

**IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH, PRAYAGRAJ**

IA NO.535/2023 IN CP (IB) NO.512/ALD/2019

In the matter of:

An application under Rule 11 of the National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

1. Suraksha Reality Limited
3, Narayan Building, 23,
L.N. Road Dadar (East)
Mumbai, Maharashtra, India-400014

.....Applicant No.1

2. Lakshdeep Investments and Finance Private Limited
3, Narayan Building, 23,
L.N. Road Dadar (East)
Mumbai, Maharashtra, India-400014

.....Applicant No.2

Versus

1. J.C. Flowers Asset Reconstructions Pvt. Ltd.
12th Floor, Crompton Greaves House,
Dr. Annie Besant Road, Worli,
Mumbai City, Mumbai, Maharashtra,
India-400030

.....Respondent No.1

2. Jaypee Healthcare Ltd.
Sector 128, Noida, Uttar Pradesh, India-201304

.....Respondent No.2

AND IN THE MATTER OF:

J.C. FLOWERS ASSET RECONSTRUCTIONS PVT. LTD

.....Financial Creditor/Petitioner

Versus

JAYPEE HEALTHCARE LTD.

.....Corporate Debtor/Respondent

Order pronounced on 18th April, 2024

Coram:

Mr. Praveen Gupta. : Member (Judicial)

Mr. Ashish Verma : Member (Technical)

Appearances:

Sh. Abhinav Vasishth, Sr. Adv. : For the Financial Creditor
Assisted by Sh. Anoop Rawat, & Res. in IA No.535/2023
Sh. Saurav Panda, Sh. Vaijayant and in IA No.622/2023
Paliwal, Sh. Nikhil Mathur,
Sh. Aditya Marwah, Ms. Mehak Nayak,
& Ms. Gunjan Jadwani, Adv.

Sh. R.P. Agarwal, Sr. Adv. : For the Corporate Debtor
Assisted by Sh. Abhishek Tripathi, Adv.

Sh. Alok Dhir with Ms. Varsha : For the Applicant in IA
Banerjee & Sh. Zain Abbas, Adv. No.535/2023

Sh. Anurag Khanna, Sr. Adv. assisted by : For the Applicant in
Sh. Rohan Gupta & Ms. Kali Gupta, Adv. IA No.622/2023

ORDER

1. This Application has been filed under Rule 11 of the NCLT Rules, 20116 for impleadment by the Suraksha Realty Ltd. and Lakshwadeep Finance and investment Private Limited ("SRAs") being Applicant No.1 and 2 respectively for seeking the following reliefs:-

“....

a) Allow the instant Application

b) Implead the Applicants as Respondents in the captioned petition.

c) Stay the hearing in the captioned Company Petition during the pendency of the instant application.

d) Pass an ex-parte ad interim order in terms of prayer c above.

e) Pass any other and further order(s) as this Hon'ble Tribunal may be deem, fit and proper in the interest of justice.”

2. Applicant contends that they are necessary and proper party in the matter against the Jaypee Healthcare Limited i.e Corporate Debtor. The Applicants are also the Successful Resolution Applicants (SRAs) of Jaypee Infratech Limited (JIL) which is the holding Company of the Corporate Debtor and the Resolution Plan categorically provides for amicable solution with the lenders of the Corporate Debtor herein. Copy of the relevant extract of the

Information Memorandum of JIL has been annexed as **ANNEXURE A-3** with the Application. Copy of the relevant extract of Resolution Plan of JIL dealing with the captioned Company Petition has been annexed as **ANNEXURE A-4** with the Application.

3. Applicants also contends that they are necessary and proper parties who are required to be heard in the captioned Company Petition. The Applicants are the Successful Resolution Applicants of the holding company of the Corporate Debtor herein The Applicants in the present case are sanguine to amicably resolve the alleged debts of the subsidiary company i.e. the Corporate Debtor herein in terms of the approved Resolution Plan. The Corporate Debtor herein is valuable asset-of-JIL and the Resolution Plan of JIL is required to be duly protected and implemented in its true letter and spirit in the present case. The captioned Company Petition in the present case cannot be proceeded without grant of opportunity to the Applicants to amicably resolve the debt of the Corporate Debtor herein.

4. According to their contentions, the Applicants hereunder are obligated to be heard in the captioned Company Petition in accordance with the conditions of JIL's approved Resolution Plan.

The applicants will need to provide a formal plan for the resolution of the corporate debtor's debt in accordance with the authorized Resolution Plan at some point, as the JIL Resolution Plan is being implemented as scheduled. Further, the order dated 27.06.2022 passed by this Tribunal, it is mentioned in paragraph 25 that the possibility of amicable solution of debts of the Corporate Debtor in terms of resolution plan and the implications of such a resolution for the current Section 7 Petition. Copy of the Order dated 27.06.2022 as passed by the Ld. Adjudicating Authority has been annexed herewith and marked as ANNEXURE A-5.

5. Applicant states that their right in the present matter as a necessary and proper party is clearly recognized by the Hon'ble Supreme Court in terms of the order dated 24.03.2021 in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Limited & Ors., 2022 1 SCC 401**. Para 185 of the said judgement specifically records the following:

"185 We have carefully examined the submissions made by the parties. In the totality of circumstances of the case and the stance of respective parties, when it is noticed that the aforesaid proposal of YES Bank, as stated in sub-paragraphs "ff" and "gg" of paragraph 7 of the memo of appeal, is acceptable to NBCC, subject to approval of

the resolution plan, we do not find any reason to say anything further on this score and would leave the parties to work out a viable solution in the best interest of all the stakeholders; and for that purpose, the parties concerned, if necessary, may seek appropriate orders from NCLT, as regards mode and modalities of the process to be carried out."

6. According to the Applicant, from the perusal of the aforesaid judgement passed by the Hon'ble Apex Court, it clearly established that the Applicants have a right to work out a viable solution in the best interest of all parties. Copy of the Judgement passed by the Hon'ble Supreme court in the matter of Jaypee Kensington Boulevard Apartments Welfare Association and Ors. Vs. NBCC (India) Limited & Ors., 2022 1 SCC 401 has been annexed as **ANNEXURE A-6** with the Application.

7. The aforesaid observation of the Hon'ble Supreme Court was duly taken into the consideration by this Hon'ble Tribunal in its order dated 27.06.2022. Even the order dated 13.10.2023 passed by the Hon'ble Appellate Tribunal takes note of the above observations of the Hon'ble Supreme Court. However, despite the above specific recognition of the right of the Applicants herein, the Respondents failed to array the Applicants as a party to the captioned Company Petition. Copy of the order of the Hon'ble NCLAT dated 13.10.2023 in Company Appeal (AT) (Insol) No. 873

of 2022 has been annexed as **ANNEXURE A-7** with the Application.

8. The main company petition, filed under section 7, was placed in abeyance in accordance with ruling dated 27.06.2022 of this tribunal. The captioned petition is only now being heard by this tribunal in accordance with order dated 13.10.2023 issued by the Hon'ble NCLAT. In the proceedings before the Hon'ble NCLAT, the Applicants were not impleaded as a party. The applicants have also filed an application before the Hon'ble NCLAT for seeking clarification of the order dated 13.10.2023. Copy of the clarification Application as filed before the Hon'ble NCLAT along with E-Filing proof have been annexed as **Annexure-A-8 (Colly)** with the Application.

REPLY ON BEHLF OF THE FINANCIAL CREDITOR

9. In response to this impleadment application, Respondent has filed reply vide dairy no. 2894 dated 08.11.2023 wherein the followings averments have been made :-

i. Respondent states that applicant has no locus in the application filed by Financial Creditor under Section 7 of the IBC, 2016 for initiating CIRP against the Corporate Debtor. While

relying on the judgements passed by the Hon'ble Supreme Court in ***Innoventive Industries Ltd. vs ICICI Bank Ltd (2018) 1 SCC 407***, respondent averred that only the Financial Creditor and Corporate Debtor are the necessary parties at the stage of admission of Section 7 application. Shareholders and Personal Guarantors may if required can challenge the order passed by the Adjudicating Authority in appeal.

ii. Respondent also states that total 42,75,00,000 equity shares of the Corporate Debtor are held by JIL. Out of which 27,21,09,231 shares, (63.65% of the total shareholding of the Corporate Debtor), were pledged by JIL as security against the different credit facilities that the Corporate Debtor availed from various lenders. The security trustee invoked the aforementioned commitments on 10.03.2021, on behalf of Respondent No. 1 and the consortium of lenders. As a result, 63.65% of the corporate debtor's total equity share capital is now beneficially owned by the Petitioner/ Financial Creditor through its security trustee, with JIL holding the remaining 36.35 % of the total equity share capital of the Corporate Debtor.

iii. Since JIL only owns 36.35% of the corporate debtor's equity share capital, it does not even have majority voting power over the corporate debtor due to the invocation of the pledge and the rights being exercised by the lender/ financial creditor. As a result, JIL is not the holding company of the Corporate Debtor. Furthermore, it is also denied that the lender/ financial creditor have to give up the claim on shares before selling them to a third party.

iv. It is argued by the non-applicant/ respondent/ financial creditor that, it would be in the best interests of all parties involved to admit the Section 7 Application as soon as possible and transfer control of the company's affairs to a qualified expert and new management, who will work to bring the corporate debtor back to life as soon as possible. This includes the general public, who is the ultimate consumer of the services provided by the corporate debtor's hospitals.

v. Respondent further averred that the judgment passed by the Hon'ble Supreme Court in ***Jaypee Kensington Boulevard Apartments Welfare Assn. v. NBCC (India) Ltd., (2022) 1 SCC 401 : 2021 SCC OnLine SC 253*** specifically records that the

resolution plan deals with the assets of JIL and not that of the Corporate Debtor.

vi. The resolution plan that NBCC submitted for JIL was rejected by the COC. and the Hon'ble Supreme Court remitted the plan approval process back to the Committee of Creditors of JIL in compliance of which Fresh resolution plans was presented by NBCC. On 10.06.2021, the Committee of Creditors of JIL rejected the new resolution plan submitted by the NBCC , while Suraksha's plan was accepted by the Committee of Creditors of JIL and later by the Ld. Principal Bench of this Hon'ble Adjudicating Authority on 07.03.2023.

vii. Furthermore, Yes Bank Limited assigned its financial assets related to the Corporate Debtor to Respondent No. 1. Additionally, an application (I.A. 146/2023) to substitute Respondent No. 1 for Yes Bank Limited as the Financial Creditor in the mentioned petition has been approved by the Adjudicating Authority vide order dated 06.06.2023. Therefore, any arguments regarding the directions outlined in *Paragraph 185 of the Jaypee Judgment*, which are claimed to impact the Section 7 Application is devoid of merit.

viii. Further, Respondent averred that approval of resolution plan does not bar the applicant from exercising its right against the Corporate Debtor. For this purpose the relevant extract of treatment of pledged shares of JHL is reproduced below:-

"23. Treatment under the Resolution Plan with respect to the liability on Corporate Debtor with respect to the Jaypee Healthcare Ltd ("JHL")

All contingent liabilities as more particularly detailed in the information memorandum or appearing in the books of the Corporate Debtor or otherwise, inter-alia including any contingent liabilities relating to guarantee(s), shortfall undertaking or any other similar instrument provided by the Corporate Debtor to secure the financial indebtedness of Jaypee Healthcare Limited or any other person, along with any related legal proceedings (including criminal proceedings), if any, shall stand irrevocably and unconditionally abated, and extinguished in perpetuity on and in with effect from date of approval of Resolution Plan by the Adjudicating Authority.

The Corporate Debtor shall have right of subrogation against its subsidiary JHL, in the event the pledged shares owned by the Corporate Debtor are enforced and monies are recovered by the lenders of JHL.

It is clarified that, without prejudice to the above mentioned treatment, the Resolution Applicant is in discussion with Yes Bank to explore possibility of mutually acceptable amicable solution.

34.55 "On and from the Approval Date, any liabilities, claims, demands, capital contribution or any other form of financial commitment, or any enforcement action undertaken including but not limited to any security interest created or provided, save and except, the

security interest created over 100 acres of land at Tappal in favour of the lenders of JAL and pledge of shares created in favour of lender of JHL, whether guaranteed or contractually agreed in writing or otherwise by the Corporate Debtor on behalf of or for its subsidiary companies, step-down subsidiaries, associate companies, group Companies, and/or their respective affiliates, shareholders/associates or for and on behalf of any other person, as the case may be, which are in existence prior to the Approval Date and which may be invoked prior to the Approval Date or at any time thereafter, shall stand irrevocably and unconditionally extinguished. It is clarified that the Corporate Debtor shall have right of subrogation in respect of the security interest created in favour of JAL Lenders and the lenders of JHL. It is clarified that the Corporate Debtor reserves its right to challenge and/ or seek appropriate remedy under the Applicable Laws in respect of mortgage of 100 acres land at Tappal of the Corporate Debtor created in favour of the lenders of JAL as well as pledge of shares created in favour of lender(s) of JHL.

ix. Moreover, the Applicant vide an email dated 05.09.2022 addressed to Bank of Baroda, one of the lenders of the Corporate Debtor, has explicitly stated that Jaypee Infratech Limited (JIL) does not have the right to subrogation under the plan, and there is no cancellation of the pledged shares held by the lenders of the Corporate Debtor. A copy of the letter by the Applicant to Bank of Baroda dated 05 September 2022 has been annexed as **ANNEXURE R-2** with the Application.

x. This tribunal vide order dated 27.06.2022 kept in abeyance the proceedings under section 7 of the IBC, 2016 till the order on the Resolution Plan in IA No. 2836/2021 in CP No. 77/2017 is passed by the Hon'ble Principal Bench. This order was set-aside by the Hon'ble Appellate Authority, New Delhi vide order dated 13.10.2023. The relevant paras of the order is reproduced below:-

“....

9. Senior Counsel for Appellant has brought to our attention paragraph 182.2 of the judgment of Hon'ble Supreme Court in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. (*supra*) to point out that the proposition given by Yes Bank noted in sub-paragraph (ff) in para 182.2 was regarding evolving a workable mechanism with regard to the monetization of assets of JHL and that it was with reference to the resolution plan submitted by NBCC. He has clarified that the resolution plan submitted by NBCC was not acted upon and the resolution plan of Suraksha Realty was approved.

10. Senior Counsel for Appellant has further brought to our notice clause (xi) of para 182.2 of the same judgment to contend that JHL lenders will have all rights to enforce its securities, once the date of 30.6.2020 is over, which also goes to show that the condition in para 182.2 was relevant only in connection with the resolution plan submitted by NBCC. He has further argued that the judgment of this Tribunal in the matter of Alok Industries (*supra*) also makes it clear that the CIRP of a subsidiary company can be initiated while the CIRP of the holding company is going on.

11. *In the light of the judgments of the Hon'ble Supreme Court in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. (supra) and this Tribunal in Alok Industries (supra), we are of the clear view that now there is no bar to hear the section 7 application filed by Yes Bank, which is now being pursued by its assignee J.C. Flowers Asset Reconstruction Pvt. Ltd., which can be considered and adjudicated upon.*

12. *Be that as it may, the facts remains that the proceedings before the Adjudicating Authority in CP (IB) No. 512/ALD/2019 filed by the Appellant under Section 7 of the Code has restarted.*

13. *The present appeal has been filed by the Appellant being aggrieved that his application has kept in abeyance by recording reasons which are not germane to the issue involved but once the proceedings has again been started, we deem it appropriate to dispose of this appeal with the observation that the finding recorded in the impugned order shall not come in way either of the parties for the purpose of decision of Section 7 application and all the issues shall remain open.”*

xii. Respondent further averred that the Corporate Debtor has committed default in repayment of its liabilities in terms of credit facilities availed which is evident from the audited financial statements filed by the Corporate Debtor. For this purpose of existence of debt and default in admission of section 7 application, Respondent has relied on judgement passed by the Hon'ble Supreme Court in **Innoventive Industries (Supra)** and **E.S**

Krishnamurthy vs Bharath Hi Tech Builders Pvt. Ltd. (2022)
3 SCC 161.

REJOINDER ON BEHALF OF THE APPLICANTS

10. In response to the reply filed by the Respondents, applicant has filed rejoinder vide dairy no. 3019 dated 28.11.2023 wherein they have denied all the averments made in the reply.

11. Applicants contends that in this instance, the Applicants' rights as the Successful Resolution Applicants of Jaypee Infratech Limited (JIL) are emerging as JHL's Holding Company and in support of the Hon'ble Supreme Court's ruling in the Jaypee Kensington (Supra) Case, the Applicants respectfully submitted that the Respondent has completely ignored the fact that the said judgment of the Hon'ble Supreme Court, as specifically recorded in para. 182.2, takes into account the interest of the Resolution Applicants of JIL, which as of this date are represented by the Applicants.

12. Applicants also contends that the Hon'ble Supreme Court of India in Jaypee Kensington case (*supra*) has exercised its jurisdiction under Article 142 of the Constitution. The order recognizes the unique circumstances surrounding JIL's Insolvency

Resolution, whose operations affect a multitude of individuals and entities, including homebuyers in its real estate development project. The 100% equity participation in the Corporate Debtor before this Hon'ble Tribunal, in JHL, is one of JIL's assets, as stated expressly in the judgement of the Hon'ble Supreme Court. The term "stakeholders" is wide term which includes the Successful Resolution Applicants of JIL, who were granted specific liberty to seek appropriate order from this Tribunal.

13. Since the Hon'ble Supreme Court recognized the rights of JIL's Resolution Applicants in the ongoing Section 7 Petition, on 24.03.2022¹ the Applicants have submitted their Resolution Plans in accordance with that judgement. NBCC was the resolution applicant before the Hon. Supreme Court, and Yes Bank was the lender. The Applicant has replaced NBCC, while the Respondent no.1 has replaced Yes Bank. The Respondent cannot establish a case of non-suiting the Applicants on the grounds that the Hon'ble Supreme Court proposal addressed the NBCC proposal, which is no longer in existence. Nevertheless, the parties are nevertheless bound by the rights and obligations that the Hon'ble Supreme Court specifically recorded and recognized.

FINDINGS AND ORDER

14. We have heard the Ld. Counsel of both the parties and perused the documents submitted on record.

15. The Applicants are the SRA of the Jaypee Infratech Limited (JIL) which is the holding company of the Corporate Debtor. Initially, the resolution plans submitted by the applicants in the matter of JIL was approved by the Principal Bench, New Delhi. Later on, an application under Section 7 was filed against the Jaypee Healthcare Ltd (JHL) by the JC Flower Assets Reconstruction Ltd. replacing Yes Bank Ltd. This tribunal vide order dated 27.6.2022 kept the Section 7 application in abeyance against which respondent filed an appeal before the Hon'ble Appellate Tribunal, New Delhi.

16. The Hon'ble Appellate Tribunal vide order dated 13.10.2023 in the matter of J.C. Flowers Asset Reconstruction Pvt. Ltd. versus Jaypee Healthcare Ltd. –CA(AT)(Ins) No. 873 of 2022 held as under:-

“.....

10. Senior Counsel for Appellant has further brought to our notice clause (xi) of para 182.2 of the same judgment to contend that JHL lenders will have all rights to enforce its securities, once the date of 30.6.2020 is over, which

also goes to show that the condition in para 182.2 was relevant only in connection with the resolution plan submitted by NBCC. He has further argued that the judgment of this Tribunal in the matter of Alok Industries (supra) also makes it clear that the CIRP of a subsidiary company can be initiated while the CIRP of the holding company is going on.

11. In the light of the judgments of the Hon'ble Supreme Court in the matter of Jaypee Kensington Boulevard Apartments Welfare Association & Ors. (supra) and this Tribunal in Alok Industries (supra), we are of the clear view that now there is no bar to hear the section 7 application filed by Yes Bank, which is now being pursued by its assignee J.C. Flowers Asset Reconstruction Pvt. Ltd., which can be considered and adjudicated upon.

12. Be that as it may, the facts remains that the proceedings before the Adjudicating Authority in CP (IB) No. 512/ALD/2019 filed by the Appellant under Section 7 of the Code has restarted.

13. The present appeal has been filed by the Appellant being aggrieved that his application has kept in abeyance by recording reasons which are not germane to the issue involved but once the proceedings has again been started, we deem it appropriate to dispose of this appeal with the observation that the finding recorded in the impugned order shall not come in way either of the parties for the purpose of decision of Section 7 application and all the issues shall remain open.”

17. The Hon'ble Apex Court while hearing the appeal arising out of order dated 03.03.2020 in the case of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Vs. NBCC (India) Ltd. & Ors., 2022 (1) SCC 401**. In this

regard, we may refer to Paragraph 280 to 281 which are reproduced as under:-

“.....

182.2. *It is noticed that without prejudice to the aforesaid and other submissions, the objector YES Bank has given out its proposition for evolving a workable mechanism with certain stipulations in sub-paragraphs “ff” and “gg” of para 7 of the memo of appeal, which read as under:*

“ff. Without prejudice to any of the above and the following legal grounds raised in the present proceedings, the appellant in the best interest of all the interested parties including the interests of the resolution applicant and in spirit of reconciliatory approach is still willing to work with the resolution applicant in finding a working solution so that JHL assets can be monetised in a timely manner. Provided, Respondent 2/resolution applicant is willing to accept the proposals and the safeguards as requested by the appellant. For brevity's sake, the Appellant's proposal for a workable mechanism is set out in the written submissions filed before the learned adjudicating authority, which is reiterated below:

(i) The lenders of JHL led by YBL will take all necessary preparatory measures required for finding a viable buyer to take over the JHL units in a completely transparent manner.

(ii) To the above cause, JHL lenders shall be permitted to prepare an information memorandum, seek bids from prospective buyers, appoint independent, impartial and reputed investment bankers to run the process of JHL monetisation.

(iii) This is proposed to be done through fullest cooperation from RP of JIL as well as Board and Management of JHL as information and engagement will be critical to run an efficient and effective sale process.

(iv) JHL lenders shall liaise with the IRP, Mr Jain and share the status of the steps periodically with IRP and NBCC.

(v) A Sale Committee to be set up with participation of lenders of JHL and NBCC, for sale of JHL.

(vi) The decision to accept the bid of a particular buyer shall be taken by a unanimous vote of NBCC and YBL (on behalf of the lenders of JHL).

(vii) The sale process shall be finalised within a period of 3 months from the date of approval of the resolution plan by Hon'ble NCLT and latest by 30-6-2020 and until such time rights of lenders of JHL vis-à-vis assets of JHL as well as pledge of JHL Shares (held by JIL as investment) in favour of JHL lenders shall be kept intact.

(viii) In the event of successful disinvestment of JHL, the disinvestment funds shall be utilised for settlement of debt of JHL lenders in priority, in accordance with existing resolution plan.

(ix) During the period above, until 30-6-2020, there shall be a moratorium on the rights of the JHL lenders to enforce its securities held in JHL including the share pledge by JIL.

(x) Should the sale still not be finalised before 30-6-2020, for any reason whatsoever (including any delay due to legal proceedings), then the moratorium over enforcement of pledged shares as well as other assets of JHL, shall stand lifted; and

(xi) Thereafter, JHL lenders will have all rights to enforce its securities against JHL to recover its outstanding dues including but not limited to enforcement of pledge, and, or continuation of CIRP against JHL.

gg. If Respondent 2 is agreeable to accept the above mechanism then the appellant shall not press its remedies for challenging the resolution plan. Failing which the entire resolution plan insofar as it relates to JHL assets is required to be severed and set aside.”

183. *In response, it is submitted that as a resolution applicant, NBCC is entitled to get th*

e management of the corporate debtor on a clean slate (as observed by this Court in Essar Steel [Essar Steel India Ltd. (CoC) v. Satish Kumar Gupta, (2020) 8 SCC 531 : (2021) 2 SCC (Civ) 443]); and when NBCC under its plan is extinguishing all the contingent liabilities, disinvestment of JHL shares cannot be taken exception of. It has also been submitted that in the resolution plan, it was made clear that NBCC does not possess the expertise to run the operation of a healthcare business and, therefore, seeks to divest the entire shareholding of JHL to a third party and/or a trust who would have the requisite expertise to deal with the requirements of healthcare business. It is also submitted, with reference to Section 18(1)(f)(v) of the Code, that the assets of the corporate debtor include securities and shares held in any subsidiary; and shares of a subsidiary company are held as the assets of the parent company in its books, as held by this Court in Vodafone [Vodafone International Holdings BV v. Union of India, (2012) 6 SCC 613 : (2012) 3 SCC (Civ) 867] .

184. *Apart from the above, NBCC has referred to the proceedings before the adjudicating authority before passing of the order dated 3-3-2020 [Anju Agarwal, In re, 2020 SCC OnLine NCLT 1429] and it is pointed out that the adjudicating authority, in its order dated 4-2-2020 observed that a settlement may be reached between NBCC and YES Bank and pursuant thereto, YES Bank and NBCC held a meeting on 6-2-2020 to discuss the mechanism for sale of shares of JHL and thereafter, on*

7-2-2020, a proposal for sale of shares of JHL was given by YES Bank to which NBCC, in its email dated 14-2-2020 stated that “NBCC is agreeable for constitution of a committee which will take forward the disinvestment process of JHL after approval of the resolution plan as submitted by NBCC”. Thus, according to NBCC, there has been an agreement between the parties on the manner of sale to be carried out of JHL shares. This apart, NBCC has also referred to the aforesaid proposal stated in the memo of appeal and while reproducing the first part of the abovequoted paragraph “gg”, has stated its acceptance of the proposal so made by YES Bank subject to the approval of resolution plan.

“185. We have carefully examined the submissions made by the parties. In the totality of circumstances of the case and the stance of respective parties, when it is noticed that the aforesaid proposal of YES Bank, as stated in sub-paragraphs “ff” and “gg” of paragraph 7 of the memo of appeal, is acceptable to NBCC, subject to approval of the resolution plan, we do not find any reason to say anything further on this score and would leave the parties to work out a viable solution in the best interest of all the stakeholders; and for that purpose, the parties concerned, if necessary, may seek appropriate orders from NCLT, as regards mode and modalities of the process to be carried out.

186. In view of the above, we do not consider it necessary to render any other finding in this point for determination except the observation that the resolution plan essentially deals with the assets of the corporate debtor JIL and not that of its subsidiary JHL. Differently put, what the resolution plan deals with are the shares in JHL, which are regarded as assets of the corporate debtor JIL. As observed, no further comments are required and we leave this aspect of the matter at that only”

.....

280. Taking all the facts and circumstances into account and in keeping with the spirit and purport of the orders passed in the past, we are inclined to again exercise the powers under Article 142 of the Constitution of India and to enlarge the time for completion of CIRP concerning JIL while extending opportunity to the said resolution applicants Suraksha Realty and NBCC to submit modified/fresh resolution plans, which are compliant with the requirements of the Code and the CIRP Regulations and are in accord with the observations and findings in this judgment.

281. We also deem it appropriate to clarify that the processing of the modified/fresh resolution plans, as permitted and envisaged by this judgment, is required to be completed within the extended time and for that matter, the other aspects like reconciliation of accounts between JAL and JIL or resolution of the issues related with the financial creditor of the subsidiary of the corporate debtor shall be the matters to be dealt with separately and decision on the resolution plan by the Committee of Creditors need not wait the resolution of those issues.”

18. It is significant to note that the issue for determination before the Hon'ble Apex Court was regarding resolution plan of the Corporate Debtor i.e Jaypee Infratech Limited submitted by the NBCC. Yes Bank Limited being an objection of the Resolution Plan recommended certain suggestions to the proposal of the NBCC. NBCC accepted the suggestions of the Yes Bank subject to the

approval of the Resolution plan. NBCC was granted time to submit the revised resolution plan.

19. After which the Hon'ble Apex Court gave liberty to the Yes Bank and NBCC to approach the Adjudicating Authority for appropriate directions regarding the *mode and modalities of the process to be carries out*. In compliance with the said order passed by the Hon'ble Supreme Court, NBCC submitted revised resolution plan on 10.06.2021 which was rejected.

20. The JIL holds total 42,75,00,000 equity shares of the Corporate debtor herein. Out of which 27,21,09,231 shares, (63.65% of the total shareholding of the Corporate Debtor), were pledged by JIL as security against the different credit facilities that the Corporate Debtor availed from various lenders.

21. At this point, it is pertinent to mention that Jaypee Infratech Ltd is the holding company of the Corporate Debtor i.e Jaypee Healthcare Ltd, which already underwent insolvency proceedings and by virtue of Suraksha Reality Consortium i.e Applicant in the present matter came out to be Successful Resolution Applicant of the Holding Company of the Corporate Debtor. The Resolution Plan submitted by the Suraksha Reality i.e

Applicant herein deals with the resolution of claims of the creditors of the Corporate Debtor. Even the Hon'ble Apex Court in Para 186 has categorically stated that Resolution plans deals with the shares held by the JIL in JHL which are considered as the 'assets of the JIL'.

22. Thus, we are conscious of the fact that the present petition has been filed by the Financial Creditor under section 7 of the Code, 2016 and the third party would not have any say in the process of adjudication of petition under section 7 of the Code, 2016. However, the factual matrix of the present case/application provide a different legal dimension in as much as the Applicants who are the SRA of the limited aspect as observed by the Hon'ble Supreme Court and the Hon'ble NCLAT. The Resolution Plan of Suraksha Reality Private Limited will impact the overall financial health and operations of the JIL as well as the JHL which is a Corporate Debtor herein and also subsidiary of JIL. Thus, for the purpose of implementation of the resolution plan of the Suraksha Reality Limited i.e Applicant it is significant that the SRA of the Jaypee Infratech Limited needs to be heard in the proceedings of application filed under Section 7 of the IBC, 2016 as a necessary and proper party in order to resolve the debt of the Financial

Creditor, particularly in the light of the paras 185 and 186 of the judgement passed by the Hon'ble Supreme Court of India in Japyee Kensington (Supra) as well as para 13 of the Hon'ble NCLAT's Order dated 13.10.2023. The Applicant namely, Suraksha Consortium who are the SRA of the JIL, which is the holding company of the Corporate Debtor herein. They therefore, have become the rightful candidate for the purpose of enabling them to work out a viable plan/solution, if any. The Applicants would have a limited right to intervene, in this context.

23. In view of the above observations and analysis, we are inclined to allow the present application for impleadment of the Applicants i.e Suraksha Reality Limited and Lakshwadeep Investments and Finance Private Limited as Respondents/intervener in the present petition.

24. Therefore, ***I.A No. 535 of 2023*** is disposed of.

25. Ordered Accordingly.

-Sd-

Ashish Verma
Member (Technical)

Dated : 18.04.2024

-Sd-

Praveen Gupta
Member (Judicial)