

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: SHRI DEEP CHANDRA JOSHI,
HON'BLE JUDICIAL MEMBER

SHRI RAGHU NAYYAR,
HON'BLE TECHNICAL MEMBER

IA No. 327/JPR/2019;
IA No. 34/JPR/2020;
IA No. 87/JPR/2022
In CP No. (IB)- 54(PB)/2018

IN THE MATTER OF:

ALCHEMIST ASSET AND RECONSTRUCTION COMPANY
LIMITED

...FINANCIAL CREDITOR

Versus

JAIPUR METALS & ELECTRICALS LIMITED

...CORPORATE DEBTOR

MEMO OF PARTIES

IA No. 327/JPR/2019

State of Rajasthan,
Through Officer In-Charge
Panchu Ram Sharma,
Joint Director, Industries Rajasthan
Udyog Bhawan Tilak Marg Jaipur- 302005

...Applicant

VERSUS

Arunava Sikdar
Resolution Professional
Jaipur Metals & Electricals Limited
D-3, LGF, Lajpat Nagar, Part-1
New Delhi- 110024

...Respondent No. 1

Alchemist Asset Reconstruction Company Limited
A-270, 1st & 2nd Floor, Defence Colony,
New Delhi, Delhi- 110024

... Respondent No. 2

IA No. 34/JPR/2020

State of Rajasthan,
Through Officer In-Charge
Panchu Ram Sharma,
Joint Director, Industries Rajasthan
Udyog Bhawan Tilak Marg Jaipur- 302005

...Applicant

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Alchemist Asset Reconstruction Company Limited
A-270, 1st & 2nd Floor, Defence Colony,
New Delhi, Delhi- 110024

... Respondent No. 2

Asset Reconstruction Company (India) Ltd.
10th Floor, The Ruby, 29, Tulsi Pipe Road,
Dadar West, Mumbai
Maharashtra- 400028

... Respondent No. 3

IA No. 87/JPR/2022

State of Rajasthan,
Through Officer In-Charge
Panchu Ram Sharma,
Joint Director, Industries Rajasthan
Udyog Bhawan Tilak Marg Jaipur- 302005

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... Respondent No. 2**Asset Reconstruction Company (India) Ltd.**

10th Floor, The Ruby, 29, Tulsi Pipe Road,
 Dadar West, Mumbai
 Maharashtra- 400028

... Respondent No. 3

For the Applicant : Major RP Singh, Ld. AAG
 Hemant Kothari, Adv.
 Prakul Khurana, Adv.
 Ankit Sareen, Adv.
 Prateek Singh, Adv. for SDRI

For the Respondent : Ashu Kansal, Adv.
 Arunava Sikdar, RP
 Sachin Gupta Adv.
 Saurabh Jain, Adv.

Order Pronounced On: 24.06.2022**ORDER****Per: Shri Raghu Nayyar, Technical Member**

1. This application has been filed by the State of Rajasthan, through officer in charge, Mr. Panchu Ram Sharma, Joint Director Industries - Rajasthan, against the Resolution Professional ('RP') of Jaipur Metals and Electricals

Ltd. ('JMEL'), as Respondent No. 1, and Alchemist Asset Reconstruction Company Limited ('AARCL'), being Respondent No. 2, under Section 60(5)(c) of the Insolvency and Bankruptcy Code ('IBC'/ 'Code') seeking directions to call for the loan agreement amounting to Rs. 1,50,00,000/- (Rupees One Crore Fifty Lakhs) dated 21.03.1996 between JMEL and Industrial Development Bank of India ('IDBI') and to impound the same as insufficiently stamped, while directing the RP to reject the claim of AARCL and making a reference to the Collector mandated under law. A copy of the loan agreement and deed of hypothecation is marked as Annexure-1 (Colly). It is further stated that the loan agreement related to debt upon JMEL from IDBI was assigned to AARCL vide assignment agreement dated 11.10.2007. An application numbered IA 34/JPR/2020 was filed for impleadment of Asset Reconstruction Company (India) Ltd. ('ARCIL') as Respondent No. 3, and that is also considered alongside.

2. It has been mentioned that as per Article 6 of the Rajasthan Stamp Law Adaptation Act, 1952, the stamp duty payable on any agreement recording such monetary consideration would be around Rs. 74,950 whereas on perusal of the loan agreement it appears that only an amount of Rs. 10/- has been paid towards stamp duty. It is also submitted by Applicant State that the Ld. RP ought not to have admitted the claim of AARCL

arising out of the assignment pertaining to the insufficiently stamped loan agreement and deed of hypothecation dated 21.03.1996.

3. It is noted that vide judgement dated 13.04.2018 by/of the Principal Bench, NCLT, the application of AARCL as a Financial Creditor was admitted against JMEL with registered office Near Railway Station, Jaipur, Rajasthan-302001, under Section 7 of the Code read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 ('Rules'). The Principal Bench duly considered the details of Financial Debt which were stated in Part-IV of the application, including the various facilities granted by IDBI and State Bank of Bikaner and Jaipur ('SBBJ'), subsequently merged with State Bank of India ('SBI'). It was noted that IDBI had assigned its secured loans to JMEL in favour of AARCL on 11.10.2007 and SBBJ had also assigned the same vide assignment dated 11.03.2016 registered on 29.03.2017.
4. It is recorded in the said order that JMEL was declared a sick company under Board of Industrial and Financial Reconstruction ('BIFR') case No. 03/1999. As neither the company nor its promoters showed interest for revival, BIFR confirmed its prima facie opinion to wind up the company. The Co-ordination committee of Workers Union had filed an appeal before the Appellate Authority for Industrial and Financial Reconstruction ('AAIFR') against order of BIFR, which was rejected.

5. A summary of events, mostly as per briefing note dated 28.07.2021 by the Applicant/ State of Rajasthan, and duly interspersed, is as follows:

- a) The Corporate Debtor was incorporated in 1943 and run by the Government of Rajasthan since 1977. Due to various externalities, the net worth of the Corporate Debtor kept on deteriorating and the Corporate Debtor was referred to proceedings under Sick Industrial Companies Act, 1985 on 03.10.1998, and finally also recommended into winding up. Consequently, Company Petition No. 19/2009 was filed at the Hon'ble High Court of Rajasthan. This was pending when Insolvency resolution process commenced in NCLT with the passing of admission order dated 13.04.2018.
- b) The Corporate Debtor was declared a relief undertaking on 17.12.1977, under the Rajasthan Relief Undertakings (Special Provisions) Act, 1961, which entailed special provisions to enable certain industrial undertakings to attain revival and offer continued employment to their employees, by declaring them as Relief Undertakings, and for other matters connected therewith. Notably, as per Section 4(1)(b) of the said Act, *no suit or other legal proceeding shall be instituted or commenced or if pending, shall be proceeded with, against any industrial undertaking during the period in which it remains a relief undertaking.* As per Section 4(2) thereof, *the*

period, during which any suit or legal proceeding cannot be instituted or commenced because of the provisions of clause (b) of sub-section (1), shall be excluded in computing the period of limitation prescribed by the Indian Limitation Act, 1908 (Central Act 9 of 1908), or any other law for the time being in force, for such suit or proceeding. Such status as / of Relief Undertaking admittedly continued till 07.12.2016.

- c) The applicant State of Rajasthan took over control and management of affairs of JMEL in the year 1977 and later on acquired shares in terms of the Jaipur Metals & Electricals Limited (Acquisition of Shares) Act ('JMEL Act'), 1986. The JMEL Act was enacted with the aim '*to provide for the acquisition of certain shares of the Jaipur Metals & Electricals Limited with a view to secure the proper management of the affairs of the said company and continuity and development of the production of goods which are vital to the needs of public and for matters connected therewith or incidental thereto*'.
- d) The shareholding of the Corporate Debtor is as under:

Shareholder	Percentage
JWE Employees Cooperative Credit & Thrift Society Ltd.	59.49%
Government of Rajasthan	20.23%
Unit Trust of India	16.12%
Life Insurance Corporation of India	3.19%
Banks & Others	0.97%

- e) On 30.09.2000, the factory of the Corporate Debtor was locked out. At the time of lockout, JMEL had 1559 workers and employees on its muster. In 2008, the Government of Rajasthan, through an Information Memorandum ('IM') sought bids for a revival plan of / for JMEL by sale of its shares but this attempt did not bear fruit.
- f) The Corporate Debtor had taken loans from four different banks, viz. State Bank of Bikaner & Jaipur, State Bank of Indore, IDBI Bank, and Central Bank of India ('CBI') under various loan agreements. The said loans were assigned to AARCL and Asset Reconstruction Company India Limited ('ARCIL'), as follows:

Date	Particulars
29.09.2007	CBI assigned its loan to ARCIL vide assignment agreement
11.10.2007	IDBI Bank assigned its loan to AARCL by assignment agreement
29.03.2017	SBBJ assigned its loan to AARCL vide assignment agreement
31.03.2018	State Bank of Indore assigned its loan to AARCL vide assignment agreement

While the State of Rajasthan refers to loans as having been bought; the common understanding is assignment to the respective banks.

- g) At the time of passing of admission order dated 13.04.2018 by the Adjudicating Authority, Company Petition No. 19/2009 for winding up of the Corporate Debtor was pending at the Hon'ble High Court.
- h) In addition, SB Civil Writ Petition ('CWP') No. 19134/2017 was also pending. In this, a challenge had been made to the notice under Section 13(4) of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest ('SARFAESI') Act,

2002 for symbolic possession issued by AARCL, who appears as the member with majority share in the Committee of Creditors ('CoC') of the Corporate Debtor / JMEL in its Corporate Insolvency Resolution Process ('CIRP').

i) The key dates in respect of various proceedings are as follows:

Date	Particulars
04.05.2017	Notice under Section 13(4) of the SARFAESI Act was issued by AARCL for symbolic possession, which was challenged in the aforesaid SB Civil Writ Petition No. 19134/2017.
14.11.2017	High Court restrained State (Industries Department) to transfer property in dispute. The stay continued till the final disposal of SB Civil Writ Petition No. 19134/2017.
26.04.2018	NCLT Order of 13.04.2018 starting CIRP was stayed by the High Court in the pending Winding Up Company Petition No. 19/2009.
01.06.2018	Final order was passed by High Court in Company Petition No. 19/2009 setting aside NCLT admission order of 13.04.2018.
12.12.2018	Supreme Court upheld NCLT order of 13.04.2018 in Civil Appeal No. 12023/2018 and set aside High Court order of 01.06.2018 in Winding Up Petition. It recorded as follows: "2. The present appeal has been filed by an employees' union challenging the judgment of the High Court of Judicature for Rajasthan dated 01.06.2018, in which the High Court has refused to transfer winding up proceedings pending before it to the National Company Law Tribunal ("NCLT"), and has set aside an order dated 13.04.2018 of the NCLT by which order a financial creditor's petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Insolvency Code" or "Code") has been admitted. 3. This case has had a chequered history. On 30.09.1997, the account of the Respondent No. 1 company had become a non-performing asset, and since the company's net worth had turned negative, a reference was made to the Board for Industrial and Financial Reconstruction ("BIFR") under the Sick Industrial Companies (Special Provisions) Act, 1985 ("SIC Act"). -----

	<p>18 ----- We are of the view that the NCLT was absolutely correct in applying Section 238 of the Code to an independent proceeding instituted by a secured financial creditor, namely, the Alchemist Asset Reconstruction Company Ltd. This being the case, it is difficult to comprehend how the High Court could have held that the proceedings before the NCLT were without jurisdiction. On this score, therefore, the High Court judgment has to be set aside. The NCLT proceedings will now continue from the stage at which they have been left off. Obviously, the company petition pending before the High Court cannot be proceeded with further in view of Section 238 of the Code. The writ petitions that are pending before the High Court have also to be disposed of in light of the fact that proceedings under the Code must run their entire course. We, therefore, allow the appeal and set aside the High Court’s judgment.”</p>
29.11.2019	<p>SB Civil Writ Petition No. 19134/2017 was finally disposed of. State was permitted to raise objections with regard to valuation in terms of stamp duty relating to the Loan and Security Documents as executed between Corporate Debtor and various banks before the NCLT. High Court further directed NCLT to pass appropriate orders on such objections. The Hon’ble High Court had ordered as follows:</p> <p><i>“Mr. RP Singh, learned Additional Advocate General appearing for the State has objection relating to original agreements entered between the concerned banks and the Jaipur Metals and submits that they were not duly stamped. In view of the provisions of Section 17 and 39 of the Stamp Act, 1899, they are liable to be impounded. Learned AAG submits that documents has been handed over to this Court also. Learned AAG prayed that High Court should direct the documents to be impounded.</i></p> <p>In the considered opinion of this Court, the question regarding under-valuation of the agreements which are <u>relied upon</u> by the respondent no. 2 - Alchemist Asset Reconstruction Company Limited before the NCLT can best be appreciated in the said Court and the State Government would be free to take up the issue before the NCLT and raise all the its objections with regard to the valuation in terms of Stamp duty. Upon such objections the NCLT shall pass appropriate orders.”</p>

- j) The course of CIRP of JMEL subsequent to the order of the Hon'ble Supreme Court dated 12.12.2018 has been as follows:

Date	Particulars
11.01.2019	NCLT granted liberty to the Government of Rajasthan to raise objections with respect to appointment of RP. <i>However, this was in context of State of Rajasthan stating that the proposed RP, coming in place of the IRP, was from New Delhi and it would be better if the CIRP could be conducted by a Jaipur based person.</i>
13.06.2019	<i>IA No. 99/2019 was filed by RP seeking handing over of assets and records of JMEL. Respondent directors were nominee directors of the State of Rajasthan in accordance provisions of Jaipur Metals & Electricals Ltd. (Acquisition of Shares) Act, 1986. It was stated that appropriate communication had been sent to the State government in this regard. It was also submitted that Cooperative society of workers is a major shareholder and certain nominees of the society are also directors. Adjudicating Authority directed impleadment of State of Rajasthan and other directors in the said application, IA No. 99/2019, filed by RP under Section 19 of IBC.</i>
05.07.2019	Order dated 13.06.2019 of this Adjudicating Authority was challenged by the RP before the Hon'ble National Company Law Appellate Tribunal ('NCLAT'), who directed as follows. " ---- In the circumstances, we are of the view that the 'Resolution Professional' should implead the Chief Secretary of the Government of Rajasthan and the concerned Secretary of the Department of Rajasthan as party respondent and he will serve a copy of this order along with notice of the Adjudicating Authority for their appearance. If this order is served on the Chief Secretary, Government of Rajasthan, he will take steps and ask its officers and the Secretary of the concerned Department to appear before the Adjudicating Authority (National Company Law Tribunal) Jaipur in IB No. 54(PB)/2018 on the next date. The Adjudicating Authority in its turn will pass appropriate order preferably within three weeks in terms of Insolvency and Bankruptcy Code, 2016 to ensure that the possession of the assets, control and management of the 'Corporate Debtor' is handed over to the 'Resolution Professional' ----"

12.07.2019	Mr P. R. Sharma, officer-in-charge on behalf of State Industries Department appeared before this Adjudicating Authority.
29.07.2019	The Ld. Additional Advocate General ('AAG') appeared before the Adjudicating Authority for the first time.
07.08.2019	This Adjudicating Authority considered request of the Counsel for the RP for transfer of possession and also took note of order dated 05.07.2019 passed by Hon'ble NCLAT, mentioned above. The Adjudicating Authority recorded the stand of the State that due to stay order dated 14.11.2017 passed by the Hon'ble High Court in SB Civil Writ Petition No. 19134/2017, it was unable to handover or transfer the assets. It was also recorded that the State has already rendered support, police protection and cooperation to the RP to visit premises of the CD and take appropriate steps. The AAG assured that the same would be continued as and when the RP wanted to visit and inspect and further, whatever records were required by the RP would be handed over for enabling him to make out a resolution plan. The Ld. AAG further stated that the records and all other papers whatever are required for the RP would be made accessible at the premises and he would be enabled to make out copies of necessary documents if necessary. The Ld. AAG had further submitted that the Government is " <i>making strenuous endeavour to settle the matter in all respects and it would do its best to make out an amicable solution to make out a resolution plan in consultation and coordination with the RP. The Government shall come out with appropriate solution by the next date of hearing.</i> " However, no solution was given till date.
05.09.2019	Order dated 07.08.2019 passed by this Adjudicating Authority was challenged by the RP and AARCL, one of the members of CoC, before the Hon'ble NCLAT, who recorded the assurances provided by the State to provide cooperation and assistance. Hon'ble NCLAT also took note of stay order dated 14.11.2017 of the Hon'ble Rajasthan High Court in SB Civil Writ Petition No. 19134/2017, restraining the State (Industries Department) from transferring the property in dispute. It directed the RP to move an application before Hon'ble High Court for expeditious disposal of the said writ petition and also noted, " Though the 'State of Rajasthan' has not been heard at this stage, we make it clear that the proceedings under the provisions of 'I&B' Code is binding on all the Stakeholders/ Central Government/ State Government and the Local Authorities ----- "

13.09.2019	Matter was adjourned. State filed IA 301/2019 for change of RP, inter alia on the grounds of conflict of interest and apparent bias.
23.09.2019	With reference to order of Adjudicating Authority of 07.08.2019 and for the <i>professed objective of formulating a resolution plan</i> the State had filed IA No. 300/JPR/2019. Ld. AAG submitted <i>“that to comply with the order of this Tribunal dated 07.08.2019, certain information is required to be furnished by the RP and he sought directions in this IA to the RP to provide all such details regarding the assignment debt of JMEL, valuation of such debt assigned, consideration prayed (sic) by the Financial Creditors (Asset Reconstruction Companies) of the Corporate Debtor upon assignment of the debt from the banks and the rate of interest previously charged and being charged presently along with all the other terms and conditions of such assignments and the necessary calculations thereof.”</i> The RP was directed to furnish relevant information to Ld. AAG; and the State Government was directed to keep the information as strictly confidential. IA 300/JPR/2019 was disposed of.
26.09.2019	<u>IA 327/19</u> was filed by State with the prayer to impound the loan documents and security documents filed by AARCL and ARCIL, along with their claim as financial creditors, since said documents were allegedly under-stamped. Such impounding of documents was asserted to be mandatory in terms of Section 37 of the Rajasthan Stamp Act, 1998. Reliance was placed on the judgment of the Hon’ble Supreme Court in case of <i>Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta & Ors., (2020) 8 SCC 531</i> , to state that the RP should reject under-stamped documents forming the <i>raison d’etre</i> of the claim as basis thereof. <u>IA 328/19</u> was filed by State with a prayer to reject the claims of AARCL and ARCIL as being time-barred and also implying that <i>the Section 7 application filed by ARCIL was also time-barred.</i> It was stated that the Hon’ble Supreme Court, through various judgments, has now settled the proposition that limitation period of three (3) years is applicable for filing a petition for initiation of CIRP. Vide this application, the State asserted that it has presented all evidence to establish that debts of both AARCL and ARCIL are barred by limitation and are liable to be rejected.
31.01.2020	State filed IA 47/20 for stay of all proceedings till all IAs are decided. Notice issued in IA 47/2020.

- k) **It is seen that while the State of Rajasthan submits that SB Civil Writ Petition No. 19134/2017 was disposed of with permission to raise objections before the NCLT, regarding valuation in terms of stamp duty on the Loan and Security Documents executed between the Corporate Debtor and various banks, it did not wait till such order of the Hon'ble High Court before filing trinity of IA Nos. 301/JPR/2019, 327/JPR/2019 and 328/JPR/2019.**
6. The State of Rajasthan had been directed by the Hon'ble NCLAT in July and September, 2019, to implead the Chief Secretary and the Secretary of the concerned Department for facilitating process of CIRP. The role of the Chief Secretary was that of a prime catalyst for ensuring presence of relevant officers before the Adjudicating Authority. While the Department of Industries presented itself through Mr. Panchu Ram Sharma, ostensibly the Joint Director Industries, and officer in charge, the State / Government of Rajasthan also started appearing before the Adjudicating Authority in various avatars through its instrumentalities. Either the timing was extremely coincidental, or it would already have been simmering from around the time of the order of the Hon'ble Apex Court of 12.12.2018; persistently unrelenting probes were made by the State Directorate of Revenue Intelligence ('SDRI'), Government of Rajasthan, to access case

records. The Adjudicating Authority recorded in its order dated 27.09.2019 as follows:

IA No. 327/JPR/2019

The learned counsels for the applicant and RP are present. Learned counsel for the RP requests two weeks' time to file reply. -----

IA No. 328/JPR/2019

The learned counsels for the applicant and RP are present. Learned counsel for the RP requests two weeks' time to file reply. -----

IB No. 54(PB)/2018

*A letter was received by this Tribunal dated 23.01.2019 written by one Ms. Rashmi Gupta, IAS, Additional Director (Adm.) of Government of Rajasthan, State Directorate of Revenue Intelligence, Jaipur requesting this Tribunal to provide certain Annexures filed in this case. In response to the same it was communicated by the Registry of this Tribunal vide letter No. 01/2018/NCLT/JB/263/2019 dated 07.03.2019 that only party to the proceedings is entitled to carry out inspection and obtain certified copy. Subsequently another letter was recently sent by Mr. Matadeen Sharma, Additional Director (Adm.), bearing No. 1082 dated 12.09.2019 and he sought the inspection of records of the case file citing the reason to unearth the evasion of Stamp Duty of the State of Rajasthan. It is noted that dispatch of the said letter almost just precedes the filing of IA No. 327/JPR/2019, mentioned hereinbefore, wherein the prayer is to call for the loan agreement dated 21.03.1996 between Jaipur Metals and Electricals Ltd. and IDBI and to impound the same. In the overall historical context of the case and the directions of the Hon'ble Supreme Court of India in Civil Appeal no. 12023 of 2018 that the proceedings in the matter of Jaipur Metals and Electricals Ltd. must run their entire course under the Insolvency and Bankruptcy Code, 2016, and quite irrespectively in the backdrop of the instant proceedings, **the said letter dated 12.09.2019 is contemptuous and un-called for.** On the next date of hearing Mr. Matadeen Sharma, Additional Director (Adm.) of Government of Rajasthan, State Directorate of Revenue Intelligence, Jaipur shall be present in person before this Tribunal, along with the concerned counsel and he shall also bring all the relevant files and also all the background material pertaining to this particular issue. Post the matter on 18.10.2019.*

[Emphasis added]

7. Filing of IA 327/JPR/2019 and 328/JPR/2019 was quite incongruous in this case, particularly in the backdrop of the imprimatur of the Hon'ble Supreme Court for the proceedings in the matter of JMEL to run the entire course under IBC, 2016. The counsels were heard on 18.10.2019 and the matter was posted to 07.11.2019. On 07.11.2019, Ms. Sheetal Mirdha, Additional Advocate General, for SDRI, was granted time to file an affidavit to clarify the position. An affidavit was filed vide Diary No. 2781/2019 dated 28.11.2019. Extracts of the said affidavit are as under;

I, Adarsh Lohia S/o Shri Mool Chand, Aged about 53 years, presently working as Additional Director (Tax), State Directorate of Revenue Intelligence (SDRI), Govt. of Rajasthan, Jaipur (Raj.), do hereby solemnly affirm -----.

1. *That I have been appointed Link Officer by the order dated 06.03.2017 assed by the Director General, SDRI. -----.*
2. *That Mr. Matadeen Sharma, who was holding the post of Additional Director (Admn.) has superannuated from the services on 30.09.2019 and therefore as per the order dated 06.03.2017, I am authorized to submit this Additional Affidavit on behalf of SDRI.*
3. *That SDRI was conceptualized with the aim to collect, collate, analyze and process the intelligence and pass it onto the concerned departments for effective action against revenue leakage -----.*
4. *That in August, 2018 the officials of the SDRI while surfing the internet came across the information that Industrial Development Bank of India (IDBI) and State Bank of Bikaner & Jaipur (SBBJ) had transferred their debts of approx. Rs. 140.00 Crores pertaining to M/ s Jaipur Metals & Electricals Ltd. to Alchemist Asset Reconstruction and Securitization Company Limited. It prima-facie appeared that the said transfer of debts was through an Assignment Agreement. It was however not clear whether sufficient stamp duty had been paid on the Assignment Agreement or not. In furtherance of enquiring into the said probable evasion of tax, SDRI through communication dated 20.09.2018 addressed to the Hon'ble NCLT, CGO Complex, New Delhi requested for providing the certified copies of documents forming part of IB-54(PB)/2018 -----.*
5. -----.

6. -----.
7. -----.
8. *That vide communication dated 07.03.2019, Deputy Registrar, NCLT, Jaipur Bench conveyed that as per Rule 50 and Rule 114 of NCLT Rules, 2016 only party to proceedings is entitled to obtain certified copy -----.*
9. -----.
10. -----.
11. *That vide Letter dated 23.09.2019, Registrar, NCLT, Jaipur conveyed to SDRI that in terms of Rule 50 & 114 of NCLT Rules, SDRI cannot be permitted to carryout inspection or provided certified copies as SDRI is not a party to the proceedings. -----.*
12. *That meanwhile Alchemist Asset Reconstruction and Securitization Company Limited vide communication dated 31.08.2019, which was received in the office of SDRI on 26.09.2019 enclosed a copy of the Assignment Agreement. -----.*
13. *That vide communication dated 04.10.2019 Alchemist Asset Reconstruction and Securitization Company Limited was directed to provide complete set of documents forming part of the Assignment Agreement -----.*
14. *That it appears that during the course of hearing of Case No. (IB)-54(PB)/2018 on 27.09.2019, the Hon'ble NCLT was given the impression that the communication sent by SDRI on 12.09.2019 was connected to the IA no. 327/JPR/2019 wherein it had been prayed that the Hon'ble Tribunal should call for the loan agreement dated 31.03.1996 between Jaipur Metals and Electricals Ltd. and IDBI and to impound the same. It is most respectfully submitted that the SDRI has no relation whatsoever with regard to any proceedings already concluded or pending between Alchemist Asset Reconstruction and Securitization Company Limited, M/s Jaipur Metals & Electricals Ltd., IDBI and SBBJ (SBI). The only endeavor of SDRI as is reflected from a perusal of the documents annexed along with this Affidavit was to look into and unearth any evasion of tax payable to the State Government. It is thus clear that no attempt has been made by the SDRI to undermine the authority of this Hon'ble Tribunal and any request made by SDRI was only with the earnest intent to investigate into financial bungling and detecting tax evasion.*
15. *That it would be pertinent to state that vide Notification dated 16.05.2011, the Finance Department, Government of Rajasthan exercising powers conferred under Section 2(x) of the Rajasthan Stamp Act, 1998 appointed the Additional Director, State Directorate of Revenue Intelligence, Rajasthan, Jaipur by virtue of his office to be Collector for the purposes of the Rajasthan Stamp Act for the State of Rajasthan. -----.*
16. -----.

17. *That it is submitted that SDRI holds dignity of this Hon'ble Tribunal in highest esteem and would not flout any directions passed by the Hon'ble Tribunal or undermine the authority of the Hon'ble Tribunal.*

18. *That it is most respectfully submitted that if despite of the facts detailed above, this Hon'ble Tribunal still finds the conduct of SDRI as contemptuous, then we tender our most sincere and unconditional apologies. In view of the facts narrated above, the notice dated 27.09.2019 issued to SDRI may kindly be discharged.*

19. -----.

8. *Notice to SDRI in the aforesaid circumstances was never discharged.*

On 29.11.2019, the Ld. AAG, appearing in IA No. 327/JPR/2019 and IA No. 328/JPR/2019, was granted time for filing rejoinder and the matter was posted for 10.01.2020. The third IA No. 301/JPR/2019, completing the triumvirate of contentious IAs, which sought change of the RP, was clubbed together with IA No. 46/JPR/2019 filed for the same purpose by the Metals and Electrical Mazdoor Sangh, and was also posted to 10.01.2020. On the same date (29.11.2019), Advocate Sh. Prateek Singh on behalf of Ms. Sheetal Mirdha, Ld. AAG State of Rajasthan, appearing for SDRI, submitted that an additional affidavit had been filed, as above, which was also directed to be listed on 10.01.2020.

9. On 10.01.2020, the Applicant's (State of Rajasthan) arguments were heard in IA No. 327/JPR/2019 and parties were directed to file written submissions. After conclusion of arguments of the State of Rajasthan, on 24.01.2020, it filed another application through Mr. Panchu Ram Sharma, Joint Director, Industries, and officer in charge, State of Rajasthan bearing

IA No. 34/JPR/2020 in IA No. 327/JPR/2019, praying for addition of ARCIL as Respondent No. 3 in the said IA, presentation of claim documents filed by AARCL and ARCIL in sealed cover, impounding of all the claim documents of AARCL and ARCIL admitting them as Financial Creditors as the documents appeared to be enormously under-stamped, or in the alternative to appoint a third party to assess the same and file a report. This was strongly opposed by the Ld. Counsel for Respondent No. 2, AARCL. *The avatar of Rajasthan State in filing the said application, besides the trinity of applications, IA No. 301/JPR/2019, IA No.327/JPR/2019 and IA No. 328/JPR/2019 was never clearly manifest, but the impetus was discernible.* It is pertinent to note that the State of Rajasthan filed IA No. 47/JPR/2020 again through Mr. Panchu Ram Sharma, Joint Director, Industries, and officer in charge, State of Rajasthan vide Diary No. 215/2020 dated 29.01.2020 as a combined IA in the aforesaid trinity of applications praying for stay of CIRP and stay on submission/ consideration of resolution plans by the CoC comprising AARCL and ARCIL *pending final adjudication of the triad of IAs filed by the State of Rajasthan under multiple hats*, all sworn by one concerned officer who presented himself at the Adjudicating Authority for facilitation of CIRP consequent to order dated 05.09.2019 of Hon'ble NCLAT, perhaps on the instructions of the Chief Secretary.

10. On 31.01.2020, notice was issued to the respondents in IA No. 34/JPR/2019, *limited to extent of documents other than those already on record of the case* from the stage of admission of the Section 7 application before the NCLT, Principal Bench, New Delhi. Counsel for SDRI mentioned that he was seeking to move an application in the case. It was directed that the same would be considered along with the affidavit of SDRI already filed earlier, subject to availability of time.
11. The matter was listed for 06.02.2020, but could not be taken up due to administrative reasons. On 12.02.2020, IA No. 328/JPR/2019 was heard and order was reserved. Thereafter, this matter could not be heard on 20.02.2020 and was posted to 05.03.2020 with further reposting to 18.03.2020. Then the case went into a limbo due to Covid-19 pandemic.
12. As had been mentioned by the counsel for SDRI and recorded in the order dated 31.01.2020, the SDRI of the State of Rajasthan moved an application IA No. 65/JPR/2020 vide Diary No. 311/2020 dated 12.02.2020. The said application reads as follows:

The Applicant - State Directorate of Revenue Intelligence (SDRI), most respectfully submits this Application as under: -

- 1. That the Hon'ble Tribunal vide its order dated 27.09.2019 had issued directions to the Additional Director (Admn.), State Directorate of Revenue Intelligence to appear before the Hon'ble Tribunal.*
- 2. That it is most respectfully submitted that vide letter dated 23.01.2019, the Applicant had sought certified copy of the annexures/documents forming part of the Application No. IB-54(PB)/2018 - Alchemist Asset Reconstruction and Securitization Company Limited Vs. M/s Jaipur*

Metals and Electricals Ltd., so that they may be examined by the Applicant from the view of determining tax evasions, if any. In furtherance of the communication dated 23.01.2019, another communication dated 12.09.2019 was sent by Applicant-SDRI requesting the Registrar, NCLT, Jaipur Bench to permit inspection of relevant record by its officials in Case No. (IB)-54(PB)/2018. Copies of Letters dated 23.01.2019 and 12.09.2019 have already been annexed as Annexure-AA/3 & AA/9 in the Additional Affidavit filed by the Applicant.

3. *That Applicant has filed a detailed Additional Affidavit in response to the notice issued by the Hon'ble Tribunal, which is already on record. In the meanwhile, Applicant- SDRI has received certain documents/agreements. The copy of the documents/agreements received have been forwarded vide Letters dated 07.02.2020 and 10.02.2010 to the Additional I.G., Departmental Nodal Officer (DNO) Registration and Stamps Dept., Jaipur for further necessary action.*
4. *That since the matter is pending adjudication before the Hon'ble Tribunal, **the Applicant seeks to inform that the relevant documents/ agreements have been received by the Applicant and forwarded to Additional I.G., Departmental Nodal Officer (DNO) Registration and Stamps Dept., Jaipur for further necessary action.***
5. *That other grounds would be urged in detail at the time of hearing of this Application. **[emphasis added]***

PRAYER

It is therefore, in these circumstances prayed that the Application may kindly be allowed. The Hon'ble Tribunal may kindly allow the Applicant to take further action in accordance with law in the interest of justices.

13. ***The audacity, impunity and intransigence inherent in IA No. 65/ affidavit of SDRI got obfuscated due to onset of Covid 19 pandemic and three intervening waves thereof.*** On the one hand the State of Rajasthan tautologically referred to the order of the Hon'ble High Court dated 29.11.2019 in SB CWP No. 19134/2017 to bring up the issue of stamp duty before the NCLT, on the other hand it thought it fit, in the application/ affidavit of one of it's instrumentalities, merely **to inform that the**

relevant documents/ agreements have been received by the Applicant and forwarded to Additional I.G., Departmental Nodal Officer (DNO) Registration and Stamps Dept. for taking further action. Arguments in IA No. 327/JPR/2019 & IA No. 328/JPR/2019 had been concluded and order had been reserved. However, the entire case / matter, like all other cases across benches, was then in stretched hibernation due to Covid-19 pandemic and could only be listed sporadically in the interregnum without efficacious hearing. The bench had also changed and IA No. 327/JPR/2019 & IA No. 328/JPR/2019 were released for fresh hearing on 06.07.2021.

14. As above-mentioned, the matter came up for hearing in mid-2021 and again towards the end of 2021, when it was fixed for hearing of various IAs and effective continuation of the case, from the point it was hit due to Covid-19 Pandemic. The State of Rajasthan also moved IA No. 87/JPR/2020 vide diary No. 443/2022 dated 16.02.2022 for bringing on record all the developments in the matter which took place subsequent to filing of IA No. 327/JPR/2019 and seeking directions for reconstitution of the CoC. The broad contours of the said application are as follows:

a) Pursuant to ongoing investigation and receipt of information, the Deputy Inspector General ('DIG'), Registration and Stamp (Tax Evasion) Rajasthan had issued show-cause notices to AARCL

(Respondent No. 2) under the Rajasthan Stamp Act, 1998 regarding insufficient stamp duty of all the documents executed as Asset Credit agreement and other ancillary documents. The said notices were challenged by Respondent No. 2 in two writ petitions bearing S.B. CWP Nos. 7747/2021 & 7748/2021. The Hon'ble High Court had concluded that the Petitioner (AARCL) did not have locus standi to challenge the notice issued under Section 37 read with Sections 51 and 53 of the Rajasthan Stamp Act for insufficient duty on the documents executed by it. The Petitioners would be free to raise all objections available under the Act before the DIG, Registration and Stamp Act (Tax Evasion), Rajasthan, Jaipur Special Circle and Ex-officio Collector (Stamp), Jaipur, Rajasthan regarding insufficiency of stamp duty. ***The High Court also recognized that due to the moratorium envisaged under Section 14 of IBC, 2016 being applicable against the Corporate Debtor (JMEL), the notice to JMEL would be hit by Section 14 of the IBC, 2016.***

- b) Subsequent to the aforesaid order of the Hon'ble Single Judge of the High Court, dated 01.09.2021, the Court of DIG Rajasthan and Stamp (Tax Evasion) Rajasthan, Jaipur Special Circle passed various orders dated 17.09.2021, 18.11.2021 & 26.11.2021.

- c) In the said orders the original loan and security documents of SBI, IBBI, SBBJ and CBI for grant of loan to JMEL have been held to be under-stamped. Consequently, Respondent No. 2 (AARCL) who had bought the loans from SBI and IDBI have been held to pay Rs. 630 crores approximately towards stamp duty and penalty. ***It is noted that various agencies of the State of Rajasthan refer to the said loans as having been bought by the concerned Asset Reconstruction Companies, rather than being assigned to them.***
- d) The order dated 01.09.2021 passed by the Hon'ble Single Judge was assailed before the Division bench of the Hon'ble High Court and the office of the DIG was restrained from recovering Stamp Duty in relation to show cause notices. It is stated that the said order had already been brought on record of the Adjudicating Authority vide additional affidavit bearing diary No. 2583/2021 of 02.12.2021.
- e) The orders dated 17.09.2021 & 18.11.2021 had been challenged vide DB CWP No. 15033/2021 & 15067/2021. However no challenges have been made against two orders dated 26.11.2021.
- f) While the recovery of demand had been stayed, the effect and operation of the said orders dated 17.09.2021 and 18.11.2021 has not been stayed. Hence, such documents need to be disregarded and the claim(s) deserve(s) to be rendered inadmissible.

- g) It was submitted that the Applicant State of Rajasthan, through its representative as the Member of the CoC, objected to convening of any CoC meeting by the RP till such time the CoC is reconstituted by rejecting the claims of AARCL and ARCIL.
- h) Given that the basis of claims of AARCL and ARCIL “*forming more than the majority of the CoC of JMEL have been usurped*”, it would be highly prejudicial to the Applicant State and other Stakeholders of JMEL to continue without reconstitution of the CoC of JMEL.
- i) It was also alleged that the counsel of the Applicant State received an email from the counsel of AARCL with regard to rejoinder to be filed before the Hon’ble High Court in reply to the amendment application of AARCL in D.B. CWP No. 15033/2021 & 15067/2021 which was first sent to Dhir and Dhir Associates by the office to the counsel for the RP, which was indicative of collusion.
- j) It was prayed that actions of the RP in admitting claims of AARCL, Respondent No. 2 and ARCIL Respondent No. 3 (as sought to be impleaded vide IA No. 34/JPR/2020), be rejected in view of shortfall of stamp duty and IA No. 47/JPR/2020 be allowed for stay over CIRP proceedings.
- k) Pending adjudication of IA No. 87/JPR/2022, the RP may be restrained from convening meetings of the CoC.

15. Upon hearing of IA No. 87/JPR/2022 on 17.02.2022, the interim prayer of restraining the RP, from convening meeting(s) of the CoC **until reconstitution thereof by rejection of the claims of AARCL & ARCIL**, which seemed an inherent assumption, was declined by this Adjudicating Authority. Subsequently, the Hon'ble High Court, in SB CWP 3008/2022, did not interfere but allowed the State of Rajasthan 5 working days for filing appeal before Hon'ble NCLAT. The Hon'ble NCLAT, vide order in Appeal No. AT(Ins) 202 of 2022, directed the Adjudicating Authority to consider IA No. 301/JPR/2019, IA No. 327/JPR/2019 & IA No. 328/JPR/2019 and IA No. 47/JPR/2020 within a period of 3 months. As recorded in the hearing of 28.03.2022, parties submitted that discussions were on for settlement and were directed to conclude the same before the next date of hearing. The matter was listed for 3 consecutive dates i.e. 27.04.2022, 28.04.2022 & 29.04.2022. An adjournment was sought by the Ld. counsel for AARCL and Ld. AAG for the State of Rajasthan who stated that the Government of Rajasthan was seriously considering the issue of settlement. Such submission by the Ld. AAG has been repeatedly put forth for the State of Rajasthan in this matter since 2019, i.e. from/on 07.08.2019, when it was submitted "***that the Government is making strenuous endeavor to settle the matter in all respects -----.***"

16. In reply to IA No. 327/JPR/2019, the RP (Respondent No. 1) has stated and submitted orally and in written submissions (initially in January 2020 and subsequently in May 2022) as follows:

- a) The application is completely frivolous and filed with the sole intent to delay the CIRP of JMEL.
- b) The applicant State of Rajasthan took over control and management of affairs of the Corporate Debtor (JMEL) way back in the year 1977 and later on in terms of the JMEL Act, 1986. Thus, Government officials/ IAS/ RAS officers are/ were appointed as the Chairman and Managing Director of the Corporate Debtor (JMEL).
- c) The management of JMEL, for more than 4 decades, i.e. since 1977, vested with the Government of Rajasthan. It is strange that the Applicant State of Rajasthan is seeking recalling of the document executed by the Applicant State of Rajasthan itself in the year 1996 on the ground of non-payment/ shortfall of stamp duty by the applicant itself. The State is estopped from raising such contentions.
- d) The factory premises were completely shut down in the year 2000 and lockout was declared. Even thereafter, the State of Rajasthan remains in control of management affairs and assets of JMEL despite the appointment of the RP by the Adjudicating Authority. Further, despite filing of application under Section 19(2) of IBC, 2016 no

cooperation has been extended to the RP; and no possession or control of the CD has been handed over. The loan agreement dated 21.03.1996 for Rs. 1,50,00,000/- was entered into between IDBI and JMEL, an agency of the State of Rajasthan through its officers and was to be admittedly repaid by JMEL. State of Rajasthan cannot raise frivolous objections. In this case, the maxim *nullus commodum capere potest de injuria sua propria* (i.e. no man can take advantage on his own wrongs) is applicable.

- e) If this stand of State of Rajasthan is to be accepted, it would imply that State is washing its hands clean from the misdeeds committed by its officers. The State of Rajasthan cannot raise such false pleas.
- f) The subtle implication of the same is that certain officials who entered into the loan agreement dated 21.03.1996 cheated revenue department of the State of Rajasthan by availing loan facilities and not paying stamp duty on the same.
- g) The Adjudicating Authority vide admission order dated 13.04.2018 duly took note of debt dated 21.03.1996 owed by JMEL to AARCL and also noted certificate of Registration of modification charge in favour of AARCL instead of IDBI.
- h) The Hon'ble NCLAT in *Company Appeal (AT) (Ins.) No. 485 of 2018 in the matter titled as Lalan Kumar Singh vs. Phoenix ARC*

Private Limited and Anr. held that the assignment deed cannot be challenged under Section 7 of IBC.

- i) The Debt owed by JMEL to AARCL by virtue of loan agreement dated 21.03.1996 and assignment dated 11.10.2007 is clearly shown in last available balance sheet of JMEL submitted to the Registrar of Companies ('RoC') for the year 2013.
- j) It is held in a catena of judgments that even under-stamped document or non-registration at the proper place does not make it invalid. In any case, *the loan agreement deed between IDBI and JMEL was registered in Jaipur after payment of stamp duty.*
- k) Even a deficiently stamp document can be admitted in evidence on payment of stamp duty. The State of Rajasthan has been constantly trying to delay the CIRP process of JMEL.
- l) *While the State of Rajasthan has been orally deposing through the learned AAG that "the Government is making strenuous endeavors to settle the matter in all respects", as recorded in order of 07.08.2019, nothing has happened. No measures have been taken for over 20 years since the CD has been lying closed.*
- m) As per the Government of Rajasthan CSR Portal, Mr. Panchu Ram Sharma is not enlisted as joint director and officer in charge industry. In any case, Mr. Panchu Ram Sharma has criminal proceedings in

pending against him and has threatened the RP that he would file an appropriate application for substitution of the RP.

- n) In reply on merits, the RP has reiterated that the State of Rajasthan has been interfering with the process of the entire CIRP proceedings; the same very Government of Rajasthan, cannot after 23 years, question validity/ authenticity of the loan and deed dated 21.03.1996 which was executed by their officers and is estopped in this regard; the RP had duly verified the loan agreement executed between CD/ JMEL and AARCL and subsequent assignment deed 11.10.2007 between IDBI and AARCL and accepted and verified the claim of AARCL on the basis of various documents submitted by AARCL after due diligence and also consideration of the documents which have been looked into by the Principal Bench in passing of the admission order dated 13.04.2018 for commencement of CIRP.
- o) Pertinently, while deciding the relevant Application under Section 7, the Hon'ble Bench has duly taken cognizance of the documents and records filed by the Respondent No.2 (Petitioner therein); the said documents/ records find due mention in the order dated 13.04.2018, and the same is stated herein below:

13. The applicant has placed on record the following documents in support of IDBI debt:

- *Copy of the Assets Credit Agreement dated 23.03. 1995 executed between the Corporate Debtor and IDBI up to the maximum sum of*

Rs.474 lakh for purchase of assets from time to time under the Credit Scheme of IDBIL

- *Copy of loan agreement dated 23.03. 1995 executed between the corporate Debtor and IDBI for an amount of Rs.200 lakhs towards working Capital Facility*
- *Copy of the Deed Hypothecation dated 23.03. 1995 executed between the Corporate Debtor and IDBI for availing the credit facilities amounting to Rs. 200 lakh.*
- *Copy of the Joint Mortgage deed dated 07.04. 1995 executed by Shri Gopal Singh, Director, and the Corporate Debtor (JMCL) in respect of deposit of title deeds of immovable and hypothecation of movables with reference to credit facilities availed from various Financial Creditors.*
- *Copy of the Loan agreement dated 21.03.1996 executed between the corporate Debtor and IDBI for availing the credit facility for an amount of Rs.150 Lakh for purchase of equipments.*
- *Copy of the Deed of Hypothecation dated 21.03.1996 executed between the Corporate Debtor and IDBI for availing the credit facilities amounting to Rs. 150 Lakh.*
- *Copy of the Joint mortgage deed dated 29.04. 1996 executed by Shri Gori Shankar Pathak, Director and the Corporate Debtor in respect of deposit of titles deed of immovable and hypothecation of movables with reference to credit facilities availed from various financial Creditors.*
- *Copy of Memorandum of entry dated 11.04 1996 wherein Mr. Gori Shanker Pathak, Director of the Corporate Debtor submitted the title of documents at the office of IFCI (acting for itself and other financial creditors).*
- *Copy of assignment agreement dated 11.10.2017 executed between IDBI and AARCL assigning the debt in favour of AARCL.*

14. Similarly in support of the SBBJ debt (now SBI) the following documents have been placed on record:

- *Copy of the sanction letter dated 11.11.1994 issued by SBBJ to the Corporate Debtor granting the credit facilities i.e. Fund Based Limits totalling to Rs.720 lakhs. Copy of the Agreement dated 21.11.1994 for Cash credit hypothecating goods by the Corporate Debtor.*
- *Copy of Hypothecation Agreement for debts and Assets dated 21.11. 1994.*
- *Copy of Demand Promissory note dated 21.11. 1994 promising SBBJ to pay an amount of Rs. 20.66 Cr.*

- *Copy of Hypothecation agreement dated 21.11.1994 executed by the Corporate Debtor for securing the credit facilities including guarantees amount to Rs.5.00 Cr. and letter of credit limit not exceeding the sum of Rs. 3.90 Crores.*
 - *Copy of the letter of undertaking dated 21.11.1994 by the Corporate Debtor giving further charge over the property (moveable or immovable) including the uncalled capital.*
 - *Copy of Sanction letter dated 30.04.1996 issued by SBBJ to the Corporate Debtor renewing the sanctioned credit faculties (fund Based Limits totalling to Rs.720 Lakhs and Non-Fund based Limits totalling to Rs.1050 Lakh.*
 - *Copy of Demand Promissory Note dated 14.06.1996 by The Corporate debtor in favour of SBBJ to pay a sum of Rs. 20.58 Crore.*
 - *Copy of Hypothecation agreement dated 14.06.1996 for debts and Assets hypothecation by the Corporate Debtor.*
 - *Copy of the Agreement dated 14.06.1996 for Cash Credit Hypothecating goods by the Corporate Debtor.*
 - *Copy of assignment agreement dated 11.03.2016 executed on 29.03.2017 between SBBJ and AARCL assigning the debt in favour of AARCL*
15. *In addition to above the applicant has placed on record copies of certificates of registration for modification of charge under Section 132 read with Section 135 of the Companies Act, 1956 issued by Registrar of Companies, Rajasthan modifying the charge created by IDBI in favour of Ms Dhir & Dhir Asset Reconstruction and securitization Company Ltd. now AARCL)*
16. *In respect of SBI loan also copy of Form 8 and 13 filed by SBBJ dated 18.06.1996 has been placed on record. Besides search report dated 15.12.2000 specifying the details of creation of charge and modification of charge in favour of SBBJ has also been placed on record.*

p) Para 17 of aforesaid admission order deals with CERSAI (Central Registry of Securitization Reconstruction and Security Interest) certificate with respect to assets held by AARCL as security. Para 18 contains extracts of balance-sheet of JMEL for the financial year ending 31.03.2013, which shows total amount of Rs. 391,72,98,134/-

payable to all financial creditors of JMEL, break-up whereof is given in Note 5 of the said balance-sheet which, as per Para 19, clearly illustrates admission of debt due, inter alia, to IDBI and SBBJ. The admission order records in Para 20 “*that the applicant ‘financial creditor’ has placed on record voluminous and overwhelming evidence in support of the claim as well as to prove the default committed by the respondent company.*”

17. In reply to the IA and in written submissions (initially in January 2020 and subsequently in May 2022), Respondent No. 2, i.e. AARCL, has stated:

- a) Even if the loan agreement was short-stamped by the State of Rajasthan, it does not warrant and result in extinguishment of the right of the CD/JMEL and repayment of its own debt to AARCL who were assigned the debt by IDBI on 11.10.2007.
- b) Government of Rajasthan had floated an IM in 2008 as it intended to sell its shareholding in JMEL as per the said IM. It clearly stated that debt was due and payable along with interest to IDBI and it was also admitted that the said debt had been assigned to the AARCL. It is rather strange for the State of Rajasthan to backtrack in this regard.
- c) In the last balance sheet of the CD filed with the RoC for the order 2012-2013, the debt due and payable to AARCL was clearly shown.

- d) IA No. 327/JPR/2019 is not maintainable as it pertains to insufficient stamp duty paid for the loan agreement between the CD/ JMEL and IDBI on 21.03.1996. AARCL was not a party to the loan or deed or remotely concerned therewith. IDBI sanctioned various loan facilities on 23.03.1995 & 21.03.1996 to the CD against execution of asset credit agreement dated 23.03.1995 for term loan of Rs. 474 lakhs, loan agreement dated 23.03.1995 for a work capital of loan of Rs. 200 lakhs and loan agreement 21.03.1996 for a loan amount of Rs. 150 lakhs. AARCL was assigned the right, title, interest and benefit of the dues of the CD by IDBI after the period of more than 10 years had lapsed since execution of the loan.
- e) Issue of insufficient stamp duty was never raised during the period of assignment of deeds by IDBI to AARCL. However, it has cropped up belatedly after 23 years, on NCLT admission order of 13.04.2018.
- f) The Hon'ble Supreme Court in the matter of *Shyamal Kumar Roy Vs. Sushil Kumar Agarwal (AIR 2007 SC 637)* observed that once an instrument has been admitted in evidence it shall not be called in question at any stage of the same suit or proceedings on the ground that the instrument has not been duly stamped.
- g) The Applicant State is barred from raising the issue of insufficient stamp duty on account of estoppel.

- h) The Applicant State had due information and knowledge concerning stamp duty at the outset. The said fact was suppressed and not raised at earlier stage. The Applicant cannot take advantage of its own wrongs by raising issues about which it had relevant knowledge. The frivolous application of the state is liable to be rejected.
- i) Proviso to Section 3 of the Stamp Act mentions that no duty shall be chargeable qua an instrument executed by/ in favour of Government in cases where the Government is liable to pay the duty charges.
- j) In the matter of *Ishaq Mohammad etc. etc. Vs. Jaipur Metals & Electrical Ltd. cited in 1988 SCC Online Raj 132* it was held that M/s Jaipur Metals & Electricals Ltd. is an instrumentality or agency of Government and thus, an ‘authority’ and therefore ‘State’ within the enlarged meaning of the expression in Article 12 of the Constitution. The said judgement was also relied upon in the case of *M/s Jaipur Metals & Electrical Ltd. Vs. Jagdish Prasad Gupta, being DB Civil Special Appeal (Writ) No. 118/1999*, which also referred to the JMEL Act, 1986 to reiterate the same finding. In challenge at the Supreme Court in *SLP (Civil) No 14940/2010 titled M/s Jaipur Metals & Electrical Ltd. Vs. Jagdish Prasad Gupta* the Hon’ble Supreme Court observed as follows;

“On a perusal of the impugned judgment of the High Court, we find that the High Court has taken notice of the provisions of the Jaipur Metals

and Electricals Ltd. (Acquisition of Shares) Act, 1986 and in particular, Sections 3 and 4 thereof, under which the shares of the petitioner Company have been transferred and vested in the State Government and the Management of the Company has also been vested in the State Government. Considering the aforesaid provisions as well as the fact that substantial loan was given by the financial institutions and the State Government to the aforesaid Company and at the relevant time, no individual was having controlling share in his favour, the High Court has held that the petitioner Company was an instrumentality of the 'State' within the meaning of Article 12 of the Constitution.

We find no infirmity in the aforesaid reasoning of the High Court and we accordingly dismiss the special leave petition”

- k) Section 3.8 of the General Conditions of the loan agreement dated 21.03.1996 requires the Corporate Debtor / JMEL to pay burden of any additional duty, which stands exempted by virtue of Clause-1 to the proviso of Section 3 of the Stamp Act.
- l) No case has been made out for impounding of loan agreements and consequential documents which were taken due cognizance of by the Tribunal in the Section 7 admission order of 13.04.2018 and referred to in the said admission order in detail. The proposition enunciated in *Shyamal Kumar Roy Vs. Sushil Kumar Agarwal (Supra)* that once an instrument is admitted in evidence reopening of matter regarding sufficiency or otherwise of stamp duty is prohibited, is reiterated.
- m) While the original prayer is for calling for and impounding the loan agreement dated 21.03.1996, during the argument stage, the State of Rajasthan has talked about an expanded list of documents without any correlation in respect thereof in the application.

- n) The loan document is not compulsorily registerable under provision of Section 17 of the Indian Registration Act, 1908.
 - o) The claim of the Financial Creditor, within the parameters of Section 5(8) of IBC is clearly established on strength of the loan agreements itself besides other documents. The contention of the State Government for rejection of claim of AARCL is untenable, besides being a gross abuse of the process of law with malafide intent to delay CIRP of JMEL and to prejudice rights and contentions of AARCL.
18. In consolidated rejoinder to the reply of Respondent Nos. 1 and 2, the State of Rajasthan has submitted the following:
- a) The RP provided various documents including Form C of AARCL and ARCIL subsequent to the order of the Tribunal dated 23.09.2019 in IA No. 300/JPR/2019.
 - b) Initial objection in IA No. 327/JPR/2019 was with respect to loan agreement dated 21.03.1996 and was merely based on one loan document available with the applicant State. However, on review of Form C of AARCL and ARCIL, it seemed to the Applicant State that other documents that may be under-stamped have been ignored by the RP despite statutory obligation to not admit them. Complete set of Form C of AARCL and ARCIL was filed in sealed cover along with tabular analysis of alleged difference in stamp duty at execution.

- c) The Hon'ble Rajasthan High Court, vide order dated 29.11.2019 in SB WP No. 19134/2017 had left it to the State Government to take up the issue of under-stamping with NCLT.
- d) As the State Government was required to keep the documents confidential, as per NCLT order of 23.09.2019, they were submitted in sealed cover. Presumptively, the said documents were considered by the RP for purposes of admission of claims of AARCL & ARCIL.
- e) While admittedly the documents were received from the RP, they need to be impounded, the claim of AARCL liable to be rejected due to under-stamping and need to be referred to the competent authority for necessary proceedings under the Rajasthan Stamp Duty Act 1998 and the extant Rajasthan stamp Law Adaptation Act, 1952.
- f) Judgement of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors.*, Civil Appeal Nos. 8766-67 of 2019, dated 15.11.2019 was referred to.
19. In arguments and written submissions (initially in January 2020, and subsequently in May 2022), the State of Rajasthan has stated:
- a) There is no specific denial of allegation of the State of Rajasthan that documents, classified as loan agreements, security agreements and assignment agreements being massively under-stamped. These documents form part of Form C of AARCL before the RP who has

not examined the aspect of stamping which is to be mandatorily done by him. The respondents submitted a tabulation in support of their submission of massive under-stamping and evasion of stamp duty.

- b) It is the proposition of the State of Rajasthan that the aforesaid documents are part of Form C submitted by AARCL **and form the basis for admission of their claim**. It has not been claimed by AARCL that the documents are sufficiently stamped.
- c) JMEL and the State are not one and the same, as JMEL has a different corporate character. If, this was not true than there really would not be any claim between JMEL and the Applicant State; the fact is that a claim of the Applicant State has been admitted against CD/ JMEL, which is a separate juristic entity.
- d) The obligation of the Tribunal to impound the claim documents is a statutory obligation and the context of the person bringing it to the notice of the Tribunal is immaterial. At the stage of impounding, it is not necessary to determine who is to pay the stamp duty.
- e) Reliance of the RP on the judgement of the Supreme Court, *Shyamal Kumar Roy Vs. Sushil Kumar Agarwal (Supra)*, is unfounded as the same pertains to a civil suit where a separate stage of trial is devoted for admission of evidence.

f) Respondents have not provided any authority or reference to statute in support of any limitation period, which will only come into play once documents are produced before the Tribunal. The submission that the documents have already been seen/ admitted by the Tribunal as part of the admission order is defective. At admission proof of debt of Rs. One Lakh and default thereof has to be established, and thereafter the RP has to examine claims specifically in terms of Regulations 8 to 14 of Insolvency and Bankruptcy Board of India (Insolvency Resolution for Corporate Persons) Regulations ('CIRP Regulations'), 2016, whereby the RP can receive evidence. In context, para 99 of the Judgement of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited Vs. Satish Kumar Gupta and Ors., Civil Appeal Nos. 8766-67 of 2019, dated 15.11.2019 ('Essar Steel II Case')* is referred to for emphasising that ***insufficiency of stamp duty on documents forming basis of claim*** is a ground for rejection of claim. Reliance of the RP on paras 88-89 of the judgement of the Hon'ble Supreme Court in the case of *Swiss Ribbons (P) Ltd. Vs. Union of India, (2019) 4 SCC 17* is misplaced that only held the powers of the IRP/ RP as being administrative and not quasi-judicial, which has nothing to do with receiving evidence and checking sufficiency of stamping.

- g) The State was not a party to the admission proceedings and cannot be estopped from raising the issue of under-stamping. The order dated 12.12.2018 of the Hon'ble Supreme court had merely affirmed the admission order of 13.04.2018 to the extent that the process of IBC would prevail over the parallel winding-up process going on before the Hon'ble High Court. No issue of stamping was raised.
- h) The argument of the Respondents that JMEL being entity of the State Government is not obligated to pay stamp duty in terms of proviso 2 Section 3 of the Rajasthan Stamp Act, 1998 is not tenable, else nominal stamping of the documents would not have been done.
- i) While admittedly relevant/ claim documents are part of the record of the Adjudicating Authority, since the admission stage of the Section 7 application and were also received by the Applicant State from the RP consequent to the order dated 23.09.2019, which were submitted in a sealed cover as part of rejoinder and separate IA No. 34/JPR/2020 in the instant application, the Adjudicating Authority and the RP are obligated to examine sufficiency of the Stamp duty.
- j) Reliance in this regard was also placed on the judgement of NCLT, Chennai, in *A. Senthil Kumar Vs. IRP, M/s Paragon Steels Private Limited, CA no. 38/2017 in CP No. 553/IB/CB/2017, dated 18.01.2018*, wherein the Hon'ble Tribunal categorically held that the

MoU sought to be relied upon by the Applicant for his claim may be accepted as a valid evidence of the financial debt only upon fulfilling the requirements under the Tamil Nadu Stamp Act.

- k) The State of Rajasthan has further relied on *Sita Ram Bhama Vs. Ramavtar Bhama, (2018) 15 SCC 130* to submit that unlike an unregistered document an unstamped cannot even be admitted for collateral purposes. Further, in terms of *Avinash Kumar Chauhan Vs. Vijay Krishna Mishra, (2009) 2 SCC 532*, there is an absolute bar on the admission of an unstamped document.

20. In the hearing of the matter in May, 2022, it was additionally submitted and reiterated by AARCL (orally and in written submissions) as follows:

- a) The instant application filed by the Applicant being in management control of the Corporate Debtor is frivolous and baseless and is only a delay tactic of the Applicant so as to delay CIRP of the Corporate Debtor and further to frustrate the rights of the Financial Creditor.
- b) During the pendency of the present application, the Collector suo moto on a letter forwarded by the Director Revenue Intelligence of the Applicant Government of Rajasthan initiated proceedings against the Respondent and issued show cause notices dated 27.04.2021. The Collector vide orders dated 17.09.2021 and 26.11.2021 has allegedly adjudicated deficient stamp duty on various documents which were

already considered and relied upon by this Hon'ble Tribunal vide order dated 13.04.2018.

- c) As per Section 40 of the Rajasthan Stamp Act, 1988 an Instrument which has once been admitted in evidence, such admission shall not be called in question at any stage of the same suit or proceedings on the ground that the instrument has not been duly stamped.
- d) In this case, the admission order dated 13.04.2018 at para 13 lists out the documents with respect to debt of IDBI assigned to Respondent No. 2 and at para 14 lists out the documents with respect to the debt of SBBJ (now SBI) assigned to Respondent No. 2. The Applicant has vide this application challenged the issue of under stamping of the same documents which have already been considered and relied upon by this Tribunal and thus, the Applicant has no right to question the issue with respect to such instruments being not duly stamped. The table below shows that the documents considered and relied upon by this Tribunal and the documents on which the Collector has allegedly demanded deficient stamp duty are the same.

(i) DOCUMENTS RELATED TO IDBI

Documents referred in admission order dated 13.04.2018 at Para 13	Documents on which the Collector demanded additional stamp duty vide order dated 18.11.2021
Asset Credit Agreement dated 23.03.1995 for Rs. 474 Lacs	Asset Credit Agreement dated 23.03.1995 for Rs. 474 Lacs

Deed of Hypothecation dated 23.03.1995 for Rs. 200 Lacs	Deed of Hypothecation dated 23.03.1995 for Rs. 200 Lacs
Memorandum of Entry dated 07.04.1995 for deposit of Title Deeds	Memorandum of Entry dated 07.04.1995 for deposit of Title Deeds
Deed of Hypothecation dated 21.03.1996 for loan of Rs. 150 Lacs	Deed of Hypothecation dated 21.03.1996 for loan of Rs. 150 Lacs
Memorandum of Entry dated 11.04.1996 for deposit of Title Deeds	Memorandum of Entry dated 11.04.1996 for deposit of Title Deeds
Assignment Agreement dated 11.10.2007 between IDBI & AARCL	Assignment Agreement dated 11.10.2007 between IDBI & AARCL

(ii) DOCUMENTS RELATED TO SBBJ

Documents referred in admission order dated 13.04.2018 at Para 14	Documents on which the Collector demanded additional stamp duty vide order dated 26.11.2021
Agreement dated 11.11.1994 regarding credit limits	Agreement dated 11.11.1994 regarding credit limits
Agreement of Hypothecation dated 21.11.1994 for cash credit on goods	Agreement of Hypothecation dated 21.11.1994 for cash credit on goods
Agreement of Hypothecation dated 21.11.1994 for debts and assets	Agreement of Hypothecation dated 21.11.1994 for debts and assets
Agreement of Hypothecation dated 21.11.1994 for securing credit facilities	Agreement of Hypothecation dated 21.11.1994 for securing credit facilities
Agreement of Hypothecation dated 11.04.1996	Agreement of Hypothecation dated 11.04.1996
Assignment agreement dated 11.03.2016 executed on 29.03.2017	Assignment agreement dated 11.03.2016 executed on 29.03.2017

e) The following judgments clearly show that once a document has been admitted in a suit or proceeding, the party cannot in the same proceedings question the instrument as not being duly stamped.

- i) *Shyamal Kumar Roy Vs. Sushil Kumar Agarwal, Supreme Court judgment dated 31.10.2006 passed in Civil Appeal No. 4609/2006*
- ii) *Jupudi Kesava Rao Vs. Pulavarthi Venkata Subbarao and Ors. (1971)1SCC545*
- iii) *Javer Chand & Ors. Vs. Pukhraj Surana, AIR 1961 SC 1655*
- iv) *Jagdish Vs. Deep Shika Garg, AIR 2013 Raj 89*

f) Section 32 of the Rajasthan Stamp Act is as follows:

“32. Duties by whom payable :- *In the absence of an agreement to the contrary the expense of providing the proper stamp shall be borne,-*

(a) in the case of any instrument described in any of the following Articles of the Schedule, namely:-

No. 2 (Administration bond),

No. 6 (Agreement relating to deposit of title-deeds, pawn or pledge),

No. 14 (Bond),

No. 15 (Bottomry Bond),

No. 25 (Customs Bond),

No. 30 (Further charge-instrument of),

No. 32 (Indemnity Bond),

No. 37 (Mortgage deed),

No. 48 (Release),

No. 49 (Respondentia Bond),

No. 50 (Security bond or Mortgage-deed),

No. 51 (Settlement),

-by the person drawing, making or executing such instrument;”

g) Thus, the documents i.e. Mortgage Deed, Hypothecation Agreement, Memorandum of Entry are documents executed by the Corporate Debtor (CD) i.e. Jaipur Metal and Electricals Ltd. and thus, **any deficient stamp duty is to be paid by the CD. However, as the**

CIRP process of the CD is going on and Section 14 Moratorium has been triggered, thus no proceedings or recovery can be done on these documents.

- h) Further, as per the loan documents executed in the case of IDBI, Article II Clause (2.4A) (ii) of the Loan Agreement clearly state that any additional stamp duty or other duties, taxes or penalties with respect to these agreements would be paid by the CD. Similarly, Clause 12(b) of the Joint Mortgage Deed dated 07.04.1995 and also 11.04.1996 require any additional stamp duty or penalty to be paid by the CD.
- i) While the Collector has in one case taken nature of land of the CD to be industrial in nature, in another case it has been assumed as commercial. Further, the Collector has also adjudicated deficient stamp duty on the Assignment Deed whereas as per the notification dated 08.03.2017 and 10/11.04.2018 of Govt. of Rajasthan, no stamp duty was payable on the assignment deed. Further, the Collector has adjudicated deficient stamp duty on the loan agreements whereas as per the Schedules of the Rajasthan Stamp Act, 1998, the loan agreement is not a compulsory registrable document.
- j) In this case, the loan was taken by the CD way back in 1995-1996. The loan has been shown in the Balance Sheets of the CD upto 2013.

No Balance Sheets have been filed by the CD thereafter. In the Balance Sheets of 2013, in Note 5 - Long Term Borrowings, the CD has clearly admitted that the IDBI loan had been acquired by M/s Dhir & Dhir Asset and Securitisation Company Ltd. ('DDARS Co. Ltd.', now AARCL) and therefore, wherever IDBI has been mentioned, it should be read as DDARS Company Ltd.

- k) Further, the Govt. of Rajasthan in 2008 had floated an IM for sale of shares of the CD wherein, it is clearly mentioned / admitted that the loan of IDBI has been assigned to AARCL so it goes beyond any doubt that the GOR was very well aware of the said assignment even in the year 2008 and now cannot say that they were not aware.
- l) AARCL had filed an OA before the DRT for recovery of its debts in 2013 which is pending. It is most pertinent to know that the CD in its reply to Section 7 Petition has also admitted the debt of the Respondent herein. At para 4 of its Reply, the CD clearly admits that the IDBI loan has been assigned to the AARCL. In para 5 of the Reply, it admits that the loan of SBBJ has been assigned to AARCL.
- m) There are various judgments of the Hon'ble NCLAT and NCLT dealing with issue with respect to under stamping of document and have held that in case, to analyse the debt if a particular document

cannot be relied upon, then other documents should be seen to ascertain whether the debt / claim exists, as follows:

- i) *(2021)168SCL585; Ashique Ponnamparambath, Member of Suspended Board of Directors of the Corporate Debtor, Platino Classic Motors (India) Pvt. Ltd. Vs. The Federal Bank Limited*
- ii) *(2019) SCC OnLine NCLT 55571; Edelweiss Asset Reconstruction Co. Ltd. Vs. Sejal Glass Ltd.*
- iii) *(2018) SCC OnLine NCLT 9916; Bank of India Vs. Gupta Infrastructure (India) Pvt. Ltd. AND Bank of India Vs. Gupta Infratec Pvt. Ltd.*
- iv) *(2020) SCC OnLine NCLT 9320. Bennett Property Holdings Company Limited Vs. Brick Eagle Affordable Housing Advisory LLP.*
- v) *Satra Properties (India) Limited Vs. Vistra ITCL India Limited & Ors.; M.A. No. 180/2020 in C.P. No. 1632/I&B)MB/2019.*

n) Thus, in view of the above submissions and various admissions by the CD with respect to the debt of the Respondent No. 2 the claim of the Respondent No. 2 cannot be rejected on the basis of alleged order of the Collector requiring deficient stamp duty to be paid as the debt of the Respondent No. 2 can be proved by various documents such as the Information Memorandum issued by Govt. of Rajasthan, balance sheet of CD, admission of the CD in its reply, etc.

o) The Applicant i.e., Govt. of Rajasthan is resisting the handing over of the possession of the assets of the CD and are putting spokes in the running of the CIRP process. This application along with other applications filed by the Applicant are frivolous and delaying tactics.

The application needs to be dismissed with heavy costs.

21. Vide IA No. 34/JPR/2020, the Applicant State of Rajasthan had sought to implead ARCIL as the third Respondent. While no formal impleadment order was passed in IA No. 327/JPR/2019 during the course of the proceedings, Ld. Counsel for Respondent No. 3 appeared in the hearings and adopted submissions and arguments of Respondent No. 2, AARCL.
22. Another IA No. 87/JPR/2022 was also filed vide diary no. 443/2022 dated 16.02.2022 during the course of the proceedings which sought stay on further CoC meetings of JMEL, without reconstitution of CoC by rejecting claims of AARCL and ARCIL.
23. From the entirety of the above factual narrative, including arguments / submissions of the applicant, AARCL and ARCIL, it is clear that:
 - a. JMEL is an entity which has been under deep and pervasive control of the State with IAS/ RAS officers holding charge of the office of Chairman and Managing Director. While the State of Rajasthan may seek to distance itself from the corporate persona of JMEL, it has clearly been under its substantive control since 1977 and particularly after Jaipur Metals and Electrical Limited (Acquisition of Shares) Act, 1986. While the JWE Employees Cooperative Credit & Thrift Society Ltd. may hold around 59 percent of shares, they stand emasculated in terms of management control, which lay/ lies with the Government of Rajasthan.

Irrespective of the force and extent of the pull of the strings of management of JMEL by the Government of Rajasthan, it is a fact that JMEL became a BIFR case and was subsequently admitted for CIRP under Section 7 of IBC.

- b. The fact of loans taken by JMEL has not been denied by the State of Rajasthan at any time anywhere. It has been undeniably covered in an IM floated by the State of Rajasthan for seeking investment in JMEL. The position of loan is admitted in the balance sheets and various other documents.
- c. The aforesaid documents are not denied *per-se*. Instead, the aspect of stamp duty is being amplified by the State of Rajasthan to go on repeatedly and in a blanket manner about short-stamping and inadmissibility of documents.
- d. The aspect of loan has been adequately addressed in the admission order dated 13.04.2018, which states that voluminous evidence in support thereof was filed and considered, inter-alia in paras 13 to 20, in the said admission order.
- e. At the stage of admission, the State of Rajasthan may have had a lackadaisical stance as a State, including concerned responsible officers. However, the process of law went ahead unimpeded.

- f. The pendency of the winding up petition 19//2009 and SB CWP 19134/2017 against the symbolic possession under SARFAESI Act gave the State of Rajasthan some footing. However, the Supreme Court order dated 12.12.2018 possibly shook the ground on which the State government was standing.
- g. Instead of cooperating for completion of CIRP, as per order of the Hon'ble Supreme Court and Hon'ble NCLAT, from the stage where it was interdicted by order of the Hon'ble High Court of Rajasthan, it is evidently clear from conduct of proceedings at the Adjudicating Authority that the State of Rajasthan sought to entangle the matter under manifold hats, in multi-pronged legal assault, at multiple fora.
- h. Strangely, while in one avatar the State of Rajasthan appeared as the Applicant in the trinity of IA nos. 301/JPR/2019, 327/JPR/2019 and 328/JPR/2019 before this Adjudicating Authority, in other roles of its agencies, such as SDRI, it self-propelled itself as the judge and jury on the issue of stamp duty, which is the subject matter of the instant application and has been recurrently harped on by the State of Rajasthan as to be addressed by the Adjudicating Authority in terms of the order dated 29.11.2019 of the Hon'ble High Court of Rajasthan in SB CWP

19134/2017. *While SDRI was itself before this Adjudicating Authority in contumacious action*, which matter is not yet closed, *it choose to merely inform the Adjudicating Authority that it was going ahead with its own proceedings*. It is not understood how the State of Rajasthan can hold ground with shifting sands and changing stands.

- i. It has been submitted by AARCL that various *assignment documents were exempt from stamp duty as per Government of Rajasthan Notifications dated 08.03.2017 and 10/11.04.2018*.

The notification dated 08.03.2017 reads as follows:

S.O.177.- In exercise of the powers conferred by sub-section(1) of Section 9 of the Rajasthan Stamp Act, 1998 (Act No. 14 of 1999), the State Government being of the opinion that it is expedient in public interest so to do, hereby orders that the stamp duty chargeable on any agreement or other document executed for transfer or assignment of rights or interest in financial assets of banks or financial institutions under Section 5 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act No. 54 of 2002), in favour of any asset reconstruction company as defined in clause (ba) of sub-section (1) of Section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (Central Act No. 54 of 2002) for the purposes of asset reconstruction or securitisation shall be remitted.

[No. F.4(3)FD/Tax/2017-110]

By order of the Governor,

(Shankar Lal Kumawat)

Joint Secretary to the Government

- j. Notification No. F.7(43) Jan/2017-18/4928 of 10/11.04.2018 prescribed duty rates on various instruments, including separation of debt assignment in respect of performing assets and debt assignment by Bank or Financial Institutions in favour of Asset Reconstruction Company, which was retained as a full stamp duty rebate as per notification dated 08.03.2017.
- k. The pre-existing notification P2(22)Fin/Tax/03-5 under Rajasthan Stamp Law Adaptation Act, 1952, provided for a maximum stamp duty of Rs. 2,00,000/-, under Article 23 at the rate of 0.1%. It is thus clear that incidence of stamp duty, if any, was either zero or minimal with a ceiling. It is also clear that all / many documents need not be examined to establish debt. ***A certain minimum set of documents is enough to prove existence of debt, irrespective of whether each constituent document of the set needs stamping.*** Out of vast array of documents before the Adjudicating Authority, small sub-sets or sub-arrays are enough to establish / prove debt. Other documents need not be examined.
- l. The judgment in the case of *Satra Properties (India) Limited Vs. Vistra ITCL India Limited & Ors. (Supra)* was delivered by a third member in a situation of difference of opinion between the Judicial Member and the Technical Member of Mumbai Bench.

While both the members had concurred with each other that *debt and default stood proved even without relying on a debenture trust deed and NCD subscription agreement in question*, they differed on the issue of impounding and payment of deficit stamp duty on the aforesaid two documents. In reference to the third member, it was concluded that a Section 7 Application needs to establish debt and default and it can be proved through various means without getting into trivial technical issues. It was stated that the issue of stamp duty is irrelevant and uncalled for in a Section 7 application, more so when debt and default can be proved otherwise without looking into various documents. This judgment considered and referred to other judgments on the same issue. It follows that neither the Adjudicating Authority nor the RP is supposed to sit like a hunter to hunt for any short-stamped document, or sift through bundles thereof, for impounding, if debt is otherwise proved, in more ways than one.

- m. On the one hand, while the State of Rajasthan in one of trio of the applications, i.e. IA 328/JPR/2019, is agitating issue of limitation of claim of AARCL and ARCIL, there is no word about timeliness of its claim for stamp duty. It seems that the troika of applications, as aforesaid, were filed to create legal hurdles and impediments

in the CIRP of JMEL. There is no other plausible reason for the timing and sequence of the conduct of the State of Rajasthan in proceedings before the Adjudicating Authority.

- n. The applicant seems to be inter-alia attempting to:
- (i) Establish a belated/ extensive claim of stamp duty, which at best could be classified as an operational debt, if/ when crystallized;
 - (ii) Diminish/ erode/ extinguish claim(s) of AARCL and ARCIL so that their relative position nullifies/ weakens in the CoC;
 - (iii) Blame the RP for admitting claims of AARCL and ARCIL on the aspect of all documents being under stamped and delayed without establishing which documents were seen by the RP and on what documents is the claim of the RP pivoted;
 - (iv) Stymie/ scuttle the process of CIRP of JMEL;
 - (v) ***Reopening the admission order dated 13.04.2018 on account of under stamping and limitation***, which option is not available ***as the admission order was unchallenged and subsequently the matter travelled to the Hon'ble Supreme Court, who understood the full chequered history of the case as is clear in the narrative of order of the Supreme court dated 12.12.2018***, unlike the belief of the State of Rajasthan that it is limited to the aspect of continuance of winding up proceedings in the face of CIRP of JMEL.

- o. Be that as it may, the Adjudicating Authority cannot but help notice the pace, pressure, persistence and peccadilloes of the State of Rajasthan in trying to push various applications, applications within applications, and trying to push, shove and ride rough-shod in the proceeding at the Adjudicating Authority.
- p. During pendency of the extant application the Collector on the basis of letter forwarded by the SDRI, as stated hereinbefore, has initiated proceedings against the Respondent and issued show cause notices dated 27.04.2021 to AARCL. The Collector, as per orders dated 17.09.2021 and 26.11.2021, has allegedly adjudicated deficient stamp duty on various documents, some of which documents have earlier been already examined and considered by this Adjudicating Authority in the order dated 13.04.2018. The Collector had given a time of 30 days to the Respondents to pay the deficient stamp duty; or in the alternative, the documents would be impounded. AARCL had filed Writ Petition(s) No. CW 7747/2021 and 7748/2021 before the Single Bench of Hon'ble High Court of Rajasthan, Jaipur Bench, wherein the Hon'ble High Court did not grant any relief. However in Appeal(s), in DB CW No. 15033/2021 and 15067/2021, the Hon'ble High Court vide its order dated 20.12.2021 has stayed the recovery of stamp duty. The extract of the order is as hereunder:

“The appeals require consideration. As pointed out, the show cause notices have been issued after a long period of time on execution of the original documents. Question of exemption of payment of stamp duty as declared by the State government also required further examination.

Hence, issue notice, returnable on 27.01.2022. Mr. R.P. Singh, learned Additional Advocate General waives service of notice on behalf of the State. Mr. Ashu Kansal, learned counsel also waives service of notice on behalf of Respondent No. 3.

By way of an ad interim relief, the Respondents are prevented from recovering the stamp duties in relation to the show cause notices dated 27.04.2021, which are challenged in the writ petitions.”

- q. The entire conspectus of the State of Rajasthan revolves around the fact that the RP could not have considered the bunch of loan documents with Form C as proof/ evidence of claims of AARCL and ARCIL. Copies thereof, whether or not obtained from the RP during the proceedings, have been submitted to the Adjudicating Authority and the entire bunch of documents needs to be impounded. Despite the examination of many documents by the Adjudicating Authority at the admission stage, the State would like the RP to look through each one and ferret out under-stamped documents, irrespective of the fact whether it is **relevant or basis** for establishing the claim or not.
- r. There is no submission about specific documents that were wrongly considered by the RP, as being short-stamped. It is a generic broad-brush sweep. The focus is that since a bouquet of documents were

given to the RP, all of which **seem** to be massively under-stamped, they must all be impounded and sent for assessment of stamp duty. Repeated emphasis has been placed on the judgment of the Hon'ble Supreme Court in *Committee of Creditors of Essar Steel India Limited vs Satish Kumar Gupta & Ors. (Supra)* with reference to Para 99 which implies that the RP should not accept any document **as the of basis of claim** if it is short-stamped.

- s. The emphasis of the State of Rajasthan needs to be contrasted with the judgment of the Hon'ble Supreme Court in the case of *Swiss Ribbons (P) Ltd. Vs. Union of India, (Supra)* wherein it is implied that the RP does not have any adjudicatory powers and his job is merely to collate various claims. In this case, there is no claim of the State before the RP or correspondence about dues of stamp duty. The only focus is to use issue of stamping to dilute position of AARCL and ARCIL. It is a spanner in the works strategy to introduce new parameters in the adjudicatory and resolution process.
- t. The role of the RP in substantiation of claims is stated in Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ('CIRP Regulations, 2016'). Regulation 8(2) of the said Regulation pertains to of the Financial Creditors, as follows:

The existence of debt due to the financial creditor may be proved on the basis of

(a) the records available with an information utility, if any; or

(b) other relevant documents, including –

(i) a financial contract supported by financial statements as evidence of the debt;

(ii) a record evidencing that the amounts committed by the financial creditor to the corporate debtor under a facility has been drawn by the corporate debtor;

(iii) financial statements showing that the debt has not been paid; or

(iv) an order of a court or tribunal that has adjudicated upon the non-payment of a debt, if any.

- u. Needless to say that the RP can verify claims in multiple ways. Also, admitted/ examined documents need not be re-examined by the RP. The State of Rajasthan has not enumerated/ established any specific documents relied upon by the RP as short-stamped for considering the claims of AARCL and ARCIL. The State is implying that any document, which the RP may stumble upon, even if not used **as basis or for establishing a claim** should be held by the RP and referred to the Collector for assessment of any alleged short-stamping. Also, the State of Rajasthan is subtly trying to sully the admission order of the Adjudicating Authority by implying that documents that were seen by the Adjudicating Authority and recorded in the admission order dated 13.04.2018, need to be seen again by the RP. It is an attempt to put a foot in the door and wedge open the Section 7 case once again.

We are satisfied that there is adequate proof of debt and admission thereof by JMEL in its reply to the Section 7 petition / application. The admission order is not based on a single transaction / document. Amidst the pleadings and the admission order of the case too, there is adequate canvas for the RP to ascertain and verify debt underlying the claim(s). There is no reason to believe that documents admitted in the matter can be reopened, especially as the order has attained finality and was seen extensively by the Hon'ble Supreme Court. There is no infirmity in the actions of the RP. Stamping is a bogey. Impounding was not needed as the matter was and could be decided without reference to an extensive set of documents, quite irrespective of amount of stamping thereon. Also, the Adjudicating Authority had presciently seen with some fortuitous clairvoyance, earlier on 31.01.2020, when notice was issued to the respondents in IA No. 34/JPR/2019, *limited to extent of documents other than those already on record of the case* from the stage of admission of the Section 7 application before NCLT, Principal Bench, New Delhi.

- v. On the one hand the State of Rajasthan distances itself from JMEL, but the other hand appears as SDRI of the State of Rajasthan before the Adjudicating Authority. As an entity distinct from JMEL, the only locus standi of the State could be as a claimant. Otherwise, it is

a related/ same party. It is also not clear whether the State is indulging in a fishing & roving expedition and in what capacity. ***The State must honestly answer who was/ is in management & control of JMEL?***

Also, why has access to the premises not been given to the RP, which if given may have allowed the RP to actually examine records and ascertain why any documents appear as unstamped or short-stamped.

This State claims that it was not a party to the admission order dated 13.04.2018. It is seemingly a very loose and fragile statement as it is evidently clear that JMEL was and has been under the control of the Government of Rajasthan since 1977, whatever may be its state of health. In an analogous way, the concerned Asset Reconstruction Companies were also not a party to the original loan agreements.

- w. The State of Rajasthan refers to assignment agreements as loans being bought by the Asset Reconstruction companies and is perhaps looking at them through lens of conveyance. This may have the effect of displacing party to bear burden of stamp duty, quite incorrectly.
- x. It is entirely within realm of possibility that at the time of execution of the loan agreements, any officer(s) of JMEL, wearing the hat of State Government may have believed in or got waiver of stamp duty. This is entirely plausible since concerned loan dispensing agencies were instrumentalities of the Central Government.

- y. As per the website of IDBI Bank it germinated as a Development Finance Institution as follows:-

IDBI Bank has inherited a rich legacy from its predecessor entity — Industrial Development Bank of India — which was an apex Development Financial Institution (DFI) from July 1, 1964 to September 30, 2004. The bank claims that as a DFI, the erstwhile IDBI stretched its canvas beyond mere project financing to cover an array of services that contributed towards balanced geographical spread of industries, development of identified backward areas, emergence of a new spirit of enterprise and evolution of a deep and vibrant capital market. On October 1, 2004, the erstwhile IDBI was converted into a banking company — IDBI Ltd. — to undertake the entire gamut of banking activities while continuing to play its DFI role. IDBI Ltd. merged its subsidiaries — the erstwhile IDBI Bank, IDBI Home Finance Ltd., IDBI Gilts, and the erstwhile United Western Bank Ltd., with itself over a period of time. IDBI Ltd. also changed its name to IDBI Bank Ltd. to reflect its widened business functions.

On December 31, 2003, the Ministry of Law and Justice notified in the gazette the Industrial Development Bank (Transfer of undertaking and repeal) Act 2003, No.3 of 2003 and the Act describes it as an Act to provide for the transfer and vesting of the undertaking of the Industrial Development Bank of India to, and in, the company to be formed and registered as a company under the Companies Act 1956, to carry on banking business and for matters connected therewith or incidental thereto and also to repeal the Industrial Development Bank Act 1964.

- z. In a like manner, SBI was founded under the SBI Act and associates under the SBI (Subsidiary Banks) Act, which is an instrumentality of State though donning a corporate-like avatar. This is another factor for not delving into a very old matter that in any case is hit by laches.

24. The blitzkrieg pace of the State of Rajasthan has pushed the issue of stamping into the court of the Collector. The Ld. Counsels for the RP and AARCL have raised various points on how the order of the Collector was wrong on points of law and fact. However, we are not inclined to go into this issue as the same is now being dealt with between the Collector and the Respondents in appropriate proceedings. Action is already being taken by the Competent Authority and the same has been stayed by the Hon'ble High Court of Rajasthan. We do not wish to impinge in the domain of the Collector or the Hon'ble High Court. We have mainly covered the factual narrative of the proceedings before the Adjudicating Authority and our overall assessment thereof. Thus, as is clear, the prayer of the Applicant with respect to the impounding of the loan agreement and other documents and placing the same before the Collector has been rendered infructuous.
25. However, in light of pleadings, submissions made and overall assessment of the matter, we hold and concur with the view that existence of a debt can be proved by different documents/ means irrespective of numerous (under/ over/ correctly) stamped instruments, and, inter-alia, more so in this case, several diverse documents and admission of debt in pleadings, which have already been considered at the stage of admission clearly establishing debt in favour of AARCL and ARCIL. In view of the entirety of the foregoing, the Application of the State of Rajasthan is rejected.

IA No. 34/JPR/2020:

1. This is an application filed by the State of Rajasthan with the following prayers:

“In view of the above, the Applicant- State of Rajasthan in the interest of justice and in terms of Section 60(5)(c) of the IBC r/w Rule 11 of the NCLT Rules, 2016, prays for the following reliefs, which this Hon’ble Tribunal may be pleased to grant:

- a. To permit impleading Asset Reconstruction Company India Limited as the Respondent No. 3 in this Application;*
- b. To permit submission of the Claim Documents relied upon by the Respondent No. 2 and 3 for their claim in sealed envelope/ box with the Hon’ble Tribunal;*
- c. To impound all the Claim documents relied upon by the Respondent No. 1 Alchemist and the Respondent No. 2 ARCIL to claim themselves as the financial creditors for lack of proper stamp duty in terms of Section 37 of the Rajasthan Stamp Duty Act, 1998;*
- d. To reject and set aside the actions of the Respondent No. 1 Resolution Professional in admitting the claims of Respondent No. 1 Alchemist and the Respondent No. 3 ARCIL as financial creditors despite the Claim Documents being enormously under-stamped;*
- e. Alternatively, and without prejudice to the above, to direct appointment of a third-party and independent expert to assess if the Claim Documents submitted by the Respondent Nos 2 and 3 are properly stamped or not and direct such expert to submit its report to this Hon’ble Tribunal;*
- f. Any other orders or directions, that this Hon’ble Tribunal may be pleased to pass.”*

2. Through this Application, the State of Rajasthan has sought to file additional documents (Form C of AARCL & ARCIL, with all documents) in a sealed cover as were received by the State Government from the RP subsequent to the order dated 23.09.2021. Further, it has sought impleadment of ARCIL as Respondent No. 3 in IA No. 327/JPR/2019.

3. The RP in his reply has vehemently opposed consideration of additional documents as the original prayer only pertained to loan agreement dated 21.03.1996. Further, the RP has stated that *Applicant State of Rajasthan has only vaguely referred to a non-exhaustive list of purportedly short-stamped documents*; and pleadings cannot be allowed to be amended at a belated stage when arguments have already commenced. Also, the State of Rajasthan filed a consolidated rejoinder on 07.01.2020 and could have availed that opportunity to place all documents on record. The intention of the Applicant is mala fide and a delay tactic.
4. The RP has also stated that the Application is solely premised on the ground that the documents were not in possession of the Applicant earlier. While the Applicant State refers to the order of the Hon'ble High Court dated 29.11.2019, there is neither any findings against the RP, nor any order of the Hon'ble High Court to the prejudice of the Respondents for impounding of the documents. The reliance of the State of Rajasthan on the case of *Essar Steel India Limited Vs. Satish Kumar Gupta and Ors., Civil Appeal Nos. 8766-67 of 2019, dated 15.11.2019*, does not have any bearing on the facts and circumstances of the instant case. Also, the reliance on *A. Senthil Kumar Vs. IRP representing, Paragon Steels Private Limited, CA No. 38 of 2017 in CP No. 553/IB/CB/2017* is irrelevant, as the said case stands on its own set of facts.

5. The Ld. Counsel for AARCL has submitted the following in its oral and written submissions:

1. *This application has been filed by the Applicant praying.*
 - i. -----
 - ii. -----
 - iii. -----
 - iv. -----
 - v. -----
2. *This application has become infructuous as the collector has already adjudicated deficient stamp duty with penalty on all the documents therefore, the prayer with respect to impounding the same does not arise. Further, w.r.t. the prayer to set aside the claim of the Respondent No. 2, the Respondent No. 2 herein relies on the Written Submission filed in IA No. 327 of 2019 for the same.*
3. *In light of the above this application should be dismissed as infructuous.*

6. Though not added as a Respondent in IA No. 327/JPR/2019, the Ld. Counsel for ARCIL participated in the proceedings and has adopted the submissions of AARCL in IA No. 327/JPR/2019 and IA No. 34/JPR/2020.

7. Prayer to impound documents and set aside claim as Financial Creditors of AARCL and ARCIL is akin to trying to reopen the case; and was rejected as concluded hereinbefore in respect of IA No. 327/JPR/2019.

8. Prayer for Appointing a third party for assessing stamp duty has been self-destroyed by State of Rajasthan in pushing matters before the Collector.

9. In view of the observations and conclusions in IA No. 327/JPR/2019, it is amply clear that the IA has been driven to redundancy by Applicant itself.

Accordingly, the instant IA No. 34/JPR/2020 is rejected.

IA No. 87/JPR/2022:

1. The State of Rajasthan filed this IA for bringing on record developments in the matter which took place after filing of IA No. 327/JPR/2019.

2. The State of Rajasthan has stated the following prayers in the IA:

“Therefore, in view of the above, the applicant-State of Rajasthan, in the interest of justice, prays for the following reliefs, which this Hon’ble Tribunal may be pleased to grant:

a. To reject and set aside the actions of the Respondent No. 1- Resolution Professional in admitting the claims of the Respondent No. 2- Alchemist and the Respondent No. 3- ARCIL as financial creditors in view of the fact that the Claim Documents are enormously under-stamped and allow IA No. 47/2021 (sic) seeking stay over the CIRP proceedings;

b. Pending adjudication of this Application, the Respondent No. 1- Resolution Professional may be restrained from convening meetings of COC of JMEL until the COC is reconstituted by rejecting claims of Respondent No. 2-Alchemist and the Respondent No. 3-ARCIL;

c. Any other orders or directions, that this Hon’ble Tribunal may be pleased to pass.”

3. It is seen that the Applicant has filed this IA in IA No. 327/JPR/2019 but has sought to allow IA No. 47/JPR/2020 which is filed in trinity of IAs, i.e. IA No. 327/JPR/2019, IA No. 328/JPR/2019, IA No. 301/JPR/2019, and also IA No.34/JPR/2020, as a pre-requisite for further continuance of CIRP and to restrain CoC from holding meetings or considering resolution plans until the reconstitution of the CoC by rejection of claims of AARCL and ARCIL. Thus, IA No. 87/JPR/2022 is caught in a convoluted and loops & hoops with IA No. 47/JPR/2020, which refers to the aforesaid triad, and IA No.34/JPR/2020, as stated hereinbefore. IA No. 47/JPR/2021

has been dealt with separately. Here we are only addressing IA No. 87/JPR/2022.

4. Upon hearing of IA No. 87/JPR/2022 on 17.02.2022, the interim prayer of restraining the RP, from considering resolution plans and convening meeting(s) of CoC until reconstitution thereof by rejection of the claims of AARCL and ARCIL, was declined by this Adjudicating Authority. Thereafter, in S.B. Civil Writ Petition No. 3008/2022, the Applicant State of Rajasthan, was directed by the Hon'ble High Court of Rajasthan to file an appeal at Hon'ble NCLAT. The Hon'ble NCLAT, vide order dated 25.02.2022 in Appeal No. AT(Ins) 202 of 2022, directed this Adjudicating Authority to consider and decide IA Nos. 301/JPR/2019, 327/JPR/2019, 328/JPR/2019 and 47/JPR/2020 within a period of 3 months.
5. Ld. Counsel for the RP has vehemently opposed this application
6. The Ld. Counsel for AARCL has stated in oral and written submissions:
 1. *This application has been filed by the Applicant praying for rejections of actions by the Resolution Professional in admitting the claims of Alchemist and ARCIL and restrain the Resolution Professional from holding meeting of CoC till the adjudicating of I.A.No.327, 328 and 301.*
 2. *The Applicant had challenged the order dated 17.05.2022 passed by this Hon'ble Tribunal before the Hon'ble NCLAT. In light of the order dated 25.02.2022 passed by Hon'ble NCLAT wherein the Hon'ble NCLAT has restrained the Resolution Professional from holding any meetings of the CoC till the above mentioned applications are decided by this Tribunal and further directed this Tribunal to decide the applications within 3 months. As this tribunal has reserved orders on all the above applications thus, I.A. 87 has become infructuous and should be dismissed.*

7. Ld. Counsel for ARCIL has submitted that he adopts the arguments of AARCL in this matter.
8. The background facts and circumstances, not repeated for sake of brevity, have been stated in the order of even date in IA No. 327/JPR/2019.
9. By means of pronouncements today in IA No. 327/JPR/2019 (together with IA No. 34/JPR/2020), IA No. 301/JPR/2019 (together with IA No. 46/JPR/2019), IA No. 328/JPR/2019 and IA No. 47/JPR/2020, the matters have been appropriately heard and disposed off. The directions of the Hon'ble NCLAT for consideration of the aforesaid trinity of IAs, besides IA No. 47/JPR/2020, have been duly complied with.
10. The instant IA No. 87/JPR/2022 has also been heard along with IA No. 327/JPR/2019 and IA No. 34/JPR/2020. Like the preceding IAs herein, and inter-alia for reasons stated therein we find no merit in this IA as well.

Hence, this IA is rejected.

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A JOSHI** Digitally signed by DEEP
CHANDRA JOSHI
Date: 2022.06.24
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**(DEEP CHANDRA JOSHI)
JUDICIAL MEMBER**

**RAGHU
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RAGHU NAYYAR
Date: 2022.06.24
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**(RAGHU NAYYAR)
TECHNICAL MEMBER**