

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

Company Appeal (AT) (Insolvency) No.549 of 2023

[Arising out of order dated 07.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Special Bench in I.A. No.2836 of 2021 in CP (IB) No.77 (ALD)/2017]

IN THE MATTER OF:

DEPUTY COMMISSIONER OF INCOME TAX

Circle 5(1)(1), Noida
Room No.308, A-2D, Aaykar Bhawan,
Sector – 24, Noida.

...Appellant

Vs.

**1. ANUJ JAIN, IRP OF
M/S JAYPEE INFRATECH LIMITED**

DLF Cyber City, Phase-II,
Gurgaon – 122002.

2. SURAKSHA REALTY LIMITED,

3, Narayan Building,
23, LN Road Dadar (East),
Mumbai, Maharashtra – 400014.

**3. LAKSHDEEP INVESTMENTS AND
FINANCE PRIVATE LIMITED,**

3, Narayan Building,
23, LN Road Dadar (East),
Mumbai, Maharashtra - 400014

...Respondents

Present:

For Appellant: Mr. Puneet Rai, Sr. Standing Counsel with Mr. Ashvini Kumar, Ms. Madhavi Shukla and Mr. Nikhil Jain, Advocates.

For Respondent: Mr. Sumant Batra, Ms. Ruchi Goyal, Ms. Aishwarya, Advocates for IMC of JIL.

Mr. Ramji Srinivasan, Sr. Advocate, Mr. Mahesh Agarwal, Ms. Geetika Sharma, Ms. Eshna Kumar, Mr. Sagar Bansal, Ms. Prachi Bhatiya, Advocates.

Mr. Evneet Uppal, Mr. Tanmay Arora, Mr. Siddharth Kaushik, Advocates for Intervenor.

Ms. Sonia Malhotra Kumar, Advocate for Applicant Intervenor JREAWS in I.A. No. 2910/2023.

Ms. Namrata Saraogi, Mr. Kartik Pandey, Advocates.

Mr. Varinder Kumar Sharma, Ms. Parul Sharma, Advocates in I.A. No. 3701, 3702 and 3704 of 2023.

Cont'd.../

J U D G M E N T

ASHOK BHUSHAN, J.

This Appeal has been filed challenging the order dated 07.03.2023 passed by the Adjudicating Authority (National Company Law Tribunal), New Delhi, Special Bench in I.A. No. 2836/PB/2021 by which the Adjudicating Authority has approved the Resolution Plan submitted by Respondent Nos. 2 and 3 in the Corporate Insolvency Resolution Process of M/s Jaypee Infratech Limited, the Corporate Debtor. Brief facts of the case necessary to be noticed for deciding the Appeal are:

- (i) By order dated 09.08.2017, NCLT, Allahabad Bench admitted Section 7 application filed by IDBI Bank against the Corporate Debtor – M/s Jaypee Infratech Ltd. Mr. Anuj Jain was appointed as Interim Resolution Professional (IRP).
- (ii) On 28.09.2017, Appellant filed its claim of Rs.3334.29 Crores plus interest for the AY 2010-11 and AY 2012-13 before the Interim Resolution Professional.
- (iii) Appellant vide letter dated 26.12.2017 enquired about status of their claim. Interim Resolution Professional vide letter dated 29.01.2018 informed the Assistant Commissioner of Income Tax that with regard to AY 2010-11, the Company has received favourable order and demand has been reduced to NIL. With

regard to AY 2012-13, the IRP informed that the same has shown as contingent liability in the books of the Company, which has already filed an appeal before the Income Tax Appellate Tribunal (ITAT). IRP in its letter dated 29.01.2018 stated that liability for the AY 2012-13 does not exist as on date.

- (iv) The Assistant Commissioner of Income Tax in reply to the letter dated 29.01.2018 of IRP wrote that in AY 2012-13, the demand has been reduced after giving appeal effect. It was stated that showing the amount as contingent liability does not conclude that liability does not exist.
- (v) The IRP published a list of creditors.
- (vi) The Hon'ble Supreme Court in its judgment dated 09.08.2018 in **"(2018) 18 SCC 575, "Chitra Sharma and Ors. Vs. Union of India and Ors."** directed recommencement of CIRP on the date of order. After judgment of the Hon'ble Supreme Court dated 09.08.2018, in the CIRP of the Corporate Debtor a Resolution Plan submitted by NBCC Ltd. was approved by the Adjudicating Authority by order dated 03.03.2020, where appeals were filed against the said order before NCLAT which were withdrawn by the Hon'ble Supreme Court and the Hon'ble Supreme Court in **"Jaypee Kensington Boulevard Apartments Welfare Association & Ors. Versus NBCC (India) Ltd. & Ors., Civil Appeal No. 3395/2020"** vide its judgment dated 24.03.2021 set

aside the approval of the Resolution Plan and remitted the matter to the Adjudicating Authority. IRP was directed to invite modified/fresh Resolution Plan from Suraksha Realty Ltd. and NBCC.

(vii) After order of the Hon'ble Supreme Court, Resolution Plan was submitted by NBCC as well as Suraksha Realty. Resolution Plan submitted by Respondent No. 2 and 3 was approved by the Committee of Creditors (CoC) which was also approved by the Adjudicating Authority vide order dated 07.03.2023, which has been impugned in the present appeal by the Income Tax Department.

(viii) This Appeal has been filed by the Appellant questioning the treatment of the claim of the Income Tax Department.

2. We have heard Shri Puneet Rai, learned senior standing counsel appearing for the Income Tax Department, Shri Sumant Batra, learned counsel appearing for Implementation and Monitoring Committee of the Corporate Debtor, Shri Ramji Srinivasan, learned senior counsel for Respondent Nos. 2 and 3, Successful Resolution Applicant. We have also heard learned counsels for the Interveners.

3. Learned counsel for the Appellant challenging the order contends that the Resolution Applicant has wrongly stated that the Income Tax Department did not file any claim pertaining to operational debt. It is

submitted that the Adjudicating Authority has erroneously observed in Para 20.13 that the Income Tax Department having not filed any claim, no payment provided in the Resolution Plan. It is submitted that the Appellant has filed claim of Rs.3334.29 Crores in Form B on 28.09.2017 within time prescribed in Regulation 12(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The Resolution Plan has erroneously considered the claim of Income Tax Department in its Resolution Plan. It is submitted that the Resolution Plan wrongly mentions that claim for AY 2012-13 has been set aside by ITAT whereas appeals were dismissed by order dated 16.01.2023. The payment of Rs.10 Lakhs towards claim of the Income Tax Department is fraud and not in accordance with law. List of creditors prepared by the Resolution Professional has noted submission of the claim by the Appellant. It is submitted that claim was filed by the Appellant with regard to debt which was due. There was no occasion for filing claim for Rs.33,000 Crores as per order dated 31.03.2017 since the said amount was not due and the said amount was revenue subsidy which was spread for 36 years. Rs.33,000 Crores is not amount due and no claim could have been filed for the said amount. It is prayed that appeal be allowed and necessary directions be issued to protect the interest of the Appellant and payment of dues of Income Tax Department to the tune of Rs.1157,07,72,480/- for AY 2012-13, which is the crystallised demand as on date.

4. Shri Sumant Batra, learned counsel appearing for the Implementation and Monitoring Committee submits that the Hon'ble

Supreme Court in its judgment in **Jaypee Kensington (supra)** has already approved extinguishment of liability of Rs.33,000 Crores for the period prior to insolvency of JIL. In order dated 03.03.2020, the claim of the Appellant being extinguished, it is no longer *res-integra* and Appellant is estopped by *res-judicata* from raising the issue by way of present appeal. The Adjudicating Authority in its earlier order dated 03.03.2020 while approving the Resolution Plan of NBCC permitted extinguishment of pre-CIRP liability of Rs.33,000 Crores of JIL of the Appellant. It is submitted that in view of the judgment of **Jaypee Kensington** the liability of Income Tax Department has been extinguished and cannot be reopened and re-agitated by Appellant. Learned counsel for Respondent No.1 referred to Paras 39.3, 49, 216 and 217 of **Jaypee Kensington** in support of his submission. The Successful Resolution Applicant whose plan has been approved by the Adjudicating Authority by order dated 07.03.2023 has been permitted for treatment of entire outstanding of the Appellant of Rs.33,000 Crores in accordance with IBC, similar to what NBCC plan provided. Issue of treatment of dues attained finality by decision of the Hon'ble Supreme Court in **Jaypee Kensington**. It is further submitted that the Appellant is estopped from raising issue of past liability at this belated stage. Appellant has filed its claim in Form B as Operational Creditor on 28.09.2017 for a sum of Rs.3334.29 Crores plus further interest. Demand for the AY 2010-11 was set aside by the ITAT by its order dated 03.11.2017 and claim for AY 2012-13 has been treated as contingent liability since an appeal has been filed by JIL before the ITAT, which was pending. The IRP by letter dated 29.01.2018 informed the

Appellant that their claim is not admissible. The Appellant never challenged non-admission of their claim. It is further submitted that it was obligatory for creditor to file claim for entire liability of Rs.33,000 Crores which accrued on 31.03.2017. In the scheme of IBC filing of claim is not limited to claim in default and what is due and default. It is obligatory for Appellant to claim entire Rs.33,000 Crores which was crystalized and determined amount as per 31.03.2017. Entire liability arises before the commencement of CIRP of JIL. It is submitted that in view of the clean slate theory, as laid down by Hon'ble Supreme Court in **"Ghanashyam Mishra and Sons Pvt. Ltd. vs. Edelweiss Asset Reconstruction Company Ltd., (2021) 9 SCC 657"** no subsequent claim can be entertained which ought to have been filed in CIRP process. The Resolution Applicant takes the Corporate Debtor on clean slate to avoid hydra head popping up. Copy of the Resolution Plan could not have been shared with the Appellant, which can only be done after approval of the plan. The appellant is not secured creditor of the Corporate Debtor.

5. Learned counsel for the Successful Resolution Applicant submits that when liability of Rs.33,000 Crores has arisen prior to insolvency commencement date which was reduced by judgment dated 31.03.2017, which was well known to the Hon'ble Supreme Court while hearing the matter of **Jaypee Kensington**, Appellant chose to file only part of the claim in Form B for Rs.3334.29 Crores relying on judgment dated 31.03.2017 instead of filing entire claim of Rs.33,000 Crores. Under the IBC, creditors are expected and obliged to file a claim which is much wider to cover its liability so that the Resolution Applicant can deal with it in order to get clean/fresh slate.

Treatment provided by the Successful Resolution Applicant to the Appellant was in compliance with Section 30(2) of the Code. Claim under Section 3(6) include claim which is disputed/undisputed. Resolution Applicant can deal with disputed claim too. Admitted claim of the Financial Creditors being far in excess than the liquidation value of the Corporate Debtor, there is no liquidation value left as per Section 53(1) for the Income Tax Department being an Operational Creditor. Thus, the Income Tax Department was not entitled for any amount under the water fall mechanism. The Successful Resolution Applicant has provided for Rs.10 Lakhs, which is more than liquidation value to be paid as per Section 30(2)(b) r/w Section 53 of the Code, which is in accordance with law. The Hon'ble Supreme Court in **Jaypee Kensington** has noted the order of the Adjudicating Authority of extinguishment of INR 33,000 Crores under NBCC Resolution Plan. There is no merit in the appeal, which require to be dismissed.

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

7. In Para 20.13, the Adjudicating Authority under heading 'Treatment for Claims of Income Tax Department' made following observations:

“20.13 Treatment for Claims of Income Tax Department (Para 19.2): *It has been stated by the Resolution Applicants that since the Income Tax Department did not file any claim pertaining to operational debt owed to them by the Corporate*

Debtor, therefore, no payment is provided in the Resolution Plan in line with Jaypee Kensington Judgement.”

8. The above Para refer to Para 19.2. Para 19 deals with ‘Financial outlay of Resolution Plan. Para 19.2 (of the impugned order) deals with ‘Unsecured Financial Creditors’ and under the sub-head (3) it deals with Operational Creditors which included Income Tax Department. Para 19.2 of the impugned order is as follows:

3)	Operational Creditors	<i>a. YEIDA</i>	Rs.0.20 Cr. <i>[Refer clause 20.2 at pg 72, clause 20.8 at pg 83 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022]</i>
		<i>b. Workmen</i>	<i>NIL</i>
		<i>c. Employees</i>	<i>NIL</i>
		<i>d. Income Tax</i>	Rs.0.10 Cr <i>[Refer clause 19.3 at page 71 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022]</i>
		<i>e. Other Operational Creditors</i>	Rs.0.10 Cr <i>[Refer clause 21.2 at page 85 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022]</i>
		Total (a+b+c+d+e)	Rs.0.40 Cr <i>[Refer (3) in point 7 at page 271 in Form H filed with IA 2836/2021]</i>
4.	Public Shareholders		Rs.0.14 Cr <i>[Refer clause 24.8 at page 90 of Suraksha Resolution Plan dated 07.06.2021 read with addendum dated 09.06.2021 filed in IA 1603/2022]</i> <i>[Refer point 8 of Form H at page 273 filed with IA 2836/2021]</i>
Grand Total (1+2+3+4)			Rs.20,363.36 Crore

9. We may notice that above Para refers to insofar as Income Tax Department is concerned to clause 19.3 of the Suraksha Resolution plan. We may also notice Clause 19.3 of Suraksha Resolution Plan. In clause 19 of the Resolution Plan, the Successful Resolution Applicant has detailed claims of the Income Tax Department. Para 19 which contain 19.1, 19.2 and 19.3, is as follows:

“19. Claims of Income Tax Department:

Disputed Claims of Income Tax:

19.1. The Income Tax authorities have made addition of Rs. 3,000 crore income, annually, to income of the Corporate Debtor, for the entire concession period under the Concession Agreement, treating transfer of land parcels under Concession Agreement as revenue subsidy. On the basis of such addition to income, presumptive revenue subsidy has been worked out by the income tax authorities for the total land provided to the Corporate Debtor and has been spread over the concession period of 36 years. Accordingly, total assessed tax liability (this has been set aside by Income Tax Appellate Tribunal and Income Tax Department's appeal is pending before the Hon'ble High Court of Allahabad) for the remaining period is a determined crystallized amount of Rs. 33,000 crore and not a future liability. The Income Tax Department has also raised tax demands of Rs. 3,334 crore for certain assessment years for the period prior to

Insolvency Commencement Date. The Income Tax Department did not file Claim pertaining to above operational debt owed to them by the Corporate Debtor.

*Treatment for the above Claims of
Income Tax Department:*

19.2. The Income Tax Department did not file the Claim within stipulated timeframe as provided in the Code. Hence, no payment is ought to be provided in the Resolution Plan in line with Jaypee Kensington Judgement, the relevant extract whereof has been reproduced hereinbelow for ready reference

“135.1. Due adherence to the timelines provided in the Code and the related Regulations and punctual compliance of the requirements is fundamental to the entire process of resolution; and if a claim is not made within the stipulated time, the same cannot become a part of the Information Memorandum to be prepared by IRP and obviously, it would not enter into consideration of the resolution applicant es also of the Committee of Creditors. In the very scheme of the corporate insolvency resolution process, a resolution applicant cannot be expected to make a provision in relation to any creditor or depositor who has failed to make a claim within the time stipulated and the extended time as permitted by Regulation 12.

19.3. The Income Tax Department ought to have submitted the Claim to the Resolution Professional and it should have been decided by the Resolution Professional so that Resolution Applicant could proceed on a fresh slate, in line with in the Jaypee Kensington Judgement, the relevant extract whereof in relation whereto has been reproduced hereinbelow for ready reference:

“Para 135.1.....

In Essar Steel (supra), while dealing with the topic 'Extinguishment of Personal Guarantees and Undecided Claims, this Court disapproved that part of the NCLT judgment which held that other claims, that might exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal, could be decided in an appropriate forum in terms of Section 60(6) of the Code. This Court specifically held that a resolution applicant cannot be made to suddenly encounter undecided claims after resolution plan submitted by him has been accepted; and in the scheme of the Code, all claims must be submitted to, and decided by, the resolution professional so that the resolution applicant could proceed on a fresh plate.

This Court, inter alia, held as under:-

“107. For the same reason, the impugned NCLAT judgment in holding that claims that may exist apart from those decided on merits by the resolution professional and by the Adjudicating Authority/Appellate Tribunal can now be decided by an appropriate forum in terms of Section 60(6) of the Code, also militates against the rationale of Section 31 of the Code. A successful resolution applicant cannot suddenly be faced with "undecided" claims after the resolution plan submitted by him has been accepted as this would amount to a hydra head popping up which would throw into uncertainty amounts payable by a prospective resolution applicant who would successfully take over the business of the corporate debtor. All claims must be submitted to and decided by the resolution professional so that a prospective resolution applicant knows exactly what has to be paid in order that it may then take over and run the business of the corporate debtor. This the successful resolution applicant does on a fresh slate, as has been pointed out by us hereinabove. For these reasons, NCLAT judgment must also be set aside on this count.”

(Emphasis ours)

This is a determined and crystallised Operational debt and not a future liability. Nevertheless, the Claim of Income Tax Department is being dealt in the Resolution Plan as Operational Debt in

accordance with the provisions of the Code. In view of the provisions of the Code, no amount shall be payable to the aforesaid Operational Creditors in accordance with the section 30 read with section 53 of the Code. However, payment of Rs. 0.10 crore shall be made towards such disputed Claim of the Income Tax Department under this Resolution Plan.”

10. In the Resolution Plan there is observation that the Income Tax Department did not file the claim within stipulated timeframe, which statement is made in Para 19.2, as extracted above. We may first examine whether claim was filed within time, whether the claim was admitted and what is the status of the claim in the CIRP of the Corporate Debtor. We have noted above that the Resolution Professional has published the list of creditors as on 29.05.2021, which is filed at page 418-419 of the paper book. Details of the ‘Operational Creditors Claim’ are at page 419 under heading (B). With regard to Income Tax Department, Note 2 on the same page explains the claim. Page 419 including Note 2 is as follows:

“B. Operational Creditors Claim

#	Name of the Operational Creditor	Date of claim	Claims Filed (INR crores)	Claims Admitted (INR crores)	Note
1	Yamuna Expressway Industrial Development Authority	23-Aug-17	6,111.6	461.0	1
2	Income tax department	28-Sep-17	3,334.3	-	2
3	Jaiprakash Associates Ltd. (JAL)	23-Aug-17	261.8	-	3
4	SBI capital market Ltd.	24-Aug-17	3.8	2.7	4

5	JIL Information Technology Ltd.	21-Aug-17	0.4	0.4	4
6	Kone Elevator India Private Ltd.	23-Aug-17	0.3	0.0	4
7	IDBI Capital Markets and Securities Ltd.	23-Aug-17	0.2	0.1	4
8	Mitsubishi Elevator India Private Ltd.	21-Aug-17	0.1	0.0	4
9	Advance Panels and Switchgears	23-Aug-17	0.1	0.0	4

Notes:

2. Of the total claim, INR 1,276 crores is pending before ITAT and for balance amount of INR 2,058 crores, JIL has received a favourable order from ITAT. JIL has received on order dated 29 September 2017 from income tax, initiating a penalty of 100% of the tax amount. This matter being currently under litigation has not been considered in the amount to be admitted against the claims filed, however the same has been considered as contingent liability in the books of accounts.”

11. We further notice that the Resolution Applicant has vide its letter dated 29.01.2018 has informed the Income Tax Department regarding proof of the claim submitted by the Department by letter dated 28.09.2017. In the letter dated 29.08.2019 IRP stated:

“29th January 2018

*Assistant Commissioner of Income Tax,
Circle-1, Room No.308, 3rd Floor,
A-2D, Section 24,
Noida.*

**Sub: Proof of claim submitted by the Income Tax
Department vide letter dated 28.09.2017
Ref: F.No. ACIT/ Cir-1/ Noida/
Recovery/2017-18/2451 dated 26.12.2017**

Sir,

1. *This is with reference to the proof of claim submitted by the department as operational creditor on Form-B on 28.09.2017 in respect of Jaypee Infratech Limited le, the company under Corporate Insolvency Resolution Process in terms of Insolvency and Bankruptcy Code.*
2. *It is submitted that proof of claim submitted by the department has been verified by us from the records as available with the Company.* 3. *On scrutiny of your claim it is observed that out of the total claim of Rs 3,334.29 crores following is the year wise breakup:*
 - a. *Rs. 2,058 crores pertains to tax demand raised for AY 2010-11*
 - b. *Rs. 1,276 crores pertains to tax demand raised for AY 2012-13*
4. *In this regard, we would like to bring to your notice that the company has received favorable order from ITAT for AY 2010-11 and the appeal effect has also been given (Copy attached)*
5. *For the claim amount pertaining to AY 2012-13, it may be noted that the same is shown as contingent liability in the books of accounts as the Company has already filed an appeal before Hon'ble ITAT. Thus the said liability does not exists as on date.*

You are hereby requested to acknowledge the above for non-admissibility of your claim. However, in case of any discrepancy / differences of opinion, you are requested to kindly intimate us.

Thanking you,

Yours sincerely

Anuj Jain

Resolution Professional

IP Registration no. 1881/IPA-001/IP-P00142/2017-18/10306

(Jaypee Infratech Limited is under Corporate Insolvency Resolution Process of the Insolvent and Bankruptcy Code 2016. Its affairs, business and assets are being managed by the Res Professional, Mr Anuj Jain, appointed by the National Company Law Tribunal by order dated August 2017 under the provisions of the Code).

Copy to:

- i) The Pr. Commissioner of Income Tax, Noida*
- ii) The Addl. Commissioner of Income Tax, Range-1, Noida”*

12. From the above it is clear that the IRP never raised any dispute regarding non-submission of claim by the Income Tax Department in Form B. What was communicated to the Department was that claim for AY 2010-11 does not subsist and with regard to claim pertaining to AY 2012-13 Company having already filed appeal before ITAT, the said liability does not exist as on date.

13. In the list of creditors which was published by the IRP, it was clearly mentioned that claim has been received of Rs.3334.29 Crores from the Income Tax Department. Learned counsel for the Appellant has referred to the provisions of Income Tax Act; Section 220 of the Income Tax Act which

provides that when tax payable and when assessee deem in default. Demand was raised for AY 2010-11 and AY 2012-13 only. Demand for AY 2010-11 having been set aside, there is no error in not accepting any claim for the said year. However, demand for AY 2012-13 was confirmed by the CIT against which appeal has been filed before ITAT by the Corporate Debtor. By mere filing of the Appeal before ITAT, it cannot be said that demand for the AY 2012-13 is set aside. It is not case of the Corporate Debtor that there was any stay of the demand granted by ITAT. It is, thus, clear that claim of the Department for the year 2012-13 cannot be said to be non-existent as has been claimed by the IRP.

14. Another issue which is sought to be raised by the Respondents is that claim of Income Tax Department which was based on crystalized liability of Rs.33,000 Crores by order dated 31.03.2017 stands extinguished by order of the Hon'ble Supreme Court in **Jaypee Kensington**. Shri Sumant Batra, learned counsel for the IRP submits that said liability having been extinguished, the said issued cannot be raised in this appeal. Learned counsel for the Respondent No.1 has relied on certain Paras of the judgment of **Jaypee Kensington** (Paras 39.3, 49, 216 and 217). We may notice the relevant Paras as relied by Respondent No.1. In Para 39.3, the Hon'ble Supreme Court has noted the key reliefs sought by the NBCC in the Resolution Plan. Para 39.3 of the judgment is as follows:

“39.3. The key reliefs sought for by NBCC in the resolution plan are summarised as under: -

Sl. No.	Matter	Key Reliefs sought
1.	<i>INR 750 Crore (along with interest) deposited by Jaiprakash Associates Ltd. (JAL), holding company of JIL with the Hon'ble Supreme Court in Writ Petition (Civil) No. 744/2017.</i>	<i>NBCC has retained the right to withdraw its Resolution Plan in case INR 750 Cr along with interest accrued thereon is not made available to JIL.</i>
2.	<i>Enforcement Directorate has initiated investigation under the Prevention of Money Laundering Act, 2002 ("PMLA") against JIL.</i>	<i>JIL to be discharged from PMLA and other investigations. NBCC has retained the right to withdraw from its Resolution Plan in case the said relief is not granted.</i>
3.	<i>858 acres of JIL's land was mortgaged with JAL lenders to secure debt of JAL without any consideration or counter guarantee to JIL (Transaction).</i>	<i>NBCC has sought relief that 858 acres of mortgaged land shall continue to be vested in JIL free of any mortgage, charge and encumbrance subject to the orders of the Hon'ble Supreme Court. Note: In the meanwhile, out of 858 acres, the Hon'ble Supreme Court vide order dated 26.2.2020 have set aside mortgage of 758 acres as avoidance transaction.</i>
4.	<i>Deemed approval of YEIDA for business transfer</i>	<i>Approval of the Adjudicating Authority shall be binding on YEIDA and constitute adequate approval by YEIDA for any business transfer to be undertaken between the Corporate Debtor and Expressway SPV. As per NBCC, no separate approval will be required for 'carve-out' and transfer of lands to land bank SPV and toll road to Road SPV as contemplated in the plan.</i>

5.	<i>Income Tax Liability</i>	<i>On account of transfer of land parcels from YEIDA to JIL in terms of the Concession Agreement, the Income Tax authority has been making an addition to the income of approximately INR 3,000 Cr on an annual basis estimated by the Resolution Applicant to be a tax demand of INR 33,000 Cr. for a period of 30 years, treating the transfer of land parcels as the revenue subsidy. This amount is being treated as operational debt and is being settled in accordance with the Resolution Plan.</i>
6.	<i>INR 716 Cr advance to JAL on Insolvency commencement date (subsequently this amount has reduced to approx. INR 500 crore)</i>	<i>INR 716 Cr was advanced to JAL towards construction work and maintenance charges/deposit. This amount of INR 716 Cr outstanding from JAL shall also be available to JIL for the purpose of completion of flats to the Home Buyers and other associated purposes. In case the relief is not granted, the assets currently owned by the JIL and being used by the home buyers of JAL relating to maintenance, shall not be available to the home buyers of JAL with effect from the Approval Date.</i>
7.	<i>Additional FAR appeal by YEIDA</i>	<i>YEIDA to withdraw the appeal filed in the District Court, Gautam Budh Nagar challenging the award dated 23.1.2017 passed by arbitral tribunal pertaining to additional FAR and JIL to get the right to use additional FAR as per the Resolution Plan.</i>

8.	<i>Additional Compensation to erstwhile land owner (for both real estate parcels and land acquired for toll road)</i>	<i>Any Claim/claim of YEIDA in future w.r.t. the land acquired and transferred to JIL by YEIDA (in terms of the Concession Agreement), if any, shall only be recoverable by YEIDA directly from the actual lease holders (i.e. the sub-lessees) on such date and no Claim/claim shall lie against JIL or NBCC.</i>
9.	<i>Extension of Concession Period</i>	<i>To ensure feasibility and viability of this Resolution Plan, YEIDA and other concerned authorities shall extend the concession period (currently 36 years) under the Concession Agreement for an additional period of ten years.</i>
10.	<i>Liability to repay of capital cost pertaining to Noida-Greater Noida Expressway</i>	<i>This liability shall stand extinguished, on account of failure of YEIDA to allow JIL to collect and retain toll/fee from the users of the Noida-Greater Noida Expressway during the term of the Concession Agreement.</i>

15. Para 39.3 was thus only reproduction of reliefs which was sought by NBCC. In Para 49 of the judgment, Hon'ble Supreme Court has made observations regarding the NCLT order which dealt with reliefs and concessions. Para 49 is as follows:

“49. Having thus dealt with the relevant objections, the NCLT entered into the fifth segment of its order and generally dealt with the provisions relating to the reliefs and concessions with the observations/directions as under: -

“134. The clauses already covered in the aforesaid discussion will not be discussed again, but as to the clauses not covered above are hereby dealt with as follow: -

Clauses 1 to 5 have already been covered in the above discussion.

Clause No. 6:- With regard to the past liabilities of income tax authority, they shall stand extinguished.

Clause No. 7:- Since reduction of the share capital of the corporate debtor is not part of this resolution, this Adjudicating Authority cannot waive the procedure for reduction of share capital in relation to the companies not yet incorporated.

Clause No. 8 & 10:- Payment of stamp duty mentioned in clause 8 is waived to the extent permissible under law.

Clause No. 9:- Any non-compliance arising out of past claims prior to CIRP initiation shall not have any bearing on this corporate debtor from hereof.

Clause No. 11:- The lenders to the corporate debtor shall regularise all the accounts and ensure that such classification of the loan account is standard in their books with effect from the transfer dates.

Clause No. 12:- All claims which have been placed before the RP and any criminal proceedings appurtenant to those claims are hereby extinguished.

Clause No. 13:- As to the contracts relating to the development of land by JAL, the Resolution applicant can reserve its right to terminate the same, as to the claims, if any, the resolution applicant has right to take appropriate action against JAL.

Clause No. 14:- With regard to liability arising out of concession agreement in relation to YEIDA, since those issues are governed by concession agreement, this Bench cannot nullify the rights of YEIDA against the corporate debtor emanating from the concession agreement.

Clause No. 15:- The agreements for subleases executed between the corporate debtor and the third parties, which are not in accordance with law and not supported by material proof, the Resolution applicant will have a right to terminate in accordance with law.

Clause No. 16 to 18:- The resolution applicant is granted 12 months' time from the approval date to ensure compliances in relation to the non-compliance of applicable laws by the corporate debtor or of its subsidiary pertaining to any period up to the approval date and licenses if any, to be obtained.

Clause No. 19:- In respect to the lands shown as transferred to JAL for real estate development, where the title and ownership is still lying with the corporate debtor, the resolution applicant is at liberty to proceed in accordance with law.

Clause No. 20:- It goes without saying that the IRP will not be held responsible with regard to discharge of his duties during CIR Process. The IRP and the Resolution Applicant will not be liable for any transactions carried out by the ex-management of the corporate debtor.

Clause No. 21:- This point has already been dealt with in the above discussion.

Clause No. 22:- For the purpose of consolidation of the books of the CD with the resolution applicant, the effective date shall be treated as the first day of the quarter immediately succeeding quarter in which the resolution applicant completes the takeover of the CD.

Clause No. 23:- This point is not clear as to whether it is referring to the land of the Corporate Debtor mortgaged to the lenders of JAL, if that is so, since it has been decided by the Honourable Supreme Court, it need not be reiterated.

Clause No. 24:- This generalization of cancellation of all agreements cannot be

granted unless each transaction is specifically dealt with.

Clause No. 25:- The resolution applicant cannot modify the resolution plan once it is approved by the CoC.

Clause No. 26:- As to the claims placed before the IRP and other liabilities of the CD which are shown in the records of the company and where notice has been given to such creditors, they can be construed as withdrawn after the approval date.

Clause No. 27:- With regard to extension of concession period by YEIDA, it is YEIDA to decide as to whether such extension should be given or not.

Clause No. 28:- This Adjudicating Authority can only direct the Central Government and Reserve Bank of India to accord permissions to the extent permissible under law.””

16. Para 216 and 217 of the judgment are summation of findings; final order and conclusion. We have looked into the various conclusions and findings in Para 216. None of the sub-paras of Para 216 deals with the claim of the Income Tax Department. Para 217 is as follows:

“217. The net result of the discussion and findings hitherto is that some of the terms and stipulations of the resolution plan of NBCC, which was voted for approval by 97.36% of the voting share of the Committee of Creditors, do not meet with approval. Although, barring such terms and stipulations, all other terms and propositions of the resolution plan stand approved. To be specific, the terms and stipulations in the resolution plan which do not meet with approval are those concerning: (a) the land providing agency [as held in Point C (supra)]; (b) the

*dissenting financial creditor [as held in Point D (supra)];
(c) the undischarged security interest of the lender of
JAL [as held in Point K (i) (supra)].*

217.1. Apart from the above, we have also disapproved the decision of the Adjudicating Authority in relation to the said amount of INR 750 crores with accrued interest and have held that this amount is the property of JAL and the stipulations in the resolution plan concerning its usage by JIL or the resolution applicant cannot be approved [as held in Point J (i) (supra)]. However, the final treatment of the said amount of INR 750 crores with accrued interest shall be determined by NCLT after the reconciliation of accounts between JAL and JIL and in terms of the directions contained in this judgment.

217.2. The added feature of the matter is that adequate provision is required to be made by the resolution applicant for utilisation of the land bank of 758 acres on which, security interest of the lenders of JAL stands discharged in terms of the judgment of this Court in Anuj Jain (supra).

217.3. The matters aforesaid, one way or the other, relate to the commercial terms of the resolution plan and carry their own financial implications.”

17. Relying of Para 217, Shri Batra submits that the part of the Resolution Plan which did not find favour with the Hon'ble Supreme Court for approval has been specifically mentioned which does not refer to claim of the Income Tax Department.

18. Hon'ble Supreme Court under Para 225 concluded the matter in following manner:

“225. Accordingly, while once again exercising our powers under Article 142 of the Constitution of India to do substantial and complete justice to the parties and in the interest of all the stakeholders of JIL, we conclude on these matters with the following order:

225.1. The matter regarding approval of the resolution plan stands remitted to the Committee of Creditors of JIL and the time for completion of the process relating to CIRP of JIL is extended by another period of 45 days from the date of this judgment.

225.2. We direct the IRP to complete the CIRP within the extended time of 45 days from today. For this purpose, it will be open to the IRP to invite modified/fresh resolution plans only from Suraksha Realty and NBCC (Only these resolution applicants were permitted to submit the revised plans in the judgment dated 06.11.2019) respectively, giving them time to submit the same within 2 weeks from the date of this judgment.

225.3. It is made clear that the IRP shall not entertain any expression of interest by any other person nor shall be required to issue any new information memorandum. The said resolution applicants shall be expected to proceed on the basis of the information memorandum already issued by IRP and shall also take into account the

facts noticed and findings recorded in this judgment.

225.4. After receiving the resolution plans as aforementioned, the IRP shall take all further steps in the manner that the processes of voting by the Committee of Creditors and his submission of report to the Adjudicating Authority (NCLT) are accomplished in all respects within the extended period of 45 days from the date of this judgment. The Adjudicating Authority shall take final decision in terms of Section 31 of the Code expeditiously upon submission of report by the IRP.

225.5. These directions, particularly for enlargement of time to complete the process of CIRP, are being issued in exceptional circumstances of the present case and shall not be treated as a precedent.

225.6. As noticed in paragraphs 4.5 and 38.3 hereinabove, the proceedings relating to CIRP of JIL were initiated by the Allahabad Bench of National Company Law Tribunal but, later on, the same were transferred to its Principal Bench at New Delhi. Therefore, the proceedings contemplated by this judgment shall be taken up by the Principal Bench of the National Company Law Tribunal at New Delhi.”

19. The question of approval of Resolution Plan was remitted to the Adjudicating Authority for fresh consideration. The Adjudicating Authority while hearing the parties afresh on the Resolution Plan permitted Income Tax

Department and other Objectors to raise their objections and has considered the said objections. The Hon'ble Supreme Court specifically in the **Jaypee Kensington** judgment has not dealt with the claim of the Income Tax Department nor observed that claim of the Income Tax Department stands extinguished.

20. There is one more reason to reject the submission of learned counsel for Respondent No.1 that claim of the Income Tax Department stands extinguished by judgment of **Jaypee Kensington**. In the impugned order, Para 131 onwards, the Adjudicating Authority has dealt with reliefs and concessions under heading 'X. Reliefs and Concessions'. Para 132 expressly dealt with obligation of the Corporate Debtor vis-à-vis Income Tax Department. The Adjudicating Authority held that the Adjudicating Authority is not inclined to grant such a blanket relief. Para 132 of the order of the Adjudicating Authority is as follows:

"132. Nevertheless, we would like to examine each of the reliefs and concessions asked for. The first relief and concession sought in the Annexure- II of the Resolution Plan are:

"1. All the existing legal proceedings relating to Income Tax shall stand irrevocably and unconditionally abated, settled and all liability/ obligations of the Corporate Debtor vis-a-vis the Income Tax authority in relation to such matters shall stand extinguished in perpetuity."

Through this relief, the SRA is seeking irrevocable and unconditional abatement/settlement in perpetuity of all Income Tax proceedings of the Corporate Debtor.

*Thus, the relief sought being abatement/settlement of all legal proceedings relating to Income Tax in perpetuity, we are not inclined to grant such a blanket relief. In our view, it is the duty of the SRA to seek termination of such litigations, pending before the relevant Authorities, in accordance with the law. **It would not be apt for this Adjudicating Authority to interfere with the jurisdiction of various legal forums on a blanket basis and therefore, the relief is declined.***

21. Para 135 also dealt with the relief of waiver of Income Tax Authority dues of further claims, which was not granted. Para 135 of the order is as follows:

“135. The next relief and concession asked by the SRA is mentioned in Serial No.4 of Annexure II, which reads as under:

“4. All Governmental Authorities (including the Income Tax authority) to waive the non-compliances of the Corporate Debtor or further claims of the Governmental Authorities on the Corporate Debtor arising out of or in relation to the past claims or non-compliances, prior to the Approval Date.”

Since the relief sought is with respect to non-compliance of the CD or further claims of the Governmental Authorities (including the Income Tax authority) on the Corporate Debtor, which has neither been crystalized nor an opportunity of hearing to the relevant Governmental Authorities including the Income Tax Department was available, we are not inclined to grant such a blanket relief in rem.”

22. Similarly, in Para 136 also relief was not granted which is as follows:

“136. The next relief and concession sought by the SRA is listed in Serial No.5 of Annexure-II, which is reproduced below:

“5. All Governmental Authorities (including the Income Tax authority, Service Tax department and VAT department) to provide relief to the Corporate Debtor from all past litigations pending at different levels and provide waiver from tax dues including interest and penalty on such litigations as on the Approval Date.”

*Through, this relief, the SRA is seeking blanket termination of litigations pending before all Governmental Authorities. In our view, it is the duty of the SRA to seek termination of those litigations, pending before the relevant Governmental Authorities, in accordance with the law. **It would not be apt for this Adjudicating Authority to interfere with the jurisdiction of Governmental Authorities on a blanket basis and therefore, the relief is declined. However, the SRA would be at liberty to proceed in accordance with law.**”*

23. The above Paras clearly indicate that reliefs from Income Tax liabilities have not been granted as prayed by the Successful Resolution Applicant. The claim which was submitted in the proceeding and the Successful Resolution Applicant has very well dealt with claim submitted by the Income Tax Department of Rs.3334.29 Crores. Even if the claim for the AY 2012-13 of Income Tax Department cannot be said to be extinguished,

Appellant being an Operational Creditor, the liquidation value of the Income Tax Department is NIL. The payment of Rs.10 Lakhs cannot be said to be violative of provisions of Section 30(2)(e).

24. We may also notice that the submission of learned counsel for the Respondent that claim of Rs.33,000 Crores which was crystalized prior to CIRP commencement should be held to be extinguished, which submission cannot be accepted. When the Appellant has not filed any claim for Rs.33,000 Crores in the CIRP process, we cannot accept the submission of learned counsel for the Respondent that the said claim stood extinguished. Even order dated 31.03.2017 which is relied by learned counsel for the Respondent only determine the revenue subsidy of Rs.33,000 Crores to the Corporate Debtor which was decided to be received on yearly basis in staggered manner. Hence, amount of Rs.33,000 Crores did not become due on the Corporate Debtor on passing of the order dated 31.03.2023 but become due when demands are raised year to year. That is why Appellant has filed claim for AY 2010-11 and 2012-13 in the CIRP of the Corporate Debtor.

25. Further, as noted above, reliefs and concessions claimed by the Successful Resolution Applicant in the Resolution Plan has been specifically rejected in Para 132, 135 and 136 of the impugned order. The submission of the Respondent No.1 is not liable to be accepted in view of the express refusal of reliefs and concessions as prayed for. We may notice that the Appeal has been filed by the Income Tax Department aggrieved by treatment of their claim and not by Respondent No. 2 and 3.

26. Now we may notice, I.A. No. 2910 of 2023 filed by JIL Real Estate Allottees Welfare Society who sought permission to intervene in the Appeal. Intervenor at best support the impugned order or make submissions against the order. Respondent No.1, 2& 3 has already made elaborate submissions to support the impugned order. We see no reason to separately consider I.A. No. 2910 of 2023.

27. I.A. No. 2331 of 2023 has been filed by Jaypee Kensington Boulevard Apartments Welfare Association & Ors. For the reasons as stated while considering I.A. No. 2910 of 2023, for the same reasons we are not separately considering this I.A. I.A. No. 3704 of 2023 is also disposed of accordingly.

28. I.A. No. 2910 of 2023, I.A. No. 2331 of 2023 and I.A. No. 3704 of 2023 are disposed of.

29. Now coming to the question of relief which can be claimed by the Appellant in the present Appeal. Suffice it to say that Appellants claim for the AY 2012-13 cannot be said to be non-existent, as is the stand taken by the IRP. However, after admitting the aforesaid claim for the AY 2012-13 for total amount of Rs.1157.07 Crores, as claimed by the Appellant, Income Tax Department who has filed claim as Operational Creditor was entitle for amount not less than the amount to be paid in the event of liquidation as per Section 53. It is specifically submitted on behalf of Respondent No. 2 and 3 that liquidation value of the Appellant being NIL, the Appellant was not entitled to receive any amount as per Section 30(2)(b). We, thus, are of the

view that no effective relief can be granted to the Appellant in the present Appeal. The treatment of the claim of the Appellant in the Resolution Plan cannot be said to be in violation of Section 30(2)(e).

30. We, thus are of the view that at the instance of the Appellant – Income Tax Department, impugned order passed by the Adjudicating Authority need no interference. Appeal stands disposed of with the observations as made above.

**[Justice Ashok Bhushan]
Chairperson**

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

NEW DELHI

26th September, 2023

Archana