



INSOLVENCY & BANKRUPTCY

# NCLT has limited jurisdiction, cannot substitute any commercial term of resolution plan approved by Committee of Creditors

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The Supreme Court in *Jaypee Kensington Boulevard Apartments Welfare Association & Ors. vs. NBCC (India) Ltd. & Ors.*<sup>[1]</sup> has issued a significant judgment on the powers and jurisdiction of the National Company Law Tribunal (NCLT) when dealing with the resolution plan approved by the Committee of Creditors (CoC) under the Insolvency and Bankruptcy Code (“I&B Code”).

The court explained, “To put in a nutshell, the Adjudicating Authority has limited jurisdiction in the matter of approval of a resolution plan, which is well-defined and circumscribed by Sections 30(2) and 31 of the Code read with the parameters delineated by this Court in the decisions above referred. The jurisdiction of the Appellate Authority is also circumscribed by the limited grounds of appeal provided in Section 61 of the Code.”

It said that in the adjudicatory process concerning a resolution plan under the I&B code, there is no scope for interference with the commercial aspects of the decision of the CoC, and there is no scope for substituting any commercial term of the resolution plan approved by the CoC.

The court asserted that within its limited jurisdiction, if the Adjudicating Authority or the Appellate Authority, as the case may be, finds any shortcoming in the resolution plan vis-à-vis the specified parameters, it would only send the resolution plan back to the CoC, for re-submission after satisfying the parameters delineated by I&B Code and expounded by the court.

It clarified that in the present case, the NCLT did not err in disapproving the proposed treatment of a dissenting financial creditor like ICICI Bank Limited in the resolution plan; but has erred in modifying the related terms of the resolution plan and in not sending the matter back to the CoC for reconsideration.

The court was hearing a batch of appeals related to the resolution plan approved by the NCLT under the I&B Code concerning the corporate debtor, Jaypee Infratech Limited (JIL).

The corporate insolvency process of JIL got initiated on 9 August 2017, when the Allahabad bench of the NCLT admitted a petition filed by one of the financial creditors, IDBI Bank Limited, under Section 7 of the I&B Code.

The resolution plan for JIL was submitted by NBCC (India) Limited and was approved by the CoC by a substantial majority of 97.36% of voting share of the financial creditors, on 17 December 2018. The Resolution Professional (RP) then moved an application before the Allahabad bench of the NCLT, for submission and approval of the resolution plan in terms of Section 30(6) read with Sections 31 and 60(5) of the I&B Code and Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. Later on, the proceedings pending before the Allahabad Bench of the NCLT were transferred to its Principal Bench at New Delhi wherein, several objections/suggestions/propositions were submitted by different stakeholders, going for or against the resolution plan or even off on a tangent.

By its order dated 3 March 2020, NCLT approved the resolution plan with some modifications.

### **Supreme Court's conclusions**

The apex court concluded that simultaneous consideration and voting over two resolution plans by the CoC does not vitiate the corporate insolvency resolution process.

It ruled that when homebuyers as a class have assented to the resolution plan of NBCC, any individual homebuyer or any association of homebuyers cannot maintain a challenge to the resolution plan and cannot be treated as a dissenting financial creditor or an aggrieved person.

There were also issues concerning a sum of INR 750 crores, which was deposited by Jaiprakash Associates Limited (JAL), the holding company of JIL. JAL had deposited the amount as per orders of the court passed in *Chitra Sharma & Ors. vs. Union of India and Ors.*<sup>[2]</sup>, in which the court, *inter alia*, issued several directions to JIL for making deposits in the court, particularly looking at the claim of refund being made by some of the homebuyers.

JAL had now sought refund of the amount within accrued interest, contending that the said amount is not the property of the corporate debtor, JIL, and that it cannot be utilised for the corporate insolvency resolution process of JIL.

The Supreme Court now held that this amount was the property of JAL and stipulation in the resolution plan concerning its usage by JIL or the resolution applicant cannot be approved. The part of the order of NCLT placing this amount in the asset pool of JIL was set aside.

The court further said that the NCLT could not have approved the provision of the resolution plan providing for extinguishment of security interest—particularly in relation to the security interest that has not been discharged—of the lenders of JAL. It, therefore,

set it aside.

Furthermore, it asserted that the Appellate Authority—National Company Law Appellate Tribunal (NCLAT)—was not justified in providing for an Interim Monitoring Committee for implementation of the resolution plan in question during the pendency of appeals. It, therefore, set aside this order as well.

The fate of INR 195 crores, paid as advance by home buyers, will be decided by the NCLT.

### **The directions**

The court finally directed the resolution plan to be remitted to the CoC and directed the Resolution Professional (RP) to complete the CIRP within 45 days. It, however, asserted that for this purpose, the RP can only invite modified/fresh bids from Suraksha Realty and NBCC respectively, giving them time to submit them within 2 weeks. It clarified that the RP shall not entertain any expression of interest by any other person nor shall be required to issue any new information memorandum.

The court, however, clarified that the directions, particularly for enlargement of time to complete the corporate insolvency resolution process have been passed in exceptional circumstances and shall not be treated as precedent.

[\[1\]](#) Civil Appeal No. 3395 of 2020

[\[2\]](#) (2018) 18 SCC 575