

IN THE NATIONAL COMPANY LAW TRIBUNAL

ALLAHABAD BENCH, PRAYAGRAJ

IA No.622/2023 IN CP (IB) NO.512/ALD/2019

In the matter of

An application under Section 60(5) of the Insolvency and Bankruptcy Code, 2016 r/w Rule 11 of the National Company Law Tribunal Rules, 2016

IN THE MATTER OF:

JAYPEE INFRATECH LIMITED

Having its registered office at:

Section 128, Noida, Uttar Pradesh-201304,
Through Implementation and Monitoring Committee.

..... Applicant

Versus

1. J.C. FLOWERS ASSET RECONSTRUCTION PVT. LTD.,

12th Floor, Crompton Greaves House,
Dr. Annie Beasantroad, Worli,
Mumbai City, Mumbai.

...Respondent/Financial Creditor

2. JAYPEE HEALTHCARE LTD.,

Sector 128, Noida, Uttar Pradesh 201304.

.....Corporate Debtor

3. MINISTRY OF CORPORATE AFFAIRS,

‘A’ Wing, Shastri Bhawan,

Rajendra Prasad Road, New Delhi, 110001.

..... Proforma Respondents

AND IN THE MATTER OF:

J.C. FLOWERS ASSET RECONSTRUCTION PVT. LTD.

.....Financial Creditor

Versus

JAYPEE HEALTHCARE LTD.

.....Corporate Debtor

Order pronounced on 18.04.2024

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.622/2023
Sh. Saurav Panda, Sh. Vaijayant
Paliwal, Sh. Nikhil Mathur,
Sh. Aditya Marwah, Ms. Mehak Nayak,
& Ms. Gunjan Jadwani, Advs.

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

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

ORDER

1. The Applicant namely, Jaypee Infratech Limited (JIL) is the holding company against which Company Petition No. CP (IB) No. 77 of 2017 was filed by IDBI Bank under Section 7 of IBC,2016

which was admitted by the tribunal vide order dated 09.08.2017. There were two main Resolution Applicants- NBCC and Suraksha Realty Ltd. who submitted their resolution plans and while the matters pertaining to the Applicant were transferred to the Principal Bench, Delhi, by the order of the Hon'ble President, NCLT. The two primary applicants for resolution were NBCC and Suraksha Realty Ltd. Both have filed their resolution plans.

2. Applicant states that even though the CoC initially approved the NBCC Resolution Plan, a number of parties appealed before the Hon'ble NCLAT. Eventually, all appeals were moved to the Hon'ble Supreme Court with the primary case being named **"Jaypee Kensington Boulevard Apartments Welfare Association and Ors. v. NBCC (India) Ltd. & Ors."** The Apex Court vide order dated 24.03.2021 disposed of all the appeals which set aside the order dated 03.03.2020 passed by the Principal Bench, NCLT Delhi's and directed the IRP to request new resolution plans from the two resolution applicants, NBCC and Suraksha Realty Ltd.

3. Subsequently, the Principal Bench, NCLT, Delhi vide order dated 07.03.2023 passed in I.A No. 2836 of 2021 approved the Resolution Plan of Suraksha Realty Ltd. and Lakshwadeep Finance

and Investment Private Limited ("SRA"),. This order established an Implementation and Monitoring Committee ("IMC") to oversee the management of the applicant company, Jaypee Infratech Limited, and to manage the resolution plan from the NCLT approval date, i.e. 07.03.2023, until the approval date, as defined therein.

4. The applicant is the holding corporation that owned all the shares of the Jaypee Healthcare Ltd. i.e the Corporate Debtor. Nonetheless, 63.65% of the shares of JHL were pledged by JIL, with a reservation of the first right of redemption in the event that the Lenders transferred the shares vide an indenture of pledge signed by the Applicant (JIL), the Corporate Debtor (JHL), and the Lenders of the JHL. Because the lenders invoked the pledge over the shares under the share pledge agreements and gave the depository instructions to transfer the pledged shares, the applicant company now owns 37% of the equity shareholding in the corporate debtor. Additionally, the Financial Creditor thereafter filed the application under section-7 IBC, 2016 petition against the Corporate Debtor-JHL. A copy of Applicant's shareholding structure at corporate debtor has been annexed as **ANNEXURE A-2** with the Application.

5. Applicant also states that on 31.10.2019, the financial creditor filed an application under Section 7 IBC 2016, and on 10.03.2023, the financial creditor commenced the invocation of the pledge against the pledgor and the corporate debtor. The intention to start insolvency and bankruptcy procedures is to start corporate resolution insolvency proceedings, not any recovery proceeding. However, as pointed by the Applicant, it is important to emphasize that the financial creditor is just using a forum shopping strategy in this instance. It is not possible to collect debt against solvent corporations through the use of bankruptcy legislation.

6. In the matter of **SS Engineers vs Hindustan Petroleum Corp. [Civil Appeal No. 4583 of 2022 decided on 15 July 2022]**, the Hon'ble Supreme Court had held that the exercise of powers by the NCLT under the IBC is not like that of debt-collecting forum and it is not the object of the IBC to penalise solvent companies for non-payment of disputed dues claimed by an operational creditor. Similar view was taken by the Hon'ble Supreme Court in **M/S Invent Asset Securitisation And Reconstruction Pvt. Ltd. Vs. M/S Girnar Fibres Ltd. (CIVIL APPEAL NO. 3033 OF 2022; April 25,2022)** and has held that

the provisions of the Code are essentially intended to bring the Corporate debtor to its feet and are not of money recovery proceedings as such.

7. The Applicant Company not only holds 37% equity shareholding in the Corporate Debtor but also has a right to redeem the shares in as much as under the Indenture of Pledge dated 23 June 2016. The Financial Creditors are bound to first offer the shares to the Applicant, before selling them further to any third party. Therefore, the Applicant Company not only holds 37% of the Shares of the Corporate Debtor, but also has a right of redemption of the rest of the 63.65% of the Shares. Furthermore, the Corporate Debtor being its subsidiary and one of its most valuable assets, it is necessary that the Applicant is given a chance to be heard before any orders, determining the fate of the Corporate Debtor, are passed.

8. Applicant further states that the Applicant Company holds a significant equity stake of 37% in the Corporate Debtor, coupled with the right to redeem shares as per the Indenture of Pledge dated 23.06.2016. According to this agreement, Financial Creditors must first offer these shares to the Applicant before considering selling them to any third party. Consequently, besides

owning 37% of the Corporate Debtor's shares, the Applicant also possesses the right to redeem the remaining 63.65% of shares. Given that the Corporate Debtor is a subsidiary and a crucial asset of the Applicant, it is imperative that the Applicant is afforded an opportunity to present its case before any decisions affecting the fate of the Corporate Debtor are made. A copy of the Indenture of Pledge dated 23.06.2016 has been annexed as **ANNEXURE A-3** with the Application. Reference may be made to Para 14 of judgment passed in case of **Ramesh Hirachand Kandanmal v. Municipal Corporation of Greater Bombay and Others, 1992 2 SCC 524**. The Relevant extract is reproduced herein below:

"14. It cannot be said that the main object of the rule is to prevent multiplicity of actions though it may incidentally have that effect. But that appears to be a desirable consequence of the rule rather than its main objective. The person to be joined must be one whose presence is necessary as a party. What makes a person a necessary party is not merely that he has relevant evidence to give on some of the questions involved; that would only make him a necessary witness. It is not merely that he has an interest in the correct solution of some question involved and has thought of relevant arguments to advance. The only reason which makes it necessary to make a person a party to an action is so that he should be bound by the result of the action and the question to be settled, therefore, must be a question in the action which cannot be effectually and completely settled unless he is a party. The line has been drawn on a wider construction of the

rule between the direct interest or the legal interest and commercial interest. It is, therefore, necessary that the person must be directly or legally interested in the action in the answer, i.e., he can say that the litigation may lead to a result which will affect him legally that is y curtailing his legal rights. It is difficult to say that the rule contemplates joining as a defendant a person whose only object s to prosecute his own cause of action. Similar provision was considered in Amon v. Raphael Tuck & Sons Ltd. [(1956) 1 All ER 273: (1956) 1 QB 357], wherein after quoting the observations of Wynn-Parry, J. in Dollfus Mieg et Compagnie S.A. v. Bank of England[(1950) 2 All ER 605, 611], that their true test lies not so much in an analysis of what are the constituents of the applicants' rights, but rather in what would be the result on the subject matter of the action if those rights could be established, Devlin, J. has stated: "The test is 'May the order for which the plaintiff is asking directly affect the intervener in the enjoyment of his legal rights'."

9. It is further submitted that the right of the Applicant in the present case as a necessary and proper party is clearly recognised 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."

Therefore, the Applicant has a right to work out a viable solution in the interest of all parties.

10. The above stated observation made by the Hon'ble Supreme Court, was duly considered by this tribunal in its order dated 27.06.2022, which led to keep the proceedings under section 7 in abeyance. It was only after the Order dated 13.10.2023 passed by the Hon'ble NCLAT that the current Company Petition began to be heard by this Tribunal. the Applicant was not involved in the proceedings before the Hon'ble NCLAT and was appropriately safeguarded by the Order dated 27.06.2022 passed by this Tribunal. Therefore, the Applicant's right to seek involvement in this matter only arose after 13.10.2023, when the Hon'ble NCLAT concluded the appeal against the Order dated 27.06.2022, and granted permission to all parties, including the applicant, to present their arguments before this Hon'ble Tribunal on all relevant matters. Copy of the Hon'ble NCLAT dated 13.10.2023 in

Company Appeal (AT) (Insol) No. 873 of 2022 has been annexed as **ANNEXURE A-4** with the Application.

11. Applicant further submits that if the instant Section 7 application is accepted, it could jeopardize the rights and interests of the Corporate Debtor and all other stakeholders, especially considering that the approved Resolution Plan by the SRA has not yet been finalized. The Applicant is submitting this application to safeguard their interests and rights. It's worth noting that the primary objective of the IBC is to facilitate resolution while preserving businesses and employment opportunities.

12. The Hon'ble Supreme Court in para 205 of the ***Ebix Singapore Private Ltd. Vs. Committee of Creditors of Educomp Solutions Ltd. & Anr.*** dated 13.05.2021 observes that delay in the process of insolvency resolution, systemic and frequent, have an undeniable impact on the commercials. Therefore, initiation of CIRP against the Corporate Debtor is not a good solution and will jeopardise the interest of all the stakeholder.

13. Applicant initially sought permission to file a detailed impleadment application through an intervention application submitted to this tribunal on 10.11.2011, shortly after becoming aware of the proceedings. However, this intervention application

was withdrawn on 21.11.2023, as the proceedings were scheduled for 01.12.2023. Hence, the Applicant has now filed this instant application before this Tribunal within the prescribed period of time.

REPLY ON BEHALF OF THE RESPONDENT- J.C FLOWERS
ASSETS RECONSTRUCTION LIMITED

14. In response to this impleadment application, Respondent Financial Creditor has filed reply vide dairy no. 635 dated 12.03.2024 wherein the followings averments has been made :-

- i. Respondent Financial Creditor 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 replying 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 the Corporate Debtor holds total 42,75,00,000 equity shares. 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 creditors of the corporate debtor 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 debtor due to the invocation of the pledge and the rights being exercised by the lenders. As a result, JIL is not the corporate debtor's holding company. Furthermore, it is also denied that the lenders

have to give the applicant shares before selling them to a third party.

- iv. It is argued by the Respondent 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 Financial Creditor 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 which is evident from the relevant extracts of the Jaypee Judgment reproduced herein below:-

“.....

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 Para 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.*

- 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 Financial Creditor averred that approval of resolution plan does not bar the applicant from exercising its right against the Corporate Debtor. Moreover, the Applicant vide an email dated 05.09.2022 addressed to Bank of Baroda has explicitly stated that one of the lenders of the Corporate Debtor, 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 Financial Creditor 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.***

15. Both the parties have filed their written submissions vide dairy no. 646 dated 12.03.2024 and 22.03.2024 which have been taken on record which not stated here for the sake of brevity.

FINDINGS AND ORDER

16. We have heard the submissions made by the Ld. Counsel of both the Parties and perused the materials on record.

17. Ld. Counsel of both the parties have placed their averments on the judgement passed by the Hon'ble Supreme Court in Jaypee Kensington (*Supra*) wherein it was held as under:-

“....

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 Para 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.

...”

18. The present application has been filed by the JIL through Implementation and Monitoring Committee to seek intervention and participation in the present proceedings under section 7 of the IBC, 2016.

19. In an application filed under section 7 of the Code, 2016 there is no enlarged scope of any third party intervention in the process

of adjudication of Section 7 Petition. The reliance placed upon by the JIL on the judgment passed by the Hon'ble Supreme Court in Kensington (*Supra*) seems to be misplaced in order to seek its eligibility to intervene in the process. The Hon'ble Supreme Court in para 185 and 186 have referred to the Successful Applicant which at the relevant time was NBCC whose resolution plan ultimately did not mature resulting into Suraksha Consortium to be SRA. Therefore, according to us at best, it is the Suraksha Consortium as the SRA who would be entitled to be considered as intervener in the process of adjudication of petition under section 7 of the Code, 2016.

20. By way of separate order passed in IA No. 535 of 2023 we have allowed the application filed by the SRA to be intervener to the limited aspect as observed in that order.

21. The present applicants however, would not have the same cause to seek intervention as being the holding company of the present Corporate Debtor which is already under the process of implementation of the Resolution Plan of the SRA.

22. Therefore, we are not inclined to allow the present application. **I.A No. 622 of 2023** hereby stands dismissed.

23. Ordered Accordingly.

-Sd-
Ashish Verma
Member (Technical)

-Sd-
Praveen Gupta
Member (Judicial)

Dated:- 18.04.2024