

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL,
PRINCIPAL BENCH, NEW DELHI**

Company Appeal (AT) (Insolvency) No. 1296 of 2024

In the matter of:

Suraksha Realty Ltd. & Anr.

....Appellants

Vs.

J.C. Flower Asset Reconstruction Pvt. Ltd. & Anr.

...Respondents

For Appellants

Mr. Mukul Rohatgi, Senior Advocate with Mr. Alok Dhir, Ms. Varsha Banerjee, Advocates.

Mr. Krishnendu Dutta, Senior Advocate with Mr. Mahesh Agarwal, Ms. Geetika Sharma, Mr. Sagar Bangal, Ms. Aakansha, Mr. Akhil Nene, Advocates.

For Respondents

Dr. Abhishek Manu Singhvi, Mr. Abhinav Vasishta, Sr. Advocates with Mr. Vijayant Paliwal, Mr. Anoop Rawat, Mr. Saurav Panda, Mr. Nikhil Mathur, Mr. Aditya Marwah, Ms. Kirti Gupta, Advocates for R1.

Mr. Raunak Dhillon, Ms. Aishwarya Gupta, Ms. Niharika Shukla, Advocates for R2.

ORDER

(Hybrid Mode)

11.07.2024: Heard Shri Mukul Rohatgi and Shri Krishnendu Dutta, Learned Senior Counsel for the Appellant, Dr. Abhishek Manu Singhvi, Learned Senior Counsel for the Respondent No. 1 and Shri Raunak Dhillon, Learned Counsel for the IRP.

2. This Appeal has been filed against the order dated 14.06.2024 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench, Prayagraj, by which Section 7 application has been admitted which was filed by the Yes Bank continued by Assignee- J.C. Flowers Asset Reconstruction Pvt. Ltd.

3. Shri Mukl Rohatgi, Learned Senior Counsel for the Appellant submits that the Appellant is Successful Resolution Applicant (SRA) of the JIL which is a holding company of the Corporate Debtor- Jaypee Healthcare Limited. It is submitted that the plan of the SRA was approved by the Adjudicating Authority on 07.03.2023 in the CIRP of JIL against which appeals were filed. Last of the appeal was decided on 24.05.2024. It is submitted that an application for impleadment was filed by the Appellant in the CIRP of the corporate debtor on 25.10.2023 which has been allowed on 18.04.2024. Adjudicating Authority heard Section 7 application and reserved the order on 17.05.2024. At the time of reserving the order, Counsel for the Appellant whose application for impleadment was allowed has also made a statement that the time be allowed to take appropriate steps so as to reach the settlement with the financial creditor which has been noticed in paragraph 1 of the order reserving the order by the Adjudicating Authority. The case of the Appellant is that subsequent to the order dated 17.05.2024, an Affidavit dated 03.06.2024 was filed after mentioning to the Court with the leave of the Court. Adjudicating Authority has passed the order on 14.06.2024 admitting Section 7 application. It is submitted that the Adjudicating Authority in paragraph 77 of the order has observed that although the Appellant was impleaded as one of the parties but they have not submitted any plan for resolution of the debt of the corporate debtor, hence, Section 7 application need to be admitted. It is submitted that the Adjudicating Authority did not consider the Affidavit which was filed with the leave of the Court in which the Appellant has submitted a proposal of Rs.801 Crore for taking care of the debt of all the creditors. It is submitted that the application which was filed by the financial creditor in the

year 2019 was for amount Rs.378 Crores. It is submitted that the corporate debtor has been running a 500 bedded hospital i.e. Jaypee Hospital in the midst of several residential building constructed and where thousands of persons living and hospital is catering the large number of populace. It is submitted that the appellant has expressed his willingness to resolve the debt of all the creditors and has also filed an affidavit which have not been adverted to by the Adjudicating Authority while passing the order.

4. Dr. Abhishek Manu Singhvi, Learned Senior Counsel appearing for the Respondent No.1 opposing the submissions of the Counsel for the Appellant submits that the Appellant had not submitted any proposal before the Adjudicating Authority despite opportunity been given. He submits that appellant plan was approved on 07.03.2023 but no plan was submitted even after order dated 18.04.2024. Along with the impleadment, the Appellant did not come with any plan which clearly indicate that the Appellant is not interested in any resolution and the steps are only to ambush the proceedings under Section 7 initiated by the financial creditor. It is submitted that the proposal which was submitted in the Affidavit dated 03.06.2024 is not a proposal and is a conditional proposal and payment of Rs.801 Crores as offered is not to clear the entire debt. It is further submitted that the CoC has already been constituted on 06.07.2024 and any proposal for settlement has to be considered by the CoC only as per Section 12A of the statute. It is submitted that the Adjudicating Authority could not have accepted the proposal as submitted by the Appellant.

5. Shri Raunak Dhillon, Learned Counsel appearing for the IRP submits that the IRP has taken possession and is running the hospital as a going concern. He submits that the IRP collated the claim of the financial creditors totaling to Rs.1036 Crores and Operational Creditors' claims are under verification.

6. We have considered the submissions of the Counsel for the parties and perused the record.

7. The Appellant before us is a holding company of the corporate debtor who is SRA whose plan has been approved by the Adjudicating Authority on 07.03.2023 and thereafter by this Tribunal on 24.05.2024. It is submitted that the Corporate Debtor have been running 500 bedded hospital and two other hospitals. The financial creditors have initiated the proceeding on the basis of debt of Rs.378 Crore and the appellant is ready and willing to submit a resolution plan to resolve the corporate debtor so as to hospital may continue to run to cater the needs of populace. In the order dated 18.04.2024 by which impleadment application was allowed following was observed in paragraph 22 of the impugned order:-

“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 Jaypee 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."

8. It is submitted that the Adjudicating Authority itself has noted that the Appellant is being impleaded to resolve the debt of financial creditors and has also referred to paragraphs 185 and 186 of the earlier judgment of **"Jaypee Kensington Boulevard Apartments Welfare Association and Ors. vs. NBCC (India) Ltd. and Ors.- Civil Appeal No. 3395 of 2020"**.

9. From the sequence of the events, as noticed above, it is clear that on the date when order was reserved, it was submitted on behalf of the Appellant that

OTS proposal will be submitted which was mentioned on 12.06.2024 and Affidavit was filed. From the impugned order, it is clear that there is no reference to the Affidavit dated 03.06.2024 for which according to the appellant leave was granted on 12.06.2024.

10. We have looked into the Affidavit which has been placed on the record by the Appellant which Affidavit in detail indicate the proposal given by the Appellant in paragraph 5. Paragraph 5 of the Affidavit is as follows:-

“5. Therefore, in terms of the order dated 17.05.2024 passed by this Hon'ble Tribunal, the Applicants in IA No. 535 of 2023 are proposing the following viable plan/ solution which shall improve overall financial health and operations of the Corporate Debtor namely Jaypee Healthcare Ltd. (JHCL), which the subsidiary company of Jaypee Infrastructure Limited:

(a) For improving the Financial Health of JHCL- That as on date, various financial institution has granted loan facilities to Jaypee Healthcare Ltd, out of which the major loan of Yes Bank, Bank of Baroda and Union Bank has been acquired by JC Flower. The acquisition cost by JC Flower (as on January, 2024) of the loan from the said banks are as follow:

S. No.	Bank	Percentage of claim amount on the basis of JCF claim filed u/s 7 petition	Assessed value by JCF ARC (In Crores)	Remarks
1.	JCFARC (Debt acquired from YBL)	58.9%	278.3	Based on value paid by JCF to BOB and Union bank in proportion to debt of Yes Bank

2.	JCF (Debt acquired from Bank of Baroda)	8.1%	38.4	Consideration paid by JCF
3.	JCF (Debt acquired from Union Bank of India)	12.3%	56.9	Consideration paid by JCF
	Sub-Total of JCFARC	79.3%	373.6	
4.	Oriental Bank of Commerce	8.2%	38.9	Based on value paid by JCF to BOB and Union bank in proportion to debt of Yes Bank
5.	Exim Bank	8.2%	38.6	Based on value paid by JCF to BOB and Union bank in proportion to debt of Yes Bank
6.	ARCIL	4.2%	20.1	Based on value paid by JCF to BOB and Union bank in proportion to debt of Yes Bank
	Total	100	471.2	

For the said turn around, the Applicants are ready for settling the dues of creditors i.e. J.C Flower ARC and other lenders of the Corporate Debtor at Rs.801 crores, around i.e. 170% of the value at which debt are acquired by JCFARC within a period of 90 days. (Out of the total amount, 25% will be paid within 90 days and the remaining 75% of the amount shall be paid within 180 days) post the Hon'ble NCLT order on the instant proposal/plan, although as per J.C. Flower ARC own assessment the total assessed value of the debts due to financial creditors stands at Rs. 471.2 crores. To clarify out of RS.801 crores, Rs642 crores will be paid to JCFARC as against their acquisition cost of Rs.373.60 crores and the balance Rs.159 crores will be paid to OBC, Exim Bank and ARCIL in the ratio of their respective debt to the total debt of the Company as

per the chart given above. That apart from the above full and final settlement of debt of financial institution, the Applicant will have to infuse significant Working Capital and capex to the tune of around Rs.200 crores in the Company for improvement in the operations of the said hospital on need basis. It is pertinent to mention that from last so many years, the hospital was not running on the full capacity, even till date the capex of 525 beds have not been achieved (which is further expandable up to 1200 beds). Due to poor management and other reasons, the Hospital being unable to pay the loan of these financial institutions, which resulted in financial insolvency due to ballooning interest of financial creditors. Therefore, the Applicants have proposed to turnaround the complete scenario and provide best facilities to the patients Hospital and further to make plan/ solution feasible and viable not only for financial institution but for all stakeholders including doctors, surgeons, patients, nursing staff etc. Settlement of the dues shall allow the Applicant to focus on the services being provided efficiently resulting in better financial performance of the Corporate Debtor, resulting in revival of the Corporate Debtor, outside IBC without any delay of time in process of IBC. As such the Resolution Proposal is for Rs.1001 crores consisting of Rs. 801 crores to the financial creditors and Rs.200 Crores for capex and working capital and improvement of operations of the Company.

*(b) **For improving the Operations of JHCL-** The Applicants envisages for working capital and capex infusion to the tune of Rs.200 Crores on need basis to expand the services being provided along with purchase of new equipment and capital expenditure essential to be done for revival of Corporate Debtor. The Hospital in the present case become operational in 2014 and therefore there is need to infuse new equipment for*

betterment of patients. Also, the doctor to beds ratio has come near to 1 and therefore the Applicants propose for engaging additional staff of doctors and nurses along with frequent and flexible cross-trainings to maximize the staff productivity. The Applicants also propose to complete the pending capital expenditure to be done at the hospitals located at Anoopshahar and improving the services being provided to the patients. The Applicants shall explore the strategic partnership with academic institutions and healthcare technology companies to enhance the products/ services being offered by the Corporate Debtor.”

11. We are conscious of the fact that the corporate debtor has been running a 500 bedded hospital. Appellant having submitted an Affidavit giving a proposal for settlement of the dues of all creditors including the financial creditors, the said proposal has to be considered before proceeding further in the matter. Now the CoC having been constituted, we are of the view that the Appellant may submit appropriate proposal before the Resolution Professional to be placed before the COC for consideration which may be done within a period of two weeks from today.

12. We have been informed that the meeting of the COC is scheduled for 15.07.2024. The meeting of the COC may take place but the COC may not proceed in the CIRP any further till the proposal as to be submitted by the Appellant is considered. Let CoC take a decision on the proposal and decision so taken may be brought on the record.

13. Issue Notice. Let reply be filed within three weeks. Rejoinder, if any, be filed within three weeks thereafter.

14. List the Appeal on 21.08.2024.

In the meantime, IRP as directed above shall not take any further steps in the CIRP. However, running of the hospital shall be continued with the assistance of the officers and employees of the corporate debtor and under supervision of the IRP.

**[Justice Ashok Bhushan]
Chairperson**

**[Barun Mitra]
Member (Technical)**

Anjali/nn