

The South Indian Bank Ltd vs Anuj Jain, R.P. Of Jaypee Infratech Ltd on 1 August, 2019

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 243 of 2018

IN THE MATTER OF:

Axis Bank Ltd. ...Appellant

Versus

Anuj Jain, Resolution Professional for
Jaypee Infratech Ltd. ...Respondent

Present:

For Appellant: Mr. Sudipto Sarkar, Senior Advocate assisted by
Ms. Anindita Roy Chowdhury, Mr. Abhishek Singh
and Mr. Abhijnan Jha, Advocates.

For Respondents: Mr. Sanjeev Sen, Senior Advocate with Ms.
Jannahvi Bhasin, Advocates.
Mr. Sanjay Bhatt and Ms. Niharika Sharma,
Advocates.
Mr. Mahfooz Nazki, Advocate.

WITH

Company Appeal (AT) (Insolvency) No. 244 of 2018

IN THE MATTER OF:

Standard Chartered Bank ...Appellant

Versus

Anuj Jain, Resolution Professional for
Jaypee Infratech Ltd. ...Respondent

Present:

For Appellant: Mr. Amit Sibal, Senior Advocate with Mr. Parag
Maini and Mr. Abhimanyu Chopra, Advocates.

For Respondents: Mr. Sanjeev Sen, Senior Advocate with Ms.
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

Mr. Anshuman Gupta, Mr. Syed Arsalan Abid and
Mr. Prateek Khaitan, Advocates.

WITH

Company Appeal (AT) (Insolvency) No. 245 of 2018

IN THE MATTER OF:

ICICI Bank Ltd.

...Ap

Versus

Anuj Jain, Resolution Professional for
Jaypee Infratech Ltd.

...Respo

Present:

For Appellant:

Mr. Ramji Srinivasan, Senior Advocate assisted by
Ms. Misha, Mr. Shantanu Chaturvedi and Ms.
Charu, Advocates.

For Respondents:

Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

WITH

Company Appeal (AT) (Insolvency) No. 249 of 2018

IN THE MATTER OF:

State Bank of India

...App

Versus

Anuj Jain, Resolution Professional for
Jaypee Infratech Ltd. & Ors.

...Respon

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 3

Present:

For Appellant: Mr. Sanjay Kapur, Mr. Bharath Gangadhar and Ms. Megha Karnwal, Advocates.

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

WITH

Company Appeal (AT) (Insolvency) No. 276 of 2018

IN THE MATTER OF:

Jai Prakash Associates Ltd.

...Ap

Versus

Anuj Jain, Resolution Professional for
Jaypee Infratech Ltd.

...Respo

Present:

For Appellant: Mr. Alok Dhir, Ms. Varsha Banerjee and Mr. Kunal Godhwani, Advocates.

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

WITH

Company Appeal (AT) (Insolvency) No. 301 of 2018

IN THE MATTER OF:

Axis Bank Ltd.

...Ap

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

4

Versus

Anuj Jain, Resolution Professional of
Jaypee Infratech Ltd.

...Res

Present:

For Appellant: Mr. Krishnendu Datta, Ms. Anindita Roy
Chowdhary, Mr. Abhishek Singh and Mr. Abhijnan
Jha, Advocates.

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

WITH

Company Appeal (AT) (Insolvency) No. 331 of 2018

IN THE MATTER OF:

Bank of Maharashtra

...

Vs

Anuj Jain, Resolution Professional
for Jaypee Infratech Ltd.

....Re

Present:

For Appellant: Mr. Divyanshu Goyal and Ms. Swati
Advocates.

For Respondent: Mr. Sanjeev Sen, Senior Advocate with
Ms. Jannahvi Bhasin, Advocates.
Mr. Sanjay Bhatt and Ms. Niharika
Advocates for R.P.

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349,

With

Company Appeal (AT) (Insolvency) No. 343 of 2018

IN THE MATTER OF:

United Bank of India

...A

Versus

Anuj Jain, Resolution Professional of
Jaypee Infratech Ltd. & Ors.

...Resp

Present:

For Appellant:

Mr. Rajiv S. Roy, Mr. Avrojoyoti Chatterjee, Mr.
Abhijit S. Roy and Ms. Jayasree Saha, Advocates.

For Respondents:

Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

Mr. Jaskinder Singh and Ms. Shipra
Advocates.

WITH

Company Appeal (AT) (Insolvency) No. 348 of 2018

IN THE MATTER OF:

Central Bank of India

...

Vs

Anuj Jain, Resolution Professional
for Jaypee Infratech Ltd.

....Res

Present:

For Appellant:

Mr. Jasvinder Singh and Ms. Shipra
Advocates.

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

6

For Respondents:

Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

With

Company Appeal (AT) (Insolvency) No. 349 of 2018

IN THE MATTER OF:

Standard Chartered Bank

...Ap

Versus

Anuj Jain, Resolution Professional of
Jaypee Infratech Ltd.

...Resp

Present:

For Appellant :

Mr. Parag Maini and Mr. Abhimanyu Chopra,
Advocates

For Respondents:

Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

WITH

Company Appeal (AT) (Insolvency) No. 353 of 2018

IN THE MATTER OF:

ICICI Bank Ltd.

...A

Versus

Anuj Jain, R.P. of
Jaypee Infratech Ltd.

...Respo

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

7

Present:

For Appellant: Mr. Ramji Srinivasan, Senior Advocate assisted by
Ms. Misha, Mr. Shantanu Chaturvedi and Ms. Charu
Bansal, Advocates

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

WITH

Company Appeal (AT) (Insolvency) No. 370 of 2018

IN THE MATTER OF:

UCO Bank

...

Vs

Anuj Jain, Resolution Professional
for Jaypee Infratech Ltd. & Ors.

....Respond

Present:

For Appellant: Mr. Rajiv S. Roy, Mr. Avrojoyoti Chatterjee, Mr.
Abhijit S. Roy and Ms. Jayasree Saha, Advocates

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

Mr. Divyanshu Goyal and Ms.
Advocates for Respondent No. 23

Mr. Jasvinder Singh and Ms. Shipra
Advocates for Respondent No. 26.

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349,
376, 411, 424, 436, 458, 492, 511, 524 of 2018

8

WITH

Company Appeal (AT) (Insolvency) No. 374 of 2018

IN THE MATTER OF:

The Karur Vyasa Bank (P) Ltd.

Vs

Anuj Jain, Resolution Professional
for Jaype Infratech Ltd.

Present:

For Appellant : Mr. Vijay Kumar and Mr. Shashant Prabhakar,
Advocates.

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

WITH

Company Appeal (AT) (Insolvency) No. 376 of 2018

IN THE MATTER OF:

L&T Infrastructure Finance Company Ltd.

Vs

Anuj Jain, Resolution Professional

for Jaype Infratech Ltd.

Present:

For Appellant: Mr. Ramji Srinivasan, Senior Advocate with Mr. Varun Singh, Advocate.

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

9

For Respondent: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

WITH

Company Appeal (AT) (Insolvency) No. 411 of 2018

IN THE MATTER OF:

Central Bank of India

...

Vs

Anuj Jain, Resolution Professional
for Jaypee Infratech Ltd.

....Res

Present:

For Appellant: Mr. Jasvinder Singh and Ms. Shipra
Advocates.

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

WITH

Company Appeal (AT) (Insolvency) No. 424 of 2018

IN THE MATTER OF:

Canara Bank

...

Vs

Anuj Jain, Resolution Professional
for Jaypee Infratech Ltd. & Ors.

....Respo

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349,
376, 411, 424, 436, 458, 492, 511, 524 of 2018

10

Present:

For Appellant: Mr. Rajiv S. Roy, Mr. Avrojoyti Chatterjee, Mr.
Abhijit S. Roy and Ms. Jayshree Saha, Advocates

For Respondents: Mr. Sanjeev Sen, Senior Advocate with Ms.
Jannahvi Bhasin, Advocates.
Mr. Sanjay Bhatt and Ms. Niharika Sharma,
Advocates (for R.P.)

Mr. Jasvinder Singh and Ms.
Advocates for Respondent No. 26

Shipr

WITH

Company Appeal (AT) (Insolvency) No. 436 of 2018

IN THE MATTER OF:

Karnataka Bank Ltd.

...

Vs

Anuj Jain, Resolution Professional
for Jaypee Infratech Ltd.

....Res

Present:

For Appellant : Mr. Siddhant Surya and Mr. Sanj
Advocates.

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

11

WITH

Company Appeal (AT) (Insolvency) No. 458 of 2018

IN THE MATTER OF:

IFCI Ltd.

Vs

Anuj Jain, Resolution Professional
for Jaypee Infratech Ltd.

Present:

For Appellant: Ms. Shweta Bharti, Mr. Sukrit Kapoor and Ms.
Shuchi Sejwar, Advocates

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

WITH

Company Appeal (AT) (Insolvency) No. 492 of 2018

IN THE MATTER OF:

Allahabad Bank

Vs

Anuj Jain, Resolution Professional
for Jaypee Infratech Ltd. & Ors.

Present:

For Appellant: Mr. Rajiv S. Roy, Mr. Avrojoyoti Chatterjee, Mr. Abhijit S. Roy and Ms. Jayasree Saha, Advocates.

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

12

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

Mr. Jasvinder Singh and Ms. Shipra
Advocates for Respondent No. 26

WITH

Company Appeal (AT) (Insolvency) No. 511 of 2018

IN THE MATTER OF:

Jammu & Kashmir Bank

...

Vs

Anuj Jain, Resolution Professional
for Jaypee Infratech Ltd. & Ors.

...Resp

Present:

For Appellant: Mr. Syed A. Abid, Mr. A. Gupta and Mr. Prateek
Khaitan, Advocates.

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

Mr. Jasvinder Singh and Ms. Shipra
Advocates for Respondent No. 26.

WITH

Company Appeal (AT) (Insolvency) No. 524 of 2018

IN THE MATTER OF:

The South Indian Bank Ltd.

...

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

13

Vs

Anuj Jain, Resolution Professional
for Jaypee Infratech Ltd.

....Res

Present:

For Appellant: Mr. Abhimanyu Chopra and Mr. Parag Maini,
Advocates.

For Respondents: Mr. Sanjeev Sen, Senior Advocate
Jannahvi Bhasin, Advocates.

Mr. Sanjay Bhatt and Ms. Niharika
Advocates (for R.P.)

J U D G M E N T

SUDHANSU JYOTI MUKHOPADHAYA, J.

The 'Resolution Professional' of 'Jaypee Infratech Limited' - ('Corporate Debtor') filed application (CA No. 26 of 2018) under Section 43, 45, 60(5)(a) & 66 read with Section 25(2)(J) of the Insolvency and Bankruptcy Code, 2016 ("I&B Code" for short) before the Adjudicating Authority ('National Company Law Tribunal), Allahabad Bench, Allahabad seeking direction that the transactions entered into by the promoters and Directors of the 'Corporate Debtor' creating mortgage of 858 acres of immovable property owned by it and in possession of the 'Corporate Debtor', to secure debt of related party i.e. 'Jaiprakash Associates Limited' by way of mortgage deeds dated 29th December, 2016, 12th May, 2014, 7th March, 2017, 24th May, Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 2016 and 4th March, 2016 are fraudulent and wrongful transactions within the meaning of Section

66 of the 'I&B Code'.

2. The direction was also sought against the Directors and promoters of the 'Corporate Debtor' to make such contributions to the assets of the 'Corporate Debtor' as it may deem fit, including directions under Section 67 of the 'I&B Code'.

3. The impugned order has been challenged by the Appellants- Banks/Financial Institutions (lenders of 'Jaypee Infratech Limited'/ 'Jaiprakash Associates Limited') on the grounds as noticed below:

4. Learned counsel for the Appellant submitted that the Adjudicating Authority ignored the nature and character of a mortgage. Referring to Section 58 of the 'Transfer of Property Act, 1882', it is submitted that a 'mortgage' means transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt, or the performance of an engagement which may give rise to a pecuniary liability.

5. According to the Appellants, a mortgage debt is covered by the definition of 'debt' under Section 3(11) of the 'I&B Code' and it being liability or obligation in respect of a claim which is due from the 'Corporate Debtor' or a mortgagor and the Appellants have a right to payment.

6. According to learned counsel for the Appellants, a mortgage debt constitutes a 'financial debt' within the meaning of Section 5(8) of the 'I&B Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Code' and the Adjudicating Authority misconstrued the definition of 'financial debt'. The Adjudicating Authority failed to notice that the 'Corporate Debtor' stood in the position of a 'guarantor' with respect to the security provided by it and also failed to notice the meaning of 'financial debt' particularly clauses (a) to (i) of Section 5(8) of the 'I&B Code', which provides extended meaning to 'financial debt'.

7. Therefore, according to them, the transactions in question cannot be termed to be 'preferential transactions' within the meaning of Section 43 of the 'I&B Code'.

8. Further, according to them, the transactions, in question, nor come within the meaning of 'undervalued transactions' for taking action under Section 45, nor can be termed to be a 'fraudulent trading or wrongful trading' within the meaning of Section 66 of the 'I&B Code'.

9. To decide the aforesaid issue, it is relevant to notice the individual case of the Appellants and transactions, as detailed below:

Company Appeal (AT) (Insolvency) No. 243 of 2018

10. Learned counsel for the Appellant- 'Axis Bank Limited' provided the table of assets mortgaged to it, as under:

S.N. Name of the Bank Date of the Mortgage Assets encumbered under the Mortgage

1. Axis Bank Limited- February 24, 2015 (to cover (a) 167.229 acres of land at Appellant in Comp. App. the NCD exposure of the Village Chagan and Chhalesar, Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 (Ins.) AT No.(s) 243, 301 of Corporate Debtor) (pp. 243, Agra, Uttar Pradesh (p. 348 of 2018 314 of the Appeal Paperback) the Appeal Paperback); and This was modified on September (b) 166.9615 acres of land at 15, 2015 (wherein the Security Village Tappal, Kansera, and would cover the Rupee Term Jeenagarh, Aligarh, Uttar Loan exposure, in addition to the Pradesh (p. 275 of the Appeal NCD Exposure). Paperback).

This was further modified on December 29, 2016, as the The nature and identity of the number of lenders (in terms of assets encumbered have the Rupee Term Loan Exposure) remained the same from increased substantially. (pp. February 24, 2015, till date. 365, 455 of the Appeal (pp. 247, 318 of the Appeal Paperback) Paperback read with pp. 377-

378, 457-458 of the Appeal However, the nature and Paperback).

identity of the Security remained the same.

(pp. 247, 318 of the Appeal Paperback read with pp. 377- 378, 457-458 of the Appeal Paperback) Company Appeal (AT) (Insolvency) No. 244 of 2018 (Standard Chartered Bank)

11. Similar details have been given by the counsel for the Appellant- 'Standard Chartered Bank', as under:

S. NAME OF THE DATE DETAILS OF COMMENCEMENT DATE OF NO. BANK ASSETS OF CIRP FILING OF OF MORTGAGE FORMING PART APPLICATION OF THE UNDER MORTGAGE SECTION 43, 45 AND 66 OF THE CODE

1. Standard Chartered Bank 27.11.2012 An Area By order dated 06th February Facility 1 admeasuring 09.08.2017 passed 2018 25.0040 acres of by the Adjudicating

2. Standard parcel of land Authority at Chartered Bank situated at Allahabad revised 29.12.2012 Village: to 09.08.2018 by Facility 2 Sultanpur, way of Writ Petition Sector-128, (Civil) No. 744 of

3. Standard Noida. 2017 in the matter Chartered Bank of Chitra Sharma 23.03.2013 and Ors. Versus Facility 3 Union of India and Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

4. Standard Ors.

Chartered Bank 23.06.2015 Facility 4

5. Standard Chartered Bank 24.05.2016 Facility 5 Company Appeal (AT) (Insolvency)
No. 245 of 2018 (ICICI Bank Limited)

12. Learned counsel for the Appellant- 'ICICI Bank Limited' provided a detailed chart relating to mortgaged properties, as follows:

PROPERTY BANK'S DATE OF FACILITIES DATE OF DATE OF FACILITIES NAME
FIRST SECURED BY RECONVEYAN SECOND SECURED MORTGAG FIRST
CE/RELEASE MORTGAGE BY SECOND E DEED MORTGAGE AND DEED
MORTGAGE RATIONALE CONSORTIUM MORTGAGES 167.229 26 Lenders 15
Term loans On 29 29 December Term loans acres land of September aggregating to
December 2016 aggregating at Agra, Jaiprakash 2015 Rs. 20,509 2016, a release to
21081.50 Uttar Associates Crores deed was crore Pradesh Limited (comprising of
executed in (comprising ("JAL") ICICI facilities relation to of ICICI including
aggregating to momentary facilities ICICI Bank Rs. 5600 crores) release of
aggregating and non- mortgage to Rs. 5600 convertible created vide crores) and
debentures for deed dated 15 redeemable maximum of Rs. September non-

3600	Crore	2015,
sanctioned by a		Simultaneousl
consortium of the		y, a Mortgage
lenders of JAL		Deed dated
("Original		December 29,
Lenders")		2016 creating
		mortgage over
		the same
		properties was
		executed in
		favour of JAL
		Lenders
		(Including

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348,
349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 ICICI Bank).

Rationale:
the
aforesaid
momentary
release and
recreation of

mortgage have been done only to record entry of certain additional members into the consortium (as mentioned in 'Facilities Secured by Second Mortgage' column). It may be noted that ICICI exposure has remained unchanged since 2015.

166.9615 acres land at Tappal, Aligarh, Uttar Pradesh	26 JAL Lenders including ICICI Bank	15 September 2015	Term loans aggregating to Rs. 20,509 Crores (comprising of ICICI facilities aggregating to Rs. 5600 crores) and non-convertible debentures for maximum of Rs. 3600 Crore sanctioned by a consortium of the lenders of JAL ("Original Lenders")	On December 29, 2016, a release deed was executed in relation to momentary release of mortgage created vide deed dated 15 September 2015. Simultaneously, a Mortgage Deed dated December 29, 2016 creating mortgage over the same properties was executed in favour of the JAL Lenders (including ICICI Bank).	29 D 2016
---	-------------------------------------	-------------------	--	--	-----------

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Rationale: Note: As The is evident, aforesaid ICICI Bank's momentary aggregate release and exposure of recreation of 5600 crores mortgage has have been remained done only to unchanged record entry since 2015.

of certain additional members into the consortium (as mentioned in 'Facilities Secured by Second Mortgage' column). It may be noted that ICICI exposure has remained unchanged since 2015.

151.0063	ICICI Bank	12 May	Rupee Term Loan	On 7 March	7 March
acre at		2014	of Rs. 15 Billion	2017, a release	
Tappal,			under Corporate	deed was	
Aligarh,			Rupee Loan	executed for	
Uttar	Background		Facility	the release of	Note:
Pradesh	:		Agreement and	property in	
			General	relation to the	Though
			Conditions dated	15 billion	mortga
			7 May 2014 and	facility (of	was ex
			overdraft facility	2014) as the	in 201
			of Rs. 1.75	same got	earmar
			billion.	repaid in 2017.	this m
	On 12 May				for
	2014, a				billio
	mortgage				under
	deed was				Corpor
	executed by				Rupee
	JIL qua this		(REPAID IN 2017)	However,	Facili
	property for			simultaneous	Agreem
	a 15 billion			execution of	dated
	facility			mortgage deed	2015 h
	granted by			dated 7 March	done b
	ICICI Bank			2017 in	
	to JAL in			relation to the	
	2014. On				

25	May	same	since
2015,		properties was	is evi
another		done for	the fa
facility		creation of	the sa
worth	Rs.	mortgage in	been r
12	billion	favour of ICICI	in the
was		Bank for the	Annual

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 provided by 12 billion Reports for the ICICI Bank facility under Financial Year to JAL with the Corporate 2015-16 at a Rupee Loan Note 29 at stipulation Facility page 1691 of on JIL to Agreement Volume VII create dated 25 May and the year mortgage 2015 which 2016-17 at on the same was pending note 34 at land, but since 2015. page 2085 of security Volume IX of creation by the Appeal.

JIL remained pending since 2015.

However, JIL
had
admitted its
liability in
relation to
creation of
mortgage
vis-à-vis the
12 billion
facility
through
additional
documents,
such as
Annual
Reports for
the
Financial
Year 2015-
16 at Note
29 at Page
1691 of
Volume VII
and the year
2016-17 at
Note 34 at
page 2085 of
Volume IX of
the Appeal.

While in
2017, the 15
billion
facility was
repaid, the
obligation on
JIL to create
security for
the 12
billion
facility (of
2015) still

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 continued.

Thus from
the above, it
is clear that,
w.r.t. the 12
billion
facility, the
property was
always
agreed to be
mortgaged
as far back
as 2015.
Formally,
the said
mortgage
was
eventually
done by JIL
on 7 March
2017.

158.1739
acre at
Jaganpur
and
Aurangpur,
Backgroun

12 May
2016

Rupee Term Loan
of Rs. 15 Billion
under Corporate
Rupee Loan
Facility

On 7 March
2017, a release
deed was
executed for
the release of

7 M
Not

Uttar Pradesh	d: On 12 May 2014, a mortgage deed was executed by NIL qua this property for a 15 billion facility granted by ICICI Bank to JAL in 2014. On 25 May 2015, another facility worth Rs. 12 billion was provided by ICICI Bank to JAL with	Agreement and General Conditions dated 7 May 2014 and overdraft facility of Rs. 1.75 billion. (REPAID IN 2017)	property in relation to the 15 billion facility (of 2014) as the same got repaid in 2017. However, simultaneous execution of mortgage deed dated 7 March 2017 in relation to the same properties was done for the creation of mortgage in favour of ICICI Bank for the 12 billion facility under the Corporate rupee Loan Facility	Tho mor was in ear thi for bil und Cor rup Fac Agr dat 201 don sin is the the bee in Ann Rep Fin 201 Not pag
---------------	--	---	---	---

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 a Agreement Volume VII stipulation dated 25 May and the year on JIL to 2015 which 2016-17 at create was pending Note 34 at mortgage since 2015. page 2085 of on the Volume IX of same land, the Appeal.

but security creation by JIL remained pending since 2015.

However,
JIL had
admitted
its liability
in relation
to creation
of mortgage
vis-à-vis
the 12
billion
facility

through
additional
documents,
such as
Annual
Reports for
the
Financial
year 2015-
16 at Note
29 at page
1691 of
Volume VII
and the
year 2016-
17 at Note
34 at Page
2085 of
Volume IX
of the
Appeal.

While in
2017, the
15 billion
facility was
repaid, the
obligation
on JIL to
create
security for
the 12
billion
facility (of

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 2015) still continued.

Thus from the above, it is clear that, w.r.t.

the 12 billion facility, the property was always agreed to be mortgaged as far back as 2015.

Formally, the said mortgage was eventually done by JIL on 7 March 2017.

Company Appeal (AT) (Insolvency) No. 249 of 2018 (State Bank of India)

13. Learned counsel for the Appellant- 'State Bank of India' provided a chart relating to mortgaged properties, as follows:

Name of the Date of Mortgage Details of assets forming part of Bank the mortgage
Initially on 24.02.2015 Immovable property comprising 167.229 acres land at Agra, Uttar Pradesh @140-180 Reconfirmed on 15.09.2015 Immovable property comprising 166.9615 acres land at Tappal, On 29.12.2016 with the entry District Aligarh, Uttar Pradesh @ of additional lenders into Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 State Bank of consortium of JAL lenders, 181-222 India charge over these 2 properties was remortgaged to cover other lenders as well.

04.03.2016 First charge on Immovable Property admeasuring 90 acres at Village Chauga Tehsil Elmadpur, ict Agra, Uttar Pradesh @223-253 of Vol. II Company Appeal (AT) (Insolvency) No. 301 of 2018 (Axis Bank Ltd.)

14. The case of the Appellant- 'Axis Bank Ltd.' is that the security, being 167.229 acres of land at Village Chagan and Chhalesar, Agra, Uttar Pradesh and 166.9615 acres of land at Village Tappal, Kansera and Jeenagarh, Aligarh, Uttar Pradesh, were mortgaged by the 'Corporate Debtor' to a consortium of lenders, including the Appellant. This Security was granted by the 'Corporate Debtor' on 24th February, 2015 vide separate mortgage deeds to secure financial assistance given by the Appellant to 'Jaiprakash Associates Limited', which is holding company of the 'Corporate Debtor'. Company Appeal (AT) (Insolvency) No. 331 of 2018 (Bank of Maharashtra)

15. Learned counsel for the Appellant- 'Bank of Maharashtra' provided a chart relating to 'Mortgage, Asset Mortgaged', as follows:

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Chart showing Name of the Bank, Date of Mortgage, Asset Mortgaged, Date of admission of Application under Insolvency and Bankruptcy Code, 2016, Date of filing of Application Under Section 43 of Insolvency and Bankruptcy Code, 2016.

Sr. Name of the Date of Indenture of Mortgage Asset Mortgaged Bank No. 1 Bank of 15.09.2015- To secure 167.229 acres land Maharashtra as credit facilities advanced situated at village Chagan a part of to JAL; and Chhalesar Agra; Uttar consortium of Pradesh.

29.12.2016-superseded Banks.

the aforesaid Indenture of
Mortgage dated

		15.09.2015; with no change in substantial terms of the Agreement w.r.t. the same purpose/transaction.	
2	Bank of Maharashtra as a part of consortium of Bank.	15.09.2015- To Secure credit facilities advanced to JAL; 29.12.2016-superseded the aforesaid Indenture of Mortgage dated 15.09.2015; with no change in substantial terms of the Agreement w.r.t the same purpose/transaction.	166.9615 acres situated at T Kansera & Jeen district Aligarh, Pradesh.

Company Appeal (AT) (Insolvency) No. 343 of 2018 (United Bank of India)

16. The case of the Appellant- 'United Bank of India' is that two different mortgage deeds each dated 24 th February 2015, were executed by the 'Corporate Debtor' mortgaging its properties (as third party security) (i) measuring 167.229 acres situated at Village Chaugan and Chhalesar, Tehsil Etmadpur District Agra, Uttar Pradesh ("Property 1") and (ii) Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 measuring 166.9615 acres situated at Village Tappal, Kansera & Jeenagarh, Tehsil Khair District Aligarh, Uttar Pradesh ("Property 2") to secure the financial assistance of 'Jaiprakash Associates Limited', for the first time in favour of 'Axis Bank Limited' and 'State Bank of India' (both lenders of 'Jaiprakash Associates Limited') on 24 th February 2015. Later, upon accession of other lenders and enhancement of secured limits further mortgage was effectuated on 15 th September 2015 and again on 29 th December, 2016. The mortgages in favour of the Appellant was created vide registered mortgage deed dated 29 th December, 2016. Company Appeal (AT) (Insolvency) No. 348 of 2018 (Central Bank of India)

17. Learned counsel for the Appellant- 'Central Bank of India' provided a chart relating to 'mortgage of properties in question', as under:

Sl.	Name of Asset	Date of mortgage	Date of filing of No. the Bank mortgaged by Corporate initiation of claim/form C Debtor CIRP Central Immovable Originally created
09.08.2017	18.08.2017	Bank of property vide indenture of India comprising mortgage dated 167.229 acres 15 September land at Agra, 2015 Uttar Pradesh ("Agra	

Property") Momentarily lifted and recreated on 29 December Central Immovable Originally created 09.08.2017 18.08.2017 Bank of property vide indenture of comprising mortgage dated Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 India 166.9615 acres 15 September land at Tappal, 2015 District Aligarh, Uttar Pradesh ("Aligarh Property") Momentarily lifted and recreated on 29 December 2016 Company Appeal (AT) (Insolvency) No. 349 of 2018 (Standard Chartered Bank)

18. According to the Appellant- 'Standard Chartered Bank', on 27th September, 2012, the Appellant entered into an agreement vide which the credit facilities aggregating Rs. 400 crores ("Facility 1") had been granted in favour of 'Jaiprakash Associates Limited' vide the Term Loan Facility Agreement ("Facility 1 Agreement"). In order to secure the amount granted under the Facility 1 Agreement, on 27th November, 2012, the security by way of first pari passu charge over the Subject Property was in favour of the Applicant by the 'Corporate Debtor' vide the mortgage deed ("Mortgage Deed 1") executed by the 'Corporate Debtor' in favour of 'IDBI Trusteeship Services Limited' ("Security Trustee") acting for and on behalf of the Appellant.

19. Further case of the Appellant is that pursuant to the execution of Facility 1 Agreement and the Mortgage 1, additional credit facilities aggregating Rs. 450 crores ("Facility 2") were sanctioned by the Appellant in favour of 'Jaiprakash Associates Limited' on 29th December, 2012. Accordingly, for the purpose of availing the amount covered in Facility 2, a Term Loan Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Facility Agreement ("Facility Agreement 2") was executed by and between 'Jaiprakash Associates Limited' and the Appellant.

20. Thereafter, on 23rd March, 2013, pursuant to the execution of the Facility Agreement 2, charge created on the Subject Property was extended to secure Facility 2. Accordingly, a first pari passu charge by way of a registered mortgage was created in favour of the Security Trustee acting for and on behalf of the Applicant by way of a mortgage deed ("Mortgage Deed 2").

21. The Appellant submits that Facility 3 of INR 538,16,00,000/- and Facility 4 of INR.81,84,00,000/- (total aggregating INR 620,00,00,000/-) were granted by the Appellant to 'Jaiprakash Associates Limited' vide term loan facility agreements, both of the date (Facility Agreement 3 & Facility Agreement 4) on 1st May, 2015.

22. The case of the Appellant is that on 23rd June, 2015, Facility 3 and Facility 4 were sanctioned to 'Jaiprakash Associates Limited' pursuant to the corrective action plan of the joint lenders' forum of 'Jaiprakash Associates Limited' constituted under the guidelines framed by 'Reserve Bank of India' ("RBI") which mandated all lenders of 'Jaiprakash Associates Limited' to sanction new term loans as per their respective share for the purpose of meeting the liquidity gap required to meet immediate cash flow requirements of 'Jaiprakash Associates Limited'. Accordingly, one of the conditions for the sanction of Facility 3 & 4 was that the mortgage created Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 over the Subject Property for Facility 1 and Facility 2 shall also extend to secure Facility 3 & 4.

Therefore, in order to achieve the said purpose, the 'Corporate Debtor' executed 'Security Trustee Agreement' in favour of the Security Trustee (acting for and on behalf of the Appellant).

23. On 4th November, 2015, equitable mortgage was created vide the Declaration ("Declaration") executed by the authorised representative of the 'Corporate Debtor' evidencing deposit of title deeds inter alia pertaining to Subject Property in favour of Security Trustee (acting for and on behalf of the Appellant) to secure Facility 1, Facility 2, Facility 3 and Facility 4 inter- se on pari passu charge basis. On 4th November, 2015, Security Trustee prepared a memorandum of entry recording the deposit of title documents in relation to the Subject Property.

24. On 24th May, 2016, the Appellant received a request from 'Jaiprakash Associates Limited' by way of its email dated 12th December, 2015 stating that the title deeds deposited with the Security Trustee for creating equitable mortgage contains certain properties which were not intended to have been mortgaged for the benefit of the Appellant and some of such title deeds were required by the 'Corporate Debtor', and therefore 'Jaiprakash Associates Limited' requested for release of title deeds deposited with the Security Trustee and simultaneously 'Corporate Debtor' agreed to create charge by way of registered mortgage over the Subject Property to secure the facility of Rs. 297 crore (sanctioned in the year 2013) ("Facility 5") in addition to Facility 1 to Facility 4. For the said purpose, the 'Corporate Debtor' created Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 charge by way of registered mortgage over the Subject Property vide execution of the Deed of Mortgage ("Last Deed of Mortgage") dated 24th May 2016 in favour of the Security Trustee, thereby creating first pari passu charge on the Subject Land to secure Facility 1 to Facility 5 (hereinafter referred to as "Entire Facilities") aggregating INR 1767 Crores sanctioned by the Appellant.

25. On 17th June, 2016, pursuant to the execution of the Last Deed of Mortgage, charge over the Subject Property was /registered by filing form CHG- 1 and certificate of registration of charge (bearing charge identification no. 10600969) was issued in this respect.

Company Appeal (AT) (Insolvency) No. 353 of 2018 (ICICI Bank Ltd.)

26. The case of 'ICICI Bank Ltd.' in this appeal is that on 28th December, 2009, the Appellant sanctioned Rupee Term Loan of Rs. 8.0 billion ("RTL- 1") and Rupee Term Loan of Rs. 4.0 billion ("RTL-2") under two separate Common Facility Agreement to 'Jaiprakash Associates Limited', the holding company of 'Jaypee Infratech Limited', the Corporate Debtor herein. On 31st March, 2011, Facility Agreement executed between the Appellant and 'Jaiprakash Associates Limited' whereby the Appellant sanctioned a Rupee Term Loan of Rs. 5.0 billion ("RTL-3") to 'Jaiprakash Associates Limited'.

27. The Facility Agreement executed between the Appellant and 'Jaiprakash Associates Limited' whereby the Appellant sanctioned a Rupee Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Term Loan of Rs. 12.0 billion ("RTL-4") to 'Jaiprakash Associates Limited' on 30th September, 2011.

28. On 13th December, 2013, the Corporate Rupee Loan Facility Agreement and General Conditions executed between the Appellant and 'Jaiprakash Associates Limited' whereby the Appellant granted Rupee Term Loan of Rs. 15.0 billion ("RTL-5") to 'Jaiprakash Associates Limited'.

29. On 10th March, 2014, the 'Corporate Debtor' executed a deed of mortgage for mortgaging its property admeasuring 100 acres at Tappal, District Aligarh, Uttar Pradesh for securing RTL-5.

30. Pursuant to the Corporate Rupee Loan Facility Agreement and General Conditions, the Appellant, on 7th May, 2014, sanctioned a Rupee Term Loan of Rs. 15 Billion ("RTL-6") and overdraft facility of Rs. 1.75 Billion to 'Jaiprakash Associates Limited'. The Corporate Rupee Loan Facility Agreement executed between the Appellant and 'Jaiprakash Associates Limited' whereby the Appellant further advanced a Rupee term loan of Rs. 12.0 billion ("RTL-7") to 'Jaiprakash Associates Limited' on 25th May, 2015.

31. On 29th December, 2016, the 'Corporate Debtor' created first pari passu charge on its property admeasuring 167.229 acres land at Agra, Uttar/Pradesh in favour of 'Axis Trustee Services Limited' (security trustee), acting for and on behalf of a consortium of lenders of 'Jaiprakash Associates Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Limited', including the Appellant. RTL-1, RTL-2, RTL-3 and RTL-4 of the Appellant were secured by creation of charge on the said property.

32. The Corporate Debtor created first pari passu charge on its property admeasuring 166.96 acres land at Tappal, district Aligarh, Uttar Pradesh in favour of 'Axis Trustee Services Limited' (security trustee), acting for and on behalf of a consortium of lenders of 'Jaiprakash Associates Limited', including the Appellant. RTL-1, RTL-2, RTL-3 and RTL-4 of the Appellant were secured by creation of charge on the said property.

33. The 'Corporate Debtor', on 7th March, 2017 created first exclusive charge over immovable property comprising 151.0063acre land at Tappal, district Aligarh, Uttar Pradesh to secure RTL-7. The 'Corporate Debtor' created first exclusive charge over immovable property comprising 158.17 acres land at Jaganpur and Aurangpur, Uttar Pradesh to secure RTL-7.

34. On 28th June, 2017, the demand notice issued by the Appellant to 'Jaiprakash Associates Limited' requesting to repay the outstanding amounts under the 'Jaiprakash Associates Limited' Facilities. Company Appeal (AT) (Insolvency) No. 370 of 2018 (UCO Bank)

35. According to the Appellant- 'UCO Bank', two different mortgage deeds each dated 24 th February 2015, were executed by the 'Corporate Debtor' mortgaging its properties (as third party security) (i) measuring Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 167.229 acres situated at Village Chaugan and Chhalesar, Agra, Uttar Pradesh ("Property 1") and (ii) measuring 166.9615 acres situated at Village Tappal, Kansera & Jeenagarh, Aligarh, Uttar Pradesh ("Property 2") to secure the financial assistance of 'Jaiprakash Associates Limited', for the first time in favour of 'Axis Bank Limited' and 'State Bank of India' (both lenders of 'Jaiprakash Associates Limited') on 24 th

February 2015. Later, upon accession of other lenders and enhancement of secured limits further mortgage was effectuated on 15 th September, 2015 and again on 29 th December 2016. The mortgages in favour of the Appellant was created vide registered mortgage deeds dated 15 th September, 2015 and 29 th December, 2016.

Company Appeal (AT) (Insolvency) No. 374 of 2018 (The Karur Vysya Bank (P) Ltd.)

36. The case of the Appellant is that 'Karur Vysya Bank Ltd.' [Scheduled Bank is a member of consortium of lenders to the 'Jaiprakash Associates Ltd.' as the Appellant Bank granted the following credit facilities to 'Jaiprakash Associates Ltd.':

(i) (GOOTERM120490001) Rupee Term loan of Rs.75.00 Crores

(ii) (GOOTERM150890002) Rupee Term loan of Rs.50.00 Crores On the execution of following loan documents;

a) Master Security Trustee Agreement ("MSTA") dated 24th September, 2011;

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

b) Master Inter Creditor Agreement ("MICA") dated 24th September, 2011;

c) Deed of Accession dated 24th February, 2012 to "MSTA" in relation to 'Jaiprakash Associates Ltd.' Facilities;

d) Deed of Adherence issued on 24th February 2012 to "MICA" in relation to 'Jaiprakash Associates Ltd.' Facilities; as also the other Consortium bankers have granted various credit facilities to.

37. The Corporate Debtor, 'M/s Jaypee Infratech Limited' has mortgaged its following immovable properties, to secure the Term loan facilities granted to 'Jaiprakash Associates Ltd.' by the Appellant Bank.

a. First pari passu charge over immovable property comprising 167.229 acres land at Agra, Uttar Pradesh ("Property 1") created by registered mortgage dated 15 th September 2015 executed by the 'Corporate Debtor' in favour of 'Axis Trustee Services Limited' ("ATSL"), acting as security trustee for the benefit of the Appellant and other lenders of 'Jaiprakash Associates Ltd.'; and b. First pari passu charge over immovable property comprising 166.9615 acres land at Tappal, district Aligarh, Uttar Pradesh ("Property 2") created by registered mortgage dated 15 th September 2015 ("IOM 2") in favour of 'ATSL', acting as security trustee for the benefit of the Appellant and other lenders of 'Jaiprakash Associates Ltd.'.

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

38. The said mortgages were created to secure credit facilities comprising of term loans aggregating to Rs.20,509 Crore granted by the 'Jaiprakash Associates Ltd.' consortium lenders to 'Jaiprakash Associates Ltd.' and redeemable convertible debentures issued for an amount of Rs.3600 Crore to various debenture holders by 'Jaiprakash Associates Ltd.'.

39. Subsequently, to accommodate additional lenders into the consortium of 'Jaiprakash Associates Ltd.' lenders, the charges over above mortgaged properties were extended to secure credit facilities of the existing lenders and additional lenders to the extent of term loans aggregating to 21081.50 crore and redeemable convertible debentures issued for an amount of Rs. 2409.25 crores (reduced from Rs. 3600 Crore) and for the aforesaid extension of charge, the charge was momentarily and temporarily released with the limited purpose of charge extension for the above referred additional lenders and hence immediately re-mortgaged vide Indenture of mortgages both dated 29th December, 2016.

Company Appeal (AT) (Insolvency) No. 376 of 2018 (L&T Infrastructure Finance Company Limited)

40. The Appellant- 'L&T Infrastructure Finance Company Ltd.' provided a chart showing details of transaction, as under:

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Name of the Date of Assets mortgaged Date of Amount Financial Mortgage registration of outstanding Creditor Charge with under facilities ROC provided to Jayprakash Associates Ltd.

(JAL) L & T 15.09.2015 & In view of the financial 6.10.2015 A As on Infrastructure assistance rendered to copy of the 09.08.2017, Rs.

Finance Company 15.09.2015 JAL by various lenders Certificate of 189,91,42,048/-

Limited (The Appellant herein)

which constitute a Consortium of Lenders (hereinafter "Consortium") comprising of the Appellant the Corporate Debtor, i.e. JIL, as a third party security provider to secure the facilities provided to JAL created mortgage of immoveable property as stated herein below:

a. First pari passu charge over immovable property comprising 167.229 acres land at

Agra, Uttar Pradesh
("Property 1") created
by registered mortgage
vide an Indenture of
Mortgage dated
15.09.2015 executed
at Noida, Uttar
Pradesh in favour of
Axis Trustee Services
Limited ("ATSL"),
acting as security
trustee for the benefit
of the Appellant and
other pari passu
lenders of JAL; and

b. First pari passu
charge over immovable
property comprising
166.9615

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Company Appeal (AT) (Insolvency) No. 411 of 2018 (Central Bank of India)

41. The Appellant- 'Central Bank of India' has also provided details of asset mortgaged and other relevant details, as under:

Sl. No. Name of the bank Asset mortgaged Date of mortgage by Corporate Debtor

1. Central Bank of India Immovable property Originally created vide comprising 167.229 indenture of mortgage acres land at Agra, dated 15th September Uttar Pradesh ("Agra 2015 Property") Momentarily lifted and recreated on 29th December, 2016

2. Central Bank of India Immovable property Originally created vide comprising 166.9615 indenture of mortgage acres land at Tappal, dated 15th September District Aligarh, Uttar 2015 Pradesh ("Aligarh Property") Momentarily lifted and recreated on 29th December, 2016 Company Appeal (AT) (Insolvency) No. 424 of 2018 (Canara Bank)

42. The case of the Appellant- 'Canara Bank' is that two different mortgage deeds each dated 24 th February 2015, were executed by the 'Corporate Debtor' mortgaging its properties (as third party security) (i) measuring 167.229 acres situated at Village Chaugan and Chhalesar, Agra, Uttar

Pradesh ("Property 1") and (ii) measuring 166.9615 acres situated at Village Tappal, Kansera & Jeenagarh, Aligarh, Uttar Pradesh ("Property 2") to secure the financial assistance of 'Jaiprakash Associates Limited', for the first time in favour of 'Axis Bank Limited' and Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 'State Bank of India' (both lenders of 'Jaiprakash Associates Limited') on 24th February 2015. Later, upon accession of other lenders and enhancement of secured limits further mortgage was effectuated on 15 th September, 2015 and again on 29 th December 2016. The mortgages in favour of the Appellant was created vide registered mortgage deeds dated 15th September, 2015 and 29 th December, 2016.

Company Appeal (AT) (Insolvency) No. 458 of 2018 (IFCI Limited)

43. The Appellant- 'IFCI Limited' has provided a chart showing the details of mortgage deeds etc., as under:

S.No. Particulars Detail

1. NAME OF BANK/ FINANCIAL IFCI Ltd. having its registered INSTITUTUIN office at IFCI Tower, 61, Nehru Place, New Delhi-110019.

2. DATE OF MORTGAGE Mortgage Deed: 29.12.2016 i. Mortgage Deed entered into between Jaypee Infratech Limited (JIL) and Axis Trustee Services Limited (ATSL) with respect to Leasehold Land of 167.229 Acres situated at Villages Chhalesar and Chaugan, AGRA.

ii. Mortgage Deed entered into between Jaypee Infratech Limited (JIL) and Axis Trustee Services Limited (ATSL) with respect to Leasehold Land of 166.9615 Acres situated at Villages Tappal, Kansera and Jahangarh, Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 ALIGARH.

3. ASSET(S) MORTGAGED i. Area: 167.229 Acres (Villages Chhalesar and Chaugan, AGRA) Area: 166.9615 Acres (Villages Tappal, Kansera and Jahangarh, ALIGARH)

4. DATE OF ADMISSION OF 09.08.2017 (Admission of the APPLICATION UNDER I&B CODE. Company petition No. IB/77/ALD/2017 along with C.A. No. 26/2018) initiated by the IRP.

5. DATE OF FILING APPLICATION 06.02.2018 (C.A. No. 26/2018 in UNDER SECTION-43 AND OTHER Company Petition No. PROVISIONS OF LAW IB/77/ALD/2017.

Company Appeal (AT) (Insolvency) No. 492 of 2018 (Allahabad Bank)

44. The case of the Appellant- 'Allahabad Bank' is that two different mortgage deeds each dated 24 th February 2015, were executed by the 'Corporate Debtor' mortgaging its properties (as third party security) (i) measuring 167.229 acres situated at Village Chaugan and Chhalesar, Agra, Uttar Pradesh ("Property 1") and (ii) measuring 166.9615 acres situated at Village Tappal, Kansera &

Jeenagarh, Aligarh, Uttar Pradesh ("Property 2") to secure the financial assistance of 'Jaiprakash Associates Limited', for the first time in favour of 'Axis Bank Limited' and 'State Bank of India' (both lenders of 'Jaiprakash Associates Limited') on 24th February 2015. Later, upon accession of other lenders and enhancement of secured limits further mortgage was effectuated on 15 th Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 September, 2015 and again on 29 th December 2016. The mortgages in favour of the Appellant were created vide registered mortgage deeds dated 15 th September, 2015 and 29th December, 2016. Company Appeal (AT) (Insolvency) No. 511 of 2018 (Jammu & Kashmir Bank)

45. According to the Appellant- 'Jammu & Kashmir Bank', it alongwith other lenders of Consortium Bank led by 'ICICI Bank' had sanctioned/granted credit facility to 'Jaiprakash Associates Ltd.' and as per the terms and conditions of the Loan to 'Jaiprakash Associates Ltd.', 'Jaypee Infratech Limited' had mortgaged some of its properties as collateral security in favour of 'Axis Trustee Services Limited' for the benefit of the Appellant and other members of the Consortium. The Appellant and other members of the consortium had sanctioned/granted financial assistance inter-alia in the form of term loans to 'Corporate Debtor', from time to time. One of the conditions of the Loan Agreement was that the obligations be secured by the security interest over the secured property to the satisfaction of the secured parties and hence, a security trustee agreement was executed in favour of the 'Axis Trustee Services Limited' (acting as the Security Trustee for the benefit of the Appellant and other members of consortium of lenders of 'Jaiprakash Associates Ltd.'), in order to secure the credit facilities sanctioned to 'Jaiprakash Associates Ltd.'. Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

46. The mortgaged properties referred above were mortgaged (as third party security) for the first time in favour of the lender of 'Jaiprakash Associates Ltd.' ('Axis Bank Limited' and 'State Bank of India') on 24th February 2015. Later, for the purpose of securing enhanced loan amount, the mortgage deeds were extended on 15 th September 2015. The last of such mortgage was extended vide two separate registered mortgage deeds both dated 29 th December 2016, for land admeasuring 167.229 acres and 166.9615 acres respectively. The loans of the Appellant were duly secured by the said third party mortgages, from time to time. The said mortgages deeds were existing since 24 th February 2015 and the same have been merely extended (momentarily released and immediately re-mortgaged) from time to time to secure additional loans, including the loans of the Appellant (i.e. an amount of Rs 150 Crores lent/advanced by the appellant to 'Jaiprakash Associates Ltd.'). Company Appeal (AT) (Insolvency) No. 524 of 2018 (The South Indian Bank Ltd.)

47. The case of the Appellant- 'South Indian Bank Ltd.' is that on 18th May, 2013, 'Deed of Accession' and 'Deed of Adherence' was executed by the Appellant for an amount of Rs. 100 Crores (Rupee One Hundred Crores Only) in favour of the parties to the Master Security Trustee Agreement dated 24th September 2011 by and among 'Jaiprakash Associates Limited', and other parties as mentioned therein.

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

48. 'Credit Facility Agreement' executed between 'Jaiprakash Associates Limited' and the Appellant for an amount of Rs. 120 Crores (One Hundred and Twenty Crores Only) on 24th March, 2015.

49. The 'Corporate Debtor' on 15th September, 2015, vide two different mortgage deeds of the same date ("IOM 1 and IOM 2"), mortgaged its properties bearing 167.229 acres at Village Chagan and Chhalesar, Agra, Uttar Pradesh ("Property 1") and 166.9615 acres at Village Tappal, Kansera & Jeenagarh, Aligarh, Uttar Pradesh ("Property 2") in favour of a consortium of lenders to 'Jaiprakash Associates Limited' which includes the Appellant ("JAL Consortium") of 'Jaiprakash Associates Limited' Lenders to secure term loans aggregating to Rs. 20509 Crore sanctioned to 'Jaiprakash Associates Limited' by members of 'Jaiprakash Associates Limited' Consortium and redeemable non-convertible debentures issued for amounts not exceeding Rs. 3600 Crore to debenture holders. RTL-1, RTL-2, RTL-3 and RTL-4 sanctioned by the Appellant were inter-alia secured by the aforesaid mortgages. Thereafter, on 29th December, 2016, IOM 1 and IOM 2 were momentarily released to facilitate entry of new lenders into the 'Jaiprakash Associates Limited' Consortium which includes the Appellant thereby securing an aggregate amount of Rs. 21081.50 crore and redeemable convertible debentures issued for an amount of Rs. 2409.25 crores (as reduced from redeemable convertible debentures issued for an amount of Rs. 3600 Crore).

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

50. Learned counsel for the Appellants submitted that none of the provisions such as Section 42, 44, 45 or 66 of the 'I&B Code' are applicable to any of the transactions, in question, as referred to above. They relied on the provisions aforesaid in support of their contentions. Stand of the 'Resolution Professional'

51. Learned counsel appearing on behalf of the 'Resolution Professional' submitted that the transaction, in question, come within the meaning of 'preferential transaction', 'undervalued transaction' and 'fraudulent transaction' made by the 'Corporate Debtor'.

52. It was submitted that Appellants are consortium of Banks and Financial Institution of 'Jaiprakash Associates Limited', which is the holding company of the 'Corporate Debtor' namely-- 'Jaiprakash Infratech Limited'.

53. It was submitted that the 'Corporate Debtor' has been facing severe financial stress and liquidity crunch since 2015 and started facing litigation from homebuyers (allottees) before different forum. Additionally, it started defaulting in payments of loans and financial assistance borrowed from 'Financial Creditors'. The 'Jaypee Infratech Limited' ('Corporate Debtor') was declared non-performing asset (NPA) on 30th September, 2015 by LIC and other lenders on different dates, as detailed below:

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Name of the Bank Date of the NPA J& K Bank 31.08.2015 LIC 30.09.2015 Corporation Bank 29.02.2016 Syndicate Bank 31.03.2016 Bank of Maharashtra 31.03.2016 Union Bank 31.03.2016

54. It was also submitted that the 'Corporate Debtor' was in dire needs of funds during period and was facing severe liquidity crunch to complete the construction of projects and deliver the flats to home-buyers, as well honour the payment obligations to 'Financial Creditors' as also the 'fixed deposit' holders. 'Jaypee Infratech Limited' ('Corporate Debtor') owns various pieces of unencumbered land which was available to be liquidated or offered as security to raise finance to complete the constructions of flats and deliver possession of flats to the homebuyers/ allottees.

55. It is also submitted that in the middle of its immense financial crunch, the 'Corporate Debtor' while continuing to commit default to allottees and other 'Financial Creditors', even after being declared as NPA, the directors of 'Jaypee Infratech Limited' in utter disregard to their fiduciary duties mortgaged 585 acres of unencumbered land owned by 'Jaypee Infratech Limited' ('Corporate Debtor') to secure the debt of 'Jaiprakash Associates Ltd.' which is the related party. Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

56. According to the 'Resolution Professional', the mortgaged 858 acres of land valued at Rs.5,900 Crores approximately, which the directors of the 'Corporate Debtor', mortgaged to secure the debt of 'Jaiprakash Associates Ltd.', when the 'Corporate Debtor' itself was in dire need of funds and could have sold/ mortgaged unencumbered land to raise funds to complete the construction of flats in timely manner to fulfil its own obligation to its creditors and prevent value deterioration or erosion or insolvency.

57. Further, the case of the 'Resolution Professional' is that 'Jaiprakash Associates Ltd.' being the holding company owing 995,000,000 numbers of shares of 'Jaypee Infratech Limited' as on 31st March 2017, 'Jaiprakash Associates Ltd.' is a related party within the meaning of Section 2(74) of the Companies Act, 2013 and the promoter of 'Jaypee Infratech Limited' within the meaning of Section 2(69) of the Companies Act, 2013.

58. It was further contended that in the 49th meeting dated 28th May 2015 and 50th meeting dated 6th August 2015 of the Board of Directors of 'Jaypee Infratech Limited' ('Corporate Debtor') taken up the agenda to create security over the assets of the 'Jaypee Infratech Limited' in favour of 'Standard Chartered Bank' for financial assistance to related company 'Jaiprakash Associates Ltd.' was considered and decided in favour of the Bank. In the 52nd meeting dated 11th February 2016 of the Board of Directors of 'Jaypee Infratech Limited', the agenda relates to creations of security over the assets of the 'Jaypee Infratech Limited' in favour of the 'State Bank of India' for financial assistance to related company 'Jaiprakash Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Associates Ltd.' was considered and decision taken. In the 54th meeting dated 10th September, 2016 of the Board of Directors of 'Jaypee Infratech Limited', by its agenda for creation of security over the

assets of the 'Jaypee Infratech Limited' in favour of the 'ICICI Bank Ltd.' for financial assistance to related company 'Jaiprakash Associates Ltd.' was considered and resolved.

59. According to him, while the mortgage of land by the company to its related party may not be forbidden under law, it becomes questionable if it has been done in complete disregard to the interest of creditors and stakeholders of such company.

Discussion on provisions of law and facts:

60. Section 43 of the 'I&B Code' relates to 'preferential transactions and relevant time', as under:

"43. Preferential transactions and relevant time.□(1) Where the liquidator or the resolution professional, as the case may be, is of the opinion that the corporate debtor has at a relevant time given a preference in such transactions and in such manner as laid down in sub-section (2) to any persons as referred to in sub-section (4), he shall apply to the Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 Adjudicating Authority for avoidance of preferential transactions and for, one or more of the orders referred to in section 44.

(2) A corporate debtor shall be deemed to have given a preference, if-

(a) there is a transfer of property or an interest thereof of the corporate debtor for the benefit of a creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the corporate debtor; and

(b) the transfer under clause (a) has the effect of putting such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with section 53.

(3) For the purposes of sub-section (2), a preference shall not include the following transfers-

(a) transfer made in the ordinary course of the business or financial affairs of the corporate debtor or the transferee;

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

(b) any transfer creating a security interest in property acquired by the corporate debtor to the extent that -

(i) such security interest secures new value and was given at the time of or after the signing of a security agreement that contains a description of such property as security interest, and was used by corporate debtor to acquire such property; and

(ii) such transfer was registered with an information utility on or before thirty days after the corporate debtor receives possession of such property:

Provided that any transfer made in pursuance of the order of a court shall not, preclude such transfer to be deemed as giving of preference by the corporate debtor.

Explanation. □ For the purpose of sub-section (3) of this section, "new value" means money or its worth in goods, services, or new credit, or release by the transferee of property previously transferred to such transferee in a transaction that is neither void nor voidable by the liquidator or the resolution Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 professional under this Code, including proceeds of such property, but does not include a financial debt or operational debt substituted for existing financial debt or operational debt.

(4) A preference shall be deemed to be given at a relevant time, if -

(a) It is given to a related party (other than by reason only of being an employee), during the period of two years preceding the insolvency commencement date; or

(b) a preference is given to a person other than a related party during the period of one year preceding the insolvency commencement date."

61. From bare reading of Section 43, it is clear that the 'Liquidator' or the 'Resolution Professional' is to form opinion that the 'Corporate Debtor' at a relevant time has given a preference in such transactions as laid down in sub-section (2) (a) to any person as referred to therein.

As per sub-section (2) (a) of Section 43, the 'Corporate Debtor' shall be deemed to have given a preference, if-- there is a transfer of property or an interest thereof of the 'Corporate Debtor' for the benefit of a creditor or a Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the 'Corporate Debtor'.

62. In the present case, the 'Corporate Debtor' has created interest on the property of the 'Corporate Debtor', but such interest has not been created in favour of any creditor or a surety or a guarantor for or on account of an antecedent financial debt or operational debt or other liabilities owed by the 'Corporate Debtor'.

63. The aforesaid interest on the property of the 'Corporate Debtor' has been created in all these cases with regard to financial debt given by the Appellants to 'Jaiprakash Associates Ltd.', which is not the 'Corporate Debtor'.

64. Thus, it is clear that the interest on the property of the 'Corporate Debtor' has not been created in favour of the Appellants- 'Financial Creditors' of an antecedent financial debt of the Appellants owed by the 'Jaypee Infratech Ltd.' ('Corporate Debtor'). Therefore, we hold that clause (a) of sub-section (2) of Section 43 is not attracted in any of the case of the Appellants Bank, thereby none of the Appellants Bank come within the meaning of 'deemed to have given a preference', as used in Section 43. Therefore, the mortgage(s) created in their favour cannot be annulled on the ground of preferential transaction in terms of Section 43 (2) (a) of the 'I&B Code'.

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

65. Clause (b) of sub-section (2) of Section 43 relates to transfer under clause (a) of sub-section (2) of Section 43, which in effect puts such creditor or a surety or a guarantor in a beneficial position than it would have been in the event of a distribution of assets being made in accordance with Section

53. As clause (a) of sub-section (2) of Section 43 is not attracted, the question of applicability of clause (b) of sub-section (2) of Section 43 does not arise.

66. Apart from the aforesaid position of law in respect to mortgage, in question, as per sub-section (3) of Section 43, for the purposes of sub-section (2), "a preference shall not include the transfer made in the ordinary course of the business or financial affairs of the 'Corporate Debtor' or the transferee". The mortgages in question which were made in favour of the Appellants- Banks and Financial Institutions have been made in ordinary course of the business and financial affairs of the transferee, as apparent from the relevant facts.

67. Therefore, we hold that Section 43 is not attracted to any of the transaction/ mortgage(s) made in favour of the Appellants.

68. Section 44 of the 'I&B Code' relates to 'orders in case of preferential transactions', which reads as follows:

"44. Orders in case of preferential transactions.□(1) The Adjudicating Authority, may, Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 on an application made by the resolution professional or liquidator under sub-section (1) of section 43, by an order:

(a) require any property transferred in connection with the giving of the preference to be vested in the corporate debtor;

(b) require any property to be so vested if it represents the application either of the proceeds of sale of property so transferred or of money so transferred;

(c) release or discharge (in whole or in part) of any security interest created by the corporate debtor;

(d) require any person to pay such sums in respect of benefits received by him from the corporate debtor, such sums to the liquidator or the resolution professional, as the Adjudicating Authority may direct;

(e) direct any guarantor, whose financial debts or operational debts owed to any person were released or discharged (in whole or in part) by the giving of the preference, to be under such new or revived financial debts or Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 operational debts to that person as the Adjudicating Authority deems appropriate;

(f) direct for providing security or charge on any property for the discharge of any financial debt or operational debt under the order, and such security or charge to have the same priority as a security or charge released or discharged wholly or in part by the giving of the preference; and

(g) direct for providing the extent to which any person whose property is so vested in the corporate debtor, or on whom financial debts or operational debts are imposed by the order, are to be proved in the liquidation or the corporate insolvency resolution process for financial debts or operational debts which arose from, or were released or discharged wholly or in part by the giving of the preference:

Provided that an order under this section shall not -

(a) affect any interest in property which was acquired from a person other than the corporate debtor or any interest derived from Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 such interest and was acquired in good faith and for value;

(b) require a person, who received a benefit from the preferential transaction in good faith and for value to pay a sum to the liquidator or the resolution professional.

Explanation I. □ For the purpose of this section, it is clarified that where a person, who has acquired an interest in property from another person other than the corporate debtor, or who has received a benefit from the preference or such another person to whom the corporate debtor gave the preference, □

(i) had sufficient information of the initiation or commencement of insolvency resolution process of the corporate debtor;

(ii) is a related party, it shall be presumed that the interest was acquired, or the benefit was received otherwise than in good faith unless the contrary is shown.

Explanation II. □A person shall be deemed to have sufficient information or opportunity to avail such information if a public announcement regarding the corporate insolvency resolution process has been made under section 13."

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

69. From bare reading of Section 44, it is clear that it is on the basis of application made by the 'Resolution Professional' or the 'Liquidator' under sub-section (1) of Section 43, that the Adjudicating Authority has the power to pass order in terms of Section 44. In these appeals as we have held that Section 43 is not attracted to any of the transactions made in favour of the Appellants, the Adjudicating Authority has no power to pass order under Section 44 of the 'I&B Code'.

70. Section 45 of the 'I&B Code' deals with 'avoidance of undervalued transactions', as under:

"45. Avoidance of undervalued transactions. □(1) If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

(2) A transaction shall be considered undervalued where the corporate debtor-

Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018

(a) makes a gift to a person; or

(b) enters into a transaction with a person which involves the transfer of one or more assets by the corporate debtor for a consideration the value of which is significantly less than the value of the consideration provided by the corporate debtor, and such transaction has not taken place in the ordinary course of business of the corporate debtor."

71. For holding a transaction undervalued, the 'Resolution Professional' / 'Liquidator' is required to examine the transactions which were made during 'the relevant period' as prescribed under Section 46, if any of it is undervalued. As per sub-section (2) of Section 45, the transaction shall be

considered 'undervalued' 'where the 'Corporate Debtor' makes a gift to a person or enters into a transaction with a person which involves the transfer of one or more assets by the 'Corporate Debtor' for a consideration the value of which is significantly less than the value of the consideration provided by the 'Corporate Debtor' and such transaction has not taken place in the ordinary course of business of the 'Corporate Debtor'.'

72. In these appeals, we find that the transactions as has been made i.e. mortgage(s) in favour of the Appellants as and when made against the Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 amount payable by 'Jaiprakash Associates Limited' (borrower), the amount is not payable by the 'Corporate Debtor'. Therefore, clause (a) of sub-section (2) of Section 45 is not attracted. For the same very reason, clause (b) of sub-section (2) of Section 43 or Section 45 cannot be made applicable with regard to transaction in question which are not related to any payment due from the 'Corporate Debtor'.

73. As Section 44 is not attracted, it is not necessary to notice Section 46 which is not attracted and, therefore, the Adjudicating Authority has no power to pass any order under Section 48 of the 'I&B Code'.

74. Section 66 relates to 'fraudulent trading' or 'wrongful trading', if found during the 'Resolution Process' or 'Liquidation Process' in regard to the business of the 'Corporate Debtor', which reads as under:

"66. Fraudulent trading or wrongful trading.□(1) If during the corporate insolvency resolution process or a liquidation process, it is found that any business of the corporate debtor has been carried on with intent to defraud creditors of the corporate debtor or for any fraudulent purpose, the Adjudicating Authority may on the application of the resolution professional pass an order that any persons who were knowingly parties to the carrying on of the business in such manner shall be liable to make such Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 contributions to the assets of the corporate debtor as it may deem fit.

(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit, if□

(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and

(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.

Explanation.□For the purposes of this section a director or partner of the corporate debtor, as the case may be, shall be deemed to have exercised due diligence if such diligence was reasonably expected of a person carrying out the same functions as are Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 carried out by such director or partner, as the case may be, in relation to the corporate debtor."

75. From bare perusal of Section 66, it is clear that if during the 'Corporate Insolvency Resolution Process' or 'Liquidation Process', it is found that any business of the 'Corporate Debtor' has been carried on with intent to defraud creditors of the 'Corporate Debtor' or for any fraudulent purpose, the Adjudicating Authority is empowered to pass appropriate order under Section 67.

76. In the present case, we have noticed that the transactions in question i.e. mortgage(s) were made in favour of the 'Banks and Financial Institutions' by the 'Corporate Debtor' ('Jaypee Infratech Limited') in the ordinary course of business of the 'Corporate Debtor'. The Appellants- Banks and Financial Institutions have given loans to the holding Company namely-- 'Jaiprakash Associates Limited'. The 'Corporate Debtor' being one of the group company, like a guarantor, executed mortgage deed(s) in favour of the Appellants- 'Banks and Financial Institutions'. We have seen that none of the transactions were 'preferential transaction' or 'undervalued transaction'. It has not been alleged that the transactions, in question, were made to defraud the creditors in terms of Section 49 so allegation has been made that such transactions amount to 'extortionate credit' as defined under Section 50. Therefore, the Adjudicating Authority in absence of any such finding is not empowered to pass order under Section 51. Further, as Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 we have held that the transactions were made in the ordinary course of business in absence of any contrary evidence to show that they were made to defraud the creditors of the 'Corporate Debtor' or for any fraudulent purpose, on mere allegation made by the 'Resolution Professional', it was not open to the Adjudicating Authority to hold that mortgage deeds, in question, were made by way of transactions which come within the meaning of 'fraudulent trading' or 'wrongful trading' under Section 66.

77. It is not in dispute that all the Appellants had granted loan to 'Jaiprakash Associates Limited'. Majority of Banks (Appellants) functioned as joint venture. For the said reason, the 'Corporate Debtor' executed mortgaged deeds in favour of the Appellants. Such transactions having made in ordinary course of business, the allegation against the Banks and Financial Institutions (Appellants) are not justified.

78. In fact, the 'Resolution Professional' has submitted that while the mortgage of land by the company to its related party may not be forbidden under law, it becomes questionable if it has been done in complete disregard to the interest of creditors and stakeholders of such company.

79. The Adjudicating Authority having failed to notice the aforesaid relevant facts and as it misread the provisions of Sections 43, 45 & 66 of the 'I&B Code' and on the basis of wrong presumption and error of fact held that transactions in question amount to 'preferential transactions' (Section 43); 'undervalued transactions' (Section 45) and 'for fraudulent purpose to Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018 defraud the creditors of the 'Corporate Debtor' (Section 66), the impugned order cannot be upheld.

80. For the reasons aforesaid, we set aside the impugned order dated 16th May, 2018 so far it relates to the Appellants. In view of such findings, the Appellants- 'Axis Bank Ltd.', 'Standard Chartered Bank', 'ICICI Bank Ltd.', 'State Bank of India', 'Jai Prakash Associates Ltd.', 'Bank of Maharashtra', 'United Bank of India', 'Central Bank of India', 'UCO Bank', 'Karur Vyasa Bank (P) Ltd.', 'L&T Infrastructure Finance Company Ltd.', 'Canara Bank', 'Karnataka Bank Ltd.', 'IFCI Ltd.', 'Allahabad Bank', 'Jammu & Kashmir Bank' and 'The South Indian Bank Ltd.' are entitled to exercise their rights under the 'I&B Code'.

81. All the appeals are allowed. However, we make it clear that we have not made any observations with regard to the Promoters or Directors in absence of any appeal preferred on their behalf. No costs.

[Justice S.J. Mukhopadhyaya] Chairperson [Justice Bansilal Bhat] Member (Judicial) NEW DELHI
1st August, 2019 AR Company Appeal (AT) (Insolvency) No. 243, 244, 245, 249, 276, 301, 331, 343, 348, 349, 353, 370, 374, 376, 411, 424, 436, 458, 492, 511, 524 of 2018