

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**PRINCIPAL BENCH, NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 302 of 2023**

**IN THE MATTER OF:**

**JAIPRAKASH ASSOCIATES LIMITED,**

Through its Executive Chairman,  
Sector 128, NOIDA, Uttar Pradesh,  
India – 201304

Email: [sect1.dept@jalindia.co.in](mailto:sect1.dept@jalindia.co.in)

**...Appellant**

**Versus**

**1. JAYPEE INFRATECH LIMITED,**

Through its Implementation and Monitoring  
Committee,  
Address:- Sector 128, NOIDA, Uttar Pradesh,  
India 201304

**...Respondent No. 1**

**2. SURAKSHA REALTY LIMITED,**

3, Narayan Building,  
23, LN Road Dadar (East),  
Mumbai, Maharashtra – 400014

**...Respondent No. 2**

**3. LAKSHDEEP INVESTMENTS AND FINANCE  
PRIVATE LIMITED,**

3, Narayan Building,  
23, LN Road Dadar (East),  
Mumbai, Maharashtra - 400014

**...Respondent No. 3**

**For Appellant:** Mr. Krishnan Venugopal, Sr. Advocate, Mr. Vishal Gupta, Mr. Anupam Chaudhary, Mr. Sarvesh Mehra, Mr. Avinash Mathew, Mr. Krishnan Agarwal, Mr. Rajesh J., Advocates for JAL.

**For Respondent:** Mr. Sumant Batra, Mr. Sanjay Bhatt, Ms. Ruchi Goyal, Ms. Aishwarya, Advocates for JIL/R-1.  
  
Mr. Sanjiv Sen, Sr. Advocate, Mr. Mahesh Agarwal, Ms. Geetika Sharma, Ms. Eshna Kumar, Mr. Sagar Bansal, Mr. Aditya Maheshwari, Ms. Anjali Singh, Ms. Radha

Gupta, Mr. Mridual Suri, Mr. Bhavesh Sharma, Ms. Srishty Kaul, Mr. Harish Nadda, Mr. Kumar Shashank, Mr. Virat K. Anand, Mr. Shashank Shekhar Shukla, Mr. Abhishek Sharma, Advocates for SRA.

**With**

**Company Appeal (AT) (Insolvency) No. 507 of 2023**

**IN THE MATTER OF:**

**JAYPEE INFRATECH LIMITED,**

Through its Implementation and Monitoring Committee,

Address:- Sector 128, NOIDA, Uttar Pradesh, India 201304

**...Appellant**

**Versus**

**JAIPRAKASH ASSOCIATES LIMITED,**

Through its Executive Chairman,  
Sector 128, NOIDA, Uttar Pradesh,  
India – 201304

Email: [sect1.dept@jalindia.co.in](mailto:sect1.dept@jalindia.co.in)

**...Respondent**

**For Appellant:** Mr. Sumant Batra, Mr. Sanjay Bhatt, Ms. Ruchi Goyal, Ms. Aishwarya, Advocates

**For Respondent:** Mr. Krishnan Venugopal, Sr. Advocate, Mr. Vishal Gupta, Mr. Anupam Chaudhary, Mr. Sarvesh Mehra, Mr. Avinash Mathew, Mr. Krishnan Agarwal, Mr. Rajesh J., Advocates for R-1.

Mr. Sanjiv Sen, Sr. Advocate, Mr. Mahesh Agarwal, Ms. Geetika Sharma, Ms. Eshna Kumar, Mr. Sagar Bansal, Mr. Aditya Maheshwari, Ms. Anjali Singh, Ms. Radha Gupta, Mr. Mridual Suri, Mr. Bhavesh Sharma, Ms. Srishty Kaul, Mr. Harish Nadda, Mr. Kumar Shashank, Mr. Virat K. Anand, Mr. Shashank Shekhar Shukla, Mr. Abhishek Sharma, Advocates for SRA.

Mr. Amit K. Mishra, Mr. Evneet Uppal, Ms. Mitakshara Goyal, Mr. Tanmay Arora, Advocates for Homebuyers.

## **J U D G M E N T**

### **ASHOK BHUSHAN, J:**

1. These two Appeals have been filed against the same Order dated 07<sup>th</sup> March, 2023 passed by National Company Law Tribunal, New Delhi, Principal Bench, New Delhi (hereinafter referred to as “**The Adjudicating Authority**”) disposing of I.A. No. 2593/PB/2021 filed by the Interim Resolution Professional (**IRP** in short) and dismissing I.A. No. 631/PB/2022 as having become infructuous.

2. By the Impugned Order dated 07<sup>th</sup> March, 2023, the Adjudicating Authority issued direction for appropriation of amount of Rs. 750 Crores as per the Judgment of the Hon’ble Supreme Court dated 24<sup>th</sup> March, 2021 in the matter of “**Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Versus NBCC (India) Ltd. & Ors.**” Civil Appeal No. 3395/2020 (hereinafter referred to as “**Jaypee Kensington**”).

3. Company Appeal (AT) Ins. No. 302 of 2023 has been filed by the Jaiprakash Associates Limited (hereinafter referred to as “**JAL**”) being aggrieved by the directions given by the Adjudicating Authority in Paragraph 109-111 of the Impugned Order. In C.A.(AT) Ins. No. 302 of 2023, Appellant prays for following reliefs:

- “a) Allow the present Appeal and set aside Para nos. 109 to 111 of the Impugned Order dated 07.03.2023 passed by the Hon’ble National Company Law Tribunal, Allahabad Bench in IA No. 2593/PB/2021 in CP No. (IB) 77/ALD/2017 being contrary to the directions of the Hon’ble Supreme Court in its judgment dated 24.03.2021 passed in Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors., Civil Appeal No. 3395/2020;*
- b) Modify the Impugned Order by reconciling the accounts between the parties after deducting the amounts of claims of JAL allowed by the Impugned Order from the amount of Rs. 536.49 Crores mentioned in the GT Report for JIL to arrive at the net receivable amounts by JAL and JIL;*
- c) Direct the registry of NCLT, Allahabad Bench to release the net receivable amount by JAL, as arrived after reconciliation, along with interest accrued on Rs. 750 Crores till the date of such release;*
- d) Pass any such other orders as this Hon’ble Tribunal may deem fit and proper in the facts and circumstances of this case.”*

**4.** Company Appeal (AT) Ins. No. 507 of 2023 has been filed by the Jaypee Infratech Limited (hereinafter referred to as “**JIL**”) through its Implementation and Monitoring Committee challenging the findings on issues emerging from GT Report no. a), b), d) and e) framed by the Adjudicating Authority in paragraph 13 of the Order. In the C.A.(AT) Ins. NO. 507 of 2023, following are the reliefs sought:

*“a) Pass an order setting aside the findings on issues a), b), d) & e) framed by the Ld. Adjudicating Authority in para 13 of the Impugned Order passed by the Ld. Adjudicating Authority in I.A. No. 2593/2021 in C.P. No. (IB) 77/ALD/2017 and any consequential effect given to thereto in the Impugned Order.*

*b) Declare that JAL is not entitled to reconciliation or adjustment of amounts of INR 49.63 Crores pertaining to the RA Bills, INR 212 Crores pertaining to the BGs invoked by lenders of JIL, INR 2.33 Crores towards Facility Management Bills and INR 1.19 Crores towards hospitality services;*

*c) Declare that the amount of INR 70.89 Crore forms advance towards construction as part of the land swap deal between JIL, JAL and ICICI, and form part of the reconciliation process between JIL and JAL and JIL is entitled to receive this amount from INR 750 Crores.*

*d) Pass any other appropriate orders as may be deems fit and just.”*

**5.** We may first notice certain background facts before we enter into the rival submissions raised by Learned Counsel for the parties which are as under:-

- i. The ‘Corporate Insolvency Resolution Process’ commenced (**CIRP** in short) against the JIL, the Corporate Debtor by Order dated 09<sup>th</sup> August, 2017 on an Application under Section 7 of Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as “**IBC**”) filed by the IDBI Bank Limited. IRP issued public announcement on 10<sup>th</sup> August, 2017 in pursuance of which JAL filed its claim in Form-B as

Operational Creditor for a claim amount of Rs. 261.73 Crores including its Pre-CIRP dues before the IRP.

**6.** We also need to notice few facts and events before initiation of CIRP which are as follows:-

- i. On 28<sup>th</sup> February, 2006, bids were called by the Government of Uttar Pradesh for development of Taj Expressway Project which, *inter alia*, included construction of 6 Lane, 160 KMs Long Super Expressway connecting NOIDA and Agra. JAL was declared as the highest bidder. On 05<sup>th</sup> April, 2017, JAL incorporated JIL as a Special Purpose Vehicle to undertake the Yamuna Expressway Project. On 19.10.2007, JAL transferred all its rights and obligations under the concession agreement to JIL. In pursuance of concession agreement, JIL appointed JAL as its construction contractor. On 29.12.2012, JIL entered into a facility agreement with the consortium of Lenders led by IDBI Bank limited for refinancing the outstanding existing facility of Rs.6,600 Crores which was availed earlier for financing the Yamuna Expressway Project. Pursuant to the terms of the Facility Agreement, a Promoter Support Agreement was entered into on 29.09.2015 between JAL, JIL and IDBI Bank Limited. At the request of JAL, JIL extended Interest Free Maintenance Deposit (**IFMD** in short) advance to the tune of Rs.380.60 Crores to JAL. Pursuant to the construction agreement JAL requested JIL to make construction advance of Rs.450 Crores to be recovered from the JAL's Running Account Bills (**RA** in short). JAL availed various loans from ICICI

Bank Limited; To repay the said facilities availed by JAL from ICICI, on the request of the JAL, JIL executed separate 11 sub-lease deeds in financial year 2016-17 to transfer 84.5 acres of its land at Mirzapur and Jaganpur to ICICI for the total consideration of Rs.643.50 Crores as part of swapping of the debt owed by JAL to ICICI.

- ii. A Writ Petition under Article 32 of the Constitution was filed, **“Chitra Sharma and Ors. Vs. Union of India & Ors.”** in the Hon’ble Supreme Court for protecting the interest of home buyers in project floated by JIL. In the Writ Petition filed by **“Chitra Sharma”**, Hon’ble Supreme Court issued various interim orders from time to time directing JAL to deposit an amount of Rs. 2000 Crores which is a holding company of JIL. In pursuance of the Interim order passed in Writ Petition in the matter of **“Chitra Sharma”**, amount of Rs. 750 Crores was deposited by JAL in Hon’ble Supreme Court. Writ Petition under Article 32 was disposed of by Supreme Court on 09<sup>th</sup> August, 2018 which Judgment is reported as **(2018) 18 SCC 575, “Chitra Sharma and Ors. Vs. Union of India and Ors”**. In paragraph 50.6 of the Judgment, Hon’ble Supreme Court directed following:

*“50.6. The amount of Rs 750 crores which has been deposited in this Court by JAL/JIL shall together with the interest accrued thereon be transferred to NCLT and continue to remain invested and shall abide by such directions as may be issued by NCLT.”*

- iii. On an avoidance application filed by the Interim Resolution Professional in the Insolvency Process of JIL, Orders were passed by the Adjudicating Authority and the Appellate Authority which matter came to be transferred to Hon'ble Supreme Court by way of Civil Appeal No. 8512-27 of 2019 decided on 26<sup>th</sup> February, 2020 reported as (2020) 8 SCC 401, **"Anuj Jain, IRP for JIL Vs. Axis Bank Limited and Ors."** Hon'ble Supreme Court in the said Judgment has noticed that JAL entered into Promoter Support Agreement to the Lenders of JIL and has further extended Bank Guarantee of Rs. 212 Crores to meet the DSRA Obligations of the JIL.
- iv. In the Insolvency Resolution Process of the JIL, a Resolution Plan submitted by the NBCC (I) Limited was approved by the Adjudicating Authority dated 03.03.2020. Against the Order passed by the Adjudicating Authority, appeals were filed before the Appellate Tribunal, several Appeals were filed in the Supreme Court as well as Transfer Application, matters pending before the Appellate Tribunal pertaining challenge to the Order dated 03.03.2020 was transferred to the Supreme Court and Hon'ble Supreme Court by a detail judgment dated 24<sup>th</sup> March, 2021 decided the Civil Appeal No. 3395 of 2020 with other Civil Appeals titled as **"Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) India Limited and Ors."**
- v. In the Resolution Plan of the NBCC, amount of Rs. 750 crores which was deposited by the JAL in pursuance of the direction of the Hon'ble



Supreme Court in **“Chitra Sharma”** was also dealt with which was also under challenge. Hon’ble Supreme Court framed a Point J (Rs.750 Crores and accounting between JAL and JIL) apart from various other points framed, with regard to Rs. 750 Crores dealt under point ‘J’. Paragraph 176 to paragraph 192 of the Judgment details of which we shall notice hereinafter, led to passing of the Impugned Order by the Adjudicating Authority dated 07<sup>th</sup> March, 2023.

- vi. Before the Hon’ble Supreme Court in **“Jaypee Kensington”**, Hon’ble Supreme Court took the view that amount of Rs. 750 Crores along with accrued interest is the assets of the JAL. Hon’ble Supreme Court in the Judgment of **“Jaypee Kensington”** also noticed the submission of the JAL that JAL owes certain liabilities towards JIL and JAL is not in a position to make payment unless the amount of Rs. 750 Crores is refunded to it. JAL offered that admitted liability towards the JIL should be discharged from appropriating of Rs. 750 Crores and the balance be refunded to JAL. Submission was also made that said payable amount may be verified by the IRP or by a Chartered Accountant. Hon’ble Supreme Court after hearing the submission of all the parties before it, issued direction to the Adjudicating Authority to nominate an independent accounting expert to carry out process of the reconciliation. In pursuance of the Order of the Hon’ble Supreme Court, the Adjudicating Authority appointed Grant Thornton Bharat LLP (hereinafter referred to as

**“GT”)** as the Independent Special Auditor for carrying out reconciliation between JIL and JAL.

vii. GT submitted its draft report dated 09<sup>th</sup> June, 2021 which was placed before the Adjudicating Authority by IRP by I.A. No. 2593/2021. JAL filed its objection to the GTs Draft Report. IRP also filed objection to the GTs Draft Report. By an Order dated 27.07.2021 in M.A. No. 679, 770, 850 of 2021, Hon’ble Supreme Court directed the GT to file its final report before 15<sup>th</sup> August, 2021 and the Adjudicating Authority was directed to decide objection within two weeks.

viii. GT filed its final report dated 13<sup>th</sup> August, 2021. The Adjudicating Authority provided the copy of final GT’s report to JIL and JAL with liberty to file their respective objections. Various affidavits and additional affidavits were filed by the parties JAL and IRP of JIL before the Adjudicating Authority in support of their respective objections to the GT’s report. The Adjudicating authority heard the parties and by impugned order dated 07<sup>th</sup> March, 2023 determined the issue regarding appropriation of Rs. 750 Crores between JAL and JIL. GT reported that an amount of Rs. 536.49 Crores is undisputed amount which is receivable by JIL/Home-buyers of JIL from the JAL. The Adjudicating Authority noted the issue in paragraph 13 of the Order which is to the following effect:

*“13. Thus, the issues, which emerge from the GT report and post-joint meeting of the parties held on*

24.12.2021 for adjudication before this Adjudicating Authority are the following;

Issues emerging from GT Report

- a) Whether in view of the provision of IBC 2016, can JAL claim an adjustment of Rs. 49.63 Crore (advanced against construction extended by JIL) on the basis of RA Bills pertaining to the period prior to the insolvency commencement date of JIL.
- b) Whether JAL is entitled to a claim arising out of the Bank Guarantees amounting to Rs. 212 Crore issued on behalf of JIL and subsequently, invoked by the lenders of JIL.
- c) Whether an advance of Rs. 106.90 Crore recovered from homebuyers towards IFMD is recoverable by JIL from JAL.
- d) Whether JAL can claim adjustment of Rs. 2.33 crore towards the facility management bills, from JIL.
- e) Whether JAL can claim/recover, s. 1.19 Crore towards providing hospitality services, from JIL.”

ix. The Adjudicating Authority after considering the issues and other submissions placed before the Adjudicating Authority recorded its conclusion, manner and distribution of the amount in Paragraph 109, 110 and 11 which is to the following effect:

“109. From the conjoint reading of Para 188 and 190.1 of the “Jaypee Kensington” (supra) above, we find that the Hon’ble Supreme Court has held that-

(a) Rs. 750 Crore is the asset of JAL;

*(b) The NCLT shall pass appropriate orders in the manner that if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount/Asset of Rs. 750 Crores and accrued interest (in other words, only JIL/Homebuyers of JIL'S claim can be set off from the Asset of Rs. 750 Crore), and*

*(c) Only the remainder thereof shall be returned to JAL (in other words, any claim of JAL cannot be set off from Rs 750 Crore being its own Asset, since as per the directions of Hon'ble Supreme Court, JAL is only entitled to receive the remainder after setting off the amount receivable by JIL/Homebuyers' of JIL).*

110. Thus, as per the directions of the Hon'ble Supreme Court contained in Para 190.1 of the "Jaypee Kensington" (supra), this Adjudicating Authority is required to pass orders in the manner that, if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount of Rs. 750 Crore and accrued interest; and the remainder thereof only shall be returned to JAL. Accordingly, when we aggregate both the undisputed and adjudicated entitlements of JIL/Corporate Debtor & Homebuyers of JIL, the position emerges as follows:

Sl. No.	Amount Receivable by JIL/Home Buyers of JIL	Amount (Rs. In Crore)
<i>(A) Amount Receivable by JIL</i>		
1.	Undisputed amount through the GT Report	536.49
2.	Mutually resolved by the Parties in terms of the direction of this Tribunal.	6.13
<i>(B) Amount Receivable by Home Buyers of JIL</i>		
3.	The disputed amount of Rs. 106.90 Crore on account of IFMD adjudicated vide this order in favor of Homebuyers of JIL ( <b>which</b>	106.90

	<b><i>shall be kept in the escrow account for maintenance till it is transferred to the RWA of Home Buyers of JIL)</i></b>	
	<i>Total</i>	649.52

111. We have noted above that the Hon'ble Supreme Court has specifically directed that only the remainder of Rs. 750 Crores (i.e., after excluding the amount receivable by JIL/Homebuyers of JIL) along with the proportionate amount of interest (on the remainder) shall be returned to JAL. Accordingly, we direct the Registrar NCLT through Registry of NCLT, Allahabad that out of the total amount of Rs. 750 Crores and accrued interest thereon, an amount of Rs. 649.52 Crores along with proportionate interest shall be paid to the JIL/Home buyers of JIL and the remaining amount of Rs. 100.48 Crores (i.e. , Rs. 750 Crores less Rs. 649. 52 Crores) along with proportionate interest shall be returned to JAL, on receipt of such request from the parties. ***The IA-2593/PB/2021 is disposed of accordingly.***"

- x. In paragraph 110, the Adjudicating Authority found that undisputed amount from the GT report being Rs. 536.49 Crores and amount mutually resolved being Rs. 6.13 Crores are to be added in the said amount receivable by JIL and the amount of IFMD receivable by home-buyers of JIL is Rs. 106.90 Crores. The Adjudicating Authority thus held that out of Rs. 750 Crores after deducting the amount of Rs. 649.52 Crores, balance amount be paid to JAL i.e. Rs. 100.48 Crores. The Adjudicating Authority further directed that amount of Rs. 649.52 Crores along with proportionate interest be paid to

JIL/Home buyers of JIL and the remaining amount of Rs. 100.48 Crores along with proportionate interest be returned to JAL. As noted above, both JAL and JIL being aggrieved with certain portions of the Judgment have come up in these Appeals.

**7.** We have heard Mr. Krishnan Venugopal, Sr. Advocate for **JAL**. Mr. Sumant Batra, Advocate for **JIL** through its Implementation and Monitoring Committee and Mr. Sanjiv Sen, Sr. Advocate for Successful Resolution Applicant.

**8.** Mr. Krishnan Venugopal has advanced submission in support of C.A. (AT) Ins. No. 302 of 2023 and submission in C.A. (AT) Ins. No. 507 of 2023. It is submitted that Hon'ble Supreme Court in "**Jaypee Kensington**" issued direction for reconciliation for the accounts of JAL and JIL by independent auditor. The Adjudicating Authority disregarded the meaning of term 'Reconciliation' in view of the directions issued by the Hon'ble Supreme Court in paragraph 189-191.1. The Adjudicating Authority was bound to have reconciled the accounts between JIL and JAL by setting off the liabilities mutually discharged by the JAL against the amount advanced to JAL by JIL. The Adjudicating Authority misdirected itself by holding that the reconciliation directed by the Hon'ble Supreme Court in "**Jaypee Kensington**" was limited to deducting the amounts payable to JIL/Home-Buyers of JIL from Rs. 750 Crores. The Adjudicating Authority erred in relying on order of the Hon'ble Supreme dated 27<sup>th</sup> July, 2021 passed in M.A. No. 769 of 2021 treating direction in paragraph 190.1 as only relevant direction whereas the said order was passed by the Hon'ble Supreme Court

only for extension of time. The said Order cannot be treated as modifying the original judgment. The contention advanced by the JIL that the reconciliation was only for deducting the amount found receivable by JIL/Home-Buyers of JIL is not in accordance with the directions issued by the Hon'ble Supreme Court in **"Jaypee Kensington"**. Hon'ble Supreme Court clearly directed in paragraph 190.2 that the liability discharged by the JAL must be set off for the advance made by the JIL to JAL. Although all issues were noticed in paragraph 13 and findings were returned in favor of JAL in paragraph 40, 60, 62 and 77 but those findings were not given effect to in the operating paragraph 109 to 111. The Operative Judgment of the Adjudicating Authority is not clearly in accord with the findings which were returned in favor of JAL.

**9.** Mr. Krishnan Venugopal however in his submission has not questioned the amount of Rs. 106.90 Crores which was on account of Interest Free Maintenance Deposit which was directed to be paid by the Adjudicating Authority towards IFMD. Shri K. Venugopal submits that the IBC also recognizes the principle of mutuality and set off between the Corporate Debtor and its Creditors. With regard to the claim of Rs. 212 Crores paid by JAL through encashment of its Bank Guarantees was claimed to be an amount which was furnished to ensure the completion of JIL Projects. It is submitted that even the GT has treated the amount of Rs. 212 Crores as debt and not by infusion as equity by JAL to JIL. JIL in the financial year subsequent to 2016-17 has acknowledged the invocation of JAL's Bank Guarantee under the heading of "Other Financial Liabilities" in

its balance sheet. It is submitted that in plain reading of paragraph 190.2 of the **“Jaypee Kensington”**, the liability discharged by JAL that were to be considered by GT did not necessarily have to relate to construction contracts. Learned Sr. Counsel for the Appellant has also referred to Affidavit dated 12<sup>th</sup> May, 2020 which was specifically noticed by the Hon’ble Supreme Court in **“Jaypee Kensington”** which referred to amount of Rs. 274 Crores owing from JIL to JAL as on 31.03.2019. JAL has always treated Rs. 212 Crores as a financial asset recoverable from JIL. The fact that Rs. 212 Crores was claimed by JAL in Form B as Operational Debt and not a Financial Debt cannot determine the nature of underlying debt.

**10.** Mr. K. Venugopal challenging the order of the Adjudicating Authority as contained in paragraph 111 submits that direction of the Adjudicating Authority to make payment along with proportionate interest to the JIL/Home-Buyers of JIL is clearly contrary to the directions of the Hon’ble Supreme Court in **“Jaypee Kensington”**. It is submitted that it was held by Hon’ble Supreme Court in **“Jaypee Kensington”** that amount of Rs. 750 Crores along with accrued interest is the assets of the JAL. There was no direction of Hon’ble Supreme Court to give any interest to the JIL/Home-Buyers of the JIL. Further construction advance given by the JIL were without any interest and IFMD does not carry any interest hence there is no occasion for allotting any proportionate interest to JIL/Home-Buyers of JIL. The JAL was entitled to the entire accrued interest to Rs.750 Crores and the direction of the Adjudicating Authority for payment of proportionate interest is clearly unsustainable. It is further submitted that amount of Rs.271.28



Crores found by the Adjudicating Authority to be either payable by JAL or to be retained by JAL must be deducted from the undisputed amount of Rs.536.49 Crores found payable to JIL and its homebuyers, the total amount that becomes payable to JIL is only Rs.265.21 Crores. Mr. K. Venugopal submits that JAL is entitled to be refunded Rs.377.89 Crores plus entire interest.

**11.** Mr. Sumant Batra appearing for Implementation and Monitoring Committee refuting the submissions of Mr. K Venugopal contended that order of the Hon'ble Supreme Court in **"Jaypee Kensington"** clearly contemplated computation of the amount which was payable to JIL/Home Buyers of JIL which was to be deducted from amount of Rs. 750 Crores. The findings of the Adjudicating Authority in Paragraph 109-111 of the Impugned Order are in accordance with the direction of the Hon'ble Supreme Court in **"Jaypee Kensington"** Case. The Order for reconciliation of accounts between JAL and JIL was passed by the Hon'ble Supreme Court only for crystalizing the amount payable by JAL to JIL. Hon'ble Supreme Court has not directed any amount be paid by JIL to JAL following the reconciliation as debt, if any, owed by JIL to JAL can only be paid as part of the outcome of JIL's CIRP proceedings. JAL has submitted its claim to IRP as Operational Creditor in Form B. The submission of JAL on mutuality and set off have no merit. Set off is not permissible in CIRP Proceeding which is allowed only in the Liquidation Proceeding. For any claim of JAL against JIL, distribution can be claimed as per waterfall mechanism under Section 53 of the Code. The claim of JAL if any cannot be reconciled, any amount which is

receivable by JIL from JAL out of Rs. 750 Crores. Hon'ble Supreme Court has confined direction to construction related advances only. The reconciliation was not for to find out what JIL owes to JAL. In the proceeding before the Hon'ble Supreme Court in **"Jaypee Kensington"**, JAL admitted that it owes various amounts to JIL and its homebuyers and voluntarily offered to discharge out of liabilities to its JIL and Home-Buyers within Rs. 750 Crores as it did not have the liquidity to discharge its liability. There being disagreement between the JIL and JAL to the quantum of Rs. 750 Crores, an Independent Auditor was directed to be appointed. Hon'ble Supreme Court had not directed for any amount to be paid by JIL to JAL.

**12.** Mr. Batra submits that debt if any owed by JIL to JAL can only be paid in accordance with the IBC. Adjustment of payment of JIL to its liability towards JAL shall be in contravention of the provisions of the IBC. JAL has acceded to IBC and submitted its claim through IRP in Form B. The purpose of reconciliation of account of JIL and JAL was to crystalize the amount payable by JAL to JIL against construction relating contracts. Only accounts concerning amount advanced to JAL towards construction contracts are to be examined and reconciled. Mr. Batra has referred to paragraph 189.3 and paragraph 194.2 of **"Jaypee Kensington"** Judgment. The claim of the amount of Rs. 212 Crores of the JAL was an amount consequent to invocation of Bank Guarantees given by JAL to the Lenders. The JAL has filed its claim as Operational Creditor in the CIRP in Form-B and no claim was filed as a Financial Creditor by the JAL. The amount of Rs. 212 Crores which was with the amount towards the Bank Guarantee given by the JAL

for fulfilling the DSRA obligations does not relate to construction contract, GT as well as the Adjudicating Authority ought not to have entertained the said claim. Claims made by JAL pertaining to period of prior to insolvency commencement date could not have been taken to consideration in reconciliation. All dues of JAL which are dues prior to Insolvency Commencement Date are operational debt which can be claimed only in the CIRP. JAL cannot be allowed to be paid Pre-CIRP Dues by jumping the queue/Waterfall Mechanism under Section 53. JAL cannot be allowed to provide a priority in payment over financial creditors of JIL. An amount of Rs. 49.63 Crores pertaining to RA Bills for construction, Rs. 2.33 Crores pertaining to Facility Management and Rs. 1.19 Crores pertaining to hospitality services or Pre-CIRP dues of JAL which amounts are claimed by JAL as Operational Debt in Form B dated 24<sup>th</sup> August, 2017 and 24<sup>th</sup> August, 2018. The claim of JAL was not admitted by the IRP of JIL which was never challenged by filing appropriate application, the Adjudicating Authority erred in entertaining the Pre-CIRP dues of JAL in reconciliation exercise. Hon'ble Supreme Court in **"Jaypee Kensington"** has also held that in paragraph 191.1 that process of reconciliation is not to determine the claims of Operational Creditor or Financial Creditor. The submission of the Appellant that order passed by the Hon'ble Supreme Court in **"Jaypee Kensington"** was passed in exercise of equity powers and constraints of IBC are not applicable, cannot be accepted. The Judgment clearly mentions that equity was exercised by the Hon'ble Supreme Court in favor of JIL and Home-Buyers on the offer of JAL to refund the advance from Rs. 750 Crores. Mr. Batra further submits that the Adjudicating Authority erred in holding

that Rs. 70.89 Crores claimed by JIL from JAL is not related to construction. The Adjudicating Authority exceeded in jurisdiction in adjudicating that the said amount already stands paid by JAL. It is submitted that amount of Rs. 70.89 Crores was agreed by JAL to be treated as an advance against construction contract. At the time of reconciliation by the GT the payment of Rs. 70.89 Crores was due from JAL out of total amount of Rs. 643.50 Crores which was total consideration for transferring land comprising 84.5 Acres to JAL's lender by 11 sub-leases. The Adjudicating Authority ought to have left the question open. By making observations, the Adjudicating Authority has caused serious prejudice to JIL as its right to recover the amount in appropriate proceeding will be prejudiced by findings and observations of the Adjudicating Authority. Shri Batra has supported the order passed by the Adjudicating Authority directing for payment of proportionate interest. It is submitted that the JIL and Home Buyers cannot be denied the interest which accrued to their dues which was payable by JAL. Order of the Adjudicating Authority directing for payment of proportionate interest does not warrant any interference. Company Appeal (AT) Ins. No. 302 of 2023 deserves to be dismissed and Company Appeal (AT) Ins. No. 507 of 2023 be allowed with regard to Rs. 70.89 Crores.

**13.** Mr. Sanjeev Sen, Learned Sr. Counsel appearing for the Successful Resolution Applicant supported the submissions advanced by Implementation and Monitoring Committee. It is submitted that purposes of reconciliation as directed by Hon'ble Supreme Court in **"Jaypee Kensington"** was to determine the amount payable by JAL to JIL and not

the other way round and JAL in its written submission before the Hon'ble Supreme Court in **"Jaypee Kensington"** itself has admitted that amount of Rs. 195 Crores (which was towards construction of JIL Projects) is due from JAL to JIL and can be adjusted from Rs. 750 Crores. The process of reconciliation cannot involve other amounts, for instance, amounts relating to Facility Management Bills and Hospitality Management, etc. Further no Pre-CIRP dues can be reopened in the reconciliation process. Hon'ble Supreme Court in **"Jaypee Kensington"** was well aware of the provisions of Section 14 of the Code and the intent of the Order of the Hon'ble Supreme Court was to shield the corporate debtor i.e. JIL from any claim by any creditor during the CIRP. Rs. 750 Crores can be assets of JAL but JAL is trying to bypass Section 14 and 53, waterfall mechanism to recover Pre-CIRP dues from JIL's entitlement. Claim of Rs. 212 Crores is a Pre-CIRP Claim and has to be dealt with in accordance with the provisions of the IBC. JAL has already filed a claim in Form B dated 24<sup>th</sup> August, 2017 which includes Rs. 212 Crores. JAL admittedly is operational creditor for recovery of its dues from JIL, other CIRP Process has to be utilized. Accepting Pre-CIRP claim of Operational Creditor will be preferential in nature and shall be against the observation of the Hon'ble Supreme Court in the Judgment of **"Chitra Sharma"** and **"Jaypee Kensington"**. Shri Sen further submits that JIL is entitled for the amount of Rs. 70.89 Crores which the Adjudicating Authority wrongly rejected. Shri Seen submits that the Adjudicating Authority has rightly found JIL and home-buyers of the JIL entitled for the proportionate interest for the amount payable to them out of Rs. 750 Crores.

**14.** We have considered the submissions of Learned Counsel for the parties and have perused the record.

**15.** As noted above, JAL is aggrieved against the certain portion of the Judgment of the Adjudicating Authority whereas JIL is also aggrieved against the ultimate direction of the Adjudicating Authority rejecting claim of Rs. 70.89 Crores related to Land Swap Deal.

**16.** Before we proceed to enter into rival submissions of Learned Counsel for the parties, we may first notice following two aspects which are not in dispute between the parties.

i. GT Report has found Rs. 536.49 Crores as amount receivable by JIL/Home Buyers of JIL which report of the GT has not been questioned by either of the parties thus undisputed amount through GT Report is Rs.536.49 Crores. Issues as to how much amount is to be deducted from the said undisputed amount for payment to JIL or what amount should further be added in the said amount which we shall notice hereinafter. Thus the payment which is undisputed amount through GT Report receivable by JIL, Rs. 536.49 Crores.

ii. Amount receivable by Home-Buyers of JIL on account of IFMD i.e. Rs.106.90 Crores has not been questioned before us

**17.** The bone of contention between the parties relates to claims of both the parties which has not been accepted by the Adjudicating Authority in the Impugned Order. There is challenge by JAL to the direction of the

Adjudicating Authority directing the payment to JIL/Home-Buyers of JIL along with proportionate interest. We thus need to consider points of disputes between the parties. The points which fall for determination in these two Appeals are:

- (i). What is the ambit and scope of Reconciliation of accounts between JAL & JIL as per directions of the Supreme Court in **“Jaypee Kensington”** Judgment?
- (ii). Whether the claim of Rs.212 Crores relating to Bank Guarantees issued by JAL invoked by the Lenders of JIL is the amount which need to be adjusted/deducted from the amount payable to JIL?
- (iii). Whether RA Bill for construction amounting to Rs.49.63 Crores payable by JIL to JAL should have been deducted from amount payable to JIL?
- (iv). Whether the Facility Management Bills raised by JAL on JIL of Rs.2.33 Crores ought to have been deducted from the amount to be paid to JIL?
- (v). Whether amount of Rs.1.19 Crores towards providing Hospitality Services ought to have been deducted from the amount payable to JIL?
- (vi). Whether the Adjudicating Authority on account of mutually settled amount totaling to Rs.12.26 Crores ought not to have

added amount of Rs.6.13 Crores in the amount receivable by JIL?

- (vii). Whether direction of the Adjudicating Authority in paragraph 111 directing for payment to JIL/Home-Buyers of JIL of Rs.649.52 Crores with proportionate interest is unsustainable?
- (viii). Whether JIL is entitled for amount of Rs.70.89 Crores towards Land Swap Deal and the Adjudicating Authority has wrongly rejected the said claim?
- (ix). The Relief, if any, to which the Appellants in C.A.(AT) Ins. No. 302 of 2023 and C.A.(AT) Ins. No. 507 of 2023 may be entitled?

**POINT NO. (i)**

**18.** We need to look into Judgment of Hon'ble Supreme Court dated 24<sup>th</sup> March, 2021 in **"Jaypee Kensington"** to find out true import of directions of the Hon'ble Supreme Court. As noted above, Hon'ble Supreme Court has framed "Point J, Rs. 750 Crores and accounting between JAL and JIL, discussed from Para 176 to 192 of the Judgment. In paragraph 176 of the Judgment, Hon'ble Supreme Court has noticed the submission made on behalf of JAL in following words:

*"In fact, it has been the submission on behalf of JAL that either the entire amount of INR 750 Crores with accrued interest be returned to it or in the alternative, after reconciliation of accounts, its liability towards JIL be adjusted from this corpus and balance be refunded to it."*



**19.** Further in paragraph 178.1.4, submission of JAL is noticed that JAL is conscious of its liability towards JIL which was Rs. 195 Crores as on 31<sup>st</sup> March, 2020 since JAL was not in a position to make payment unless the amount of Rs. 750 Crores is refunded to it in all fairness, JAL offers that this liability towards JIL could be discharged by appropriating from the said amount of Rs. 750 Crores and balance be refunded to JAL. In paragraph 178.1.4 and 178.1.5, following has been observed by the Hon'ble Supreme Court:

*“178.1.4. In another limb of arguments, it is submitted that JAL is conscious of its liability towards JIL, which was INR 195 crores as on 31.03.2020; and since JAL is not in a position to make this payment unless the amount of INR 750 crores is refunded to it, in all fairness, JAL offers that this admitted liability towards JIL could be discharged by appropriating from the said amount of INR 750 crores and the balance be refunded to JAL. It is submitted that the said payable amount may be verified by IRP or by a chartered accountant appointed by him. In this regard, while referring to the background facts relating to the construction contracts given to JAL and advance payment on that account made by JIL, the term in the resolution plan providing for termination of construction contracts has also been referred and it has been prayed that the balance due from JAL could be adjusted from the said amount of INR 750 crores, if NBCC makes a formal submission to the effect that it would be terminating the construction agreements. The written submissions on behalf of JAL in this regard could be reproduced as under: -*

*“G. AMOUNTS DUE FROM JAL TO JIL*

26. JIL has entered into various agreement(s)/ work contract(s) for development of Yamuna Expressway and development/maintenance of other land parcels located at Noida, Jaganpur, Mirzapur, Tappal & Agra. Pursuant thereto, at the request of JAL, JIL has advanced to JAL a sum aggregating to Rs. 716 Crores (as on 31.03.2018) which was recoverable from JAL's RA Bill as also when construction work was carried out.

27. The said sum was accordingly been recovered from JAL's RA Bill since August 2017 leaving an outstanding of Rs.274 Crores as on 31.12.2019. This has further reduced to a sum aggregate of Rs.195 Crores as on 31.03.2020 (as per the audited accounts), and is likely to be reduced by approx. Rs.165 Crores within a period of 12 months as per the work plan drawn by the RBSA (Advisors to the CIRP) [Pg.143 of JAL's Additional Affidavit].

28. Therefore, JAL is conscious of the fact that liability towards JIL now stands to Rs.195 Crores (as on 31.03.2020 and is reducing per the construction work). Since JAL is not in a position to make this payment independently unless the Rs.750 Crores is refunded back to it, hence, in all fairness and bonafide, JAL offers that this admitted and undisputed liability towards JIL can be discharged by appropriating the said liability from the Rs.750 Crores and the balance may be directed to be refunded. This amount may be verified by the RP or by a chartered accountant appointed by him. 29. However, it is pertinent to mention herein that NBCC's Resolution Plan treats the contracts for construction (between JIL

and JAL) in the following manner [Pg.47 of JAL's Additional Affidavit dated 12.05.2020]:

*“(vi) Resolution Applicant shall have a right to terminate the current construction contracts with Jaiprakash Associates Limited, (“JAL”), which are on cost plus basis and enter into fresh construction contracts with the vendors as may be selected by the Resolution Applicant in accordance with its business policies and such contracts shall be entered into on arms’ length basis as per the market standard. Provided that JAL shall not be entitled to terminate such construction contracts for a period of 12 months from the Approval Date.”*

*(Emphasis Supplied)*

*30. The above clearly shows that JAL is at the mercy of NBCC wherein NBCC is free to terminate the contracts for construction unilaterally, whereas JAL cannot. Therefore, it is submitted that the aforementioned balance of Rs.195 Crores (which was to be appropriated towards the construction of JIL's Projects) can only be adjusted/ set off from the sum of Rs.750 Crores if NBCC makes a formal submission to the effect that it would be terminating the construction agreements.”*

*(emphasis is in original)*

*178.1.5. It has, therefore, been prayed that the said sum of INR 750 crores along with accrued interest be ordered to be refunded to JAL or in the alternative, the refund may be ordered after appropriating the amount of liability of JAL*

*towards JIL, in terms of above-quoted paragraph 30 of the written submissions.”*

**20.** It is further relevant to notice that in Paragraph 187 and 188 of the Judgment, Hon’ble Supreme Court held that amount of Rs. 750 Crores which was deposited by JAL pursuant to the Order passed in **“Chitra Sharma”** and accrued interest thereof is a property of JAL. In Paragraph 189, Hon’ble Supreme Court laid down following:

*“189. After we have found that the impugned order dated 03.03.2020 placing the said amount of INR 750 crores and accrued interest in the asset pool of JIL is unsustainable, the question is as to what orders in sequel be made regarding this money? In ordinary circumstances, the consequence of the findings in the preceding paragraphs would have been of direct refund of this money to JAL but the present matter carries with it several entangled features relating to the amount otherwise payable by JAL to JIL; and these features cannot be ignored altogether.”*

**21.** In paragraph 189.2, Hon’ble Supreme Court accepting the alternative submissions of JAL as also by the resolution applicant, observed that after reconciliation, the payable amount be made over to JIL before refunding the remainder to JAL. Paragraph 189.2 is as follows:

*“189.2. Having comprehensively taken note of the complex and interwoven features, even while we are not inclined to countenance the other claims against JAL in these proceedings, so far as the admitted amount towards construction advance is concerned, in our view, the process had been a continuing one and admittedly an*

*amount of INR 195 crores was due to JIL as on 31.03.2020. In the given circumstances, it would serve the interests of all stakeholders, if the proposition for reconciliation of accounts, as stated in the alternative submissions by JAL as also by the resolution applicant, be partly accepted and after reconciliation, the payable amount be made over to JIL before refunding the remainder to JAL.”*

**22.** Paragraph 190.1 and 190.2 on which repeated reliance has been placed by Learned Counsel for the parties is to the following effect:

*“190.1. After receiving the report from the accounting expert, the NCLT shall pass appropriate orders in the manner that, if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount of INR 750 crores and accrued interest; and remainder thereof shall be returned to JAL in an appropriate account and that shall abide by the directions of the competent authority dealing with the proceedings concerning JAL. The NCLT would be expected to pass appropriate orders within 2 weeks of submission of report by the accounting expert.*

*190.2. However, we need to make it clear that this process of reconciliation is not meant for determination of any claim otherwise sought to be levied against JAL by IRP or homebuyers of JIL or by the resolution applicant; and only the accounts concerning the amount/s advanced to JAL by JIL towards construction contracts (vide paragraph 178.1.4.) are to be examined and reconciled with reference to the extent of liabilities discharged by JAL and then to find the extent of excessive amount, if any,*

*available with JAL which is receivable by JIL/homebuyers of JIL.”*

**23.** From the above directions, following are decipherable:

(i). If any amount is found receivable by JIL/Home-Buyers of JIL, the same shall be made over to JIL from out of said amount of Rs. 750 Crores and accrued interest and remainder thereof shall be returned to JAL.

(ii). Only the accounts concerning the amount/s advanced by JIL to JAL towards construction contracts (In paragraph 178.1.4) are to be examined and reconciled with reference to the extent of liabilities discharged by JAL and then to find the extent of excessive amount if any available with JAL which is receivable by JIL/Home-Buyers of JIL.

**24.** There were directions clearly indicating that the account concerning the amount/s advanced to JAL by JIL towards construction contracts are to be examined. Thus advance given by JIL towards construction contract and the liability discharged by the JAL in the above regard has to be determined.

**25.** The reconciliation of any other accounts or claims of either of the parties was not contemplated by the Order of the Hon'ble Supreme Court. In paragraph 191.1, Supreme Court further held “This Process is otherwise not of determination of the claims of individual stakeholders, be it Operational Creditors or Financial Creditors”. Thus claims of individual stakeholders was not required to be determined under the orders of the Hon'ble Supreme Court.

**26.** Hon'ble Supreme Court was well aware that Corporate Insolvency Resolution Process of JIL is underway in which Resolution Plan was approved which was under challenge. Any claim of JAL against the JIL which was in the nature of Operational Debt could have been claimed only in the Insolvency Resolution Process and Hon'ble Supreme Court never contemplated determination of any claim of the JAL against the JIL in pursuance of the above direction.

**27.** Mr. K. Venugopal, Learned Sr. Counsel for the Appellant submitted that the Adjudicating Authority failed to construe the true meaning of 'Reconciliation'. Learned Counsel for the Appellant has relied on definition of 'Reconciliation' as per Black's Law Dictionary, Sixth Edition:

***“Reconciliation.*** *The renewal of amicable relations between two persons who had been at enmity or variance; usually implying forgiveness of injuries on one or both sides. In law of domestic relations, a voluntary resumption of marital relations in the fullest sense. Keller v. Keller, 122 Cal. App. 712, 10 P. 2d 541. It means something more than mere resumption of cohabitation and observance of civility, and comprehends a fresh start and genuine effort by both parties to avoid pitfalls originally causing separation. Gutmann v. Gutmann, 70 N.J. Super. 266 175 A.2d 470, 474. In bookkeeping, it is the practice of adjusting the bank statement with the depositor's books. Also, a statement showing the consistency of two or more other financial statements. See also Reconciliation Statement.”*

**28.** Another definition relied on by Shri K Venugopal is definition of reconciliation as per P. Ramanatha Aiyar which is as follows:

***“Reconciliation.***

*The restoration to friendship or harmony. [S. 14(2), Hindu Marriage Act (25 OF 1955)].*

*Renewal of amicable relations between two persons, having been in conflict.*

*Literally the restoration of friendly relations after an estrangement. In divorce terms, it is the decision by a couple to try to re-establish their marriage relationship after a separation or other differences. It is sometimes confused with the similar sounding word “conciliation” which has a different meaning.*

*Calculation that demonstrates how one figure (such as a balance) is derived from another or others. See, e.g., bank reconciliation. (International Accounting)*

*Act of making two accounts, statements or people agree. (Banking)*

*“Reconciliation’ of spouses who have been separated means a bilateral intention to set up a matrimonial home together (1949) 1 All ER 384.’*

**29.** The above definitions of reconciliation are general definition which generally defines concept of reconciliation. The reconciliation of the accounts by the judgment of the Hon’ble Supreme Court in **Jaypee Kensington** was in special facts, circumstances and background, which reconciliation was directed to achieve a purpose. As noted above, the purpose for directing reconciliation of the accounts of JAL and JIL was with



regard to refund of Rs.750 Crores which was held to be asset of JAL after deduction of amount which was payable to JIL. We have already noticed and examined the relevant paragraphs of the judgment of **Jaypee Kensington** which captures the extent and ambit of directions of the Hon'ble Supreme Court. After deliberating on the issue under the heading 'J' under Point N, summation of findings; final order and conclusion was recorded in Para 216 of the judgment. Para 216 (J) (ii) is to the following effect:

*“(ii) The question as to whether any amount is receivable by JIL and/or its homebuyers from JAL, against advance towards construction and with reference to the admitted liability to the tune of INR 195 crores as on 31.03.2020, shall be determined by NCLT after reconciliation of accounts in terms of the directions contained in paragraphs 189 to 191.1 of this judgment. The amount, if found receivable by JIL, be made over to JIL and the remaining amount together with accrued interest be refunded to JAL in an appropriate account. It is made clear that the present matter being related to CIRP of JIL, no other orders are passed in relation to the amount that would be refunded to JAL because treatment of the said amount in the asset pool of JAL shall remain subject to such orders as may be passed by the competent authority dealing with the affairs of JAL.”*

**30.** From the final directions, as above, it is clear that the question was as to whether any amount was receivable by JIL and its Homebuyers from JAL against advance towards construction, thus, the reconciliation was only for the purpose as to what amount is receivable from JAL to JIL and such

amount to be returned and handed over before refunding Rs.750 Crores with interest. The order of the Hon'ble Supreme Court did not contemplate determination of amount to which JAL may be entitled from JIL. Hon'ble Supreme Court was well aware that the proceedings have emanated from CIRP of JIL and the Hon'ble Supreme Court in exercise of its power under Article 142 of the Constitution of India enlarged the time for completion of CIRP of JIL by the order passed in ***Jaypee Kensington***. The Supreme Court was well aware that the JAL has already filed its claim in the CIRP process which fact has already been brought on the record in the Appeals before us. The entitlement of JAL from JIL has to be determined in the CIRP process of JIL because JAL cannot claim any amount dehors the CIRP process from JIL and any payment to JAL shall be preferential payment, which shall be against the provisions of IBC Code.

**31.** We, thus, are of the view that the Adjudicating Authority rightly came to the conclusion that the determination was of the amount which was receivable by JIL/Homebuyers of JIL. We, thus, are of the view that a very wide submission made by Shri Krishnan Venugopal on behalf of the JAL that reconciliation required adjustment of claims of both JAL and JIL, cannot be accepted. As noted above, the purpose was to refund Rs.750 Crores to JAL and from the said amount, the amount payable to JIL was to be retained. The Hon'ble Supreme Court has further confined the determination to "*only the accounts concerning the amounts advanced to JAL by JIL towards construction contracts*". It is true that extent of liabilities discharged by JAL towards the above was also to be taken care of, for which

purpose reconciliation was directed. Thus, the limited scope was with regard to advance given by JIL to JAL towards the construction contract. How much liabilities have been discharged by JAL was possible by reconciliation of the financial statements of both JIL and JAL which was done by 'Grant Thornton' appointed by the Adjudicating Authority. We accordingly answer Point No. (i) in following manner:

**Point No. (i):      Ambit and scope of reconciliation of account between JAL and JIL was concerning the amounts advanced to JAL by JIL towards construction contracts and extent of liabilities discharged by JAL towards above. The reconciliation was not to find out what amount was payable to JAL by JIL.**

**POINT NO. (ii)**

**32.** JAL has in the Appeal has claimed adjustment of Rs.212 Crores related to Bank Guarantees issued by JAL in favour of lenders of JIL which was invoked by the lenders. The Adjudicating Authority in the impugned order has framed issue no. (b) under Para 13 i.e. "Whether JAL is entitled to a claim arising out of the Bank Guarantees amounting to Rs.212 Crore issued on behalf of JIL and subsequently, invoked by lenders of JIL.". The Adjudicating Authority from Para 42 to Para 60 has examined the said issue and returned a finding that JAL is entitled to retain Rs.212 Crores out of Rs.750 Crores, which findings are questioned by learned counsel appearing for the JIL. It is to be noted that even after the above finding in favour of the JAL in the ultimate order passed by the Adjudicating Authority in Para 109

to Para 111, the said amount was not retained in favour of JAL out of Rs.750 Crores. For considering the rival submissions of the parties, we may first notice the Grant Thornton Report that is quoted in Para 46 of the order. The Adjudicating Authority has quoted the Grant Thornton Report with regard to Bank Guarantees of Rs.212 Crores. The Grant Thornton's Report with regard to Rs.212 Crores is as follows:

#	Nature of transaction	Key issues	Comments from IRP of JIL	JAL's comments	Our assessment
B	BGs issued on behalf of JAL and subsequently invoked by the lenders of JIL	BGs of INR 212 crore should be treated as a Promoter's contribution to equity or debt.	<p>* JIL had shown BGs as Promoter's contribution under Other Equity in the AFS for FY 2016-17; and quarterly financial reporting of Q1, Q2 and Q3 of FY 2017-18.</p> <p>* As per interpretation of agreement by IRP of JIL, any shortfall in the DSRA was met by the holding company, i.e. JAL. Thus, the amount was treated as Promoters' contribution to equity and not as a liability.</p>	<p>* BGs was classified as 'Promoter contribution' under Other Equity by JIL in its AFS for FY 2016-17 due to a proposed restructuring scheme.</p> <p>* However, pursuant to scheme failure, it was classified as 'Financial Liability' under 'Non-Currently Liability' in JIL's AFS for FY 2017-18 and continued to be classified as 'Financial Liability' under 'Non-Currently Liability' in AFS of JIL for FY 2018-19 and FY 2019-20.</p>	<p>* There is no dispute between JIL and JAL for the amount of BG encashed i.e. INR 212 crore.</p> <p>* Based on the review of the related documentation, it is our assessment that the amount was in the nature of financial debt and not equity.</p> <p>* However, the Adjudicating Authority may provide direction to release the amount in line with the provisions of the IBC Code and/or relevant statutes.</p>

				* Thus, INR 212 crore is a legitimate debt recoverable by JAL from JIL.	
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**33.** The Bank Guarantees of Rs.212 Crores were invoked by the lenders in FY 2016-17. After commencement of CIRP process against JIL, JAL has filed its claim in Form B as Operational Creditor on 24.08.2019 to the IRP. At Item 4 of particulars following has been stated:

4.	TOTAL AMOUNT OF CLAIM (INCLUDING ANY INTEREST AS AT THE INSOLVENCY COMMENCEMENT DATE)	<p>AMOUNT OF CLAIM: Rs.261,72,89,782/- (Rupees Two hundred sixty one crores seventy two lacs eighty nine thousand seven hundred eighty two only) (REFER ANNEXURE B)</p> <p><u>Notes:</u></p> <p>1. THE ABOVE CLAIM AMOUNT INCLUDES AMOUNT OF BANK GUARANTEES GIVEN BY THE COMPANY (JAL) AS A PROMOTOR OF JAYPEE INFRATECH LIMITED (JIL), AGGREGATING TO Rs. 212 CRORES WHICH WERE INVOKED BY THE BENEFICIARIES ON 03.10.2016, 05.10.2016 AND 06.10.2016. THE SAID AMOUNT WAS TO BE TREATED AS PROMOTOR'S CONTRIUTION UNDER THE INDICATIVE RESTRUCTURING SCHEME OF JIL, WHICH WAS UNDER CONSIDERATION BY THE LENDERS OF JIL, WHICH IDBI AS LEAD BANK. SINCE THE SCHEME IS NOT YET APPROVED, THE SAID AMOUNT IS RECOVERABLE BY JAL.</p> <p>2. THE ABOVE AMOUNT OF CLAIMS DOES NOT INCLUDE AMOUNT OF INTEREST THEREON.</p>
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**34.** The above claim filed by JAL in Form B clearly included he Bank Guarantee aggregating to Rs.212 crores which was invoked by the

beneficiaries in the year 2016. It is also relevant to notice that the Hon'ble Supreme Court in **“Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. vs. Axis Bank Ltd. & Ors., (2020) 8 SCC 401”**, considered challenge to the order of the Adjudicating Authority deciding preferential applications filed by the IRP. In Para 25.3.2, it was noticed that, the Bank Guarantees of Rs.212 Crore was executed by JAL to meet the DSRA obligation. Para 25.3.2 in **“Anuj Jain, Interim Resolution Professional for Jaypee Infratech Ltd. vs. Axis Bank Ltd. & Ors.”** lays down following:

*“25.3.2. Now, the capacity of JAL is admittedly that of the holding company of JIL as its largest equity shareholder (with approximately 71.64% shareholding). Moreover, JAL had admittedly been the operational creditor of JIL, for an amount of approximately Rs. 261.77 crores. JAL itself maintains that it had been providing financial, technical and strategic support to JIL. in various ways. It is the assertion that apart from making investment in terms of equity shareholding to the tune of Rs. 995 crores, JAL had pledged its 70,83,56,087 equity shares held in JIL in favour of the lenders of JIL; had also entered into Promoter Support Agreement to the lenders of JIL to meet the DSRA obligation of JIL towards its lenders; and had further extended bank guarantees of Rs. 212. crores to meet the DSRA obligation of JIL. These assertions, in our view. put JAL in such capacity that it is a related party to JIL and is a creditor as also surety of JIL. In other words, the corporate debtor JIL owed antecedent financial debts*

*as also operational debts and other liabilities towards JAL.”*

**35.** Learned counsel for the JAL has submitted the Grant Thornton in its report did find that the above amount is a financial debt and not equity. The Bank Guarantees of Rs.212 crores given by JAL to the lender of JIL was towards discharge of obligation of DSRA which the JIL had to maintain. Promoters Support Agreement dated 29.09.2015 has been noticed by the Adjudicating Authority in its order in Para 53. The Adjudicating Authority in its order returned the finding that the said amount is debt.

**36.** From the facts as noticed above, it is clear that the amount of Rs.212 crores related to the Bank Guarantees invoked by the lenders of JIL was the amount not referable to any advance given by JIL to JAL for construction purpose. The amount of Rs.212 crores is already claimed by JAL in CIRP of JIL as is clear from the claim filed by JAL in Form B, as extracted above. When the JAL has already filed its claim in the CIRP process of JIL which includes Rs.212 crores towards invocation of Bank Guarantees, there is no occasion for deducting the said amount from the amount of Rs.750 crores deposited by JAL. The treatment of amount of Rs.212 crores has to be as per the IBC proceeding. We, thus, are of the view that the finding of the Adjudicating Authority that JAL is entitled to retain amount of Rs.212 crores out of Rs.750 crores is unsustainable. The amount of Rs.212 crores which is related to the invocation of Bank Guarantees cannot be subject matter of reconciliation process. It is relevant to notice that the Grant Thornton in its opinion has opined:

*“However, the Adjudicating Authority may provide direction to release the amount in line with the provisions of the IBC Code and/or relevant statutes.”*

**37.** Grant Thornton, the Auditor appointed by the Adjudicating Authority also did not recommend adjustment of Rs.212 crores in reconciliation process. Thus, the amount of Rs.212 crores could not have been made part of the reconciliation process and has nothing to do with amount of Rs.750 crores nor the said amount can be deducted from the amount payable to JIL as determined by the Adjudicating Authority. Point No. (ii) is answered accordingly in following manner:

**Point No. (ii): The claim of Rs.212 crores relating to Bank Guarantees issued by JAL invoked by the lenders of JIL need not to be adjusted/deducted from the amount payable to JIL.**

**POINT NO. (iii), (iv) and (v)**

**38.** The aforesaid points were decided by the Adjudicating Authority as Issue No. (a), (d) and (e). The Adjudicating Authority held that claim of Rs.49.63 crores, Rs.2.33 crores and Rs.1.19 crore, even though they were claim of pre-CIRP, JAL is entitled to retain the amount. As noted above, with regard to all pre-CIRP dues JAL has already filed its claim in the CIRP of JIL in Form B, as extracted above. We have already while considering Point No.1 opined that reconciliation between accounts of JAL and JIL was not for purpose of finding out amount which is payable to JAL from JIL rather the determination was towards the amount which is receivable by JIL out of the advance given to the JAL regarding construction.



**39.** In Para 191.1 of **Jaypee Kensington**, the Hon'ble Supreme Court held that *"This process is otherwise not of determination of the claims of individual stakeholders, be it operational creditors or financial creditors"*. The import of the judgment is clear that reconciliation process was not to determine the individual claims of JAL against JIL which has to be determined in the CIRP process, JAL having already filed his claim as Operational Creditor. The Adjudicating Authority committed error in holding that JAL is entitled to retain the above pre-CIPR dues out of Rs.750 crores. Thus, the finding given by the Adjudicating Authority on Issue Nos. (a), (d) and (e) are unsustainable. The said amount could not have been considered in the reconciliation process as directed by the Adjudicating Authority and determination of the issues by the Adjudicating Authority was faulty. As noted above, the Adjudicating Authority in the operative portion of the order i.e. In Para 109, 110 and 111 did not deduct the aforesaid amount of Rs.49.63 crores, Rs.2.33 crores and Rs.1.19 crore from amount payable to JIL, rightly so. Point No. (iii), (iv) and (v) are answered accordingly:

**Point No. (iii): RA Bill for construction amounting to Rs.49.63 Crores payable by JIL to JAL could not be deducted from amount payable to JIL.**

**Point No. (iv): The Facility Management Bills raised by JAL on JIL of Rs.2.33 Crores could not be deducted from the amount to be paid to JIL.**

**Point No. (v): Amount of Rs.1.19 Crores towards providing Hospitality Services could not be deducted from the amount payable to JIL.**

**POINT NO. (vi)**

**40.** With regard to amount of Rs.12.26 crores which stood mutually settled between the parties after receipt of the Report of Grant Thornton and has been noticed by the Adjudicating Authority in its order, the submission of learned counsel for the Appellant is that when the mutual settlement was that both JAL and JIL shall be 50-50%, the Adjudicating Authority ought not to have added the amount of Rs.6.13 crores in the amount payable to JIL. A meeting dated 24.12.2021 was held between the parties with regard to settlement of aforesaid dues of Rs.12.26 crores. The Adjudicating Authority in Para 12 has noticed as follows:

*“12. From the perusal of the aforesaid minutes, it is observed that the dispute with regard to the Transactions relating to "RA Bills for Construction of Rs. 10.97 Crore & Rs. 1.14 Crore" and "Facility Management Bills raised by JAL on JIL of Rs. 0.15 Crore" have been mutually resolved to be shared in the equal ratio between the parties. The minutes of the meeting dated 24.12.2021 is taken on record. The said issues are resolved as per the agreement above and, Ordered accordingly.”*

**41.** The amount was mutually resolved to be shared in equal ratio between the parties, thereby mutual resolution was that Rs.6.13 crores was payable

to JIL and Rs.6.13 crores was payable to JAL. As noted above, the amount payable to JAL was not to be taken into consideration and amount payable to JIL was only to be taken into consideration. As per mutual resolution, Rs.6.13 crores was receivable by JIL. The said amount has rightly been included in the amount payable to JIL in Para 110 of the order of Adjudicating Authority. We do not find any merit in the submission of Appellant and no error is committed by the Adjudicating Authority in adding amount of Rs.6.13 crores in the amount receivable by JIL. Point No. (vi) is answered as follows:

**Point No. (vi): Adjudicating Authority on account of mutually settled amount totalling to Rs.12.26 Crores has not committed any error in adding amount of Rs.6.13 Crores in the amount receivable by JIL.**

**POINT NO. (vii)**

**42.** The submission advanced by learned senior counsel for JAL in above regard is that as per the judgment of Hon'ble Supreme Court in **Jaypee Kensington**, the amount of Rs.750 crores alongwith accrued interest was the asset of the JAL. As noted above, in Para 188 of the **Jaypee Kensington**, the Hon'ble Supreme Court has held that "*the amount of INR 750 crores, which was deposited by JAL pursuant to orders passed by the Hon'ble Supreme Court in the case of **Chitra Sharma**, and accrued interest thereon, is the property of JAL*". Further in the ultimate direction which was issued by the Hon'ble Supreme Court in Para 216 (J) (ii) it was held:

*“.... The amount, if found receivable by JIL, be made over to JIL and the remaining amount together with accrued interest be refunded to JAL in an appropriate account.”*

**43.** The order of the Hon’ble Supreme Court is clear that the amount of Rs.750 crores as well as the interest accrued thereon was the asset of the JAL. The Adjudicating Authority in the impugned order directed payment of proportionate interest, as extracted above, did not give reason as to why proportionate interest be paid to the JIL on the receivable amount of JIL. In the entire judgment neither there is any discussion nor there is any reason for issuing aforesaid direction. The Hon’ble Supreme Court in its judgment in ***Jaypee Kensington*** nowhere has directed that the amount receivable to JIL be paid alongwith interest.

**44.** Learned counsel for the Appellant has further submitted that the amount which was given by JIL as mobilization advance to JAL of Rs.450 crores specifically stipulated interest free to enable JAL to undertake construction on behalf of JIL. Further, Interest Free Maintenance Deposit (IFMD) amounting to Rs.380.60 Crores advanced to JAL by JIL, by its very nature was interest free. On Interest Free Maintenance Deposit amounting to Rs.106.90 crores received from customers neither there was any direction to pay interest nor payment of interest to the Interest Free Maintenance Deposit can be contemplated. Interest Free Maintenance Deposit collected from the customers does not carry interest.

**45.** It is not the case of the JIL that mobilization advance was given by JIL to JAL which carried any interest nor it is submission of JIL that Interest Free Maintenance Deposit carries interest. When the amount which was receivable by JIL as found by Adjudicating Authority did not carry any interest, direction by the Adjudicating Authority to pay said amount alongwith proportionate interest was uncalled for. We, thus, are of the view that direction issued by the Adjudicating Authority in Para 111 for payment of proportionate interest is unsustainable. Point No. (vii) is answered accordingly:

**Point No. (vii): The direction of the Adjudicating Authority for payment to JIL/Home-Buyers of JIL of Rs.649.52 Crores with proportionate interest is unsustainable.**

**POINT NO. (viii)**

**46.** The JIL has claimed that Rs.70.89 crores was towards Land Swap Deal which was not accepted by the Adjudicating Authority. The Adjudicating Authority had dealt the said claim of the JIL from Para 78 to 101. The claim and Report of Grant Thornton is extracted in Para 79 of the Adjudicating Authority, which is to the following effect:

*“79. At this stage, we would like to visit the findings of GT on this objection raised by JIL, which is reproduced overleaf for the sake of convenience:*

*E. Other transactions*

*The Other transactions between JIL and JAL as on 31 March 2021 consisted of two parts, as mentioned below:*

*(Amount INR in crore)*

#	Particulars	Amount (INR)
1	Advance recoverable for a land swap deal by JIL from JAL	70.89
2	Amount payable for hospitality services by JIL to JAL	(1.27)
<b>Total</b>		69.62

*The transactions have been explained as under:*

*1. Advance recoverable for a land swap deal by JIL from JAL*

*JIL's and JAL's representatives informed us that as on 31 March 2021, an advance of INR 70.89 crore (INR 160.29 crore as on 9 August 2017) was receivable by JIL from JAL towards land swap deal at Agra. There was no difference in the ledger balances between JIL and JAL.*

*However, it has not been considered for our review since it did not appear to be a part of construction contracts and appeared to be outside the scope in view of para 190.2 of the Hon'ble Supreme Court's order dated 24 March 2021 as stated in point vii of Section 4. Engagement Background of this report”*

**47.** The Grant Thornton Report has opined that the said amount does not appear to be a part of construction contracts and appeared to be outside the scope of reconciliation. The Adjudicating Authority in its order in Para 100 and 101 has observed:

*“100. From the perusal of the above, it is observed that the closing balance of JIL's Ledger 01113 is Rs. 70.89 Crores. However, when we peruse the Balance*

*Sheet of the Corporate Debtor, it is evident that the same is reflected as Trade Receivable'.*

*101. Hence, it cannot be said beyond doubt that the said amount is arising out of 'Construction. **We find no error committed by GT by treating JIL's claim of Rs. 70.89 Crores outside the realm of the reconciliation process and therefore, JIL cannot recover this amount from JAL under the current reconciliation process. The issue of Land Swap Deal is decided accordingly.***

**48.** The amount of Rs.70.89 crore claimed by JIL to be payable from JAL was out of sub-lease deeds executed by JIL, JAL and ICICI Bank for consideration of Rs.643.50 crores to repay the liability of JAL for the financial facility extended by ICICI Bank. JIL by executing 11 sub-lease deeds transferred 84.5 acres of land to ICICI Bank. The Adjudicating Authority in the impugned order has noticed the contents of sub-leases and in Paras 94 and 95 made following observations:

*“94. From the above, it is observed that the Sub-Lease Deeds dated 27.04.2016 nowhere specify that the term arrangement/agreement is used in the context of construction. Therefore, we are unable to accept this plea that the liability of JAL with respect to construction was required to be adjusted. Hence, except for the sub-lease deed dated 24.06.2016, we find that none of the sub-lease deeds had any relation to construction.*

*95. JAL has contended that the amount of Rs 70.89 Crores is a "trade receivable" and it has nothing to do*

with the construction. To support its contention, it has relied upon the Balance Sheet of JIL for the Financial Year 2020-2021, the relevant extract of which is reproduced below –

		Rs. In Lakhs	
<b>Particulars</b>		<b>As at</b>	<b>As at</b>
		<b>31<sup>st</sup> March 2021</b>	<b>31<sup>st</sup> March 2020</b>
Less: Provision For Expected Credit Loss – on doubtful trade receivables		(3,947.21)	(3,567.04)
		20,601.51	22,620.36
Less: Transferred to Non-Current Trade Receivables			2,000.00
		<b>20,601.51</b>	<b>20,620.36</b>
Trade receivables include:			
Jaypee Institute of Information Technology		2,000.00	2,000.00
Jaiprakash Associates Limited		7,088.99	7,095.95
JC World Hospitality Private Limited		3,567.04	3,567.04

**49.** Even though as per the financial statement of JIL, the amount of Rs.70.89 crore was payable as Trade Receivables the same cannot be part of the reconciliation process which is confined to the advance made by JIL to JAL towards construction contracts. Sub-lease Deeds were executed by JIL to discharge the liability of JAL to its lenders which transaction has rightly been treated by Grant Thornton to be outside the realm of reconciliation process. We, thus, do not find any error in the order of Adjudicating Authority rejecting claim of Rs.70.89 crore of JIL towards Land Swap Deals. Point No. (viii) is answered accordingly:



**Point No. (viii): JIL is not entitled for amount of Rs.70.89 Crores towards Land Swap Deal and the Adjudicating Authority has rightly rejected the said claim.**

**POINT NO. (ix)**

**50.** Now we come to the reliefs to which Appellants in Company Appeal (AT) (Ins.) No. 302 of 2023 and Company Appeal (AT) (Ins.) No.507 of 2023 are entitled.

**51.** In Company Appeal (AT) (Ins.) No. 302 of 2023, we have taken the view that direction of the Adjudicating Authority in Para 111 for payment of proportionate interest to the JIL on its receivables is unsustainable. Company Appeal (AT) (Ins.) No. 302 of 2023 thus deserves to be partly allowed setting aside the direction of the Adjudicating Authority in Para 111 to make payment of proportionate interest on the receivables by JIL. Other prayers of the Appellant in Company Appeal (AT) (Ins.) No. 302 of 2023 are rejected.

**52.** Coming to Company Appeal (AT) (Ins.) No. 507 of 2023, we have taken the view that finding of issues no. (a), (d) and (e) (as contained in Para 13 of the impugned order) deciding issues in favour of JAL are unsustainable. The JAL was not entitled to adjust/deduct aforesaid amounts from the amount receivable by JIL. We notice that the Adjudicating Authority in operative portion of the order in Paras 109 to 111 has ultimately not deducted or adjusted the aforesaid amounts from the amount receivable by JIL. The direction issued by the Adjudicating Authority in Para 109, 110

and 111 are affirmed except the direction to proportionate interest, as indicated above. Company Appeal (AT) (Ins.) No. 507 of 2023 is thus disposed of holding that findings of Adjudicating Authority on Issues No. (a), (b), (d) and (e) are unsustainable.

**53.** We make it clear that our observations and findings in this order pertain only to appropriation from the amount of Rs.750 Crores deposited under the orders of Hon'ble Supreme Court in **Chitra Sharma's Case** and they have no bearing on the CIRP process of the Corporate Debtor which has to be conducted in accordance with the I&B Code and Regulations framed thereunder.

**54.** Before we close, we record our deep appreciation for learned counsel appearing for the parties for their valuable assistance rendered to the Court in deciding the issues raised in these appeals.

**55.** Both the Appeals are disposed of accordingly. Parties shall bear their own costs.

**[Justice Ashok Bhushan]  
Chairperson**

**[Mr. Barun Mitra]  
Member (Technical)**

**NEW DELHI**

**28<sup>th</sup> August, 2023**

Archana/Basant B.