

NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
SPECIAL BENCH

IA. NO. 3481/PB/2021

IN

Company Petition No. (IB)-77/ALD/2017

IN THE MATTER OF:

IDBI Bank Limited

...Applicant/Financial Creditor

Versus

Jaypee Infratech Limited

...Respondent

AND IN THE MATTER OF IA. NO. 3481/PB/2021:

1. Suraksha Realty Limited

Office at :

3 Narayan Building, 23, L.N Road Dadar
(East) Mumbai, Maharashtra - 400014

...Applicant No. 1

2. Lakshdeep Investments and Finance Private Limited

Office at :

3 Narayan Building, 23, L.N Road Dadar
(East) Mumbai, Maharashtra - 400014

...Applicant No. 2

VERSUS

1. Mr. Anuj Jain

Interim Resolution Professional of Jaypee Infratech Limited

Office at:

8th Floor, Building No. 10, Tower B, DLF Cyber City,
Phase II, Gurugram, Haryana-122002

...Respondent No. 1

2. Jaiprakash Associates Limited

Office at:

Sales office of Indirapuram Habitat Centre,
Plot No. 16, Ahimsa Khand-I
Indirapuram, Ghaziabad-201014

...Respondent No. 2

SECTION: Section 60(5) of IBC 2016

CORAM :

JUSTICE RAMALINGAM SUDHAKAR

HON'BLE PRESIDENT

SH. L. N. GUPTA

HON'BLE MEMBER (TECHNICAL)

PRESENT:

For the Applicant

: Sr. Adv. Arvind Nayyar, Adv.
Eshna Kumar, Adv. Sagar Bansal,
Adv. Mansumyer Singh, Adv. Saumya
Gupta, Adv. Veera Matha

For the Respondents

: Adv. Sumant Batra, for IRP
For JAL: Sr. Adv. Krishnan Venugopal,
Adv. Divyanshu Gupta, Adv. Anupam
Chaudhary, Adv. Pallavi Srivastava,
Adv. Krishnan Agarwal

ORDER

The present IA No. 3481 of 2021 has been filed by Suraksha Realty Limited and M/s. Lakshdeep Investments and Finance Private Limited (hereinafter referred to as the '**Applicants/Successful Resolution Applicants**') under Section 60(5) of IBC, 2016, read with Rule 11 of NCLT Rules, 2016 seeking the following reliefs:

- "a) *Allow the Applicant to intervene/implead the Applicants as parties in the IA 2593 of 2021 and a copy of the IA 2593 of 2021 be serves upon the Applicants,*
- b) *An opportunity of being heard be given to the Applicant before passing of any further orders in IA 2593 of 2021;*

c) *Pass any other order/direction as this Honourable Tribunal deems fit and proper in the facts of the present case.”*

2. The present application has been filed for seeking intervention in the IA-2593 of 2021 by which reconciliation process is taking place in relation to distribution of Rs. 750 Crore, which is deposited in the Registry of NCLT, Allahabad Bench. The said process is taking place between Jaypee Infratech Limited (hereinafter referred to as “**Corporate Debtor/JIL**”) and Jaiprakash Associates Limited (hereinafter referred to as “**JAL**”) in terms of direction of the Hon’ble Supreme Court passed in the matter of **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd. & Ors. in Civil Appeal No. 3395 of 2020 dated 24.03.2021 (hereinafter, referred to as “Jaypee Kensington Case”)**.

3. It is stated by the Applicant that it has emerged as the Successful Resolution Applicant (**hereinafter referred to as SRA**), whose Resolution Plan has been approved by the Committee of Creditors (CoC) on 23.06.2021 with voting share of 98.66 percent. It has added that the said Resolution Plan is pending adjudication before this Adjudicating Authority.

4. The Applicant has sought intervention, to be heard on the reconciliation process, on the following grounds:

4.1. On a submission of JAL that an amount of Rs. 195 crores, which was to be appropriated towards the construction of Corporate Debtor’s

project, could be adjusted from the said sum of Rs. 750 crores, the Hon'ble Supreme Court had ordered reconciliation of accounts of JAL and JIL/Corporate Debtor qua the construction advance. For ready reference, the relevant extract(s) from the judgement of Hon'ble Supreme Court in the **Jaypee Kensington** (Supra) is reproduced herein below:

“187. The upshot is that the said amount of INR 750 crores and accrued interest thereupon, is not the property of JIL. In regard to this amount, neither the stipulation in the resolution plan could be countenanced nor the order of NCLT could be approved.

...

...

189.1. As noticed, even when JAL and JIL are two separate corporate entities, JIL is an alter ego of JAL, for having been set up as an SPV and having been substituted as concessionaire in the Concession Agreement aforesaid. The agreements with homebuyers had also been of such a nature where JAL and JIL both were signatories thereto. Additionally, JAL had been extended construction contracts by JIL and, as per the submissions made before us [vide paragraph 178.1.4 (supra)], JAL had been carrying out the construction work and taking steps to reduce the liability towards JIL that stood at a sum of INR 716 crores as on 31.03.2018 and was purportedly reduced to INR 195 crores as on 31.03.2020. Various homebuyers have allegedly made payments towards IFMD to JAL. Moreover, JAL has submitted that balance of INR 195 crores, which was to be appropriated towards the construction of JIL's project, could be adjusted from the said sum of INR 750 crores, if the resolution applicant makes a formal submission of terminating the construction agreement. NBCC, on the other hand, has suggested several other amounts to be recoverable from JAL.

189.2. Having comprehensively taken note of the complex and interwoven features, even while we are not inclined to countenance the other claims against JAL in these proceedings, so far as the admitted amount towards construction advance is concerned, in our view, the process had been a continuing one and admittedly an amount of INR 195 crores was due to JIL as

on 31.03.2020. In the given circumstances, it would serve the interests of all stakeholders, if the proposition for reconciliation of accounts, as stated in the alternative submissions by JAL as also by the resolution applicant, be partly accepted and after reconciliation, the payable amount be made over to JIL before refunding the remainder to JAL.

...

...

190.1. After receiving the report from the accounting expert, the NCLT shall pass appropriate orders in the manner that, if any amount is found receivable by JIL/homebuyers of JIL, the same shall be made over to JIL from out of the said amount of INR 750 crores and accrued interest; and remainder thereof shall be returned to JAL in an appropriate account and that shall abide by the directions of the competent authority dealing with the proceedings concerning JAL. The NCLT would be expected to pass appropriate orders within 2 weeks of submission of report by the accounting expert.”

4.2. In such a scenario and given the fact that the Applicants herein (being at the helm of affairs of the Corporate Debtor upon approval of the Resolution Plan) shall be affected by adjudication of the issues before this Hon’ble Adjudicating Authority under the instant Application, it is submitted that the Applicants are necessary parties for a proper and complete adjudication of the IA-2593 of 2021. The presence of the Applicants, therefore, become indispensable for the purpose of adjudication of the IA-2593 of 2021.

4.3. It is submitted that in case the resolution plan submitted by the Applicants and approved by the CoC of the Corporate Debtor gets approval of the Hon’ble Adjudicating Authority, the Applicants would take over the management of the Corporate Debtor and hence, would become the beneficiary of the reconciled amount which shall be directed

to be given to the Corporate Debtor in IA-2593 of 2021. Any amount that would be apportioned to the Corporate Debtor would then have to be utilised by the Applicants, inter alia, for the purpose of construction work of the incomplete real estate projects of the Corporate Debtor in the interest of around 20,000 home buyers, in accordance with the resolution plan.

5. During the hearing, the Ld. Counsel of JAL i.e., the Respondent No. 2 has opposed the prayer made by the Applicant on the following grounds:

5.1. The Hon'ble Supreme Court in **Jaypee Kensington Case** had made it clear that only JIL (through its IRP) and JAL would be involved in the reconciliation process.

5.2. A Resolution Applicant, whose plan is yet to be approved by this Adjudicating Authority, will be considered as an outsider, who at best, has a contingent right that would fructify only on approval of plan by the Adjudication Authority.

5.3. Under the current IBC Proceedings, till the plan is approved by this Adjudicating Authority, the Corporate Debtor i.e., JIL can only be represented through its IRP. In this regard JAL has placed emphasis on Section 17, 18 and 25 of IBC, 2016.

5.4. The Hon'ble Supreme Court specifically rejected the attempt made by the earlier Successful Resolution Applicant i.e., NBCC (India) Limited to interfere with the reconciliation process. The relevant extracts of the **Jaypee Kensington Case** are reproduced overleaf :

“179.1.4. Apart from the aforesaid submissions and without prejudice, NBCC has also stated, with reference to the observations made by this Court during the course of hearing, that if any reconciliation of accounts has to be carried out before approval of the plan by this Court, NBCC ought to be involved in such an exercise, for being the successful resolution applicant and a part of the erstwhile Interim Monitoring Committee.”

5.5. The aforesaid relief was denied by the Hon’ble Supreme Court in its directions at para 190, 190.1, 190.2, 191.1 and 224, since it was held that only JAL and JIL will participate in the reconciliation process.

5.6. The Ld. Counsel for JIL Mr. Sumant Batra, at the beginning of the hearing of this application observed that given the mandate, the Hon’ble Supreme Court, this Tribunal may consider the plea of SRA on its merits and that if the applicant can bring forth certain relevant facts, it will be beneficial to all stakeholders.

6. We have heard the Ld. Counsels for the Applicants as well as the JAL and perused the documents placed on record in reference to the present IA. It is contended by the Applicant that it is a necessary party, which is required to be heard during the reconciliation process. If the Resolution plan submitted by the Applicant in respect of the Corporate Debtor gets approved by this Adjudicating Authority, in that situation the Applicants would take over the management of the Corporate Debtor and hence, would become the beneficiary of the reconciled amount directed to be given to the Corporate Debtor in IA-2593 of 2021. Any amount that would be apportioned to the Corporate Debtor would then

have to be utilised by the Applicants, inter alia, for the purpose of construction work.

7. Per contra, the JAL has stated that the Applicant only has a contingent right in the Corporate Debtor as on date and it cannot represent the Corporate Debtor.

8. Before arriving at any conclusion, we would like to visit the directions of the Hon'ble Supreme Court in **Jaypee Kensington** (supra):

*“190. For the aforesaid **purpose of reconciliation of accounts between JAL and JIL, the NCLT shall, within 7 days of receipt of copy of this judgment, nominate an independent accounting expert; and the accounting expert so nominated by NCLT shall carry out the process of reconciliation while involving IRP of JIL and one representative of JAL.** Looking to the underlying urgency, the accounting expert shall complete the entire process of reconciliation of accounts and submission of his report to NCLT within 10 days of his nomination. The professional charges and expenses for the task assigned to the accounting expert shall be determined by NCLT and shall be borne equally by JAL and JIL.*

....

191.1. As observed hereinabove, after having found that the said money is the property of JAL, ordinarily, the consequence would have been of directing its refund to JAL but the other entangled features of the case relating to the amount otherwise payable by JAL to JIL cannot be ignored altogether, particularly when it was an admitted position on behalf of JAL before NCLT that an amount of INR 274 crores was payable by it to JIL and even before this Court, this obligation to pay has been admitted on behalf of JAL, albeit to the tune of INR 195 crores as on 31.03.2020; and it appears that JAL has been taking steps (maybe crippled steps) to carry out construction and to reduce its liability. We are not determining the extent of amount payable by JAL to JIL because that would be a matter of reconciliation of accounts but, having regard to the background in which, and the purpose for which, JAL made the said deposit pursuant to the orders of this Court and also having regard to the present position of these two companies, adopting this course appears to be in the balance of the legal rights of the respective stakeholders as also in the balance of equities. We would

*hasten to observe that ordinarily, the equitable considerations do not directly come into play in corporate insolvency resolution process but the matter concerning this amount of INR 750 crores and accrued interest thereupon is a convoluted and stand-alone issue, having the peculiarities of its own and hence, we have adopted the course as contemplated above. **This process is otherwise not of determination of the claims of individual stakeholders, be it operational creditors or financial creditors. In the interest of justice, it is also made clear that disposal of the said sum of INR 750 crores shall otherwise not be treated as determinative of the rights and obligations of any stakeholder in any of these two companies, JAL and JIL.***”

(Emphasis Supplied)

9. From perusal of the above, it is clear that only JIL through its IRP and JAL has been allowed by the Hon’ble Supreme Court to participate in the reconciliation process. Further, any of the other stakeholders of JIL and JAL are not having any rights in this reconciliation process.

10. We are aware that the JIL has already been represented in the reconciliation process through its IRP. In our view, there cannot be two representations on behalf of JIL, especially when the resolution plan submitted by the Applicant/SRA is yet to be approved by this Adjudicating Authority and it has yet to step into the shoes of the Corporate Debtor. At present, the status of the Applicant/SRA is of only a stakeholder of the Corporate Debtor and not the Corporate Debtor itself, which is represented by the IRP.

11. The plea that the NBCC was allowed to argue on the accounting claims of JAL vs. JIL before the Hon’ble Supreme Court, at best can be considered as the view expressed by NBCC that there should be reconciliation of the accounts between JAL and JIL in the interest of all

stakeholders. The plea for reconciliation of accounts is one factor but allowing parties to participate in it is another. The Hon'ble Supreme Court in the latter permitted JIL and JAL to comment on the Report and thereafter, directed this Adjudicating Authority to give its finding on the reconciliation of the accounts based on the Report. We, therefore, cannot allow any other party except JIL and JAL. If the Applicant is allowed to intercede then every other stakeholder will have to be heard and that was not contemplated in the judgement passed by the Hon'ble Supreme Court.

12. The reconciliation process was intended by the Hon'ble Supreme Court to be carried out solely between JIL and JAL and it has been specifically held that the reconciliation process is “...***otherwise not be treated as determinative of the rights and obligations of any stakeholder in any of these two companies, JAL and JIL..***”, therefore, we are of the view that the Successful Resolution Applicant has no say in the reconciliation process, till the time its Resolution Plan is approved by this Adjudicating Authority.

13. The application is accordingly DISMISSED in the aforesaid terms.

Sd/-

**(RAMALINGAM SUDHAKAR)
PRESIDENT**

Sd/-

**(L. N. GUPTA)
MEMBER (TECHNICAL)**