be required to be referred for resolution under IBC before 31.12.2017.

31. In the DRP approved on 22.06.2017, the total debt of the Corporate Debtor as already submitted in the Reply of the Corporate Debtor, was divided into three buckets; namely Bucket 1, Bucket 2A, and Bucket 2B, which were explained by the Applicant as follows:

a) **Bucket 1**: Divest a substantial portion of its cement business, along with a debt of Rs. 11,689 crores, to UltraTech Cements Ltd (UTCL). This transaction was completed on June 29, 2017. Out of this, Rs. 10,689 crores of debt liabilities were assumed by UTCL, while the remaining Rs. 1,000 crores are pending due to certain approvals.

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b) **Bucket 2A**: The residual JAL, with an overall debt of Rs. 6,367 crores, which included Rs. 5,072 crores owed to the lenders, was classified under Bucket 2A. The Master Restructuring Agreement (MRA) for JAL's sustainable debt was signed by all 32 relevant lenders before December 13, 2017.

c) **Bucket 2B**: Transfer of assets and liabilities pertaining to a debt of Rs. 11,833.55 crores to be completed through a Scheme of Arrangement. This would involve transferring the remaining debt and land to a 100% real estate Special Purpose Vehicle (SPV) of JAL, namely Jaypee Infrastructure Development Limited (herein after referred as 'JIDL'). The Scheme is pending for approval before this Adjudicating Authority.

32. Although the DRP was approved as it was considered commercially reasonable at the relevant time, but for various reasons it could not be implemented completely within the timeframe stipulated by the RBI. Then it is also pointed out that before the DRP could be fully implemented, the RBI communicated the second list of borrowers to the lenders,

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who were then required to comply with additional conditions, which were *inter alia* as follows:

a) Implementation of DRP to be completed in all respects by December 13, 2017.

b) Investment-grade ratings from 2 accredited rating agencies for sustainable debt.

The first two parts of the DRP (Bucket 1 and Bucket 2A) were substantially completed much before the deadline of December 13, 2017 .

33. Meanwhile, several writ petitions and Special Leave Petitions (SLPs) were filed by home buyers in the Hon'ble Supreme Court with respect to the CIRP initiated against Jaypee Infratech Limited, a company promoted by the Corporate Debtor. The lead case was ***Chitra Sharma and Ors. v. Union of India and Ors., W.P.(C) 744 of 2017 ("Chitra Sharma").*** In this case, the Hon'ble Supreme Court 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.

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In the meantime, as submitted by the Applicant, by December 31, 2017, the RBI had not recognized the DRP as the same could not completely meet the requirements as mentioned in its directions as issued earlier discussed above. Subsequently, during the hearing on January 8, 2018, the RBI filed an application for directions before the Hon'ble Supreme Court, requesting permission to initiate the CIRP against the Corporate Debtor. The RBI highlighted that the Banking Regulation (Amendment) Ordinance, 2017 had introduced Section 35AA to the Banking Regulation Act, 1949, empowering the Central Government to authorize the RBI to direct banks to commence CIRP in cases of default. Following this, the Central Government authorized the RBI to issue such directives to banking companies. To facilitate this process, an Internal Advisory Committee (IAC) was formed, which had given JAL six months for resolution since it was considered a stressed account. As these six months had elapsed without a resolution between the concerned banks and JAL, the RBI requested the Hon'ble Supreme Court to permit them to follow the IAC's recommendations and initiate

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CIRP against JAL. However, the Supreme Court deferred the hearing on RBI's application to a later date.

34. Because of the Supreme Court's orders in the Chitra Sharma case, the DRP could not be fully implemented due to *inter alia* for the following reasons

a) Security creation for restructured facilities (Bucket 2A) and hiving off of the RE-SPV (Bucket 2B) could not be completed due to the Supreme Court directions in respect of proceeding of Jaypee Infratech Ltd. (JIL) directing JAL not to create any third-party interests nor alienate any assets.

b) The condition regarding obtaining two investment-grade rating could not be completed because of the Supreme Court's direction of depositing Rs. 2,000 crores by JAL as the promoter of JIL. This created uncertainty about JAL's total obligations, including payment of Rs. 2000 crores for JIL or any further amount that could have been demanded by the Supreme Court from JAL.

35. Thus, as submitted by the Applicant, the Current Status of the DRP is as follows:

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a) **Bucket 1**: Payment of INR 1,000 crores is pending due to certain approvals that are still awaited.

b) **Bucket 2A**: The Master Restructuring Agreement (MRA) has been signed by all 32 relevant lenders as planned under the DRP before December 13, 2017. However, while the MRA has been executed, the creation of security as per the MRA terms is still incomplete.

c) **Bucket 2B**: The Scheme of Arrangement has been approved by all creditors and shareholders of JAL, but the final order from this Tribunal approving the Scheme is still pending.

36. As regards the consent for the Scheme of Arrangement given by the Applicant for creating a SPV in respect Bucket 2B, it is specifically pointed out by the Applicant that it had given only conditional consent to the SPV Scheme, which was communicated to the Respondent Corporate Debtor in a letter dated January 19, 2018. The Applicant informed the Hon'ble Tribunal of this conditional consent, highlighting the following:

"In light of the above, please note that while we have accorded our in principle approval on the SPV Scheme

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through postal ballot Form dated January 19, 2018, pursuant to your notice, we request you to (i)approach the Hon'ble Supreme Court for seeking necessary orders for permitting JAL TO (a) fulfill its obligations including creation of security Interest for the benefit of Its lenders under and in relation to the MRA, WCTL, FA and (b) proceed with the SPV Scheme, pursuant to the Debt Realignment Plan and (iii) produce this letter before the NCLT prior to NCLT Issuing Its order sanctioning the SPV Scheme."

It is also specifically pointed out that since the Supreme Court, by its order (during the pendency of the case of Chitra Sharma (*supra*)), did not permit the transfer of assets as envisaged, the DRP could not be implemented within the timeline stipulated by the RBI i.e. 13.12.2017.

37. The Applicant has also pointed out that the Master Restructuring Agreement (MRA) covers only two facilities of the Applicant i.e Bucket 1 and Bucket 2B. However, the Applicant i.e. ICICI Bank herein, has granted several other facilities to the Corporate Debtor. It has been explained that the Application has been filed only in respect of the Facilities under the Loan Agreements that form part of the Bucket 2B facilities and not the Bucket 2A facilities, which are covered

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by the MRA. It is pointed out that even the security stipulations of the MRA have not been fully complied with.

38. Further, additionally, no separate restructuring agreement has been entered into for the facilities under the Bucket 2B. The scheme of arrangement for Bucket 2B facilities is yet to be approved by the Hon'ble Tribunal, and this pending approval has delayed the implementation of the DRP for Bucket 2B. Consequently, the default concerning these facilities continues.

39. The Applicant reiterates that the DRP for the facilities covered under Bucket 2B, which is the subject of the Application filed under section 7 of the IBC, has not been implemented in the banking system due to the pending approval from this Tribunal. As a result, these Facilities remain in default. Furthermore, the Respondent Corporate Debtor does not dispute that the Facilities under the Loan Agreements constitute to be financial debt under the IBC. Thus, it is evident that the only mandatory requirement for the admission of an application under section 7 of the IBC,

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namely the existence of a default of financial debt, has been met.

40. The Applicant further states that it has not withheld any information, as evidenced by the fact that the Application clearly states that, in addition to the mentioned facilities, the Applicant has provided other Rupee Term Loans and Working Capital Facilities. It is also claimed by the Applicant that the Application pertains only to the Bucket 2B facilities, which are currently pending approval by this Tribunal and are therefore in default.

41. Additionally, any reference to the Credit Arrangement Letter/Sanction Letter dated May 19, 2017, is irrelevant because the Sanction Letter explicitly stated that it should not be construed as creating any binding obligation on ICICI Bank unless the corporate debtor has signed/executed the necessary agreements/documents within 90 days of the date of the facility, or within any extended period allowed by the Applicant in writing at its discretion. Since no agreements/documents were executed concerning the Bucket 2B facilities, the Sanction Letter, specifically

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regarding the Bucket 2B facilities in the Application, is not effective or binding, and any reliance on the Sanction Letter is misplaced. Furthermore, the Master Restructuring Agreement (MRA) executed by the Lenders and the Corporate Debtor pertains only to the Bucket 2A facility, which is not part of the Application; therefore, the MRA is neither relevant nor material to this Application.

42. Additionally, the Applicant explained that it did not refer to the Minutes of the Independent Evaluation Committee dated June 12, 2017, and June 19, 2017, or the Minutes of the Joint Lenders Forum Meeting dated June 22, 2017, as these relate to the Draft Plan, which has not yet been fully implemented and is therefore irrelevant for the purpose of this Application.

43. It has been further averred by the Applicant that the Corporate Debtor has also attempted to argue that the Applicant did not act under the RBI Press Release dated June 13, 2017, which mandated that a resolution plan be finalized and approved within six months, failing which proceedings under the IBC should commence by December 31, 2017. The

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Applicant submits that the insolvency application was not filed by December 31, 2017, because the RBI, through a letter dated December 28, 2017, advised lenders to await further instructions due to the ongoing proceedings before the Hon'ble Supreme Court in the ***Chitra Sharma case* (supra)**. It was only after the Hon'ble Supreme Court's order in Chitra Sharma on August 09, 2018, that the RBI issued a subsequent letter on August 14, 2018, directing lenders to take action.

44. The Applicant further states that the Corporate Debtor's claim, that the account statements relied upon by the Applicant are incorrect, is unfounded. The loan accounts mentioned in the Application pertain solely to the Bucket 2B facility, which has not yet been implemented due to pending approval by this Tribunal. Therefore, the facilities covered in the Application remain in default and the Respondent Corporate Debtor's averment that there is no amount in default is factually incorrect. It is reiterated that default under the Loan Agreement as on 31.08.2018 is Rs. 1269,10,26,803/- and it includes the defaulted amounts of

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principal, interest and overdue interest for which computation has been given ***Annexure-6*** to the Application. Accordingly, it has been stressed in the Rejoinder that the Applicant firmly stands by its submission that there is default and there is no false averment to that effect.

45. After explaining the entire facts and circumstances of the case and showing that due to non-implementation of the resolution plan for Bucket 2b loan as the Scheme of Arrangement made for its implementation is still pending having not been approved by the NCLT , default of this loan facility covered under the present application is still continuing , hence the only pre-requisite for filing an Application u/s 7 of the IBC that there must be a default of debt is fulfilled and once, a default happens , the Adjudicating Authority need not see any other factor for admitting the Application u/s 7 for the initiation of CIRP. For its this contention, the Applicant has placed reliance on the case of ***Innoventive Industries Limited v. ICICI Bank and Anr. (2018) 1 SCC 407*** wherein the Hon'ble Supreme Court has held as follows:

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"the scheme of the Code is to ensure that when a Default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins... the Code gets triggered the moment default is of rupees one lakh or more (Section 4)." 30. In the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. ***It is of no matter that the debt is disputed so long as the debt is "due"***..

(Emphasis supplied)

After relying upon the above decision of the Hon'ble Supreme Court, It has been submitted that the Corporate Debtor's contentions that for admission of an application filed u/s 7 of the IBC, a case of insolvency has to be made out is an incorrect interpretation of law as there is no such requirement under the IBC and therefore, this Application deserves to be admitted in view of the fact that default in the present case has been established.

46. As regards the information about alleged default as available with Credit Information Company, CIBIL not having been attached with the application, it is explained that such report

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could not be submitted earlier due to error in processing from CBIL for which correspondence with CIBIL was enclosed with the Application. Now, as the CIBIL Report dated 19.08.2018 has already been received and the same has been annexed with the Rejoinder in **Annexure-2 from pg 27 to 548**. It is also pointed out that to substantiate its claim of default, the Applicant has already submitted report of default from RBI CRILC portal.

47. The Applicant has also denied the respondent's claim that the present application has been filed under compulsion and pressure from RBI. The Hon'ble Supreme Court, in its order dated August 09, 2018, in the case of ***Chitra Sharma(supra)***, allowed the RBI to follow the Internal Advisory Committee's recommendations to initiate a CIRP against JAL under the IBC. As mentioned earlier, it was following this order that the RBI issued directions to the Applicant, which were statutory in nature. Since the DRP regarding Bucket 2B Facilities was not fully implemented for the reasons stated in this Rejoinder, the amount due under the Facilities, covered under the Section 7 Application under

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IBC, continued to be in default and The default amount exceeded the threshold of Rs.1 lakh, prompting the Applicant to file this Application. It has also been pointed out that pursuant to the said order of the Hon'ble Supreme Court, the RBI had given directions to the Applicant on August 14, 2018, under Section 35AA of the Banking Regulation Act, 1949, which were statutory in nature.

48. The Applicant further states that it had internally deliberated and corresponded with the Regulating Body i.e. RBI about whether to initiate insolvency proceeding in NCLT against the respondent Corporate Debtor. However, after these deliberations, the Applicant decided to exercise its rights under the IBC and file this Application due to the default on the Facilities that were part of the Bucket 2B facilities. Moreover, internal correspondence and previous deliberations are irrelevant factors for the purpose of this Application. Whatever factors may have been considered by the Applicant before filing of this application, they lose their relevance and significance in the background of the action of filing of an Application u/s of IBC later.

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49. The Applicant further averred that the implementation of the Scheme of Arrangement was delayed due to various factors, which the Corporate Debtor has admitted. During several meetings of the Joint Lenders Forum, the Lenders discussed the status of the Scheme's implementation and the reasons for the delay. Specifically, in the meeting on January 18, 2018, the Corporate Debtor presented the status of the DRP's implementation and acknowledged the remaining tasks concerning the restructuring plan to be pending. It was clearly discussed that the Hon'ble Supreme Court's order, which restrained JAL or its promoters from creating any third-party interest in the assets, was preventing the lenders of the Corporate Debtor from participating in any security documents as it could lead to contempt of court.

50. The Applicant also submitted that the Respondent's claim of a 23-day delay in filing the Application was incorrect. The 15-day deadline given by the RBI in its letter dated August 14, 2018, expired on August 29, 2018. The Applicant filed its Application on September 6, 2018, which is only an 8-day delay. This delay is justified by the fact that after the RBI

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directive on August 14, 2018, the Applicant began preparing the Application (Form-1) according to the IBC requirements. Due to the numerous facilities in default and the substantial amount of documentation needed, it took time to gather all necessary documents. Additionally, time was required to finalize the proposed Interim Resolution Professional, with discussions held in core committee meetings on August 27 and August 30, 2018, and in the JLF meeting on September 4, 2018. Therefore, there was no delay in filing the Application under the provisions of the IBC.

51. After explaining and countering all the objections raised by the Corporate Debtor in its Reply as discussed in foregoing paras, it has been further prayed by the Applicant to reject the contentions raised by the Respondent Corporate Debtor in its Reply and admit this Application and pass such order as this Tribunal deem fit.

Supplementary Affidavit filed by Respondent

52. This tribunal v.o.d 06.01.2022 stated that the minutes of the meetings of the Joint Lenders Forum be placed on record for consideration by the Adjudicating Authority by way of a

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supplementary affidavit within ten days with copies served on the counsel on record for the respondent/ financial creditor.

53. In compliance with the said order the Respondent has filed Supplementary affidavit on 09.02.2022 to place on record minutes of Meeting of the Joint Lenders Forum from January 2020 onwards.

54. The Respondent also filed another supplementary affidavit vide diary no. 478 dated 23.01.2023 wherein it relied on the Judgement in ***Vidarbha Industries Power Limited v. Axis Bank Limited (2022) 8 SCC 352*** in which it was held that the word "may" in Section 7(5) of IBC makes it clear that even if default is assumed, the Tribunal may refuse to admit the Application, if the facts and circumstances of the case so warrant. This judgment has been annexed as Annexure 1 to the affidavit.

55. The Petitioner in response to this affidavit has filed a rejoinder affidavit vide diary no. 1300 dated 27.04.2023 stating the reasons as to why the Vidarbha Judgement is not applicable in the present case and in response to this rejoinder affidavit , the Corporate Debtor filed a sur-rejoinder

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on 15.05.2023 further emphasising for applying the decision of Hon'ble Supreme Court in case of ***Vidarbha Industries Power Limited(supra)***

FINDINGS AND ORDER

56. We have heard the arguments of Learned Counsels appearing for both Applicant Financial Creditor and Respondent Corporate Debtor and perused the pleadings, records, written submissions and exhibits/annexures marked thereto. 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 which are before us to be decided in respect of the present Application u/s 7 are:

(a) Maintainability of the Application, (especially in the light of the decision of the Hon'ble Supreme Court in case of *Dharni Sugar And Chemicals Ltd. vs. Union of India 2019 (5) SCC 480*)

(b) Whether there is default within the meaning of IBC and whether Application can be admitted after restructuring of loans, especially when approval for

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the Scheme of Arrangement for restructuring of the loans is pending in NCLT

(c) Applicability of the decision of the Ho'ble Supreme Court in *Vidarbha Industries Power Ltd. vs. Axis Bank Ltd. (Civil Appeal No. 4633 of 2021) dated 12.07.2022*

57. Before adverting to above issues, some basic facts of the case have been considered by us. It is an admitted fact that the Corporate Debtor has availed the Financial Facilities in form of taking various loans and other working capital facilities from the Financial Creditor by entering into loan agreements. The loans were sanctioned through 6 different facility agreements, the details of which have already been discussed in para 4 of this order. The total amount of default as stated in Part-IV of the application is Rs.12,691,026,803.06/- and dates of default as stated in Annexure-6 of the Application are 30.04.2016 for loans under Facility 2 to 6 and 15.05.2016 for loans under Facility 1. All supporting necessary documents as required under Part V of the Application Form 1 for section 7 application under IBC, have been filed by the Financial Creditor. The Corporate Debtor has objected to the

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above mentioned amounts of debt in default as stated in the application, taking the plea that these loans are already restructured under CRRP and put in the Bucket 2B created for this purpose, which have been proposed to be settled under a Scheme of Arrangement and this Scheme has already been finalized with the consent of all the creditors and an application of Second Motion for its approval is pending. This restructuring of outstanding loans of the Corporate Debtor has been done in compliance of the direction of the RBI issued through a press release dated 13.06.2017 for resolution of those loans, 60% of which were in default at that time and such resolution was required to be completed within six months i.e. by 13.12.2017 and in case, the scheme for resolution of such loans are not finalized and implemented, application for CIRP under IBC could have been moved. It is argued by the Corporate Debtor that as the schemes for resolution of its all outstanding loans were finalized within six months by putting these loans in three different buckets and Scheme for settlement of loans under Bucket 2B which covers the loans under the present application has also been

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finalized with the consent of all related financial creditors and only its implementation is pending due to pending approval of this tribunal , hence there is no question of any default of these loans. It is also argued that as the loans were restructured and schemes for their resolution were finalized within six months, no Application for insolvency resolution process u/s 7 was filed before 13.12.2017 and the Application which is under consideration in this order, was filed much later on i.e. 07.09.2018 in compliance of a direction issued by the RBI vide its letter dated 14.08.2018 u/s 35AA of the Banking Regulation Act 1949, which as argued by the Ld. Counsel of the Corporate Debtor is not maintainable. In this connection, an application no. CA No. 120 of 2019 in this Petition/Application i.e. CP(IB) 330/ALD/2018, has also been filed raising the issue of the present Petition/Application being not maintainable. However, issues raised regarding non-maintainability of the present Petition/Application has been countered by the Ld. Counsel of the Financial Creditor arguing that the present application has been filed in view of the direction of the

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Hon'ble Supreme Court in the case of Chitra Sharma (supra) and validity of filing of this application has also been upheld by the Hon'ble Allahabad High Court in a writ petition bearing no. 31329 of 2018 filed by the Corporate Debtor in the matter of Jaiprakash Associates Ltd. vs Reserve Bank of India & Ors., challenging filing of this Petition/Application on the direction of RBI vide its letter dated 14.08.2018 ; and later SLP filed in Hon'ble Supreme Court against the order of the Hon'ble Allahabad High Court has also been dismissed. Therefore, it is forcefully argued by the Ld. Counsel for the Applicant that filing of the present application is legally maintainable, however, the issue relating to existence of debt and default in terms of the provision of the IBC can be adjudicated on the merit of the case after considering all the facts and supporting documents as presented and argued during hearing of this case. In the light of this background, we have decided all the three issues raised before us as mentioned in para 56 above.

(a) **Maintainability of the Application:**

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58. The CA No. 120/2019 in CP(IB) No. 330/ALD/2018 filed in this respect has been decide by us by a separate order dated 03.06.2024 holding that the Judgment of the Hon'ble Supreme Court in case of *Dharani Sugars and Chemicals Limited vs. Union of India dated 02.04.2019 in Transferred Cases (Civi) No. 66 and 1399 of 2018* is not applicable in the present case and the present Application filed on the direction of the RBI issued vide its letter dated 14.08.2018 in compliance of the order of the Supreme Court in case of Chitra Sharma (supra), is legally maintainable and accordingly , CA 120/2019 has been dismissed . Therefore, the present Application under consideration is held to be legally maintainable.

(b) <u>Whether there is Debt and Default</u>

59. The issue for consideration before this tribunal for the purpose of admission of application under Section 7 of the IBC is whether there is existence of "debt" and "default" committed by the Corporate Debtor.

60. It is not disputed that the Corporate Debtor availed the credit facility from the Financial Creditor taking loans under 06

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facility agreements and other working capital loans. Total disbursement made under these facility agreements was Rs.4750 crores. The total amount of debt under default as claimed by the Applicant in Part IV of the Application is Rs.1269,10,26,803/- which includes the default amount of principal, interest and overdue interest.

61. The account of the corporate Debtor was classified under SMA-II category on 03.10.2014 for committing default in repayment of the loan amount and it was further declared as NPA by the Banks on 31.03.2015. It is evident from the documents placed on record such as NeSL records as on 08.06.2020 and CRILC Report that the JAL was moved to default category and that there is default committed by the Corporate Debtor. The loan taken by the Corporate Debtor has gone to default category has also been observed by the Hon'ble Supreme Court in the judgment of Chitra Sharma (supra) in para 41 and the same is also reproduced as below

"41. JAL was classified under the SMA II category (demands overdue for more than 60 days) by banks as early as on 3 October 2014 and as an NPA since 31 March 2015. We agree with the

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submission of the RBI that any further viable delay in resolution would adversely impact a resolution being found for JAL and JIL. ***The facts which have emerged before the Court from the application filed by the RBI clearly indicate the financial distress of JAL and JIL.....***"

62. As a huge amount of loans taken by the Corporate Debtor from a consortium of banks were outstanding as on 31.03.2017 to the tune of Rs. 28,229.27 crores turning into NPA, a JLF was constituted by these banks with ICICI Bank Ltd., the present Applicant being lead bank and a DRP was approved on 22.06.2017 in terms of the RBI Circular dated 26.02.2014 after discussions and deliberations and holding series of meetings among them since the date when the loans taken by the Corporate Debtor started turning into NPA from the year 2015-16 onwards so as to resolve the stressed loans of the Corporate Debtor to facilitate their repayments after restructuring of the business of the Corporate Debtor.

63. Under DRP, the entire debt and business of JAL was divided into 3 buckets, namely Bucket 1, Bucket 2A and Bucket 2B.

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It has already been discussed that the present Petition/Application u/s 7 undisputedly has been filed pertaining only to default of loan facilities put in Bucket 2B. The total amount of loans of the consortium of bank transferred to Bucket 2B is Rs. 11,833.55 crore out of which an amount of Rs. 1269 crore is defaulted by JAL pertaining to the Applicant as shown in the Application filed u/s 7.

64. As per DRP, the assets and liabilities of the Corporate Debtor pertaining to entire debt of Bucket 2B was planned to be transferred through a Scheme of Arrangement by hiving of the debts along with certain identified land parcels having almost equivalent value to a 100% special purpose vehicle (SPV) of JAL , namely Jaypee Infrastructure Development Ltd. Approval of this Scheme remained pending in this Tribunal after filing of second motion petition on 23.01.2018 due to pendency of the case of ***Chitra Sharma* (supra)** in Hon'ble Supreme Court in a matter involving default in non-delivery of flats to home buyers relating to stressed assets of Jaypee Infrastructure Limited (JIL) , a company promoted by JAL, the Corporate Debtor that was also party in that case and

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RBI also filed an application in that case seeking permission of the Hon'ble Supreme Court for initiation of proceeding under IBC against the JAL and consequent thereupon, JAL was ordered to deposit Rs. 2000 crore to protect the interest of home buyers and not to transfer any of its assets without the permission of Hon'ble Supreme Court.

65. As the Scheme of Arrangement could not be implemented, the debt under Bucket 2B remained under default and the Hon'ble Supreme Court in its order dated 09.08.2018 acceded to the request made on behalf of the RBI to allow it to follow the recommendations of the IAC to initiate a CIRP against JAL under the IBC and also ordered to allow the RBI in terms of its application filed in the Supreme Court to direct the banks to initiate corporate insolvency resolution proceedings against JAL under the IBC and consequent to that order, RBI issued a letter dated 14.08.2018 directing the ICICI Bank to initiate proceeding against JAL , the Applicant Bank i.e. ICICI Bank filed the present Petition/Application details of which have already been discussed in earlier part of this order.

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66. With regard to the admission of application filed under Section 7 by the Applicant/Financial Creditor for initiating CIRP, the Respondent/Corporate Debtor has at very outset challenged the maintainability of the said application by raising the contention that there is no default committed by the Corporate Debtor. In this regard, the Corporate Debtor contends that subsequent to the date of default mentioned in the Petition/Application u/s 7, a Comprehensive Reorganisation & Restructuring Plan (CRRP) as a part of Debt Realignment Plan (DRP) was approved by the JLF on 22.06.2017 to resolve NPAs pertaining to various loan facilities taken from consortium of Banks. As per the Corporate Debtor, upon resolution of NPAs as on 22.06.2017 under the CRRP, the earlier dates of defaults mentioned in the Petition/Application became irrelevant and ceased to exist.

67. Under the approved CRRP, the entire debts of all lenders (including ICICI Bank Ltd.) were trifurcated in three buckets i.e. Bucket 1, Bucket2A and Bucket2B and there is no dispute that the present Petition/Application pertains to that

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part of the debt of ICICI Bank, which has been put in Bucket 2B. In this regard, it has been contended by the Corporate Debtor that a new sanction letter dated 19.05.2017 was issued by the ICICI Bank Ltd. confirming the trifurcation of debts in three buckets as mentioned above and cessation of interest w.e.f. 01.10.2016.

68. It has been further stated that for resolution of loan in Bucket 2B, it is to be transferred to a SPV- Jaypee Infrastructure Development Ltd. (JIDL) along with corresponding security of land parcels allotted to JAL in sector 25, SDZ, Yamuna Expressway Industrial Area , District Gautam Nagar by the Yamuna Expressway Industrial Development Authority (YEIDA) under a scheme of Arrangement (with appointed date being 01.07.2017).

69. It is then submitted that JAL and JIL filed First Motion Application for the said Scheme of Arrangement vide CP(CAA) No. 174/ALD/2017 before this Tribunal, which was approved vide order dated 08.12.2017 and then, after taking necessary approvals of all their unsecured and secured creditors, Second Motion Petition CP (CAA) No.

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19/ALD/2018 was filed on 23.01.2018. It is admitted by the Ld. Counsel during the hearing that approval of this scheme could not be provided by this tribunal due to initially the matters relating JIL and JAL raised by the home buyers in ***Chitra Sharma Case (supra)*** was pending in Hon'ble Supreme Court and JAL was restrained by the Hon'ble Supreme Court from transferring of any of its assets without the permission of the Hon'ble Supreme Court. Then, after passing of order by the Hon'ble Supr6eme Court in Chitra Sharma case on 09.08.2018 and the present Petition/Application having been filed and an Application CA No. 213/2018 in CP(CAA) No. 19/ALD/2018 has been moved by the Applicant Bank with prayer to join the captioned proceeding as party intervener and to keep the captioned proceeding in abeyance pending the final disposal of the Section 7 Application. Consequent upon filing of this intervener application by the Applicant Bank, this Tribunal passed an order dated 06.02.2019 deciding to hear both Petitions/Applications i.e. CP(CAA) No. 19/ALD/2018 (for Scheme of Arrangement) and CP(IB) No. 330/ALD/2018 (for

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CIRP u/s 7 of IBC), simultaneously. Because of aforesaid reasons, the Scheme proposed for resolving the loans put in Bucket 2B could not be implemented in absence of the necessary order of approval by the NCLT. However, it has been argued by the Ld. Counsel appearing for the Corporate Debtor that once, the trifurcation of loan has been sanctioned by the Applicant Bank vide its letter dated 19.05.2017 and Scheme of Arrangement is made , neither any part of the loan in Bucket 2B is refundable nor any interest thereon is payable by the Corporate Debtor , hence the question of any default in respect of this part of loan (*which is the subject matter of present petition*) does not arise.

In this regard, it is also argued by the Ld. Counsel that the Sanction Letter dated 19.05.2017 was duly accepted by Corporate Debtor and hence, it became a binding contract. Consequently, obligations of the parties are to be decided in terms of the new contracts and not the old contracts. In support of his arguments, he relied upon a decision in case of *Union of India vs. Kishorilal Gupta AIR 1959 SC 1362* wherein it is held that once the old agreement is substituted

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by new agreement, the old agreement ceases to exist and obligations of parties have to be decided by referring to the new agreement and not the old agreement.

70. In respect of the Letter dated 19.05.2017 of the Applicant relied upon by the Corporate Debtor as being a new sanction of the loan under Bucket 2B substituting all the old facilities agreements as discussed in para 4 of this order, the Applicant Bank has stated that a reading of this letter in its entirety shows that this Sanction Letter was only with respect to Bucket 2A Facilities and not Bucket 2B Facilities as it has been clearly mention in Annexure I providing terms and conditions of the RTL Facility not exceeding Rs. 7.48 billion (aggregate of existing facilities retained in B2A as part of restructuring sanction to JAL by ICICI Bank Ltd. Therefore, the Applicant Bank contended that the present Section 7 petition is relating to only default under Bucket 2B Facilities, hence the Sanction Letter dated 19.05.2017, which is in relation to Bucket 2A Facilities is not applicable for the present Section 7 Petition.

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71. It has also been argued by the Ld. Sr. Counsel for the Applicant that the Scheme of Arrangement cannot be said to be a binding agreement with respect to Bucket 2B Facilities , as the same has not been sanctioned by this Tribunal , and therefore, cannot be said to have any binding effect under law. As regards contention of the Corporate Debtor that the said Scheme having got approved by the boards of both JAL and JIDL after consent of the Applicant Bank resulting into the loan under Bucket 2B resolved and now, there is no default in respect of this loan, hence the Applicant now cannot file Application u/s 7 in respect of the same loan which is covered by the Scheme, is not a valid argument. It has been argued by the Ld. Sr. Counsel for the Applicant that consent to a scheme given by the creditor cannot act as an estoppel against such creditor and also, there cannot be no estoppel against an express provision of law. By referring to section 232(3)(e), he said that even the Companies Act contemplates dissent by any person , post sanction of the Scheme and in the present case , filing of the present Application u/s 7 would amount to dissent to such Scheme

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for initiation of CIRP proceeding against JAL under IBC after necessary directions were issued by the Hon'ble Supreme Court in para 42 of the order dated 09.08.2018 in Chitra Sharma Case allowing RBI in terms of its application filed in the Supreme Court and consequent thereupon , the directions were issued by the RBI vide letter dated 14.08.2018.

72. Furthermore, it is also argued that it is a settled position of law that there can be no estoppel against a statute and the plea of promissory estoppel is negated if the mandate of law has to be followed. Therefore, as the right to initiate an action under Section 7 of the IBC is a statutory right, and any consent given earlier by a creditor to Scheme, cannot act as estoppel against a statutory right.

73. It is also argued by the Ld. Sr. Counsel for the Applicant that pendency of the proceeding for sanction of the Scheme of Arrangement will not have an impact on the admission of the Section 7 petition which is an independent proceeding initiated by a lender under IBC. Furthermore, it is argued that it is a settled position of law that IBC is a complete code

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in itself and IBC is a special statute enacted in a later point in time than the Companies Act, 2013, which is a general statute. Section 238 of the IBC makes it clear that the provisions of the IBC will prevail over the provisions of the Companies Act, 2013 in case of conflict. In support of this contention, the Ld. Sr Counsel relied upon the decision of the Hon'ble Supreme Court in case of ***Navinchandra Steels Pvt. Ltd. vs. SREI Equipment Finance Ltd, (2021) 4 SCC 435*** in which it is held that the IBC is a special statute that must prevail in the event of conflict over Companies Act, which is a general statute. Furthermore, the Supreme Court also held that Section 7 is an independent proceeding unaffected by other proceedings including scheme or winding up proceedings under the Companies Act. He also referred to one decision of the coordinate Mumbai Bench of NCLT in case of ***ICICI Bank Limited v. Supreme Infrastructure India Limited, IA 133 of 2023 in CA 653 of 2022 in CA(CAA) 153 of 2022***, in which the Hon'ble NCLT Mumbai while noting the principle held in the case of ***Navinchandra*** *(supra)* held that the proceedings under the

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IBC, and more particularly under Section 7 of the IBC, cannot be scuttled or circumvented merely on account of pendency of any proceedings under the Companies Act, much less under Section 230 of the Companies Act.

74. By referring to the facts and position of law as discussed above, it has been argued by the Ld. Sr. Counsel for the Applicant that mere agreeing for a CRRP and Scheme of Arrangement for resolution of loan in Bucket 2B earlier transferred on trifurcation of entire loans of the Corporate Debtor, which could not be even implemented due to the same having not been approved by the NCLT, it cannot be said that default has ceased to exist. As there being no resolution of loan in Bucket 2B in absence of implementation of the Scheme which was finalised earlier, the default continued and hence, it is not correct on part of the Corporate Debtor to say that there is no default.

75. Ld. Sr. Counsel for the Applicant after arguing to show that there is an existing default, took the plea that under Section 7(5) of the IBC, this Hon'ble Tribunal as the Adjudicating Authority under IBC is merely required to be satisfied that a

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"default" has occurred. If the "default" is more than Rupees One Lakh, then this Hon'ble Tribunal is required to admit the application, except where there is defect, which can then be removed within seven days from the date of receipt of the notice from the Adjudicating Authority. In support of his argument, he relied upon the case laws of ***Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407 and E.S. Krishnamurthy v. Bharath Hi-Tecch Builders Private Limited, (2022)3 Supreme Court Cases 161.*** By referring to these case laws, he argued that the only aspect which this Hon'ble Tribunal needs to examine is as to see whether: (a) default has occurred; (b) application is complete; and (c) whether any disciplinary proceedings is there against the proposed IRP. In the present case, default has occurred and ICICI Bank's Section 7 Petition is complete and there is no disciplinary proceeding against the proposed IRP. Considering that all the above elements are fulfilled as required under IBC, this Hon'ble Tribunal ought to admit the Section 7 Petition.

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76. In order to show that there is no default , apart from relying upon the sanction letter dated 19.05.2017 of the Applicant Bank , the Corporate Debtor has relied on two internal Correspondences between RBI and the Applicant Bank one dated 07.12.2017 in which RBI has been informed that the loan account of the Corporate Debtor after CRRP, may be considered to have been resolved and the second dated 13.08.2018 written by the Applicant Bank to RBI just after the decision of the Hon'ble Supreme Court in the case of Chitra Sharma on 09.08.2017 , suggesting that the debt of the Corporate Debtor need not to be referred to NCLT under IBC.

77. Against the letter dated 07.12.2017 written to RBI as mentioned above, it is argued by the Ld. Sr. Counsel for the Applicant that the internal correspondences and previous deliberations between ICICI Bank and RBI or any other authority are irrelevant factors for the purpose of Section 7 Petition and the same cannot act as an estoppel against ICICI Bank to initiate proceedings under IBC. In support of his argument, he referred to the decision of the Hon'ble

Allahabad High Court in its Order dated September 24, 2018 passed in the case of JAL itself in a Writ Petition challenging the validity of Application filed u/s 7 on the direction of RBI in its letter dated 14.08.2018 wherein it has been held that the letter dated December 07, 2017 sent to RBI pales into insignificance. The relevant portion of this decision is extracted as below:-

> *"... The aforesaid decision of the Supreme Court clearly indicates that the proposals of the petitioner were not accepted and that on the interlocutory application of the RBI, it found that the petitioner is under financial distress and to safeguard the interest of the home buyers the request of the RBI to allow it to initiate CIRP against the petitioner under IBC is acceded to and the RBI is allowed to direct the Banks to initiate corporate insolvency resolution proceedings (CIRP) against the petitioner under IBC. In view of the above conclusion drawn by the Supreme Court,* ***the directions issued the Letter of Consortium of Lenders dated 7.12.2017 has no sanctity and pales into insignificance...***" (Emphasis Supplied)

78. Similarly for the internal correspondence with RBI in letter dated 13.08.2018, it has been argued that it has no

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significance now, when the Application u/s 7 has been filed in compliance of the subsequent letter dated 14.08.2018 issued by the RBI on direction of the Hon'ble Supreme Court in its order dated 09.08.2018 in Chitra Sharma Case and filing of its validity has also been upheld by the Hon'ble Allahabad High Court in a Writ Petition filed against it and subsequently an SLP filed against the order of the Hon'ble High Court has also been dismissed by the Hon'ble Supreme Court.

79. After considering all the arguments put before us as well as perusing the records before us to decide the issue whether the default existed or otherwise at the time of filing Application u/s 7 on 07.09.2017, we find that as far as occurrence of default in payment of the loan is concerned , the Corporate Debtor has itself admitted in para 16 and 17 of the Reply that due to the liquidity crunch, the Corporate Debtor wasn't able to repay its liabilities owed to the Financial Creditor. Furthermore, the Corporate Debtor in Para 9 (v) of the reply has categorically admitted as regards the restructuring of the loan under consideration in this

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Application due to the same becoming NPA in 2015 stating that "…. *(v) Out of the total debt of Rs. 13,590 crores, the debt aggregating Rs. 2543.55 stands settled through Debt Assets Swap and for the balance debt of Rs. 11833.55 scheme of arrangement has been framed…*"

80. Furthermore,. the subsequent argument taken by the Corporate Debtor is that once a default will always not remain default either due to subsequent payments made or any restructuring of loan is done. In present case, as entire loans of the Corporate Debtor were restructured through CRRP under DRP trifurcating them into three buckets and the loan under consideration in this order was put in Bucket 2B . For resolution of the loan in Bucket 2B, as contended by the Corporate Debtor , a new sanction letter dated 19.05.2017 was issued by the Applicant Bank with new terms and condition and this loan was hived off to a SPV under a Scheme of Arrangement transferring a land to it from JAL as security this land . This CRRP was approved by the JLF in the meeting held on 22.06.2017. Therefore, as contended by the Corporate Debtor, with such CRRP

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arrangement, the outstanding loans under default getting resolved, there was no default on the date when the present Application u/s 7 was filed on 07.09.2018 and hence, present application u/s 7 cannot be admitted for CIRP. These arguments of the Corporate Debtor has been considered by us.

81. Against the above arguments of the Corporate Debtor, the Applicant Bank has showed to us that the sanction letter 19.05.2017 was issued for the loan in Bucket 2A as against the plea of the Corporate Debtor that this letter was issued for both Bucker 2A as well as Bucket 2B. We have examined the said letter and find that in the second part of this letter it is written that "*Accordingly, we write to inform you that Terms and Conditions for facilities previously sanctioned to the Company stands modified as detail.ed in Annexure I* ." In Annexure I, starting from pg 368 to 382 of the Reply of the Corporate Debtor, though trifurcation of loans in three buckets were provided , the terms and conditions starting from pg no. 369 are for term loan of Rs. 7.48 billion only which pertains to Bucket 2A only, which might be because

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of the reason that the debt under Bucket 2A was categorised as "sustainable debt" to be continued as debt of the Corporate Debtor and hence , new terms and conditions of the Bucket 2A loan has been specified in the letter dated 19.05.2017 and as the loans in Bucket 1 was to be discharged against sale of identified Cement Plant and loan in Bucket 2B to be transferred to SPV along with identified land of the Corporate Debtor of the equivalent value , no new terms and conditions were required for these loans . However , in clause 6 of Annexure 1 , it is provided for cessation of interest on loan to be transferred in Bucket 2B from October 1, 2016 till transfer of debt into the new real estate SPV. While computing the total outstanding amount of the debt under default in the Application, at Rs. 1262 crore, interest has been computed up to 31.08.2018. Looking to this clause., even if charging of interest from 01.10.2016 to 31.10.2018 is not taken into account , the default amount will still remain substantially higher than the threshold limit of Rs. 1,00,000/-. Even the principal amount of outstanding loan under default itself is more than Rs. 240 crores. So, the

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clause 6 of the letter dated 19.05.2017 will not make any difference for the purpose of determining the default for the purpose of admitting the application for CIRP u/s 7. Accordingly, we don't find force in the argument of the Corporate Debtor placing reliance on the letter dated 19.05.2017 of the Applicant Bank to show that no default has occurred, hence this argument of the Corporate Debtor is rejected.

82. Another plea of the Corporate Debtor is that default on repayment of debt that occurred earlier in 2014-15, has ceased to exist after CRRP under DRP has been approved and an Scheme of Arrangement for Bucket 2B loan has been finalised. This Scheme has been made for the resolution of the debt in Bucket 2B keeping in view the direction of the RBI in its letter dated 22.08.2017 , as per which the JLF including ICICI as a lead Bank was required to finalise a resolution plan for JAL and it has also been provided that in the event that a viable resolution plan is not finalised and implemented before 13.12.2017, insolvency proceedings under the provisions of the IBC may be initiated before

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31.12.2017. There is no dispute that the Scheme for the resolution of the Bucket 2B loan could not be implemented till 13.12.2017 as the same could not be approved by the NCLT. This Scheme is still pending for approval, hence resolution plan for Bucket 2B is still not implemented . On considering the Scheme of Arrangement in CP(CAA) No. 19/2018 and a CA No. 213/2018 connected with this petition , an order dated 03.06.2024 has been passed finding that after a gap of six year and now , the land of the Corporate Debtor to be transferred as security has been under litigation as its allotment has been cancelled by YEIDA and therefore, viability of the Scheme has become doubtful as it is now being opposed by the Applicant Bank also after becoming Party Intervener in CA No. 213/2019, who earlier had given consent for it. Therefore, in absence of any Scheme being implemented for resolution of loans in Bucket 2B, default of this loan covered in the present Application is still continuing leave aside the default being in existence on 07.09.2018 when Application u/s 7 was filed. As far as not filing of the Application by 31.12.2018 is concerned, the

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same has already been explained to have happened because of letter of RBI dated 27.12.2017 staying its direction to initiate proceedings under IBC against JAL in the light of the interim order in the Chitra Sharma Case. However, after passing of order in this case on 09.08.2018, a direction by RBI was issued vide letter dated 14.08.2018 in compliance of which the present Petition/Application u/s 7 has been filed on 07.09.2018.

83. As far as the internal correspondences between RBI and the Applicant Company is concerned , we are of the opinion that. the same will not have any impact on examination of default based on the facts and circumstances and relevant documents of the case as discussed above and significance of these correspondence is lost after a final decision on filing of the present Application was taken that too under the direction of the Hon'ble Supreme Court in para no. 42 of its order dated 09.08.2018 in Chitra Sharma Case.

84. After having deciding on the existence of a default in the present case as discussed above, we agree with the Applicant Bank that at the time of the admission of application u/s 7 ,

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the conditions specified under its subsection (5) are to be only examined , which include whether: (a) default has occurred; (b) application is complete; and (c) whether any disciplinary proceedings is there against the proposed IRP. These criteria for admissibility of Section 7 Application have been exhaustably discussed by the Hon'ble Supreme Court in ***Innoventive Industries Ltd. v. ICICI Bank and Anr, (2018) 1 SCC 407***The Hon'ble Supreme Court in the case of Innoventive has held as follows:

> *"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor- it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to*

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dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be"

85. The *Innoventive* judgment was followed in the case of **ES Krishnamurthy v. M/s Bharath Hi Tech Builders (2022) 3 SCC 161,** wherein the Hon'ble Supreme Court observed as follows:

"31. On a bare reading of the provision, it is clear that both, clauses (a) *and (b) of sub-section (5) of Section 7, use the expression "it may, by order"*

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while referring to the power of the adjudicating authority. In clause (a) of sub-section (5), the adjudicating authority may, by order, admit the application or in clause (b) it may, by order, reject such an application. Thus, two courses of action are available to the adjudicating authority in a petition under Section 7. The adjudicating authority must either admit the application under clause (a) of sub-section (5) or it must reject the application under clause (b) of sub-section (5). The statute does not provide for the adjudicating authority to undertake any other action, but for the two choices available. 34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively. These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute...." 5) Thus, the only aspect which this Hon'ble Tribunal needs to examine is as to whether: (a) default has occurred; (b) application is complete; and (c) whether any disciplinary proceedings is there against the proposed IRP. In the present case, default has occurred and ICICI Bank's Section 7 Petition is complete and there is no disciplinary proceeding against the proposed IRP. Considering that all the above elements are fulfilled as required under IBC, this Hon'ble Tribunal ought to admit the Section 7 Petition.

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....."

86. 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 ICICI Bank's Section 7 Petition is complete providing all the details of debts and default as required in Part IV of the Application and attaching all the necessary supporting documents including ROD from NeSL along with CIBIL Report and CIRLC Report from RBI portal 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.**

(C). **Applicability of the decision of the Ho'ble Supreme Court in Vidarbha Industries Power Ltd. vs. Axis Bank Ltd. (Civil Appeal No. 4633 of 2021) dated 12.07.2022**

87. Finally, the Ld. Counsel for the Corporate Debtor has argued in the light of the decision of the Hon'ble Supreme Court in

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the case of ***Vidarbha Industries Power Ltd. Vs. Axis Bank Ltd. (2022) 8 SCC 352***, that the Hon'ble Adjudicating Authority has wide discretionary power, either to admit or reject the instant application on consideration of the whole factual matrix of the present case. It has been pleaded by the Ld. Counsel of the Corporate Debtor that there are good reasons to exercise discretion u/s 7(5)(a) and refuse admission of the application by applying the discretionary power considering the above factual matrix of the present case.

88. He argued that it is held by Hon'ble SC in this Judgment that the word "may" in Section 7(5) of IBC makes it clear that even if default is assumed, the Tribunal may refuse to admit the Application, if there are good reasons to do so. He pointed out that some of the good reasons mentioned in this judgment by way of illustration for exercise of discretion under section 7(5)(a) are as under:

A: Feasibility of initiating CIRP

B: Overall Financial health of the Corporate Debtor

C: Viability of the Corporate Debtor

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D: Receivables which may go to meet the outstanding debts

E: Expediency

He also emphasised that in Para 88 of Vidarbha Judgment, the Hon'ble SC has observed – "*The Adjudicating Authority (NCLT) has to consider the grounds made out by the Corporate Debtor against admission, on its own merits.*" Thus, the judgment requires a speaking order to be passed for accepting or not accepting the grounds made out by the CD.

89. He further went on to present the details about these good reasons present in case of the present Corporate Debtor i.e. JAL as under:-

a. <u>FEASIBILITY OF INITIATING CIRP</u>

In this regard, it has been submitted that the Corporate Debtor is handling project of strategic importance both in India and abroad for various Government Departments/ Undertakings. Such strategically important projects requiring high technical expertise in execution will be seriously disrupted if CIRP is initiated against the CD. Details are such projects mainly relating to Hydro Power Projects have been

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provided in the Second Supplementary Affidavit filed by the Corporate Debtor.

b. OVERALL FINANCIAL HEALTH OF THE CORPORATE DEBTOR

It is submitted that the Corporate Debtor is asset rich company and even after sale of cement plants to resolve the loans under Bucket 1 and Bucket 2A, following assets will remain with the company

- Real Estate Business – Noida and Greater Noida – about 11000 Units;
- 5 Five Star Hotels/Resort - 2 at Delhi, 1 at Agra (300 Rooms with International Conference Centre, 1 at Mussorie & 1 Resort at Greater Noida
- Two Golf Courses at Noida and Greater Noida;
- Formula One Sports Complex and Cricket Stadium with Real Estate;
- Engineering & Construction Division Assets, Heavy construction equipment & Machinery; Land & buildings, especially skilled and experienced work force, etc.

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It has been argued that sale of cement business will not only improve liquidity, but will also improve the financial performance of the Company. From perusal of the Division wise Performance Statement (Annexure- 3 to Sur-Rejoinder at Page 58), it can be noticed that upon disposal of Cement/Power divisions, the CD will be spared of the drain of resources due to negative results of these divisions.

c. <u>RECEIVABLES</u>

As per the details provided by the Corporate Debtor in the second affidavit and then further explained in sur rejoinder, following amounts are claimed to be receivables by the Corporate Debtor

From sale of cement business to Dalmias	Rs. 5,586 Crore.
Aggregate amount receivable under Arb. Awards	Rs. 1,097 Crore
Amount receivable against the deposit of Rs. 750 crore on the direction of Hon'ble Supreme Court	Rs. 559 Crore
TOTAL	Rs. 7242 Crore

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d. **VIABILITY OF THE CORPORATE DEBTOR**:

In this regard various Techno Viability Study Report evaluating the assets of the Corporate Debtor has been mentioned and it has been submitted that The first CRRP was approved by the IEC and the JLF on 22.06.2017 only after TEV study and satisfaction about the viability of the Corporate Debtor and now, under the changed circumstances, the earlier Restructuring Plan is being reviewed and a Revised Restructuring Plan is under consideration of the JLF

e. EXPEDIENCE OF INITIATION OF CIRP AGAINST CORPORATE DEBTOR

In this regard, following points have been mentioned as good reasons:

i. Revised Restructuring Proposal is under consideration of JLF

ii. Lenders themselves want the present Petition to be withdrawn and resolve the matter outside the IBC

iii. NARCEL'S Proposal dated 07.03.2024 for the purchase and acquisition of the outstanding debts of the JAL/JCCL

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We have considered the above arguments of Ld. Counsel of the Corporate Debtor and also carefully gone through the detailed arguments taken before us in respect of all the above good reasons. We find that in the light of the decisions of Vidarbha Judgment, only the reason for there being any sufficient receivables to be received by the Corporate Debtor in near future needs to be considered to see whether these receivables are crystalised or not and in a case it is crystalised , how long it is going to take to be received by the Corporate Debtor and after this amount is received,. whether the Corporate Debtor would be able to discharge its debts. Other reasons of feasibility, financial health , viability and expediency have not been found by us being of any relevance to have any bearing on admission of the Application for initiating CIRP against the Corporate Debtor , once the default has occurred. In this regard , the object of the IBC as evident from its Preamble is to be referred. While holding the constitutional validity of the IBC , the Hon'ble Supreme Court has analysed the Preamble of the IBC in the case of ***Swiss Ribbons Pvt. Ltd. vs. Union of India (Writ (Civil) No. 99 of***

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2018) dated 25.01.2018 holding that the Code is first and foremost , a Code to reorganise and insolvency resolution of corporate debtors . Unless such reorganisation is effected in a time bound manner , the value of the assets of such persons will deplete. In this judgment , the purpose of IBC is further elaborated stating that the Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. The relevant part of this judgment is as under

> *"11. As is discernible, the Preamble gives an insight into what is sought to be achieved by the Code.* ***The Code is first and foremost, a Code for reorganization and insolvency resolution of corporate debtors. Unless such reorganization is effected in a time-bound manner, the value of the assets of such persons will deplete****. Therefore, maximization of value of the assets of such persons so that they are efficiently run as going concerns is another very important objective of the Code. This, in turn, will promote entrepreneurship as the persons in*

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management of the corporate debtor are removed and replaced by entrepreneurs. When, therefore, a resolution plan takes off and the corporate debtor is brought back into the economic mainstream, it is able to repay its debts, which, in turn, enhances the viability of credit in the hands of banks and financial institutions. Above all, ultimately, the interests of all stakeholders are looked after as the corporate debtor itself becomes a beneficiary of the resolution scheme – workers are paid, the creditors in the long run will be repaid in full, and shareholders/investors are able to maximize their investment. Timely resolution of a corporate debtor who is in the red, by an effective legal framework, would go a long way to support the development of credit markets. Since more investment can be made with funds that have come back into the economy, business then eases up, which leads, overall, to higher economic growth and development of the Indian economy. What is interesting to note is that the Preamble does not, in any manner, refer to liquidation, which is only availed of as a last resort if there is either no resolution plan or the resolution plans submitted are not up to the mark. Even in liquidation, the liquidator can sell the business of the corporate debtor as a going concern. [See ArcelorMittal (supra) at paragraph 83, footnote 3].

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12. ***It can thus be seen that the primary focus of the legislation is to ensure revival and continuation of the corporate debtor by protecting the corporate debtor from its own management and from a corporate death by liquidation. The Code is thus a beneficial legislation which puts the corporate debtor back on its feet, not being a mere recovery legislation for creditors. The interests of the corporate debtor have, therefore, been bifurcated and separated from that of its promoters / those who are in management. Thus, the resolution process is not adversarial to the corporate debtor but, in fact, protective of its interests.*** *The moratorium imposed by Section 14 is in the interest of the corporate debtor itself, thereby preserving the assets of the corporate debtor during the resolution process. The timelines within which the resolution process is to take place again protects the corporate debtor's assets from further dilution, and also protects all its creditors and workers by seeing that the resolution process goes through as fast as possible so that another management can, through 40 its entrepreneurial skills, resuscitate the corporate debtor to achieve all these ends.*

[Emphasis Supplied}

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90. In the above judgment of ***Swiss Ribbons*** , it has been further held that in IBC the Legislative policy now is to move away from the concept of ―inability to pay debts to ―determination of default. So, now examining the default has become necessary rather than to go in the reasons of not paying the debts and assess whether the corporate debtor has capacity, viability, feasibility or is able to attain a financial health to be able to pay its debt. Now, in IBC examining of existence of default is only required to trigger its provisions as held by the Hon'ble Supreme Court in its many decisions including Innoventive and E Krishnamurthy as we have already discussed. The relevant portion of the decision of Swiss Ribbons in this regard is reproduced as under

"37. The trigger for a financial creditor's application is non-payment of dues when they arise under loan agreements. It is for this reason that Section 433(e) of the Companies Act, 1956 has been repealed by the Code and a change in approach has been brought about. ***Legislative policy now is to move away from the concept of ―inability to pay debts‖ to ―determination of default‖. The said shift enables the financial creditor to prove, based upon solid documentary evidence, that there was an***

obligation to pay the debt and that the debtor has failed in such obligation. Four policy reasons have been stated by the learned Solicitor General for this shift in legislative policy. First is predictability and certainty. Secondly, the paramount interest to be safeguarded is that of the corporate debtor and admission into the insolvency resolution process does not prejudice such interest but, in fact, protects it. Thirdly, in a situation of financial stress, the cause of default is not relevant; protecting the economic interest of the corporate debtor is more relevant. Fourthly, the trigger that would lead to liquidation can only be upon failure of the resolution process"

[Emphasis Supplied]

91. On the similar line, the Hon'ble Supreme Court has made observation while dealing with the Application of RBI in the case of ***Chitra Sharma*** *(supra)* in which it has stated in para 41 of its order dated 09.08.2018 that "*they agree with the submission of the RBI that any further delay in resolution would adversely impact a viable resolution being found for JAL and JIL.*" The relevant part of this decision is reproduced as under:-

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The RBI constituted an Internal Advisory Committee (IAC) consisting primarily of its independent directors. The IAC took up for consideration accounts which were classified either partly or wholly non-performing from amongst the top 500 exposures in the banking system as on 31 March 2017. As a first step, the IAC recommended all such non-performing asset accounts with fund and non-fund based outstandings exceeding Rs 5,000 crores. The IAC has initially taken up twelve accounts involving total exposure of Rs1,79,769 crores. JIL was one of the twelve accounts in respect of which directions have been issued to banks for initiating insolvency resolution. ***Subsequently, the IAC recommended that in respect of those accounts where 60% or more had been classified as NPAs as on 30 June 2017, banks may be directed to implement a viable resolution plan within six months failing which the accounts may be directed for a reference under the IBC by 31 December 2017. JAL was one such entity. No viable resolution plan could be found as a result of which it is also required to be referred for CIRP. RBI has carried out this exercise as a matter of economic policy in its capacity as the prime banking institution in the country, entrusted with a supervisory role, and the power to issue binding***

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directions. The position of the RBI as an expert regulatory body particularly in matters of economic and financial policy has been reiterated in several decisions of this Court: *[R.K.Garg 44 v Union of India11, Peerless General Finance and Investment Co.Ltd. v RBI12 , TN Generation and Distribution Corpn. Ltd. v CSEPDI-Trishe Consortium13"].*

41 ***JAL was classified under the SMA – II category (demands overdue for more than 60 days) by banks as early as on 3 October 2014 and as an NPA since 31 March 2015. We agree with the submission of the RBI that any further delay in resolution would adversely impact a viable resolution being found for JAL and JIL.***

[Emphasis Supplied]

92. Considering above judicial pronouncements, if the Corporate Debtor feels about its viability, feasibility and financial health , it would be more beneficial for it after its resolution under IBC is done expeditiously before its assets get depleted. Therefore , we are of the opinion that its fast resolution would be in its best of interest to put it back on feet to enable it to pay its debt fast and revive its business. Therefore , we are not inclined to accept the contention of

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Feasibility , Viability and Financial Health being good reasons to apply our discretion for not admitting the application u/s 7(5) after we have determined that default has occurred.

93. As far as expediency is concerned , it is for the Financial Creditor to decide whether they want to restructure the debt with the Corporate Debtor and withdraw the application . In the past, several such attempts were made but so far nothing concrete is reported and no application for withdrawal of present Petition/Application is made before us . Therefore , the Expediency cannot be taken as a good reason.

94. Now, we come to receivables. In this regards, the Financial Creditor has submitted that sale proceeds shown on account of sale of Cement Plant is to settle the debt of Bucket 2A and such sale proceed will not help in settling the debt of Bucket 2B. Receivable shown on account of arbitration is still not finally determined and it is not certain as to when it will be received . 75% of the amounts which are claimed to be received as per the scheme of Niti Aayog, is also subject to giving bank guarantee for which , the Financial Creditor/

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Applicant Bank has stated that as per the decision taken by it taking into account the commercial consideration , giving of bank guarantee for an amount which is under dispute and might be required to be refunded later, has not been considered to be prudent and also the amount of Rs. 750 crore which the Corporate Debtor may get, will not be sufficient to pay for its entire amount of debt that is about Rs. 11000 crore lying in Bucket 2B. Such amount to be received from arbitration is a meagre amount to pay off the entire debt. The amount of about Rs. 300 crores have already been paid back out of Rs. 750 crores deposited by the Corporate Debtor on the direction of the Hon'ble Supreme Court in case of ***Chitra Sharma*** but no payment to Financial Creditor out of this money is reported to have been made. So, we don't find any force in the plea taken before us to apply our discretion in not admitting the present Application for initiating CIRP against the Corporate Debtor following the judgment in case of **Vidarbha Industries Power Ltd.** in which the receivables were determined and it was three times the amount of the debt and was due for being

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received, which is not the case in the present Application, hence in our considered opinion the judgment of the **Vidarbha Industries Power Ltd.** has not been found to be applicable on the facts of the present Application under consideration in this order.

95. We have also examined the applicability of the decision of Hon'ble Supreme Court in the case of **Vidarbha Industries Power Ltd.** and further, review petition filed in this case. On the review petition in case of **Vidarbha Industries Power Ltd. (Supra),** the Hon'ble Supreme Court has held in order dated 22.09.2022 that it is well settled that the judgements and observations in judgments are not to be read as provisions of statute and judicial utterances and/or pronouncements are in the setting of the facts of a particular case. Therefore, after clarification by the Hon'ble Supreme Court in the review petition of its decision in the case of **Vidarbha Industries Power Ltd. (Supra).**, it has been made clear that the decision given by the Hon'ble Supreme Court in the case of **Vidarbha Industries Power Ltd**. was on the facts of that particular case and no ratio was laid down about

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Section 7(5) of the I & B Code, 2016 being mandatory or discretionary. Now, in another decision of the Hon'ble Supreme Court in case of ***M. Suresh Kumar Reddy vs. Canara Bank & Ors. Civil Appeal No.7121 of 2022 dated 11th May, 2023*** it has been held that once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission on the Application under Section 7 of I & B Code, 2016. The relevant part of this decision of the Hon'ble Supreme Court is reproduced as under.

> *9. We have given careful consideration to the submissions. This Court in the case of **Innoventive Industries Limited v. ICICI Bank and Another** has explained the scope of Section 7. Paragraph nos.28 to 30 of the said decision read thus: -*
>
> *"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to any financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under subsection (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required*

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therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. ***The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority.*** *Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.*

29. The scheme of Section 7 stands in contrast with the scheme under Section 8 where an operational creditor is, on the occurrence of a default, to first

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deliver a demand notice of the unpaid debt to the operational debtor in the manner provided in Section 8(1) of the Code. Under Section 8(2), the corporate debtor can, within a period of 10 days of receipt of the demand notice or copy of the invoice mentioned in sub-section (1), bring to the notice of the operational creditor the existence of a dispute or the record of the pendency of a suit or arbitration proceedings, which is pre-existing—i.e. before such notice or invoice was received by the corporate debtor. The moment there is existence of such a dispute, the operational creditor gets out of the clutches of the Code.

30. On the other hand, as we have seen, ***in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due the sense that it is payable at some future date. It is only when this is proved to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."***

(Emphasis added)

9. The view taken in the case of ***Innoventive Industries has been followed by this Court in the case of E.S. Krishnamurthy and others****. Paragraph nos.32 to 34 of the said decision read thus:*

32. In Innoventive industries [Innoventive Industries Ltd. v. ICICI Bank, (2018) 1 SCC 407, paras 28 and

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30: (2018) 1 SCC (Civ) 356], ***a two-Judge Bench of this Court has explained the ambit of Section 7 IBC, and held that the adjudicating authority only has to determine whether a "default" has occurred i.e. whether the "debt" (which may still be disputed) was due and remained unpaid. If the adjudicating authority is of the opinion that a "default" has occurred, it has to admit the application unless it is incomplete.*** *Speaking through Rohinton F. Nariman, J., the Court has observed: (SCC pp. 438-39, paras 28 & 30)*

"28. When it comes to a financial creditor triggering the process, Section 7 becomes relevant. Under the Explanation to Section 7(1), a default is in respect of a financial debt owed to [Ed.: The word between two asterisks has been emphasised in original.] any [Ed.: The word between two asterisks has been emphasised in original.] financial creditor of the corporate debtor — it need not be a debt owed to the applicant financial creditor. Under Section 7(2), an application is to be made under sub-section (1) in such form and manner as is prescribed, which takes us to the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Under Rule 4, the application is made by a financial creditor in Form 1 accompanied by documents and records required therein. Form 1 is a detailed form in 5 parts, which requires particulars of the applicant in Part I, particulars of the corporate debtor in Part II, particulars of the proposed interim resolution professional in Part III, particulars of the financial debt in Part IV and documents, records and evidence of default in Part V. Under Rule 4(3), the applicant is to dispatch a copy of the application filed with the adjudicating authority by registered post or speed

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post to the registered office of the corporate debtor. The speed, within which the adjudicating authority is to ascertain the existence of a default from the records of the information utility or on the basis of evidence furnished by the financial creditor, is important. This it must do within 14 days of the receipt of the application. It is at the stage of Section 7(5), where the adjudicating authority is to be satisfied that a default has occurred, that the corporate debtor is entitled to point out that a default has not occurred in the sense that the "debt", which may also include a disputed claim, is not due. A debt may not be due if it is not payable in law or in fact. The moment the adjudicating authority is satisfied that a default has occurred, the application must be admitted unless it is incomplete, in which case it may give notice to the applicant to rectify the defect within 7 days of receipt of a notice from the adjudicating authority. Under sub-section (7), the adjudicating authority shall then communicate the order passed to the financial creditor and corporate debtor within 7 days of admission or rejection of such application, as the case may be.

* * *

30. On the other hand, as we have seen, in the case of a corporate debtor who commits a default of a financial debt, the adjudicating authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. It is of no matter that the debt is disputed so long as the debt is "due" i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. It is only when this is proved

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to the satisfaction of the adjudicating authority that the adjudicating authority may reject an application and not otherwise."

33. In the present case, the adjudicating authority noted that it had listed the petition for admission on diverse dates and had adjourned it, inter alia, to allow the parties to explore the possibility of a settlement. Evidently, no settlement was arrived at by all the original petitioners who had instituted the proceedings. The adjudicating authority noticed that joint consent terms dated 12-2-2020 had been filed before it. But it is common ground that these consent terms did not cover all the original petitioners who were before the adjudicating authority. The adjudicating authority was apprised of the fact that the claims of 140 investors had been fully settled by the respondent. The respondent also noted that of the claims of the original petitioners who have moved the adjudicating authority, only 13 have been settled while, according to it "40 are in the process of settlement and 39 are pending settlements". Eventually, the adjudicating authority did not entertain the petition on the ground that the procedure under IBC is summary, and it cannot manage or decide upon each and every claim of the individual homebuyers. The adjudicating authority also held that since the process of settlement was progressing "in all seriousness", instead of examining all the individual claims, it would dispose of the petition by directing the respondent to settle all the remaining claims "seriously" within a definite time-frame. The petition was accordingly disposed of by directing the respondent to settle the remaining claims no later than within three months, and that if any of the remaining original petitioners were aggrieved by the settlement

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process, they would be at liberty to approach the adjudicating authority again in accordance with law. The adjudicating authority's decision was also upheld by the appellate authority, who supported its conclusions.

34. The adjudicating authority has clearly acted outside the terms of its jurisdiction under Section 7(5) IBC. ***The adjudicating authority is empowered only to verify whether a default has occurred or if a default has not occurred. Based upon its decision, the adjudicating authority must then either admit or reject an application, respectively.*** *These are the only two courses of action which are open to the adjudicating authority in accordance with Section 7(5). The adjudicating authority cannot compel a party to the proceedings before it to settle a dispute."*

(Emphasis added)

10. Thus, once NCLT is satisfied that the default has occurred, there is hardly a discretion left with NCLT to refuse admission of the application under Section 7. Default is defined under sub-section 12 of Section 3 of the IB Code which reads thus:

"3. Definitions: *- In this Code, unless the context otherwise requires, -.. .. ..*

(12) *"default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not [paid] by the debtor or the corporate debtor, as the case may be;" Thus, even the non-payment of a part of debt when it becomes due and payable will amount to default on the part of a Corporate Debtor. In such a case, an order of admission under Section 7 of the IB Code must*

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follow. If the NCLT finds that there is a debt, but it has not become due and payable, the application under Section 7 can be rejected. Otherwise, there is no ground available to reject the application.

11. *Reliance is placed on the decision of this Court in the case of* ***Vidarbha Industries*** *and in particular, what is held therein in paragraph nos. 86 to 89 which reads thus:-*

"86. *Even though Section 7(5) (a) IBC may confer discretionary power on the adjudicating authority, such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant exercise of discretion in a particular manner, discretion would have to be exercised in that manner.*

87. Ordinarily, the adjudicating authority (NCLT) would have to exercise its discretion to admit an application under Section 7 IBC and initiate CIRP on satisfaction of the existence of a financial debt and default on the part of the corporate debtor in payment of the debt,unless there are good reasons not to admit the petition.

88. *The adjudicating authority (NCLT) has to consider the grounds made out by the corporate debtor against admission, on its own merits. For example, when admission is opposed on the ground of existence of an award or a decree in favour of the corporate debtor, and the awarded/decretal amount exceeds the amount of the debt, the adjudicating authority would have to exercise its discretion under Section 7(5) (a) IBC to keep the admission of the application of the financial creditor in abeyance, unless there is good reason not to do so. The adjudicating authority may,*

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for example, admit the application of the financial creditor, notwithstanding any award or decree, if the award/decretal amount is incapable of realisation. The example is only illustrative.

89. *In this case, the adjudicating authority (NCLT) has simply brushed aside the case of the appellant that an amount of Rs 1730 crores was realisable by the appellant in terms of the order passed by APTEL in favour of the appellant, with the cursory observation that disputes if any between the appellant and the recipient of electricity or between the appellant and the Electricity Regulatory Commission were inconsequential."*

(Emphasis added)

12. *A Review Petition was filed by the Axis Bank Limited seeking a review of the decision of* ***Vidarbha Industries*** *on the ground that the attention of the Court was not invited to the case of* ***E.S. Krishnamurthy****. While disposing of Review Petition by Order dated 22nd September 2022, this Court held thus:*

"The elucidation in paragraph 90 and other paragraphs were made in the context of the case at hand. It is well settled that judgments and observations in judgments are not to be read as provisions of statute. Judicial utterances and/or pronouncements are in the setting of the facts of a particular case.

To interpret words and provisions of a statute, it may become necessary for the Judges to embark upon lengthy discussions. The words of Judges interpreting statutes are not to be interpreted as statutes."

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> ***13.*** *Thus, it was clarified by the order in review that the decision in the case of* ***Vidarbha Industries*** *was in the setting of facts of the case before this Court. Hence, the decision in the case of* ***Vidarbha Industries*** *cannot be read and understood as taking a view which is contrary to the view taken in the cases of* ***Innoventive Industries*** *and* ***E.S. Krishnamurthy****. The view taken in the case of Innoventive Industries still holds good.*

96. As now, it has been clarified by the Hon'ble Supreme Court itself that the decision in the case of ***Vidarbha Industries Power Ltd.***, was in the setting of facts of that case before the Hon'ble Supreme Court and the decision of Hon'ble Supreme Court in the case of ***Innoventive Industries Limited v. ICICI Bank & Another 2018 (1) SCC 407*** still holds good. In case of ***Innoventive Industries Limited***, it has been clearly held by the Hon'ble Supreme Court that if there is a debt and default in repayment of debt and application filed by the Applicant/Financial Creditor is complete in all respect, the application under Section 7 of I & B Code 2016, is to be admitted. In the present case, we have clearly found that there is a debt and also there is a clear default in payment of interest which is more than the threshold limit as well as the default in payment of entire loan amount even

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after classification of account of the corporate Debtor as NPA Therefore, we are convinced that the present application under Section of 7 of I & B Code 2016, is to be admitted.

The reason cited by the Ld. Counsel of Corporate Debtor is liquidity crunch due to delays in government sanctions /approvals, prolong litigation with respect to land acquisition for Yamuna Express Way, economic slowdown, change in government policies, etc. which is always present when a business is carried out and that cannot have any bearing on initiation of proceeding under Section 7 of IBC, when there is a debt and default in repayment of such debt as provided under Section 7 of IBC and also, as held by the Hon'ble Supreme Court in the case of ***Innoventive Industries Limited (Supra)***.

97. 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 one lakh at the relevant time and even more than Rs. 1crore the limit applicable at present. The application is also filed within limitation period and complete in all respect and a resolution

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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.**

98. The Applicant has filed the interim application bearing no. 263 of 2024 wherein the Financial Creditor has proposed the name of Mr. Bhuvan Madan as Interim Resolution Professional. His Registration Number is IBBI/IPA-IBBI/IPA-001/IP-P01004/2017-2018/11655, R/o 204, A-103 Ashok Vihar Phase-3 (Behind Laxmi Bai College), New Delhi, ,110052, Email: madan.bhuvan@gmail.com . He has duly given the consent in Form No. 2 at Page no. 12 of I.A 263 of 2024 annexed as **Annexure -4**. The Law Research Associate of this Tribunal, Ms. Aditi Kharbanda, has checked the credentials of Mr. Bhuvan Madan, and found that there are no disciplinary proceedings pending against the proposed Resolution Professional and also there is nothing adverse against him. Upon verification from the website of IBBI, it is found that IRP holds valid authorization till 24 December 2024. After considering these details, we appoint Mr.Bhuvan

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Madan, Registration No. IBBI/IPA-IBBI/IPA-001/IP-P01004/2017-2018/11655, R/o 204, as Interim Resolution Professional (IRP).

99. 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 32, the application is admitted in terms of Section 7(5) of the I & B Code, 2016 against the Corporate Debtor and accordingly, moratorium is declared in terms of Section 14 of the Code.

100. 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.

101. 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

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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.

102. 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;

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(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."

103. We direct the Financial Creditor to deposit a sum of Rs.3 lakh 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

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to adjustment by the Committee of Creditors as accounted for by the Interim Resolution Professional on the conclusion of CIRP.

104. 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.

105. I.A. No. 263 of 2024 is disposed off and IA No. 406 of 2023 is dismissed as infructuous accordingly.

106. List the matter on 08.07.2024 for filing of the progress report/further proceeding.

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(Ashish Verma)
Member (Technical)

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(Praveen Gupta)
Member (Judicial)

Date- 03.06.2024

CERTIFIED TO BE TRUE COPY
OF THE ORIGINAL

FREE OF COST

Compared by Me
Mahesh Sahai
04/06/2024

04.06.2024

V. K. Asthana
Deputy Registrar
National Company Law Tribunal
Allahabad Bench, Prayagraj (U.P.)