

IN THE NATIONAL COMPANY LAW TRIBUNAL
JAIPUR BENCH

CORAM: MS. REETA KOHLI,
HON'BLE JUDICIAL MEMBER

MS. KAVITA BHATNAGAR,
HON'BLE TECHNICAL MEMBER

CP No. (IB)- 108/7/JPR/2024

(Under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016)

MEMO OF PARTIES

**ASSET RECONSTRUCTION
COMPANY (INDIA) LIMITED**

The Ruby, 10th Floor, 29, Senapati
Bapat Marg, Dadar (West) Mumbai-
400028 (Maharashtra)

...Financial Creditor

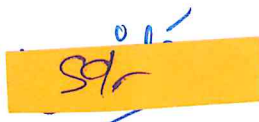
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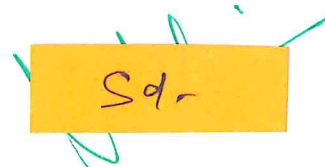
**ACCIL CORPORATION PRIVATE
LIMITED**

Plot No. 1, Raj Mahal Palace
Scheme, Sahkar Circle, Sardar Patel
Marg, Jaipur- 302001 (Rajasthan)

...Corporate Debtor

For the Financial Creditor : Shivangshu Naval, Adv.
Akanksha Noval, Adv.





CP No. (IB)- 108/7/JPR/2024

For the Corporate Debtor : Sandeep Pathak, Adv.
Palash Gupta, Adv.

Order Pronounced On: 15.10.2025

ORDER

Per: Ms. Reeta Kohli, Judicial Member

1. The present Application has been preferred under Section 7 of the Insolvency and Bankruptcy Code, 2016 ('IBC'/ 'Code') by *Asset Reconstruction Company (India) Limited* ('Financial Creditor'/ 'Applicant') seeking Corporate Insolvency Resolution Process ('CIRP') of *M/s Accil Corporation Pvt. Ltd.* ('Corporate Debtor'/ 'Respondent') on account of default in payment of Rs. 107,18,81,910/- (Rupees One Hundred Seven Crores Eighteen Lakhs Eighty- One Thousand Nine Hundred Ten Only).
2. The Corporate Debtor is a company registered under the provisions of the *Companies Act, 1956* having CIN *U65999RJ1991PTC029752* and registered office at *Plot No. 1, Raj Mahal Palace Scheme, Sahkar Circle, Sardar Patel Marg, Jaipur- 302001 (Rajasthan)*. The Authorized Share Capital is Rs. 53,00,00,000/- (Rupees Fifty- Three Crores Only), however, the Paid-up Share Capital is Rs. 51,63,29,300/- (Rupees Fifty-One Crores Sixty- Three Lakhs Twenty- Nine Thousand Three Hundred Only). The same has been noted from the website maintained by the Ministry of Corporate Affairs.

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3. The Petition has been filed on the basis of the following set of facts:

- 3.1. The Indian Overseas Bank Limited (“Bank”), a banking company within the meaning of Section 5(c) of the Banking Regulation Act, 1949 having its registered office at No. 763, Anna Salai, Chennai-600002 and a branch office amongst others at Parliament Street Branch, 10 Parliament Street, New Delhi 110001 vide Sanction Letter dated 18.04.2011 originally sanctioned a Term Loan Facility of Rs. 50,00,00,000/- (Rs. Fifty Crores Only) to the Corporate Debtor.
- 3.2. It is pertinent to submit that Bank *vide* Assignment Agreement dated 07.03.2024 has assigned the aforesaid Term Loan along with all rights, title and interest on the underlying securities to ARCIL at whose behest the present Section 7 application is being filed. By virtue of the said agreement, ARCIL has stepped into the shoes of Bank. It is therefore entitled to all the rights, titles and interests of Bank in relation to the aforesaid Term Loan facility including the right to file and pursue the instant Company Petition.
- 3.3. It is submitted that ARCIL is a securitization and asset reconstruction company registered with Reserve Bank of India. In the year 2011, the Corporate Debtor approached syndicate of Banks consisting of

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Corporation Bank (now merged with the Union Bank of India), Central Bank of India, Indian Bank, Karur Vyas Bank and Indian Overseas Bank (hereinafter collectively known as “Consortium of Banks” seeking credit facilities for the purpose of constructing a five-star deluxe hotel on the land taken on lease by the Corporate Debtor. As per the Corporate Debtor, the total estimated project cost was Rs. 450 crores.

- 3.4. The Consortium of Banks agreed to sanction the term loan credit facility aggregating to Rs. 300,00,00,000/- (Rupees Three Hundred Crores), along with applicable interest, charges etc., to Corporate Debtor. The credit facilities sanctioned by the Consortium of Banks are tabulated as under:

<i>Bank</i>	<i>Date of Sanction</i>	<i>Amount in Crores (INR)</i>
<i>Corporation Bank TL I and TL II</i>	<i>October 15, 2011</i>	<i>Rs. 70 + Rs. 50 with base rate + 4.7%</i>
<i>Central bank of India</i>	<i>October 13, 2011</i>	<i>Rs. 50 with base rate + 4.65%</i>
<i>Indian Bank</i>	<i>May 12, 2011</i>	<i>Rs. 50 with base rate + 3.65%</i>
<i>Karur Vysya Bank</i>	<i>March 30, 2011</i>	<i>Rs. 30 with base rate + 4.15%</i>
<i>Indian Oversea Bank (FC)</i>	<i>April 18, 2011</i>	<i>Rs. 50 with base rate + 3%</i>
	<i>Total</i>	<i>300,00,00,000/-</i>

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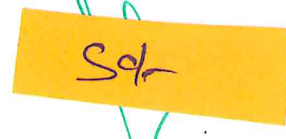
- 3.5. The Bank upon request made by the Corporate Debtor sanctioned Term Loan to the Corporate Debtor *vide* Sanction Letter dated 18.04.2011 bearing Ref no. ADV/WCTL/2010-11 ("Sanction Letter"). The said credit facility, sanctioned by the Bank is as under: -

<i>S. No.</i>	<i>Credit Limit</i>	<i>Amount (INR)</i>
<i>1</i>	<i>Term Loan</i>	<i>50,00,00,000/-</i>
	<i>Total</i>	<i>50,00,00,000/-</i>

The term loan was sanctioned for an amount of Rs. 50,00,00,000/- (Rupees Fifty Crore Only), along with applicable interest, charges etc., for a tenure of 11 years ("Term Loan"). The Terms and Conditions mentioned in the aforesaid sanction letter dated 18.04.2011 were unconditionally accepted by the Corporate Debtor.

- 3.6. Subsequently, Union Bank of India (erstwhile Corporation Bank) *vide* its sanction letter dated 27 .07.2011 confirmed the sharing of *pari-passu* first charge on the project assets with the other lenders who are a part of the Consortium of Banks, subject to the aforesaid lending banks routing their disbursements through the Trust and Retention Account being operated at its Bank.
- 3.7. Pursuant to the said Sanction Letter, the Corporate Debtor signed and executed various loan documents in favour of the Bank which are as under:





- i) *Demand Promissory Note dated 18.08.2011, copy whereof is annexed hereto and marked as Annexure-8.*
- ii) *Term Loan Agreement dated 17.08.2011 in favour of the Bank. The Corporate Debtor has unconditionally agreed to the terms and conditions mentioned therein.*
- iii) *The Corporate Debtor vide the aforesaid documents has undertaken to repay the amount of the said loan in 31 quarterly installments starting from May, 2014. A copy of the said term loan agreement dated 17.08.2011 is annexed hereto and marked as Annexure-9.*
- iv) *Hypothecation letter dated 18.08.2011, a copy whereof is annexed hereto and marked as Annexure-10.*
- v) *Fresh Certificate of Incorporation dated 09.09.2015 of the Corporate Debtor, consequent upon conversion to private limited company, a copy whereof is annexed hereto and marked as Annexure-11.*

3.8. It is submitted that Mr. Pradeep Aggarwal, Mr. Ram Kumar Aggarwal, Mr. Vikas Aggarwal and M/s Asian Colour Coated Ispat Limited have extended their guarantees to secure the Term Loan by way of signing and executing the Guarantees for Cash Credit dated 18.08.2011 guaranteeing the repayment of the said Term Loan along with applicable interest, charges, etc. thereby making themselves jointly and severally liable to pay to Bank, all the dues and outstanding in case of default by the Borrower. The said guarantees

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are valid, subsisting and continuing as on date in terms and conditions mentioned there under.

3.9. Thereafter, the Consortium of Banks and the Corporate Debtor entered into, signed and executed various finance and/ or loan documents such as the facility agreement, lender's agent agreement, security trustee agreement and intercreditor agreement, all dated 19.10.2011. It is pertinent to submit that the Corporate Debtor and the Consortium of Banks including IOB vide the aforesaid agreements have agreed to appoint Union Bank of India (erstwhile Corporation Bank) to be their lead bank, lender's agent, security trustee and account bank. The Consortium of banks have also authorized UBI to execute and deliver or accept delivery of all documents, deeds and writings and all other documents, agreements, instruments, amendments, notices and certificates, as may be contemplated under, or required pursuant to the financing documents to be executed or to be executed and delivered or to be delivered by or to the Consortium of Banks or any of them.

3.10. Under the facility agreement dated 19.10.2011 ("Facility Agreement"), the Consortium of Banks have extended/agreed to extend to the Corporate Debtor the Consortium Loan including the said Term Loan on the Terms and Conditions mentioned thereof.

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Certain terms of the said Facility Agreement dated 19.10.2011 were modified vide First Addendum to the Facility Agreement dated 19.10.2011 and executed on 09.09.2014 amongst Corporate Debtor, Consortium of Banks and Security Trustee/Lender's Agent.

3.11. Pursuant to the aforesaid, the Corporate Debtor further executed various loan and security documents in favour of UBI being the lead bank as well as the security trustee. The aforesaid loan and security documents are as under:

- i) *Memorandum of Entry (deposit of title deed) dated 25.10.2011, copy whereof is annexed hereto and marked as Annexure-18.*
- ii) *Borrowers deed of undertaking dated 19.10.2011, copy whereof is annexed hereto and marked as Annexure-19.*
- iii) *Declaration in the matter of creation of mortgage by deposit of title deeds made by Vikas Aggarwal on behalf of the Corporate Debtor Accil Corporation Private Limited dated 25.10.2011, copy whereof is annexed hereto and marked as Annexure-20*
- iv) *Deed of Corporate Guarantee signed and executed by M/s Asian Colour Coated Ispat Limited dated 19.10.2011, copy whereof is annexed hereto and marked as Annexure-21.*
- v) *Deed of Personal Guarantee signed and executed by Pradeep Aggarwal, Vikas Aggarwal and Late Ram Kumar Agarwal all dated 19.10.201 and deed of guarantee of Mrs. Kamlesh Devi Agarwal dated 18.09.2013.*

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- 3.12. Vide Memorandum of Entry (Deposit of Title Deed) dated 25.10.2011 drawn by Security Trustee, the Corporate Debtor, in order to secure the Consortium Loan including the Term Loan, mortgaged its immovable property being commercial hotel situated at Plot No. 1, Rajmahal Palace Scheme, C-Scheme, Sardar Patel Marg, Jaipur, admeasuring 5,259 sq. meters, by way of depositing title deeds thereto.
- 3.13. The Corporate Debtor also signed and executed unattested memorandum of hypothecation dated 19.10.2011 in favour of Security Trustee, wherein the Corporate Debtor has agreed to create first charge by way of hypothecation over the Hypothecated Assets (as mentioned in Part V) to secure the said Consortium Loan including the Term Loan.
- 3.14. Thereafter, upon request of the Corporate Debtor, IOB vide its subsequent sanction letters dated 03.04.2014 and 20.10.2015 reviewed the Term Loan facility of the Corporate Debtor. It is relevant to submit that the Corporate Debtor was supposed to commence the commercial operation of the five-star deluxe hotel in the year 2013. However, the commencement of commercial operation got delayed and Corporate Debtor failed to make the due payments as per the terms of the sanction.

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- 3.15. The Corporate Debtor committed breach of the financial commitments as it failed and neglected to repay the outstanding amounts with respect to Consortium Loan including the Term Loan despite requests and reminders made by the Consortium of Banks, including IOB, in writing or otherwise. On 18.12.2015, the Consortium of Banks held a joint meeting and in their meeting, it was agreed to form a Joint Lender Forum ("JLF") in accordance with the Guidelines dated 26.04.2014 issued by the Reserve Bank of India.
- 3.16. The Corporate Debtor failed to adhere to the financial commitments with respect to the said Term Loan despite requests and demands of the IOB to repay the outstanding amount to IOB. Therefore, owing to such failure/ default, the loan account of the Corporate Debtor was classified as Non-Performing Asset ("RBI") on 31.03.2016 by IOB in terms of the Master Circular issued by the Reserve Bank of India in this regard.
- 3.17. Pursuant to the aforesaid default, IOB was constrained to issue a statutory demand notice dated 27.04.2016 under Section 13(2) of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 ("SARFAESI Act") to the Corporate Debtor and the personal guarantors.

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- 3.18. Subsequently, the Corporate Debtor submitted its proposals of restructuring of its loan account which were considered by Consortium of Banks in its meetings held on 03.06.2016, 18.07.2016, 14.12.2016, 01.08.2017 and 27.09.2017,
- 3.19. The Consortium of Banks in the meeting dated 14.12.2016, decided to proceed with recovery of the outstanding dues. It was further decided by the Consortium of Banks that they would enforce their security interest by taking the possession of the Immovable Property. A refinancing package was proposed before the Consortium of Banks, and the same was objected by IOB stating that IOB is not in favour of the proposed refinancing package and intends to initiate recovery against the Corporate Debtor.
- 3.20. Subsequently, the Corporate Debtor vide its letters dated 06.04.2018, 19.04.2018, 27.06.2018, 30.07.2018, 31.08.2018 and 20.09.2018 requested to reconsider the restructuring proposal. However, the same was refused by IOB. Meanwhile, the Consortium of Banks decided to take symbolic possession of Immovable Property. Thereafter, UBI being the lead bank, issued a possession notice dated 02.12.2021 under Section 13(4) of the SARFAESI Act, on behalf of Consortium of Banks, thereby taking possession of Immovable Property.

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3.21. Even after the date of NPA i.e., 31.03.2016 till 2023, the Corporate Debtor has acknowledged its debt in respect of the credit facilities sanctioned by IOB to it and subsequently taken over by the ARCIL, in its balance sheets/ financial statements for the relevant period. It is pertinent to submit that the charge of the financial Creditor is also acknowledged on the website of Ministry of Corporate Affairs, copy whereof is already annexed with the instant Company Petition. Therefore, the present petition is filed within limitation as the Corporate Debtor has acknowledged its debt, time and again in its financial statements. Thus, the period of limitation stands extended each time the outstanding debt has been acknowledged by the Corporate Debtor in its balance sheets for the years 2016, 2017, 2018, 2019, 2020, 2021, 2022, 2023.

3.22. It was contended that as on date, the outstanding amount in default is Rs. 107,18,81,910/- (Rupees One Hundred Seven Crores Eighteen Lakhs Eighty- One Thousand Nine Hundred Ten Only). The relevant details as enumerated under Part IV of the instant Application are reproduced hereunder:

Part IV

PARTICULARS OF FINANCIAL DEBT

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1.	Total Amount of debt Granted	<u>Amount of Financial Debt:</u> The Corporate Debtor has defaulted in repayment Rs. 107,18,81,910/- (Rupees One Hundred Seven Crores Eighteen Lakhs Eighty- One Thousand Nine Hundred Ten Only) as on 21.11.2024 plus further interest, penal interest, and/ or other contractual charges from 22.11.2024 till the date of realization of Financial Debt/ Term Loan Account in respect of the loan availed from Indian Overseas Bank Limited.															
2.	Amount claimed to be in default and the date on which the default occurred	The Corporate Debtor has defaulted in repayment of Financial Debt/ Term Loan and applicable interest, charges etc. The outstanding dues with respect to the said Term Loan are as follows: <table><tr><th>Loan Account No.</th><th>Principal outstanding (INR)</th><th>Interest outstanding</th><th>Penal Interest</th><th>Amount (INR) (as on 21.11.2024)</th></tr><tr><td>1355-A333-0001-2024-003-001-001</td><td>370,695,500</td><td>68,64,88,942</td><td>14,697,467</td><td>1,071,881,910</td></tr><tr><td>Total</td><td>370,695,500</td><td>68,64,88,942</td><td>14,697,467</td><td>1,071,881,910</td></tr></table>	Loan Account No.	Principal outstanding (INR)	Interest outstanding	Penal Interest	Amount (INR) (as on 21.11.2024)	1355-A333-0001-2024-003-001-001	370,695,500	68,64,88,942	14,697,467	1,071,881,910	Total	370,695,500	68,64,88,942	14,697,467	1,071,881,910
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1355-A333-0001-2024-003-001-001	370,695,500	68,64,88,942	14,697,467	1,071,881,910													
Total	370,695,500	68,64,88,942	14,697,467	1,071,881,910													

4. The Corporate Debtor has filed its Reply to the present Petition *vide* Dairy No. 917/2025 dated 30.04.2025 wherein it raised the following contentions:

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4.1. It is noted that on the debt basis which present company petition has been filed is already under dispute and subject to adjudication by the Hon'ble Rajasthan High Court by way of writ petitions being:

- a) *S.B. Civil Writ Petition No. 27818 of 2018 titled ACCIL Corporation Private Limited & Anr. vs Reserve Bank of India & Ors.;*
- b) *S.B. Civil Writ Petition No. 13517 of 2021 titled ACCIL Corporation Private Limited and Ors. Vs. Reserve Bank of India and Ors.; and*
- c) *S.B. Civil Writ Petition No. 4965 of 2023 titled ACCIL Corporation Private Limited vs Reserve Bank of India & Ors.*

Notably, in the aforesaid writ petitions the entire debt of all the following lenders (who had further decided with majority the restructuring of the Corporate Debtor have been challenged along with necessary directions against the lenders to restructure the debt in line with the response of the Reserve Bank of India ("RBI"). It is further submitted that the Hon'ble Rajasthan High Court has, after hearing the matter in detail, stayed the insolvency proceedings initiated by creditors of the Corporate Debtor. Since the entire debt is already challenged and company petitions filed before this Hon'ble Tribunal on the basis of said debts are already stayed, the present company petition ought not be treated indifferently.

4.2. In view of the pendency of a fundamental question of law before the Hon'ble Rajasthan High Court the initiation of insolvency





proceedings by the Financial Creditor under IBC, which are proceedings in rem and ought not to be continued.

- 4.3. The Corporate Debtor had availed credit facilities to the tune of Rs. 300,00,00,000/- (Rupees Three Hundred Crores Only) (Facility Agreement dated 19.10.2011) from the consortium of banks led by Karur Vysya Bank Limited (now Omkara Assets Reconstruction Private Limited), Indian Overseas Bank (now the Financial Creditor), Central Bank of India, Indian Bank and Corporation Bank (merged into Union Bank of India (now the Financial Creditor)) (collectively referred as "**Consortium of Banks**").
- 4.4. However, on account of financial stress which was beyond the control of the Corporate Debtor and its promoters, the account of the Corporate Debtor was classified as non-performing asset ("**NPA**") and Joint Lenders' Forum ("**JLF**") was constituted for restructuring the account of the Corporate Debtor in terms of the Circular dated 26.02.2014 issued by the Reserve Bank of India on Guidelines on Joint Lenders Forum and Corrective Action Plan. As per the Circular, it was clearly stipulated that steps for recovery shall only be resorted by the lenders, if rectification and restructuring is not feasible.
- 4.5. Corporate Debtor submitted a proposal for restructuring of the account under Change in Management Outside Strategic Debt

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Restructuring Scheme ("**OSDR**") of the RBI, which was approved (in the meeting of the JLF held on September 27, 2017) by the majority of the lenders (Central Bank of India, Indian Bank and Corporation Bank (merged into Union Bank of India (now the Financial Creditor)) ("**Assenting Lenders**") constituting 73.33% by value and 60% by number i.e., whereas Karur Vysya Bank Limited (now Omkara Assets Reconstruction Private Limited), Indian Overseas Bank (now the Financial Creditor) ("**Dissenting Lenders**") did not grant approval.

- 4.6. Despite the approval of the restructuring package, Consortium of Banks failed to comply with the guidelines issued by the RBI towards its implementation. It was mandatorily required by the Dissenting Lenders to either accede to the restructuring package or sell their exposure to a third party or to the approving lenders, which they failed to do.
- 4.7. As a result of the approval of the restructuring package, Refinance Facility Agreement was executed amongst the Assenting Lenders on 28.09.2017. The Refinance Facility Agreement provided for accession by the remaining members of the Consortium Bank or any other lender, who participated in the Refinance Package.
- 4.8. It may be noted that as per the Circular (Timelines for Stressed Assets Resolution) dated May 05, 2017 issued by the RBI, timelines were

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included for stressed assets resolutions and obligations were imposed upon the banks for implementing the Corrective Action Plan within the said timeframe. In case of failure/ deviation from the timelines stipulated, penalty was also imposed.

- 4.9. Members of the Consortium of Banks did not entirely implement the restructuring package in accordance with Review of Prudential Guidelines-Revitalising Stressed Assets in the Economy ("**Prudential Guidelines**") dated 25.02.2016 (which required the Assenting Lenders to ensure compliance by the Dissenting Lenders with the obligation to down sell their exposure or accede to the restructuring package) but resorted to recovery measures before various judicial fora.
- 4.10. It was incumbent upon the Dissenting Lenders to either accede to the Refinance Facility Agreement or to exit from their exposure by selling their exposure to a new/existing lender within a period of 90 days from the approval of the refinance package. However, Dissenting Lenders did not adopt any of the approaches, thereby jeopardizing the rights/interest of the Corporate Debtor, which stood accrued under the restructuring schemes.
- 4.11. Thus, Dissenting Lenders neither implemented the restructuring package nor exited their exposure but illegally and arbitrarily initiated

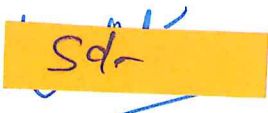
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proceedings against the Corporate Debtor across different judicial fora, including an Application by one of the dissenting lenders being *CP No. (IB) 70/7/JPR/2018 titled Karur Vysya Bank Limited vs ACCIL Corporation Private Limited* under Section 7 of the IBC before this Adjudicating Authority.

4.12. Aggrieved by the coercive recovery actions, the Corporate Debtor invoked the writ jurisdiction of the Hon'ble Rajasthan High Court by way of S.B. CWP No. 27818 of 2018 titled *ACCIL Corporation Private Limited and Ors. vs Reserve Bank of India and Ors. ("First Writ Petition")*, challenging the legality of the debt held by the Dissenting Lenders (including the Financial Creditor to whom Indian Overseas Bank has assigned the debt) *vis-a-vis* the Resolution of Stressed Assets Revised Framework dated February 12, 2018 "Circular dated 12.02.2018") and other guidelines on restructuring issued by the RBI and seeking appropriate directions/writs along with an application seeking stay of further proceedings initiated by another dissenting lender being Karur Vyasa Bank titled *Karur Vyasa Bank vs ACCIL Corporation Private Limited, CP (IB)-70/7/JPR/2018* filed before this Adjudicating Authority.

4.13. It is noted that in the present set of facts and circumstances, the relief sought by the Corporate Debtor before the Hon'ble High Court in the

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First Writ Petition is to the extent that Karur Vysya Bank and Indian Overseas Bank do not hold valid debt against the Petitioner Company, since they have voluntarily not acceded to the restructuring package approved by the majority of the lenders and thus they are not legally entitled to initiate or maintain insolvency proceedings before the National Company Law Tribunal, Jaipur, under Section 7 of the Insolvency and Bankruptcy Code, 2016.

4.14. The Hon'ble Rajasthan High Court, upon taking into consideration the *prima facie* case of the Corporate Debtor and the irreparable harm/injury which it is likely to suffer, stayed the proceedings initiated by Karur Vysya Bank before this Adjudicating Authority vide order dated January 03, 2019. The interim directions passed by the Hon'ble Rajasthan High Court continue till date as per the order dated December 13, 2024.

4.15. While the legality of the debt and actions of the lenders were *sub-judice* before the Hon'ble Rajasthan High Court, the Assenting Lenders, instead of ensuring that the restructuring package was given effect to, initiated and continued recovery action against the Corporate Debtor across different judicial fora/tribunals, by misplacing reliance on another set of guidelines issued by the RBI, i.e., Prudential Framework for Resolution of Stressed Assets dated June 07, 2019.

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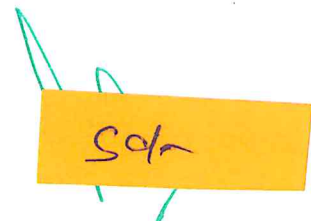
4.16. Aggrieved by such arbitrary actions, Corporate Debtor filed S.B. Civil Writ Petition No. 13517 of 2021 titled *ACCIL Corporation Private Limited and Ors. vs Reserve Bank of India and Ors.* ("**Second Writ Petition**") before the Hon'ble Rajasthan High Court on November 12, 2021, challenging RBI guidelines (Prudential Framework, that effectively enables and condones undertaking recovery measures parallelly with consideration of a restructuring proposal (which are antithesis to each other)), seeking stay on recovery of debt and enforcement measures taken by the Consortium of Banks, while simultaneously, praying for implementation of the restructuring package on agreed lines (failure of implementation of the restructuring package, being beyond the control of the Corporate Debtor and the complete and unqualified responsibility of the lenders, being the principal reason for default in debt servicing by the Corporate Debtor.

4.17. The Hon'ble Rajasthan High Court upon meticulous consideration of the relevant factors made pointed observations vide Order dated January 07, 2022 in the Second Writ Petition. The Hon'ble High Court noted that only symbolic possession of the Hotel has been taken, thereby negating the possibility of any coercive actions/steps.

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- 4.18. During the pendency of the Second Writ Petition before the Hon'ble Rajasthan High Court, Central Bank of India filed a Petition being CP No. (IB) 53/7/JPR/2022 titled *Central Bank of India vs ACCIL Corporation Private Limited* under Section 7 of the IBC on March 22, 2022 before this Adjudicating Authority. An application being S.B. Civil Misc. Application No. 2 of 2022 was filed in Second Writ Petition before the Hon'ble Rajasthan High Court, seeking inter alia stay of CP No. (IB) 53/7/JPR/2022 titled *Central Bank of India vs ACCIL Corporation Private Limited*.
- 4.19. The Hon'ble Rajasthan High Court vide Order dated October 14, 2022, stayed further proceedings (which is continuing vide Order dated December 13, 2024) in CP No. (IB) 53/7/JPR/2022 titled *Central Bank of India vs ACCIL Corporation Private Limited*.
- 4.20. Despite the aforesaid proceedings/observation, Union Bank of India (erstwhile Corporation Bank) (i) issued notices under Rule 8 & 9 of Security Interest (Enforcement) Rules, 2002, for sale (to be held on 10.03.2023 and 26.03.2023 respectively) of Hotel Property; and (ii) instituted proceeding under Section 7 of IBC being CP No. (IB) 02/7/2023 titled *Union Bank of India vs ACCIL Corporation Private Limited* before the Hon'ble NCLT on November 25, 2022.



- 4.21. Corporate Debtor, being aggrieved by the aforementioned illegal action, invoked the writ jurisdiction of the Hon'ble Rajasthan High Court on March 14, 2023, by filing of S.B. Civil Writ Petition No. 4965 of 2023 titled *ACCIL Corporation Private Limited vs Reserve Bank of India & Ors.* ("**Third Writ Petition**"), challenging the actions of Union Bank of India (erstwhile Corporation Bank) and inaction towards causing/affecting implementation of the restructuring package already approved in terms of the applicable guidelines of the RBI.
- 4.22. The Hon'ble Rajasthan High Court has, considering the facts and circumstances of the case, vide Order dated 18.04.2023 (which is continuing vide Order dated 13.12.2024), stayed further proceedings in CP No. (IB) 02/7/2023 titled *Union Bank of India vs ACCIL Corporation Private Limited* and also the Auction Notices.
- 4.23. It is submitted that due to the lack of implementation of the approved restructuring package by the Financial Creditor while resorting to judicial proceedings, despite the directions and order of the Hon'ble Rajasthan High Court amounts to brazen violation.
- 4.24. Despite the pendency of a fundamental question of law before the Hon'ble High Court, the initiation of proceedings by the Financial Creditor under the IBC, which are proceedings in rem, are bordering

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on being contemptuous, ought not to be continued and should accordingly be dismissed by this Adjudicating Authority.

4.25. During the pendency of above petition, the debt as held by Union Bank of India as well as the Indian Overseas Bank was assigned in favour of the Financial Creditor by way of an Assignment Agreement. In view of the said assignment, an application (Form No. CHG-1) for modification of charge was also filed by the Financial Creditor with the Registrar of Companies.

4.26. It is an utmost travesty that the Financial Creditor, on one hand, has held its hand and cannot proceed with the Company Petition being CP No. (IB) 02/7/JPR/2023 titled *Union Bank of India vs ACCIL Corporation Private Limited* which pertains to same debt extended by the Consortium of Lender to the Corporate Debtor, and on the other, is trying to circumvent and escape the fate that is sealed in the aforesaid writ petitions pending before the Hon'ble High Court of Rajasthan, and has filed the present Company Petition before this Adjudicating Authority.

4.27. The present company petition is also time barred and has been filed more than 8 years after declaration of NPA and default on April 27, 2016. Notably, the Financial Creditor was required to accede to the Facility Agreement dated September 28, 2017, which the Financial

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Creditor has very conveniently concealed in present petition despite being aware.

- 4.28. It is also an admitted fact that the Financial Creditor is part of the Consortium of Lenders and is a party to the Facility Agreement dated 19.10.2011 and inter creditor arrangement (**Annexure 16 to Company Petition**) that was executed by all the lenders, and yet has failed to adhere to the majority decision of the lenders, which is also the requirement under the applicable guidelines of the RBI.
- 4.29. It is submitted that the Consortium of Banks, having violated the mandatory conditions stipulated in JLF Guidelines, cannot be permitted to pursue/enforce any rights, when continuance of such debt is a consequence of inaction on the part of the lenders. It was due to the purported failure of the implementation of the restructuring package which was beyond the control of the Corporate Debtor and due to complete and unqualified responsibility of the lenders, being the principal reason for default in debt servicing, Corporate Debtor has been relegated to this situation for reasons not attributable to it.
- 4.30. It is also submitted that taking into consideration the pendency of a fundamental question of law before the Hon'ble High Court and the nature of challenge (in relation to the Prudential Framework), this Adjudicating Authority, being the creation of a special statute and

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vested with powers specific to matters outlined under the IBC, is precluded from adjudicating questions of law, such as those involved in the instant matter, that fall within the jurisdiction of a Writ Court (such as the Hon'ble High Court).

4.31. In the instant case, it becomes imperative to consider that once when the restructuring was already approved by the majority of the lenders, it was incumbent upon the Consortium of Banks to ensure implementation of the restructuring package, which they failed to do. Thus, the only parameter of debt and default can no longer be taken into consideration by this Adjudicating Authority.

5. We have heard the counsels from both sides and have perused the records. The Observations of the Tribunal are followed as under: -

5.1 The present petition has been preferred by the Financial Creditor *Asset Reconstruction Company (India) Limited ('ARCIL')* as against *ACCIL Corporation Private Limited ('Corporate Debtor')*. In the year 2011, the Corporate Debtor approached syndicate of Banks consisting of Corporation Bank (now merged with the Union Bank of India), Central Bank of India, Indian Bank, Karur Vyas Bank, and Indian Overseas Bank (hereinafter collectively known as "Consortium of Banks") seeking credit facilities for the purpose of constructing a five-star deluxe hotel on the land taken on lease by the Corporate Debtor. As per

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the Corporate Debtor, the total estimated project cost was Rs 450 crores.

5.2 The Consortium of Banks agreed to sanction the term loan credit facility aggregating to Rs. 300,00,00,000/- (Rupees Three Hundred Crores), along with applicable interest, charges etc., to Corporate Debtor. The credit facilities sanctioned by the Consortium of Banks are tabulated as under:

Bank	Date of Sanction	Amount in Crores (INR)
Corporation Bank TL I and TL II	October 15, 2011	Rs. 70 + Rs. 50 with base rate + 4.7%
Central bank of India	October 13, 2011	Rs. 50 with base rate + 4.65%
Indian Bank	May 12, 2011	Rs. 50 with base rate + 3.65%
Karur Vysya Bank	March 30, 2011	Rs. 30 with base rate + 4.15%
Indian Oversea Bank (FC)	April 18, 2011	Rs. 50 with base rate + 3%
	Total	300,00,00,000/-

5.3 The Bank upon request made by the Corporate Debtor sanctioned term loan to the Corporate Debtor vide Sanction Letter dated 18.04.2011 bearing Ref no. ADV/WCTL/2010-11 ("Sanction Letter"). The said credit facility, sanctioned by the Bank is as under: -

S. No.	Credit Limit	Amount (INR)
1	Term Loan	50,00,00,000/-
	Total	50,00,00,000/-

The term loan was sanctioned for an amount of Rs. 50,00,00,000/- (Rupees Fifty Crore Only), along with applicable interest, charges etc., for a tenure of 11 years ("Term Loan"). The Terms and Conditions mentioned in the aforesaid sanction letter dated 18.04.2011 were unconditionally accepted by the Corporate Debtor.

5.4 The whole case of the Corporate Debtor is that the subject matter of the present Petition is already under dispute and subject to adjudication of the Hon'ble High Court of Rajasthan. The Hon'ble High Court has stayed the insolvency proceedings initiated by the Petitioner. It is pertinent to note that the matter pending before the Hon'ble High Court has been withdrawn *vide* order dated 07.07.2025 and the stay as against the Insolvency Proceedings stands vacated in view of the disposal of the Writ Petition.

6. Before, we delve into the merits of the case, it is incumbent to adjudicate upon whether the instant Application is within the purview of the Laws of Limitation.
7. On perusal of the documents, it transpires that the Financial Creditor advanced a sum of Rs. 50 Crores to the Corporate Debtor *vide* sanction letter dated 18.04.2011. Thereafter, upon the request of the Corporate Debtor the Financial Creditor reviewed the Term Loan facilities *vide*

sanction letters dated 03.04.2014 and 20.10.2015. On perusal of the present Petition and the documents enclosed therewith reveal that the loan account of the Corporate Debtor was classified as Non-Performing Asset on 31.03.2016. Pursuant to the aforesaid default, a statutory demand notice under Section 13(2) of the SARFAESI Act, 2002 was issued to the Corporate Debtor on 27.04.2016.

8. Subsequently, the Corporate Debtor submitted its proposal of restructuring and the same was considered by consortium of lenders in their meetings dated 03.06.2016, 18.07.2016, 14.12.2016, 01.08.2017 and 27.09.2017. Thus, it becomes conspicuous, that subsequent to the availing of loan facilities, the Corporate Debtor has acknowledged its liability in various documents. At this juncture, it is pertinent to mention that the Corporate Debtor has continuously acknowledged its liability towards the *Indian Overseas Bank* (Loan assigned to Petitioner) in its Financial Statements since Financial Year 2015-16 till Financial Year 2023-24.
9. At this stage it is pertinent to refer to the Judgement of Hon'ble Apex Court in the matter of *IL&FS Financial Services Limited Vs Adhunik Meghalaya Steels Private Limited in Civil Appeal No. 5787/2025* wherein it was observed that:

“41. Keeping all these principles in mind, if we examine the facts of the present case, it will be clear that the Balance Sheet

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of F.Y. 2019- 20, viewed in the background of the other admitted documents, including the financial statements of the previous years, clearly constitutes a valid acknowledgment of a subsisting liability and indicated the existence of a jural relationship and an admission as to the existence of such relationship.....”

10. In view of the aforementioned judgement of the Hon’ble Apex Court and the settled position of law, it is no more *Res integra* that the continuous acknowledgement of liability in the Financial Statements by an entity will extend the period of limitation in term of Section 18 of the Limitation Act, 1963.
11. Thus, in view of the fact that the Corporate Debtor has continuously acknowledged its liability in the its financial statements since F.Y. 2015-16 till F.Y. 2023-24 along with various request of restructuring of the loan account of the Corporate Debtor, we are of the opinion that the captioned Company Petition has been filed within prescribed limitation period.
12. At this juncture it is relevant to refer Section 7 of the Code, 2016. For ease of reference, Section 7 of the Code is reproduced hereunder: -

“Section 7: Initiation of corporate insolvency resolution process by financial creditor

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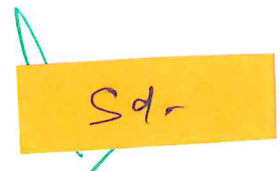
(1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2020, such application shall be modified to comply with the requirements of the first or second proviso within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission.





Explanation. --For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial creditor shall, along with the application furnish--

(a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;

(b) the name of the resolution professional proposed to act as an interim resolution professional; and

(c) any other information as may be specified by the Board.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3).

Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.

(5) Where the Adjudicating Authority is satisfied that--

(a) a default has occurred and the application under sub-section (2) is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or

(b) default has not occurred or the application under sub-section (2) is incomplete or any disciplinary proceeding is pending against the

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proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (5).

(7) The Adjudicating Authority shall communicate--

(a) the order under clause (a) of sub-section (5) to the financial creditor and the corporate debtor;

(b) the order under clause (b) of sub-section (5) to the financial creditor, within seven days of admission or rejection of such application, as the case may be."

13. A mere plain reading of the provision under Section 7 of IBC shows that to initiate CIRP under Section 7 of the Code, the Applicant must establish that there is a '**financial debt**' and that a '**default**' has been committed in respect of that financial debt by the Corporate Debtor.

14. In the instant Company Petition it is no where in dispute that the Corporate Debtor availed financial facilities to the tune of Rs. 50 Crores from the Financial Creditor and the same is duly supported by Sanction Letter dated 18.04.2011. Further, due to non-adherence of financial discipline the loan account of the Corporate Debtor was classified as NPA on 31.03.2016. Pursuant to the aforesaid default, a statutory demand notice was under

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Section 13(2) of the SARFAESI Act, 2002 to the Corporate Debtor on 27.04.2016 and symbolic possession of immovable assets were taken under Section 13(4) of the SARFAESI Act on 02.12.2021. Further, the factum of default is also corroborated by record of default issued by NeSL and the statement of loan account of the Corporate Debtor

15. Thus, in the present case, the component of debt and default as required under Section 7 of the Code stands duly established. Hence, upon conclusion of the fact that the debt has become due and default has been committed in payment of the same to the Creditor, the Adjudicating Authority has no discretion to refuse the admission of the Application for CIRP of the Corporate Debtor.

16. Accordingly, the Adjudicating Authority admits the Petition No. *CP (IB) 108/7/JPR/2024* and initiates CIRP proceedings against the *ACCIL Corporation Private Limited*.

17. Therefore, we appoint **Mr. Ajay Kumar Atolia** having Registration Number **IBBI/PA-001/IP-P-01988/2020-2021/13127**, duly registered with ICAI Insolvency Professional Agency, to be appointed as the Interim Resolution Professional. The Petitioner has filed Consent in Form 2 under Insolvency and Bankruptcy Board of India (Petition to Adjudicating Authority) Rules, 2016, stating that no disciplinary proceedings are pending against the above-named IRP.





18. Consequences of initiation of CIRP shall be inter-alia as follows:

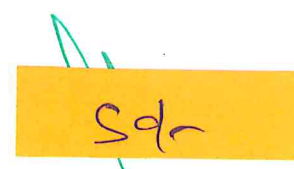
18.1 The Interim Resolution Professional, *Mr. Ajay Kumar Atolia* who is an IP registered with ICAI Insolvency Professional Agency having Registration No. *IBBI/IPA-001/IP-P-01988/2020-2021/13127*, he is hereby appointed as the Insolvency Resolution Professional (IRP) to take over the affairs of the Corporate Debtor and duties as required to be performed by him under the provisions of IBC, 2016.

18.2 IRP shall ensure that the publication in widely circulated Newspaper as contemplated under the provisions of IBC, 2016 and calling for the claims from the creditors of Corporate Debtor and collation of the same shall be done.

18.3 Further, as a sequel of admission, moratorium as envisaged under Section 14 of IBC, 2016 is invoked concerning the Corporate Debtor, which will be in vogue during the Corporate Insolvency Resolution Process of the Corporate Debtor. The IRP shall carry out CIRP strictly as per the timelines specified and as envisaged under the provisions of IBC, 2016 in relation to the Corporate Debtor.

18.4 The Petitioner shall deposit an amount of Rs. 2,00,000/- (Rupees Two Lakh Only) towards the initial CIRP costs in favour of the Interim Resolution Professional appointed herein, immediately upon





communication of this Order. The IRP shall spend the above amount towards expenses and not towards fee till his fee is ratified by CoC.

18.5 In terms of Section 17 & 19 of IBC, 2016, all personnel of the Corporate Debtor including promoters and Board of Directors, whose powers shall stand suspended, shall extend all cooperation to the IRP during his tenure as such and the management of the affairs of the Corporate Debtor shall vest with the IRP.

18.6 Further, in term of Regulation 4(3) of the IBBI (Resolution Process For Corporate Persons), 2016 the creditors shall provide information in respect of assets and liabilities of the Corporate Debtor to the IRP and it is incumbent upon the IRP also to approach the Creditors to seek such information.

18.7 In terms of Section 7 of IBC, 2016, the Registry is directed to communicate the instant order to the Petitioner, Corporate Debtor, and the Interim Resolution Professional (IRP) appointed by this Adjudicating Authority within three days of passing of this order.

18.8 Copy of this order shall also be communicated to IBBI for its record, and to any other body/entity to whom the Corporate Debtor is under legal/contractual obligation to inform/update.

18.9 The Interim Resolution Professional (IRP) is also directed to inform and forward the copy of this Order to all the statutory authorities such

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as Enforcement Directorate, Employees Provident Fund Organisation (EPFO), Income tax department and concerned Electricity department about the initiation of CIRP against the Corporate Debtor within a period of three days.

18.10 Further, the Registry is directed to list the matter after completion of 185th day of the CIRP for compliance purposes.

19. In the circumstances, *CP No. (IB) 108/7/JPR/2024* is admitted.



REETA KOHLI
JUDICIAL MEMBER



KAVITA BHATNAGAR
TECHNICAL MEMBER