IN THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH (SPECIAL BENCH)
PRAYAGRAJ

CP (IB)No.512/ALD/2019

IN THE MATTER OF:
YES BANK LIMITED
CIN: L65190MH2003PLC143249 ….Financial Creditor

Versus

JAYPEE HEALTHCARE LIMITED
CIN: U85191UP2012PLC053358 … .Corporate Debtor

Order reserved on: 17.01.2022
Order pronounced on: 27.06.2022

Coram:
Shri RajasekharV.K. : Member (Judicial)
Shri Avinash Kumar Srivastava: Member (Technical)

Appearances (through video conferencing):

For Financial Creditor	:	Mr. Abhinav Vasisth, Sr. Adv. assisted by Mr. Saurabh Panda, Ms. Simran Kaur, Mr. Nikhil Mathur, Advocates
For Respondent	:	Mr. R. P. Agarwal, Sr. Advocate assisted by Mr. Abhishek Tripathi, Advocate

ORDER

1. This Special Bench was constituted with the approval of the Hon'ble President in terms of order dated 06.12.2021.

2. This is a petition filed on 02.12.2019 under Sec.7 of IBC by Yes Bank Limited (Financial Creditor; FC) seeking to initiate (Corporate Insolvency Resolution Process (CIRP) against Jaypee Healthcare Limited (Corporate Debtor; CD). The petition was filed on the ground that the CD has defaulted for the sum of Rs.378.02 crores (Rupees Three Hundred Seventy Eight crores and Two lakh) as on 31st October, 2019. The CD has been continuously in default since the non-payment of the monthly interest payments due on 01.02.2019 for term loans. The account of the CD with the Bank was declared as Non-Performing Asset (NPA) on 02.5.2019.

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3. Ld. Senior Counsel Mr. Abhinav Vasisth appeared on behalf of the Financial Creditor and submitted as follows:

i. Financial Creditor had sanctioned a term loan for Rs.400 crores to the CD for the purpose of financing a 504 Bedded Hospital in Noida and other new hospital projects at Bulandshahr and Anoopshahr by way of four term loans and one working capital facility as follows:

Amount in Crores

Nature of Loan	Amount disbursed	Date of Agreement / Executed
Term Loan I	75	26.3.2013 22.04.2013
Term Loan II	About 100	29.9.2015 10.11.2015
Term Loan III	75	23.1.2017 20.4.2017
Term Loan IV	59.71	23.1.2017 23.3.2017
Working Capital facility	50	21.07.2015 - Master Facility Agreement dated 10.11.2015 01.03.2017
Total	**About 360**	

The applicant has provided details of disbursement under the above facilities on page 6 to 9 Vol.-I of the application and the particulars of outstanding amount in respect of the said facilities as Annexure D at page 27 of Vol.-I of the application. The applicant has also filed copies of NeSL Report generated for all Credit Facilities sanctioned by F.C. in favour of CD at page1321-1361 of Vol.8 of Petition.

The total amount in default on the part of the CD is INR 378.02 crores as on 31.10.2019 (Principal outstanding Rs.353.25 crores and interest outstanding (interest, default interest, etc.) 24.77 crores.

Corporate Debtor has been continuously in default since the non-payment of the monthly interest payments due on 1st February, 2019 for term loans. The demand under the Working Capital Facility has been made by way of Loan recall notice dated 08.11.2019.

The Financial Creditor issued a loan recall notice on 08.11.2019 in respect of all the term loans and the working capital.

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4. Notice of the petition was served upon Corporate debtor. The CD appeared and filed its reply dated 07.11.2021.Ld. Senior Counsel Mr. R P Agarwal, appeared on behalf of the CD and made the following submissions.

5. The CD is a wholly owned subsidiary of Jaypee Infratech Limited (JIL) and in (JIL) Jaiprakash Associates Limited (JAL) holds 61% share. The present management of the CD have substantial stake in JAL.

6. 43.65% shares of CD are pledged with consortium of banks and 20% with Yes Bank, rest 36.35% are unencumbered. Present application has been filed by Yes Bank only and not by consortium.

7. Company Petition No. CP(IB)-77/2017 was filed by IDBI Bank under Sec.7 IBC against JIL which was admitted by the NCLT Allahabad Bench vide order dated 09.08.2017. Being under CIRP, all the assets of JIL are in custody of RP including shares of CD. Since the Bankers of CD have not invoked the pledge, the voting right in respect of all the shares of CD (both encumbered and unencumbered) is vested in IRP of JIL. At the first stage of bidding, two Resolution Applicants NBCC and Suraksha submitted their Resolution Plans for JIL. CoC approved the Resolution plan of NBCC on 17.12.2019. The cases files of JIL were transferred to Principal Bench, Delhi by order of Hon'ble President, NCLT. The Resolution Plan of NBCC was approved by Principal Bench vide order dated 03.03.2020 but with certain modifications. This order was challenged by various stake holders before NCLAT. The Applicant Bank (Yes Bank) also challenged the said order vide Appeal No. 488/2020.

8. As per the order of Hon'ble Supreme Court, all pending appeals (including the appeal of Yes Bank) were transferred to Supreme Court. The leading appeal was Civil Appeal No. 3395 of 2020 titled as "Jaypee Kensington Boulevard Apartments Welfare Association &Ors. v. NBCC (India) Ltd. & Ors.

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9. All the appeals were disposed of by the Hon'ble Supreme Court vide judgment dated 24.3.2021. The Hon'ble Supreme Court set aside the order dated 03.03.2020 of Principal Bench, NCLT, Delhi and IRP was directed to invite fresh resolution plans from only two parties namely NBCC and Suraksha Realty Limited, to be placed before Principal Bench, NCLT, Delhi after approval by CoC.

10. The Present application was filed by the Yes Bank in Nov., 2019 much before the Hon'ble Supreme Court judgment of 24.3.2021.

11. During the pendency of the application, Yes Bank issued notice dated 11.10.2021 under Section 13(2) SARFAESI Act for recovery of dues by enforcement of security interest. No action has been taken by the Bank so far under Section 13(4) of the SARFAESI Act.

12. Since no Resolution Plan for JIL has been approved as yet by Principal Bench, NCLT, New Delhi, the Moratorium order dated 09.8.2017 is still operative.

13. In the order of Hon'ble Supreme Court, the objections of Yes Bank (FC) in respect of subsidiary (Jaypee Healthcare Limited) of the CD (JIL) has been deal in paras 137 to 141.

14. It is submitted by the Corporate Debtor that in the Appeal filed by Yes Bank, in paragraphs "**ff**" and "**gg**", which have been referred to in **Para 141** of the Kensington Judgment **(Reply Vol. II Page 334),** the Bank mooted the following proposal:

> *"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 monetized in a timely manner. Provided, the Respondent No. 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 Ld. Adjudicating Authority, which is reiterated below:*

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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 monetization.
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 liase 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 by 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 lenders of JHL);
*vii) The sale process shall be finalized within a period of 3 months from the date of approval of the resolution plan by the Hon’ble NCLT and **latest by June 30, 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 utilized for settlement of debt of JHL lenders in priority, in accordance with existing Resolution Plan;
*ix) During the period above**, until June 30, 2020**, there shall be moratorium on the rights of JHL lenders to enforce its securities held in JHL including the share pledge by JIL;*
*x) Should the sale still not be finalized **before June 30, 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 the Respondent No. 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.”*

15. The Hon’ble Supreme Court has given following important directions in **Kensington Judgment in exercise of plenary powers under Article 142 of the Constitution:**

Point N
Summation of findings: final order and conclusion
***216.** For what has been discussed and held on the relevant points for determination, our findings and conclusions are as follows:*

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***F.** The issues related with the objections of YES Bank Limited and pertaining to JHL, the subsidiary of the corporate debtor JIL, are left for the resolution by the parties concerned, who will work out a viable solution in terms of paragraphs 141 and 142 of this judgment….” **[Reply** page 433 (Vol. II)]*

The **paragraphs 141 and 142** referred to in the above direction are reproduced below:

***"141**. We have carefully examined the submissions made by the parties. In the totality of circumstances of the case and the stance of the 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.* **[Reply Page 334 (Vol. II)]**

[*Para- 225.6/Page444: it is clarified that **"NCLT"** means Principal Bench**].**

***142.** In view of the above, we do not consider it necessary to render any other finding in this point of 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."*
[Reply Page 334 (Vol. II)]

16. In view of above directions, Suraksha Reality in **Para 23** of its new Resolution Plan has stated as under: -

> *"It is clarified that, without prejudice to the abovementioned treatment, the Resolution Applicants is in discussion with Yes Bank to explore possibility of mutually acceptable amicable solution.***"**

17. Relying on these it is submitted that the concerns of JHL are duly taken care by Hon'ble Supreme Court and also in the resolution plan submitted by Suraksha Reality. Thus it has been argued by the learned Sr. Counsel that in view of the directions of Hon'ble Supreme Court the issues related with the objections of YES Bank Limited and pertaining to JHL, the subsidiary of the corporate debtor JIL, are left for the resolution by the parties concerned, who will work out a viable solution in terms of paragraphs 141 and 142 of the Kensington Judgment and further the parties concerned, if necessary, may seek appropriate orders from NCLT, Principal Bench as regards the

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mode and modalities of the process to be carried out and jurisdiction of this Bench will be unwarranted as the same will be in conflict with the directions of the Hon'ble Supreme Court.

18. The corporate debtor in its written submission further submitted its point wise reply with respect to the contentions raised by the Financial Creditor in Rejoinder affidavit at paras 12 to 19 and during the course of arguments which are as follows:

Contentions in RA Para 12-19 and during the course of argument:

SN	CONTENTION	REPLY
1	Hon'ble Supreme Court Directions were in the context of NBCC Plan only	The above directions have been given after setting aside the NCLT order/NBCC Plan and after clarifying that NBCC Plan deals with the assets of JIL and not JHL. Hence, it is wrong to say that the directions are in the context of NBCC Plan only.
2	Timeline of 30.06.2020 for negation specified in the Appeal already expired.	Hon'ble Supreme Court **Judgment – 24.03.2021-** Hon'ble Supreme Court has not taken cognizance of such timeline and Directions have been given long after the expiry of said timeline.
3	Suraksha Plan does not restrict the right of lenders to exercise their right against JHL	It is not our case that Bank's right under IBC is restricted. Our case is that proceedings in the present Application will be in conflict with the Hon'ble Supreme Court Directions.
4	In view of Para 141 of the Kensington Judgment, Hon'ble Supreme Court has cleared the deck for *JHL lenders 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.*	This is incorrect. In Para 141 the Hon'ble Supreme Court has merely reproduced some paragraphs of the Appeal of Yes Bank. The Hon'ble Supreme Court has not passed any order thereon nor has it cleared the deck for recovery in Para 141 or any other Para of the Judgment.

19. The Ld. Senior Counsel for JHL further contended that the use of word **"may" in Section 7(5)** of IBC makes it clear that even if default is assumed, the Tribunal may not admit the petition. It can reject the petition, if the facts and circumstances of the case so warrant and in support of this submission the Ld. Sr. Counsel has relied on Para 21 of the Judgment of Hon'ble Supreme Court in "***Indus Biotech (P) Ltd v. Kotak India Venture (Offshore) Fund"*** reported in (2021) 6SCC 436, which is as quoted

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below:

> "***21.****In such circumstance if the adjudicating authority find from the material available on record that the situation is not yet ripe to call it a default, that too if it is satisfied that it is profit making company and certain other factors which need consideration, appropriate orders in that regard would be made; the consequence of which could be the dismissal of the petition under Section 7 of IB Code on taking note of the stance of the corporate debtor. As otherwise if in every case where there is debt, if default is also assumed and the process becomes automatic, a company which is ably running its administration and discharging its debt in planned manner may also be pushed in to the corporate insolvency resolution process and get entangled in a proceeding with no point of return. Therefore, the adjudicating authority certainly would make an objective assessment of the whole situation before coming to a conclusion as to whether the petition under Section 7 of IB Code is to be admitted in the factual background…….*

Further upon this submission, reliance has also been placed at Para 34 of the Hon'ble NCLAT Judgment dated 30.06.2021 in Company Appeal (AT)(Ins.) No. 258 of 2021 in the matter of***" Hytone Merchants Pvt. Ltd. v. Satabdi Investment Consultants Pvt. Ltd."***[1] which is reproduced below:

> "*34. The use of the phrase '****it may****' under Sub-section (5) of section 7 itself leaves the scope of discretion exercised by the Adjudicating Authority in admitting or rejecting the Application. Section 7(5)(a) lays down parameters about general conditions to admit an Application. However, in the given situation where it appears that Application is filed collusively not with the purpose of Insolvency Resolution but otherwise, then despite fulfilling all the conditions of Section 7(5) of the Code, the Adjudicating Authority can exercise its discretion in rejecting the Application relying on Section 65 of the Code."*

20. The Learned Senior Counsel further elaborated the above submission and contended that JHL is a solvent and asset rich company and the initiation of CIRP against JHL would be detrimental to the larger interest of the society. Further stated that the corporate debtor; undertakings have significant value and substantially more than the outstanding debt of all lenders as the present valuation of assets of JHL is between Rs. 1,200-1,500 Crores, whereas the total principal outstanding debt of lenders as on date is Rs.593Crores. Thus, the dues of lenders are fully secured and default in repayment

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of principal/interest to lenders is only due to temporary liquidity problem which has been created due to the violation of the contractual terms of Escrow Agreement dated 12.12.2013 by the petitioner.

21. It is contended that as per Clause 3.4 of the Escrow Agreement, all the receivables by JHL would be collected in separate account called Escrow Account, to be maintained with YES Bank at its Chanakyapuri Branch at New Delhi and the utilization of funds of the Escrow Account will be on the basis of the waterfall mechanism which was duly followed by the Petitioner till December 2017 and after that the bank unilaterally and illegally started to auto debit the interest amount in breach of above arrangement without any notice of default to JHL and without first taking recourse to funds lying in Debt Service Reserve Account (DSRA) which resulted in a situation wherein the JHL was not able to meet its statutory liabilities and operational expenses and even the doctors and the para medical staffs also left the hospital due delayed payments of salaries.

22. The learned Sr. Counsel for the Corporate Debtor has further presented the undisputed Revenue Growth data of the corporate debtor which shows that while operations/revenue during the FY 19-20 and 20-21 were badly affected due to corona pandemic but there has been a quantum jump in revenue during FY 2021-22 and the same are expected to improve further during FY 2022-23 and thus submits that JHL is capable of generating sufficient revenue to meet its commitments.

23. In support of its arguments, the Learned Senior Counsel further referred to RBI Circular dated 07.06.2019 titled as "*Prudential Framework for Resolution of Stressed Assets*" and stated that JHL has submitted three restructuring proposals dated 02.07.2019, 15.07.2019 and 09.10.2019 which were in conformity with the RBI Guidelines and no haircut was proposed but still all the proposals were rejected arbitrarily and summarily on the same day on which the proposals were placed for consideration in Lenders' Meeting dated 09.07.2019, 08.08.2019 and 18.10.2019 on the ground of "uncertainty of implementation" and "plan would not result in immediate up gradation of NPA

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account to standard". He further submitted that the liquidity problem of JHL can be resolved if JHL restructuring proposal is approved within the guidelines stated in RBI circular and further referred to Clauses 6, 9 and 13 of the Circular and submitted that RBI's circular mainly lays emphasis on resolution of Borrower's financial difficulty and the initiation of insolvency proceedings or recovery is a measure of last resort. It is further submitted that that the main reason for rejecting resolution proposals was that the petitioner was interested to handover the hospitals to Nayati Health care under O&M Arrangement whose proposals were considered in Lenders Meetings dated 09.07.2019 and08.08.2019.

Rejoinder to the reply of the Corporate Debtor

24. In rebuttal to the arguments raised by the Ld. Sr. Counsel for the corporate debtor, the Ld. Senior Counsel appearing for the financial creditor has made the following submissions:

i. The directions passed by the Hon'ble Supreme Court in the Jaypee Judgment were made in the context of the resolution plan submitted by NBCC in respect of JIL, i.e., the holding company of the Corporate Debtor and the resolution plan submitted by Suraksha does not, in any event restrict JHL's lenders to continue with the exercise of their rights against the Corporate Debtor, including the filing of the present petition, thus the admission of this petition would not be in conflict with the Jaypee Judgment.

ii. It is further submitted that the Corporate Debtor has admittedly been in default of its repayment obligations in terms of the facilities granted to it and in support of this argument reliance has been placed on the law laid down by the Hon'ble Supreme Court in the case of "***Innoventive Industries Ltd. v. ICICI Bank Ltd***"[2]and a plethora of judgments thereafter that while adjudicating an application under Section 7 of the Code, the Tribunal is only required to determine the existence of a debt and default, as mandated in the Code and nothing more. Once the Hon'ble Tribunal is satisfied that the Corporate Debtor is in default, it is bound to admit the

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petition and initiate CIRP.

iii. Further submitted that the reliance placed by the Corporate Debtor on the Indus Biotech Judgment and the Hytone Judgment are wholly misconceived and distinguishable from the facts of the present case and is wholly inapplicable in the present facts as in the present case the fact that default has been committed is not in dispute at all. Further in regard to the company being solvent, it is submitted that the Corporate Debtor has not even been able to meet its basic operational costs as it has not paid its electricity dues since January 2019 and an amount of Rs.16.02 crores towards electricity expenses was payable to JIL, as on 29th July 2021, further salaries to doctors and other paramedical staffs had also not been paid.

iv. It is submitted that the RBI Circular on which the corporate debtor relied for restructuring proposal to be accepted does not have any bearing on the present proceedings as it does not mandate a lender to accept restructuring proposals proposed by a borrower as the same would amount to rendering the entire scheme of the Code nugatory and otiose and further relied upon paragraph 9 of the RBI Circular which gives a lender the option to initiate legal proceedings for insolvency or recovery. It is further submitted that the lenders had duly considered the restructuring proposal submitted by the Corporate Debtor in their consortium meeting dated 9 July 2019. However, the lenders while exercising their commercial wisdom were of the opinion that the same was not viable.

v. Further the Ld. Sr. Counsel for Financial Creditor has referred to clause 4.1 of the Escrow Agreement and submitted that it allows for adjustment of dues payable to the applicant without relying on the waterfall mechanism in the event of default at the behest of the Corporate Debtor. Further, the said clause only mandates if the Agent intimates to the Account Bank that an event of default is likely to occur or has occurred, then the Agent shall immediately assume exclusive control over the Escrow Account, and all deposits in the Escrow account shall then be used by the Agent towards repayment of the facility, which was duly complied with in the facts

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of the present case. There is no requirement of intimation of Event of Default to the Corporate Debtor under the terms of the Escrow Agreement which was agreed and executed by the Corporate Debtor at the time of sanction of credit facilities.

25. We have heard Ld. Counsels for both the side at length and perused all the documents available on record. In IA-2836/2021 in CP-77/2017 i.e. Resolution Plan for Jaypee Infratech Limited, the following is stated:

"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 Applicants is in discussion with Yes Bank to explore possibility of mutually acceptable amicable solution."*

From Perusal of the above extracted part of Resolution Plan of JIL, it is clear that the Resolution Applicant is trying to arrive at an amicable solution with the lenders of JHL including Yes Bank and if the Resolution Plan is approved it will have impact on JHL.

26. Section 18(1)(f)(v) reads as follows:

"*18(1) The interim resolution professional shall perform the following duties, namely:—*

> *(f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets including—*
> *(v) securities including shares held in any subsidiary of the corporate debtor, financial instruments, insurance policies;"*

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Since there is a moratorium on account of CIRP proceedings with respect to JIL and its assets including shares held in its wholly owned subsidiary of JHL, the shares of JHL cannot be transferred to any other person so long as moratorium with respect to JIL continues / is in operation. Differently put, even if we admit CIRP against JHL, we will not be able to consider any Resolution Plan with respect to JHL, wherein the shares of JIL in JHL are transferred to any Resolution Applicant, till the resolution plan of the JIL is approved and the moratorium therein is lifted.

27. We have also considered the Explanation to Section 30(2)(e), of IBC, which reads as below:

> **Section 30. – Submission of Resolution Plan:**
> *"(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—"*
> *(e) does not contravene any of the provisions of the law for the time being in force;"*
> *[Explanation: for the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention to that Act or Law:]*

On perusal of above it would appear that transfer of shares in the Company under Resolution from one or more promoter(s) to others(s) may be done on approval of the Resolution Plan by the Adjudicating Authority under Section 31 of IBC. However, in the instant case, the shareholders of JIL are the complete owners of the shares in JHL. Since JIL itself is undergoing CIRP and there is a Resolution Plan under consideration in case of JIL, we deem it appropriate not to disturb consideration of the Resolution Plan of JIL by taking recourse to Section 30(2)(e) – Explanation, for considering any Resolution Plan with respect to JHL.

28. The pledges on shares of JIL in JHL have not been invoked by Yes Bank for precisely this reason. However, Yes Bank is at liberty to take any action with respect to enforcement of any collateral security, if any, included in the loan agreement as per law.

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29. As CP-77/2017 and the Resolution Plan in IA-2836/2021 is under consideration before the Hon'ble Principal Bench, further, as per Hon'ble Supreme Court Judgement in **"Civil Appeal No.3395 of 2020 titled as "*Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. &Ors.*,** the matter of JHL is left for the Resolution for the parties concerned i.e. the lenders of JHL including Yes Bank and the Resolution Applicant of JIL, and JHL, who will work out a viable solution and may seek appropriate orders from National Company Law Tribunal as regards mode and modalities on the process to be carried out.

30. The application/ proceedings in the present matter may be kept in abeyance till the order on the Resolution Plan in IA-2836/2021 in CP-77/2017 is passed by the Hon'ble Principal Bench. Based on the same, further course of action will be embarked upon in this application. However, the Corporate Debtor is directed to ensure the timely payment of the loan instalment as per the available sources with it and work out the suitable plan to extinguish its liabilities failing which, the Financial Creditor / Applicant will be at liberty to take any action as per law with respect to enforcement of any collateral security included in the loan agreements.

The matter may be re-notified on 29.07.2022.

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AVINASH KUMAR SRIVASTAVA
MEMBER (TECHNICAL)

Rajasekhar V K

Digitally signed by Rajasekhar V K
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RAJASEKHAR V.K.
MEMBER (JUDICIAL)