NATIONAL COMPANY LAW TRIBUNAL: NEW DELHI
PRINCIPAL BENCH

CA No. 59/2019

In the matter of:
Ms. Anju Agarwal ....Applicant/
AR of FCs of the CD in
the Class of Fixed
Deposit Holders

&

CA No. 14/2020

In the matter of:
Jai Prakash Associate Ltd. ....Applicant

&

CA No. 11/2020

In the matter of:
Mr. Pankaj Sharma & Ors.
.......Applicants/Home-buyers

&

CA No. 221/2018

In the matter of:
Jaypee Greens Krescent Home-buyers Welfare
Association & Ors.
.......Applicants/ Home-buyers

&

CA No. 05/2020

In the matter of:
Mr. Anuj Jain
.......Applicant/ IRP of CD

&

CA No. 763/2020

In the matter of:

Knights Court Social Welfare Association

.......Applicant/Intervener

&

<u>CA No. 16/2019</u>

<u>In the matter of:</u>
HDFC Ltd. ....Applicant/Intervener

&

<u>CA No. 262/2018</u>

<u>In the matter of:</u>
Mr. Anuj Jain

.......Applicant/IRP of CD

&

<u>CA No. 118/2019</u>

<u>In the matter of:</u>
Authorized Representative (Home-Buyers)
of Jaypee Infratech Limited ....Applicant

&

<u>IA No. 06/2020</u>

<u>In the matter of:</u>
Jaiprakash Associate Limited & anr.

.......Applicants/Objector

&

<u>CA No. 15 & 16/2020</u>

<u>In the matter of:</u>
ICICI Bank Ltd.

.......Applicants/Objector

&

<u>CA No. 20/2019</u>

<u>In the matter of:</u>
Jaypee Green Krescent Home Buyers
welfare Association and Ors.

.......Applicants/Home-Buyers

&

CA No. 107/2019

In the matter of:
M/s. Devyanai International Ltd.
& M/s. Spingo Foods Pvt. Ltd.

.......Applicants/Objector

&

CA No. 310/2019

In the matter of:
Mr. Anuj Jain ....Applicant/IRP of CD

&

CA No. 248/2019

In the matter of:
Jaypee Green Krescent Home
Buyers Welfare Association & Ors.

.......Applicants/Home-Buyers

&

CA No. 380/2019

In the matter of:
Mr. Anuj Jain ....Applicant/IRP of CD

&

CA No. 331/2019

In the matter of:
Mr. Anuj Jain ....Applicant/IRP of CD

&

CA No. 311/2019

In the matter of:
Mr. Arun Kumar Choudhary

.......Applicant/Home-buyer

&

CA No. 19/2019

In the matter of:
Jaypee Green Krescent Home

Buyers Welfare Association & Ors.

.......Applicants/Home-Buyers

&

CA No. 10/2020

In the matter of:
Mr. Gaurav Prakash Singh

.......Applicants/Home-Buyer

&

CA No. 01/2020

In the matter of:
Mr. Anuj Jain ....Applicant/IRP of CD

&

CA No. 17/2020

In the matter of:
Wish Town Home Buyers
Welfare Society ....Applicant/Home-buyers

&

CA No. 175/2019

In the matter of:
Mrs. Kripa Patel ....Applicant/Home-buyer

&

CA No. 76/2019

In the matter of:
Air Marshal Mr. C. Hari Kumar & Mrs. Ashalatha Hari Kumar

.......Applicant/Home-buyers

&

CA No. 70 & 71/2019

In the matter of:
Subbaiya Chithambaram ....Applicant/Home-buyer

&

CA No. 193/2018 & 139/2019

In the matter of:
M/s. Devyani International Limited

& M/s. Spingo Foods Pvt. Ltd.

.......Applicant/Objectors

&

CA No. 74/2019

In the matter of:
PNB Housing Finance Ltd.

.......Applicant/Financial Creditor

&

CA No. 1085/2020

In the matter of:
Mr. Rajesh Gupta & Ors. ....Applicant/Home-buyer

&

CA No. 106/2019

In the matter of:
Major General Hemant Kr. Singh & Ors.

.......Applicant/Home-buyer

&

CA No. 662/2020

In the matter of:
Mr. Hemant Kr. Singh & Ors.

.......Applicant/CoC Member

&

CA No. 871/2020

In the matter of:
Ms. Rashmi Singhal and anr.

.......Applicant/Intervener

&

CA No. 832/2020

In the matter of:
Jaypee AMAN Owners Welfare Association

.......Applicant/Home-buyer

&

CA No. 741/2020

In the matter of:
Yamuna Expressway Industrial
Development Authority ....Applicant

&

CA No. 704/2020

In the matter of:
Jaypee Greens Krescent Homes & Ors.

.......Applicant/Home-buyers

&

CA No. 659/2020

In the matter of:
Yes Bank ....Applicant/Intervener

Versus

(IB)-77/ALD/2017

In the matter of
IDBI Bank ....Applicant/Petitioner
v.
Jaypee Infratech Ltd.
through Mr. Anuj Jain,
Interim Resolution Professional

......Corporate Debtor

CORAM:
SH. B.S.V. PRAKASH KUMAR
HON'BLE ACTG. PRESIDENT

MS. SUMITA PURKAYASTHA
HON'BLE MEMBER, (TECHNICAL)

Judgment delivered on 03.03.2020

PRESENT:-

For Resolution Applicant/NBCC : Dr. U.K Chaudhary, Sr. Adv. with Mr. Siddharth Srivastava, Mr. Prateek Kumar, Mr. Mohit Kishore, Ms. Raveena Rai, Mr. Snehal Kakrania, Mr. Dhruv Gupta, Advs.

For I.R.P	:	Mr. Sumant Batra, Ms. Niharika Sharma, Advs. with Mr. Anuj Jain, I.R.P
For A.R. of FD Holders	:	Mr. Hemant Kumar Singh & Mr. Mohit Sharma, Mr. Tushar Tyagi, Mr. L.K. Bhushan, Mr. G.C. Shyamsunder, Ms. Anju Agarwal, Advs.
For Intervener	:	Mr. Amit Dwivedi, Mr. Joel, Mr. Amar Khera, Mr. Arjun Khera, Advs.
For Nine Home Buyers	:	Mr. Ritin Rai, Sr. Adv. with Ms. Mansi Chatpalliwar, Mr. Shivam Pandey, Ms. Gunjan Mathur, Mr. Amit Kr. Mishra, Ms. Shivani Rawat, Mr. Supriyo Ranjan, Mohapatra, Advs.
For YEIDA	:	Mr. Amar Gupta, Mr. Ashish Joshi, Advs.
For Jaiprakash Associates	:	Mr. Anupam Lal Das, Sr. Adv., Mr. R.P. Aggarwal, Sr. Adv. with Mr. Abhay Kumar Singh, Divyanshu Gupta, Mr. Sumeet Sharma, Mr. Anirudh, Mr. Paras Choudhary, Advs.
For HDFC Ltd.	:	Mr. Rahul Malhotra, Ms. Himanshi Madan, Mr. Varun Garg, Advs.
For ICICI Bank	:	Mr. Arun Kathpalia, Sr. Adv. with Ms. Misha, Mr. Shantanu Chaturvedi, Mr. Nikhil Mathur, Ms. Mahima Sareen, Advs.
For IDBI Bank Ltd	:	Mr. Ramji Srinivasan, Sr. Adv. with Mr. Bishwajit Dubey, Mr. Uday Khare, Mr. Aditya Marwah, Mr. Rishub & Ms. Sylona Mohapatra, Advs.
For Yes Bank Ltd.	:	Mr. Punit Tyagi, Mr. Anush Raajan, Mr. Jayant Kumar Mehta, & Ms. Mansi Gupta, Advs.
For PNB	:	Ms. Kavita Jha, Mr. Vaibhav Kulkarni, Mr. Udit Naresh, Advs.
For RD	:	Ms. Tania Sharma, Advocate
For Promoters	:	Mr. Akshay Kumar Singh, Adv.
For Jaypee Aman	:	Mr. Rahul Goyal, Adv.
For AR of M/s Devyani Inter National Ltd. **(in IA193/2018)**	:	Mr. Amar Khera, Ms. Jasmeet Kaur, Mr. Varun Prabhakar, Advs.
For Applicant **(in CA175/2019)**	:	Mr. Hemant Kumar Singh and Mr. Sagar Suri, Advs.

For Applicant **(in CA1085/2020)**	:	Mr. Alok Dhir, Mr. Milan Singh Negi, Mr. Kunal Godhwani, Ms. Varsha Banerjee, Advs.
For Applicant **(in CA871/2020)**	:	Mr. Manish Kumar Bishnoi, Mr. Raunak Jain & Mr. Sachin Dubey, Advs.
For Applicant **(in CA106/2019)**	:	Mr. Prateek Kumar, Mr. Snehal Kakrania, Ms. Raveena Rai, Mr. Anush Raajan, Advs.
For Applicant **(in CA11/2020)**	:	Mr. Ravindra Shrivastava, Sr. Adv. with Mr. Anshuman Shrivastava and Mr. Abhijeet Shrivastava, Advs.
For Applicant **(in CA19/2019 & CA20/2019)**: **Jaypee Green Krescent Homes Buyers Welfare Association & Ors.**		Mr. Yash Tandon, Mr. Shivam Pandey and Yash Kumar, Advs.
For Applicant **(in CP248/ALD/2019)**: **Jaypee Green Krescent Homes Buyers Welfare Association & Ors.**		Mr. Yash Tandon, Mr. Shivam Pandey and Yash Kumar, Advs.
For Applicant **(in CA76/2019)**: **Air Marshal C Hari Kumar & Anr.**		Mr. H S Sharma, Mr. Bharat Sharma and Santosh Kumar, Advs.
For Applicant **(in CA118/2019)**: **AR of HomeBuyers Asso.**		Mr. Jatinder Singh Dhatt, Adv.
For Applicant **(in CA310/2019)**:		Mr. Sanjay Bhatt, Mr. Sumant Bhatt and Ms. Niharika Sharma, Advs.

For Applicant
(in CA311/2019): Mr. Rahul Chaudhary, Adv.

For Applicant
(in CA331/2019 & CA380/2019): Mr. Sanjay Bhatt, Mr. Sumant Bhatt and Ms. Niharika Sharma, Advs.

For Applicant
(in CA10/2020): Mr. Udai Chandani, Adv.

For the Applicant(s): Mr. Yash Tandon, Mr. Shivam Pandey, Advs. for Jaypee Greeen Krescent Home-buyers Welfare Association & ors. **(CA No. 221/2018)**

Mr. Ravindra Shrivastava, Sr. Adv. With Mr. Anshuman Shrivastava, & Mr. Abhijeet Shrivastava, Advs. Mr. Pankaj Sharma & Ors. for Mr. Pankaj Sharma & Ors. **(CA No. 11/2020)**

Mr. Hemant Kumar Singh, Mr. Mohit Sharma, Mr. Tushar Tyagi, Mr. L.K Bhushan, Mr. G.C. Shyamsunder, Advs. **(CA-59/2019)**

Mr. Anupam Lal Das, Sr. Adv., Mr. R.P. Aggarwal, Sr. Adv. with Mr. Abhay Kumar Singh, Divyanshu Gupta, Mr. Sumeet Sharma, Mr. Anirudh, Mr. Paras Choudhary, Advs. For Jaiprakash Associates Ltd. **(CA-14/2020)**

HEARD AND RESERVED ON 17.02.2020.

PER B.S.V PRAKASH KUMAR, ACTG. PRESIDENT

JUDGMENT

1. Home and Man are inseparable of each other. Without home, man's life is not complete. May be, it was cave in the early days, may be, air-conditioned flat with all amenities. But, purpose and object is one and the same – to have family and family life. For which, man struggles all along, the same is the struggle in this case.

2. For the sake of brevity and to remain adherent to the time lines given by the Honourable Supreme Court of India, only material facts and legal propositions relevant to adjudicate ₹750Crore issue and Resolution Plan pending for approval of this Adjudicating Authority have been discussed and adjudicated.

3. There is a company called Jaiprakash Associates Ltd. (JAL) and a subsidiary company to it called Jayprakash Infra Tech Limited (JIL). It is also a point to be noted that both are managed by the same promoters. On having Uttar Pradesh State Government come up with a proposal to lay expressway between Noida and Agra, in implementation of the proposal, it appears it had floated bids, wherein JIL had become successful bidder, therefore the Government delegated its powers to its agency called Yamuna Expressway Industrial Authority (YEIDA - it was earlier called

as Taj Expressway Industrial Authority) to ensure this project is accomplished. On this project being announced by the state government, JIL and JAL came forward to take up this project. Simultaneously, UP Government acquired land from farmers for laying road. While acquiring, it has also acquired additional land and agreed to give this land to the person agreeing to lay the expressway as concession on terms and conditions. Then YEIDA, on behalf of UP Government, in the year 2003, entered into a bilateral agreement called Concession Agreement with JIL for laying expressway in consideration of the lease of express way with a right to collect toll from users of the road for 36 years and the land adjacent to the road provided by YEIDA for commercial development of it on lease for 90 years. The land for these two purposes was acquired by State Government on the condition that acquisition cost (actual compensation) of the land would be paid by JIL and the annual lease would be collected by it either from the sub-lessee or from the end user or from JIL in the event any land still remained with the Concessionaire (JIL). Accordingly, JIL has taken up those two projects, the expressway was laid over a period

of time and JIL also started developing the other commercial project of Residential Towers.

4. In the process, JIL has floated project to develop residential flats with requisite paraphernalia in the land leased out to JIL, in shopping the project to flat buyers, bookings opened, many Home-buyers crazily hooked up to buy homes according to their levels, but sad part is, though JIL collected monies from these home-buyers, it has failed to roll out homes to the buyers within the time lines given by it.

5. In the meanwhile, when JIL, not only failed to deliver the homes to the buyers, but also defaulted repaying loan instalments to a consortium of banks led by IDBI Bank, owing to this reason, RBI declared JIL as one among 12 NPAs and recommended for initiating IBC proceedings against them.

6. Upon initiation of Section 7 proceedings under IBC before NCLT, Allahabad against JIL, for this account already being NPA and the same being admitted by JIL, NCLT, on 09.08.2017, initiated CIRP in respect of JIL by passing moratorium order appointing an IRP namely Mr. Anuj Jain, who uniquely all along continuing as IRP till this date. In pursuance of

this order, the IRP on 14.08.2017 called for submissions of claims by financial creditors in Form-C, operational creditors in Form-B, workmen & employees in Form-E and other creditors in Form-F.

7. Since home-buyers, being slotted under the caption of other creditors, not on par with financial and operational creditors, the home-buyers of JIL (and some home-buyers of JAL as well) directly knocked the doors of Hon'ble Supreme Court under Article 32 of the Constitution of India, for setting aside of the admission order dated 09.08.2017 along with other reliefs to notify that Section 14 of the Code shall not apply to the consumers; that the home-buyers be allowed to exercise the rights available to them under Consumer Protection Act and the Real Estate (Regulation & Development) Act, 2016; for forensic audit of JIL and JAL to be conducted for the period from 2009 to 2017 and for a direction to Union of India to protect the interest of home-buyers in the larger public interest.

8. Upon examining this factual aspect, and the Hon'ble Supreme Court having noticed that home-buyers are neither falling under the caption of financial creditors nor under the caption of operational

creditors, the Hon'ble Supreme Court on 04.09.2017 stayed the proceedings before the NCLT until further orders. Subsequent thereto, IDBI Bank Ltd. being aggrieved of the stay order, filed an Application before the Hon'ble Supreme Court on 11.09.2017 asking for vacation of ad interim order dated 04.09.2017, accordingly, on 11.09.2017, the Honourable Supreme Court modified its earlier order dated 04.09.2017 directing the IRP to forthwith take over the management of JIL with a further direction to the IRP to submit Interim Resolution Plan within 45 days before the Hon'ble Supreme Court with necessary provisions to protect the interest of the home-buyers.

9. It has also been stated that the Honourable Supreme Court directed that one Mr. Shekhar Naphade shall participate in the meetings of the committee of creditors (COC) to espouse the cause of the home-buyers, and the managing directors of JIL and JAL shall not leave India without prior permission of the Hon'ble Supreme Court. Another important aspect factored in this direction is, JAL/JIL shall deposit a sum of ₹2000 Crore before the Hon'ble Supreme Court on or before 27.10.2017.

10. In the Writ Petition filed before the Hon'ble Supreme Court (taken from ***Chitra Sharma and Others vs. Union of India - (2018) 18 SCC 575),*** a mechanism was set out to provide a workable arrangement to ensure that the interest of the home-buyers would not be ignored. The Hon'ble Supreme Court on 23.10.2017 granted leave to the IRP to file an Action Plan on the Information Memorandum in a sealed cover.

11. In this backdrop, when JAL moved an application for vacation of the direction for the deposit of ₹2000 Crore or for a modification that would enable JAL to transfer its rights under the Concession Agreement in respect of Yamuna Expressway (YEW), the Hon'ble supreme court by its order dated 25.10.2017, declined to modify the directions for deposit of ₹2000 Crore by extending time until 05.11.2017.

12. During the progress of this case, the Hon'ble Supreme court, on 13.11.2017, directed that the home-buyers may approach amicus curiae appointed in this case. The amicus curiae opened a web portal on which details of the home-buyers would be uploaded. When JAL issue came before the Hon'ble Supreme Court, it has issued directions to JAL to file details of Housing projects before the same amicus curiae to maintain

separate web portal reflecting the details of the home-buyers of JAL as well.

13. As the Hon'ble Supreme court time and again insisted upon the promoter directors to deposit the money aforesaid, JAL deposited ₹750crores, in the meanwhile, the counsel for JAL stated that only 8 % of the home-buyers are interested in seeking refund, as to others, they are interested to take possession of flats. Simultaneously, the amicus curia informed that information gathered from the web portal indicated that ₹13,000crores were required to refund the monies of the home-buyers. Consequently, a direction was issued restraining the developers from raising demands towards outstanding or future payments from the flat buyers.

14. Alongside, the Hon'ble Supreme Court has also directed the IRP to finalise the resolution plan with a condition that implementation would be with the leave of Hon'ble Supreme Court. To pool up the remaining funds ordered by the Hon'ble Supreme Court, when JAL sought permission to alienate the specific assets to secure the compliance for deposit of ₹2000crore, the Hon'ble Supreme Court declined that proposal.

15. During the course of process, on the IRP having invited Expressions of Interest, 10 applicants including JAL came forward with Expressions of Interest, but in between, since Section 29A of the Code has come in debarring the promoter directors defaulted in repaying from participating in restructuring of the Corporate Debtor during CIRP, the resolution plan of the of JAL was rejected. As to other plans, Lakshdeep plan also could not muster more than 6 % voting of the CoC in favour of its plan. As IRP was putting efforts to place a viable plan before the CoC, CIRP period of 270 days came to end on 12.05.2018 even before any viable plan was placed before the CoC.

16. The total financial debt due to the Financial Creditors on the date of insolvency commencement date stood at ₹9984.70Crores. At this juncture, there was unanimity among the stakeholders that liquidation would not serve the home-buyers. While the proceedings were continuing before the Hon'ble Supreme Court, on 06.06.2018, an ordinance had come into force making home-buyers as financial creditors under IBC with a seat in the CoC through an Authorised Representative (AR) elected by the home buyers.

17. According to JAL, construction of 106 towers (out of remaining 228 towers)- consisting of 11336 units is 50 % to 90 % complete, construction of 50 towers consisting of 6500 units is between 25 % to 50 % complete, the construction of 702 towers is less than 25 % complete.

18. Though JAL submitted its proposal stating that it could bring post-dated cheques for ₹600 Crore, in the event stay is granted over the IRP continuing in the management of the Corporate Debtor, the Hon'ble Supreme Court did not grant any such relief to the promoter directors on the premise that granting such relief would cause serious prejudice to the discipline of IBC in the light of Section 29A of the code that has subsequently come into force to avoid backdoor entry to the erstwhile management hit by the section.

19. To conclude that JAL and promoter directors are not fit to get back management and participation in the Resolution, the Honourable Supreme Court in the citation supra held as follows:

> *"42. The bar under Section 29A would preclude JAL/JIL from being allowed to participate in the resolution process. Moreover, the facts which have been drawn to the attention of the Court leave*

no manner of doubt that JAL/JIL lack the financial capacity and resources to complete the unfinished projects. To allow them to participate in the process of resolution will render the provisions of the Act nugatory. This cannot be permitted by the Court.

43,44 ......

45. We may note at this stage that counsel appearing on behalf of the home buyers have uniformly opposed the proposal of JIL/JAL. The home buyers have urged before this Court that they have no confidence in the ability of either JIL or JAL to complete the outstanding projects. The home buyers have urged that they have been left in the lurch by the developers who have miserably failed to fulfil their contractual obligation by allotting flats on time.

As to ₹750 Crore issue Honorable Supreme Court has decided as follows:

48. As we have stated earlier, an amount of ₹750 crores is lying in deposit before this Court pursuant to the interim directions, on which interest has accrued. The home buyers have earnestly sought the issuance of interim directions to facilitate a pro-rata

disbursement of this amount to those of the home buyers who seek a refund. We are keenly conscious of the fact that the claim of the home buyers who seek a refund of monies deserves to be considered with empathy. Yet, having given our anxious consideration to the plea and on the balance, we are not inclined to accede to it for more than one reason."

20. The Honourable Supreme Court has further stated that disbursement of the amount of ₹750crore to a class of creditors would be manifestly improper and cause injustice to the secured creditors and would amount to preferential disbursement to a class of creditors. Once IBC discipline is applied, it is held, it is necessary that its statutory provisions to be followed to facilitate the conclusion of the Resolution process. It has been further stated that only 8% of home-buyers having sought refund of their monies, while 92% would evidently show preference to homes, the person preferring homes would have legitimate grievance if the corpus of ₹750crore is distributed to the home-buyers who seek refund. It has been further stated that allowing a refund to one class

of financial creditors will not be in the overall interest of a composite plan being formulated under the provisions of IBC.

21. After discussing various issues, the Honb'le Supreme Court, in the citation supra by exercising plenary powers under Article 142 of the Constitution, held that CIRP in respect of JIL shall commence from the date of the order dated 09.08.2018 with a leave to seek further extension of 90 days by permitting NCLT to pass appropriate orders in accordance with the provisions of IBC on reconstitution of COC in the light of the ordinance of 2018 and with a permission to the IRP to invite fresh Expressions of Interest for the submission of the Resolution plans in addition to the three already shortlisted, whose bids, as the case may be, or revised bids be considered and JIL and JAL and their promoters shall be ineligible to participate in the CIRP by virtue of Section 29A.

22. Besides this, Honourable Supreme Court allowed RBI to direct the Banks to initiate CIRP against JAL under IBC, as to ₹750crore deposited in the Hon'ble Supreme Court, it has held that it shall, together with the interest accrued thereon, be transferred to NCLT and continue to remain invested and shall abide by such directions as may be issued by the NCLT.

23. In the meanwhile, when the IRP, owing to appeals filed against each other, could not get the Resolution Plan approved within the specified time, he has again sought for exclusion and extension of CIRP, this is how this litigation again reached to Hon'ble Supreme Court, over which, the Honourable Supreme Court has again by exercising its plenary powers under Article 142 of the Constitution, directed to all concerned to reckon 90 days extension from the date of the order with the directions as follows:

> *i) We direct the IRP to complete the CIRP within 90 days from today. In the first 45 days, it will be open to the IRP to invite revised resolution plan only from Suraksha Realty and NBCC respectively, who were the final bidders and had submitted resolution plan on the earlier occasion and place the revised plan(s) before the CoC, if so required, after negotiations and submit report to the adjudicating authority NCLT within such time. In the second phase of 45 days commencing from 21st December, 2019, margin is provided for removing any difficulty and to pass appropriate orders thereon by the Adjudicating Authority.*
>
> *ii) The pendency of any other application before the NCLT or NCLAT, as the case may be, including any interim direction given therein shall be no impediment for the IRP to receive and process the revised resolution plan from the above named two bidders and take it to its logical end as per the provisions of the I & B Code within the extended timeline prescribed in terms of this order.*
>
> *iii) We direct that the IRP shall not entertain any expression of interest (improved) resolution plan individually or jointly or in concert with any other person, much less ineligible in terms of Section 29A of the I & B Code.*

iv) These directions are issued in exceptional situation in the facts of the present case and shall not be treated as a precedent.

v) This order may not be construed as having answered the questions of law raised in both the appeals, including as recognition of the power of the NCLT / NCLAT to issue direction or order not consistent with the statutory time lines and stipulations specified in the I & B Code and Regulations framed thereunder.

24. Again the parties approached the Hon'ble Supreme Court assailing the order of Hon'ble NCLAT considering the lender Banks of JAL as Financial Creditors of JIL and holding the mortgage of JIL to the lenders of JAL as valid, wherein the Hon'ble Supreme Court stayed the operation to the extent of the order Hon'ble NCLAT declaring the lender Banks of JAL as Financial Creditors of JIL. Soon after this matter was posted for orders, the Honorable Supreme Court, on 26.02.2020, decided these issues making it clear that the lenders of JAL cannot become the financial creditors of JIL and the mortgage of land impugned in the order of Honorable NCLAT is hit by preferential transaction.

25. Though various applications pending before this Bench, all these applications primarily being revolved around either on utilization of ₹750Crore deposited with the Hon'ble Supreme Court and thereafter with

NCLT or on the Resolution Plan pending before this Bench for approval under Section 31 of the Code.

₹750Crore Issue

26. As to ₹750Crore issue, various Home-buyers Associations of the Corporate Debtor (JIL) have filed CA 221/2018 on 17.09.2018 seeking directions for the release of ₹750Crore deposited with the Registry of the Tribunal along with interest accrued to be utilized towards the construction of the undelivered projects of the Corporate Debtor on the premise that the Hon'ble Supreme Court transferred this fund to the NCLT for utilization of the same to the home-buyers. If the said fund is not allocated towards construction of the undelivered projects, the applicants in CA221/2018 say, it is bound to result irreparable loss to the applicants, who invested their hard earned money in the aspiration of owning homes.

27. Against this application, several applications and objections have equally come not to release the aforesaid fund to the Corporate Debtor for utilization of the same for completion of JIL projects.

28. In the line of it, ICICI Bank Limited (herein after called as 'ICICI'), who is a lender to JAL, has filed an intervention application (CA252/2018) seeking reliefs to allow ICICI to intervene in CA221/2018, and to direct that ₹750Crore, transferred to the Registry of NCLT by virtue of judgment (Chitra Sharma) dated 09.08.2018 by Hon'ble Supreme Court of India, be returned to JAL and to transfer the monies to a separated designated Account, from which the amounts cannot be utilized or withdrawn without prior written consent of the applicant and other JAL lenders. The reasons put forward by ICICI for the reliefs above are –

1. For the aforesaid ₹750crore deposited with Hon'ble Supreme Court is the money of JAL, therefore in case that money has not been returned to JAL, JAL's lenders will be adversely affected.

2. The said deposit was made by JAL upon the interim directions of Hon'ble Supreme Court, therefore it cannot be appropriated for the benefit of the Corporate Debtor's/creditors at the cost and interest of JAL and its stakeholders, besides this, the Hon'ble Supreme Court

itself having rejected the request for disbursement of ₹750Crore to the homebuyers of the Corporate Debtor, these homebuyers cannot re-agitate the same point before this Bench.

3. Since the WP744/2017 before Honourable Supreme Court of India, titled as ***Chitra Sharma v. Union of India and Ors.***, was premised on the fact that for the Code does not recognize and protect the interest of the homebuyers/ creditors, who invested monies in the project undertaken by the Corporate Debtor, the homebuyers challenged the vires of Section 6, 7, 10, 14 and 53 of the Code. In pursuance of it, the Hon'ble Supreme Court, to ensure that homebuyers should not be left remediless, directed the promoters of JAL to deposit ₹2000Crore with the Hon'ble Supreme Court so as to refund that money to the homebuyers. But on Amendment to IBC, including homebuyers as financial creditors in IBC, the Hon'ble Supreme Court, instead of refunding the said money to the

homebuyers, without insisting upon the promoters of JAL to deposit the remaining balance of ₹1250crore, simply delegated this work to the NCLT to proceed with the CIRP and approve Resolution in accordance with IBC. In the given facts and directions of the Honourable Supreme Court, ICICI submits, for there being no specific direction by Hon'ble Supreme Court to utilise this money to the financial creditors of the Corporate Debtor, it shall be returned to JAL and its stakeholders because the purpose for which the money was deposited by JAL was not being utilized for disbursement of it towards refund of the homebuyers. It further says, JAL being the holder of that money, the corpus pooled not being utilised for the object for which the Hon'ble Supreme directed JAL to deposit, that corpus shall be returned to JAL.

29. In the similar lines, FD holders filed CA59/2019 for release of ₹750Crore to pay their dues, likewise JAL also filed CA14/2019 asking for return of ₹750Crore to JAL, and one Pankaj Sharma and two others,

saying themselves as homebuyers of JAL, filed CA11/2019 for release of the aforesaid corpus to JAL so that it could be utilized for the homebuyers of JAL because JAL itself is in financial distress, moreover if such a huge money of JAL is given out to another company, the objectors submit, the interest of the stakeholders of JAL would be jeopardised.

30. In the similar lines, another set of JAL homebuyers filed CA760/2020 for the similar relief asking for return of ₹750crore to JAL. Apart from the above applications, many of the parties filed objections against CA221/2018 stating the same thing that has been stated in their independent applications.

31. As against CA221/2018, consortium banks led by IDBI filed reply stating that IDBI Bank has filed Section 7 of IBC, whereupon all this litigation has come up. The Bank counsel has stated that Hon'ble Supreme Court, in the judgment dated 09.08.2018, was conscious of the fact that ₹750crore cannot be disbursed to only one class of creditors during the CIRP, in case it is disbursed to only one class of creditors, it would cause injustice to the other secured creditors therefore disbursement of this money to the refund seekers/homebuyers cannot be said as permitted

under the discipline of IBC. It has been further stated that Yamuna Expressway industrial Development Authority (YEIDA) had awarded Yamuna Expressway Project (YEP) to the Corporate Debtor for a period of 36 years from the commercial operation date. The construction of the YEP was majorly funded by the lenders having first charge over the Expressway which is approximately 41 KM in length by way of mortgage of land and by way of hypothecation of all the movable assets including the Corporate Debtor operating cash flows. It has been further submitted that since the Corporate Debtor is generating revenues through toll collection around ₹25Crore per month from YEP alone, this entire money should have been utilized for servicing the loans provided by the Institutional Lenders, but whereas, owing to the CIRP in progress, this entire sum is utilized towards construction work and for running the Corporate Debtor as a going concern. The counsel of IDBI says, as per the Institutional Lenders, since they have first charge over toll collection money, whatever money that comes out of toll collection should have been paid to the lenders. Since that money has been spent over the construction of homes, this ₹750Crore ought to be distributed on pro rata

basis to the Lenders in accordance with the voting share of the financial creditors in the CoC. On this line of argument, the Lenders raised objections against a proposal for utilization of this money solely for the purpose of homebuyers.

32. In the reply/objections filed by JAL, the substance is that no part of the aforesaid deposit was ever handed over by the Hon'ble Supreme Court to the Corporate Debtor or utilized for any purpose, therefore that money deposited with the Hon'ble Supreme Court does not form part of the corpus or the asset of the CD. Since it is deposited by the JAL, for there being no direction to utilise this money to the homebuyers, it shall be returned to the holder of the money i.e. JAL. It has referred to various orders of Hon'ble Supreme Court dated 25.10.2017, 13.11.2017, 21.11.2017, 10.01.2018, 21.03.2018 to say that Hon'ble Supreme Court has time and again given directions for deposit of money/refunded to the homebuyers when it was felt that these homebuyers were not protected under IBC. As soon as IBC has accommodated the homebuyers as financial creditors, it has relegated this case to the NCLT to deal with in accordance with IBC. For this money being evidently paid by JAL, since the Hon'ble Supreme

Court has nowhere directed either to pay the remaining balance or to utilize this money towards refund of homebuyers' money, it has to be treated as the money of JAL and accordingly be returned to JAL.

33. The promoter directors of the Corporate Debtor also filed another reply affidavit stating that no part of ₹750Crore was deposited by JIL and the same has not been handed over to JIL for any purpose whatsoever, therefore it shall be returned to JAL because JAL is an independent jurist person different from the Corporate Debtor. Moreover, the Hon'ble Supreme Court has not stated anywhere that JAL is legally bound to contribute funds required for completing the pending projects of JIL. Therefore the Counsel says, it cannot be said that by mere deposit of monies by the directions of the Hon'ble Supreme Court, that money would become the money of the Corporate Debtor. In view of the same by referring to various paras of judgment supra, these promoter directors tried to impress upon this Bench that this money is belonging to JAL.

34. Along with others, IRP has also filed reply to CA221/2018 stating that since there are 32,754 allottees to whom flats have been sold as per the records of the JIL, out of them, as on 05.10.2018, 24296 homebuyers are

still awaiting possession of their flats. Therefore to make his efforts to continue completion of construction of flats and handing over possession to the allottees of flats/plots during the CIRP period, if this money is ordered to be released to be utilized for construction and development of the projects of the CD, it will provide a boost to the construction activity and speed up handing over possession to a large number of homebuyers.

35. In support of the above pleadings, the counsel appearing on behalf of the applicant in CA221/2018 stated that the Hon'ble Supreme Court, in *Chitra Sharma* supra categorically held that this money was intended to espouse the cause of the homebuyers and to protect their interest. It is pertinent to mention that a tripartite agreement was entered between JAL, JIL and the homebuyers, wherein JAL, as the developer to the project, is responsible for delivering possession of the flats to Home-buyers.

36. It has also been stated that JAL filed IA102471/2017 in a SLP (C) 24001/2017 for modification/recall of part of direction relating to deposit of ₹2000Crore by JAL, which the Hon'ble Supreme Court, on 25.10.2017, dismissed by extending time to deposit the sum of ₹2000Crore till 15.11.2017, despite JAL has contended various things saying that it was in

financial distress, JAL alone was liable for completion of the project, and JAL was willing to resolve the insolvency of JIL and was ready for settlement proposal.

37. Even after dismissal of the application aforementioned, the Hon'ble Supreme Court, on 22.11.2017, 23.01.2018 and also on 16.05.2018, reiterated its concern with regard to disbursement of the funds towards refund of homebuyers. In between, by the advent of Section 29A of IBC on 23.11.2017 through amendment envisaging those persons who are not eligible to submit the Resolution Plan, the Promoter-Directors of the Corporate Debtor as well as JAL directors have become ineligible to submit Resolution Plans. Though JAL directors were aware of this fact that they could not submit their Resolution Plan for they are being hit by Section 29A, they kept on depositing the monies under the direction of deposit of ₹2000 crore without assailing or raising an objection with regard to payment to the homebuyers. While this matter was pending before Hon'ble Supreme Court, on 06.06.2018, another amendment has come including homebuyers within the ambit of Financial Creditors, even after such amendment, on 13.07.2018, the promoters submitted a proposal

before Hon'ble Supreme Court to alienate certain assets to comply with the direction to deposit ₹2000 crore. Then also, the Hon'ble Supreme Court listed the mater on 16.07.2018, *exclusively for the purpose of considering the issue of rights of the homebuyers and the capability of JAL and JIL to construct the projects*. Thereafter on 09.08.2018, the Hon'ble Supreme Court disposed of Chitra Sharma petition and other connected petitions relegating the matter to the NCLT to deal with the matter in accordance with law by refusing to allow the promoters of JAL/JIL to continue construction of these projects with a clarification over ₹750 crore directing this money to be transferred to NCLT and this money shall remain invested and the parties shall abide by such directions as may be issued by the NCLT.

38. Soon after disposal of this matter, in the settlement proposal given by JAL on 15.02.2019, JAL stated that this ₹750Crore would be part of the settlement plan, therefore these applicants' counsel submits that it was JAL's case that these ₹750 crore would be utilized towards revival of the business of JIL irrespective of the outcome of legal proceedings in respect of ₹750Crore. In view of this factual history, the applicants' counsel

submits that the order of the Hon'ble Supreme Court is binding on all courts and Tribunals within the territory of India, therefore the applicant counsel says, it is clear that ₹750Crore deposit is for the cause of homebuyers, now it is not open either to the lenders of JAL or promoters of JAL or the homebuyers of JAL to reopen this issue that was already decided by the Hon'ble Supreme Court. With these submissions, the applicants' counsel submits that this money shall be used for the cause of the homebuyers as per the directions of the Hon'ble Supreme Court.

39. As against CA221/2018, JAL counsel has filed written submissions on various points questioning the maintainability CA221/2018, explaining the character of the deposit made by JAL before the Hon'ble Supreme Court, the effect of subsequent changes in the stand of the Hon'ble Supreme Court on ₹750Crore, the Hon'ble Supreme Court declining to accept the request of homebuyers for pro rata distribution of ₹750Crore, and explaining the Hon'ble Supreme Court order of transfer of ₹750Crore along with interest to the NCLT so as to deal with the fund in accordance with IBC provisions. With these submissions, JAL counsel has summed

up his argument by saying that this Tribunal cannot appropriate the above amount for any purpose other than refunding it to JAL.

40. In addition to it, JAL counsel has subsequently filed another additional written submissions as to why JAL did not file an application before the Hon'ble Supreme Court seeking refund of ₹750 crore after amendment to IBC on 06.06.2018 and also before NCLT, Allahabad immediately after the Hon'ble Supreme Court passed order. JAL counsel has further stated that payments made by JIL to JAL are based on contract for construction of flats, therefore flow of funds from JIL to JAL cannot be portrayed as a device to divert the funds of homebuyers of JIL to JAL, therefore no forensic audit is required to trace the routing of funds.

41. With regard to the maintainability, JAL counsel submits that the homebuyers being represented by authorized representative, these homebuyers should not have directly filed this application, they ought to have approached authorized representative to file such application before this Bench. For there being no information as to whether these applicants are competent to file such application on behalf of the homebuyers and there being no discloser with regard to homebuyers of the respective

associations, this application is not maintainable. With regard to the nature of the deposit, he says, in Chitra Sharma's case, it is evident that the homebuyers have never asked for completion of the projects, moreover, the object of asking JAL to deposit ₹2000Crore was towards disbursement of refund to homebuyers, it was never for completion of pending projects. Thus the character of deposit made by JAL has always remained that of deposit because it was not distributed to the homebuyers. Though the Hon'ble Supreme Court initially directed for deposit of this money, for the homebuyers being subsequently recognized as financial creditors, the Hon'ble Supreme Court declined to accept the request of homebuyers for pro rata distribution of ₹750Crore to them by clarifying that once the Hon'ble Supreme Court has taken recourse to the discipline of the IBC, it is necessary that its statutory provisions be followed to facilitate the conclusion of the Resolution process. The counsel submits that the implications of the change of the stand of the Hon'ble Supreme Court is that since homebuyers being protected as financial creditors after amendment to IBC, now the situation existing as on the date of filing the writ petition is not present, therefore the Honourable

Supreme Court has consciously relegated this case to the NCLT to pass orders in accordance with IBC. Once the case is dealt with under IBC, this corpus not being the part of JIL asset, JAL counsel says, it shall be returned to JAL for it has been deposited by JAL.

42. JAL counsel has further submitted that this deposit of ₹750Crore has acquired the character of constructive trust, as the object of distribution of this fund towards the refund of homebuyers money is denied by the Hon'ble Supreme Court, this amount is to be required to be refunded to JAL on the principle enshrined in Section 77 and 83 of Indian Trust Act.

43. To make this argument good, the JAL counsel relied upon ***State of U.P. v. Bansi Dhar*** AIR 1974 pg-1084 (paras 28 to 35). It has been further stated that since CIRP Regulations 36 & 37 having made clear that IRP and Prospective Resolution Applicant are concerned only with the properties of the Corporate Debtor, this money deposited before Hon'ble Supreme Court by JAL shall not be treated as the asset of the Corporate Debtor under IBC. In view of the same, JAL counsel has asked for the return of ₹750 crore to JAL.

44. This counsel has stated that JAL could not file an application for return of ₹750Crore before Honourable Supreme Court because the Hon'ble Supreme Court passed final judgment in the WP on 09.08.2018 relegating the matter to the NCLT, thereafter when this matter came before Allahabad NCLT, the money did not simultaneously come with the matter. However when the homebuyers filed an application for the utilization of this money to the homebuyers on 18.09.2018, JAL filed its reply on 16.10.2018 with a counter prayer seeking refund of the entire deposit to JAL, thereafter a formal application was filed seeking same relief by filing CA14/2020, therefore, JAL counsel says, it could not be said that JAL has not taken timely action with regard to ₹750 crore issue.

45. As to siphoning of funds, JAL counsel submits that JAL is engaged in various businesses, owing to its expertise, JAL was engaged by JIL as a contractor for construction of real estate projects and the same has been continuing even after commencement of CIRP on 09.07.2018, for the payments have been made after the commencement of CIRP process with the approval of IRP, today it could not be said, the JAL counsel says, JAL has diverted the funds of the homebuyers of JIL. With regard to forensic

audit prayer made before the Hon'ble Supreme Court in the aforesaid Writ Petition, the Hon'ble Supreme Court did not allow this relief either in any interim order or in the final judgment dated 09.08.2018, therefore it could not re-agitated before NCLT. In any event, the order passed by this NCLT upon the application filed under 43, 45, 50 and 66 of IBC, being set aside by Hon'ble NCLAT, it is not open to this Bench to get into forensic audit issue again.

46. In the same line, ICICI counsel has also made long submissions and written submissions reiterating the same points what everybody said against the relief sought by homebuyers of JIL, for the sake of completeness, we hereby refer its submissions in the following paras.

47. It is a fact that ICICI is the leader of the consortium of Banks lent money to JAL. In addition to the secured debt, JAL has also liabilities towards its own set of homebuyers towards the project JAL independently undertaken. The counsel has again reiterated the same thing saying that the direction for deposit of ₹2000Crore is an interim direction given by the Hon'ble Supreme Court, in between, the Hon'ble Supreme Court instead of further directing JAL to deposit the remaining

balance of ₹1250 crores, straightaway decided in the final order that the Company Petition filed against JIL shall be dealt with in accordance with IBC by relegating this case to the NCLT along with the money deposited with the Hon'ble Supreme Court with a direction that this money should be transferred to the NCLT and the parties shall abide by the directions of NCLT. Therefore whatever interim directions given prior to the final judgment dated 09.08.2018 could not be seen as directions survived after final order has been passed, because in the final order, the Court has not stated that this money should be distributed to the homebuyers or to be utilized for construction of the incomplete flats of the homebuyers of JIL.

48. In this line, ICICI has reiterated that this money having the acquired the character of trust and the same not being utilized for the purpose for which it was taken from JAL, it should be returned to JAL so that it could be paid off to its secured creditors. To substantiate the said argument, the counsel relied upon ***Barclays Bank Ltd. v. Quistclose Investments Ltd., Twinsectra Ltd. v. Yardley and Others*** (2002) 2 AC 164 and ***Indian Council for Enviro-Legal Action v. Union of India*** (2011) 8 SCC 161.

49. One Pankaj Sharma who filed CA11/2020 stated that in their application that they are homebuyers of JAL representing approximately 3000 homebuyers in Wish Town Sports City Complex. Their case in the written submission is, as all others submitted, that this Tribunal is custodia legis to this money which was deposited by JAL, since the fund has not been utilized for the purpose for which it was deposited before Hon'ble Supreme Court, it should be returned to JAL alone. It is not meant for construction of flats of JIL and this money not being the asset of the Corporate Debtor. And the Hon'ble Supreme Court having directed to deal with this matter in accordance with IBC, this money shall not be included as the asset of the Corporate Debtor as stated under Section 18, 20, 35 read with Regulation 36 of the IBBI Regulations.

50. On hearing the submissions of the counsel one side supporting for utilization of this ₹750 crore for the benefit of the homebuyers, and from the other side arguing that this money should be returned to JAL, now the predicament to this Bench is as to how this money has to be dealt with.

Discussion and Verdict on ₹750Crore Issue

51. On reading the judgments and orders of Hon'ble Supreme Court, it is evident that the Hon'ble Supreme Court is aware of the fact that JAL has deposited the money. It is aware of the fact that JIL money has gone to JAL for construction of the towers to the homebuyers of JIL, it is a fact that promoter-directors of JIL and JAL are one and the same. It is a fact that JIL/JAL failed to deliver flats to the homebuyers of JIL within the timelines given by them. In all the orders of the Hon'ble Supreme Court, it has only been said that JIL/JAL shall deposit ₹2000 crore towards the refund of homebuyers money. It has not been treated that money as the money of JAL. On reading all the orders of the Hon'ble Supreme Court, all that could be ascertained is the Hon'ble Supreme Court endeavoured to claw back the homebuyers' money from JIL and JAL. In that pursuance, JAL deposited ₹750 crore. The only criteria for not distributing this ₹750 core to the homebuyers is that only 8% of the homebuyers sought for refund of the money whereas 92% homebuyers have asked for flats, therefore to avoid preferential treatment, this issue has been relegated to the NCLT to deal with in accordance with IBC. One more fact is, though

Hon'ble Supreme Court initially stayed the proceedings of CIRP, subsequently vacated the stay and allowed the IRP to proceed with CIRP.

52. In the backdrop of these facts and in the light of submissions made by either side, let us see what the Honourable Supreme Court held in Chitra Sharma ***"Directing disbursement of the amount of ₹750Crore to the Homebuyers who seek refund would be manifestly improper and cause injustice to the Secured Creditors since it would amount to preferential treatment to a class of creditors"*** (Para 48.1 of Chitra Sharma case (2018) 18 SCC). This being the observation, now the point before us is how to go about it. It has not been said anywhere in the observation that this money should go back to JAL. Moreover the Hon'ble Supreme Court has not asked JAL/JIL to deposit the money on the condition that it would be returned to JAL in the event it has not been distributed to JIL homebuyers. It has not been said anywhere that it is the money of JAL.

53. It is a fact that if homes are not delivered within the time, the only recourse is either to complete the homes or to refund the money. Once a contract is not performed as stated under an agreement entered between the parties, if the party advanced money is entitled for refund of the

money, the jural relation in between the person given the money and the person taken the money will become creditor and debtor relation. When such money has come back from the debtor to the creditor or to a person in between for the cause of the creditor, it can never be called as the money of the debtor, it has to be treated as money returned to the creditor.

54. In this case, JAL has admittedly failed to complete the projects as stated by JIL and JAL. It is not the case that this money was given for charitable purpose. It is not the case that this money was deposited with the Hon'ble Supreme Court on the condition that it would be returned to JAL in the event it has not been distributed to the homebuyers. As long as debtor is liable to pay money to the creditor, once it has been deposited towards that payment, it can't be stated that money belongs to the debtor.

55. This concept of constructive trust is applicable provided property/money is given for an avowed object or for a charitable purpose, when such purpose is not achieved, the person given money being the owner of it and not under obligation either to pay for that purpose or to any of the beneficiaries, it is obvious that money should come back to the person who has given to a trustee.

56. ICICI Bank Counsel has argued that money is fungible, therefore unless money has gone out from JAL for repayment, it can't be said as money deposited by JIL is the money payable to JIL homebuyers.

57. No doubt money is fungible, but obligation to repay is not fungible, therefore when money is deposited or clawed back to repay it to the creditor, the money being fungible and there being an obligation for repayment, it can no more be considered as money owned by the debtor. Though JAL is per se not a debtor to the Homebuyers, when money has come on behalf of the debtor in relation to a debt obligation or for discharge of an obligation, the person deposited it towards that obligation cannot subsequently say that he is the owner of the money, therefore entitled for return of it.

58. If trust concept is examined, we will know that trust is a relationship where property/money held by one party for the benefit of another party. Trustee holds the property/money for the benefit of the trust beneficiaries. Trustee is under fiduciary duty to ensure that the property of the owner is maintained and the benefit thereof is reached to the persons to whom it is intended to. In the case of trust, the owner is under no obligation to pass

on the benefit to the beneficiary, therefore, the owner/settler being the owner of the property, he is entitled to take it back in the event it is not utilized for the purpose the owner intended to. But that is not the case when money from the Debtor or on behalf of the Debtor has gone out towards discharge of an obligation. In the case of trust, ownership of that property or money remains with the owner as long as it is not utilized for the purpose intended to. That owner has no obligation to part with his property/money.

59. In case of homebuyers' issue, once homebuyers entered into an agreement with a developer and when their relations entered into turbulence and not in a position to become normal, the relation in between them will become creditor and debtor and the person under obligation shall refund the money of the homebuyers. In the given case, JAL deposited money on behalf of JIL for utilization of the same to the homebuyers of the Corporate Debtor. Therefore, it is evident that this deposit is made towards an obligation. When any money is received towards an obligation, it can neither be construed as trust money nor

construed as governed by constructive trust, therefore we have not found any merit to say that this money is governed by trust concept.

60. In this case, the homebuyers' money has been lying with the Corporate Debtor and JAL, it is an admitted fact that money come from the Homebuyers has gone to JAL in the name of construction. It is not the case of the JAL that JIL money has not come for construction. Moreover, JAL, by the time it has deposited, was aware that it was depositing that money towards the obligation owned to JIL homebuyers.

61. Here there could not be any assumption or presumption to say that JAL deposited this money before the Honourable Supreme Court with an assumption that it would come back to it in the event this money has not been utilized for the distribution of it to the homebuyers of JIL.

62. As long as the Hon'ble Supreme Court has not stated that this money has to be returned to JAL, it has to be construed that the Hon'ble Supreme Court has consciously retained the money within the custody of it and thereafter transferred this money to NCLT with a direction that the parties shall abide by the directions of NCLT. Had the Hon'ble Supreme Court has felt that it should go back to JAL, the Honourable Supreme

court would have returned it to JAL, but it has not been done. Whenever any payment is made towards any liability, it has to be treated as a payment made towards that liability. It does not matter who paid the money, it matters as to whether it has been paid towards an obligation or not. Since JAL has without any objection or condition paid to the homebuyers of JIL on behalf of JIL, it has to be treated that the payment is towards the obligation of JIL. Though it has not been explicitly explained that JAL paid on behalf of JIL, the matter pending before the Hon'ble Supreme Court being with regard to homebuyers of JIL, when money was asked to be deposited towards refund of JIL homebuyers, and the same being paid by JAL, now it is not open to JAL to say that it is JAL's money.

63. As to the argument saying that for ₹750Crore has not gone into the books of Corporate Debtor (JIL), therefore it cannot be treated as the asset of JIL, when money has been deposited on the directions of Honourable Supreme Court and that has not been returned by Honourable Supreme Court, we are only limited to understand that the Honourable Supreme Court has not refunded the money because refunding to a few creditors

in preference to other creditors would become a preferential treatment, therefore such observation cannot be extrapolated to say that the Hon'ble Supreme Court has refused to refund the money on the assumption that this money has to go back to JAL.

64. If we see the situation in the perspective of the historical facts, it is evident that homebuyers paid money, JIL and JAL failed to deliver homes to the homebuyers, therefore the obligation lies upon JIL to satisfy that obligation either by refunding the money or by delivering homes to the homebuyers, for neither of the things being done, the money having passed from JIL to JAL, and part of it having come back as per the orders of the Hon'ble Supreme Court, now it is not open either to JAL or its creditors to canvass that this money is belonging to JAL.

65. In view thereof, we hereby consider that this money has to be utilized to the obligation owed to the creditors of the Corporate Debtor and in case this Bench for any reason passes any order for return of this money to JAL, it would be nothing but overreaching the wisdom of the Hon'ble Supreme Court and its directions. When money has been paid by JAL towards an obligation as per directions of the Hon'ble Supreme

Court, it can no more be considered as the assets of JAL. As to whether it has been stated in the information memorandum that this ₹750Crore is an asset of the Corporate Debtor or not, every case has to be seen in the context of its facts. If at all for any reason, this is not shown as the asset of the corporate Debtor in the information memorandum, can it be said that the Hon'ble Supreme Court transferring the deposit to NCLT has no meaning? Any order that has been passed by the Hon'ble Supreme Court, is binding on all Courts and Tribunals, for there being no direction to return this money to JAL or to determine as to whether it has to be paid to JAL or not, it is not open to this Bench to draw any inference other than an inference considering that this money is an asset of the Corporate Debtor. Since JAL is not under further obligation to complete construction of homes, there is no occasion to assume that if this money go back to JAL, it would be utilized for the cause of the creditors of the Corporate Debtor, in view thereof, we hereby dispose of all CAs related to ₹750Crore issue by holding that this money is to be treated as the asset of the Corporate Debtor. We have not independently dealt with the citations relied upon by JAL counsel and ICICI counsel.

Issue with regard to approval of Resolution Plan under Section 31 of the Code.

Resolution Plan

66. The Resolution Professional filed CA5/2020 for the approval of the Resolution Plan u/s 31 of the Code upon the approval dated 16.12.2019 given by the Committee of Creditors with 97.36% voting in favour of the Resolution Plan filed by NBCC (India). The summary of the Resolution Plan approved by the CoC with a requisite majority is as follows:

BRIEF SUMMARY OF THE APPROVED RESOLUTION PLAN OF NBCC (INDIA) LIMITED FOR RESOLUTION OF JAYPEE INFRATECH LIMITED

1. Fair Value And Liquidation Value Of The Corporate Debtor:

Valuer	Scenarios	Fair Value	Liquidation Value
Valuer 1 - RBSA			
Scenario - 1	*In this scenario, the valuer has assumed that any prospective buyer would honor the existing agreements entered by the company for the inventory which is already been sold. Accordingly, the balance receivables pertaining*	INR 13,736 Crores	INR 10,085 Crores

	to the sold units has been projected for cash flows and considered the delay penalty attached to the units. However, unsold units have been projected based upon the market driven rates. In this scenario, valuation for Projects Under Development, the overall cash flows are negative. Hence, he hasn't discounted the negative cash flows to estimate the net present value.		
Scenario - 2	*In this scenario, the valuer assumed that the home buyers who have already booked units would surrender their rights in these booked units (as they would be claiming these rights as financial creditors) and the entire inventory (expect for the units for which Sub-lease deed has already been executed as on 09th August,*	INR 24,866 Crores	INR 17,876 Crores

	2018) shall be available to the prospective buyer at his disposal.		
Valuer 2 - GAA			
Scenario - 1	*Valuation of Land for Development is 'as is where is' basis.*	INR 14,786 Crores	INR 8,875 Crores
Scenario - 2	*Valuation of Land for Development is based on Lien Free Inventory. it is assumed that units for which agreement to sale has been executed however sale deed is yet to happen, all agreement shall terminate and units shall available with the developer.*	INR 26,339 Crores	INR 17,658 Crores

2. NBCC Resolution Plan Salient Features

Sl. No.	**Particulars**	**Amount Admitted (INR Crores)**	**Treatment under NBCC Resolution Plan**	**Remarks**	**Cross Reference in Resolution Plan**
1	Equity Commitment	NA	(i) Need based up to max of INR 120 Cr	May be used for CIRP costs, construction,	*Page 10 Clause 1.3 of the*

Sl. No.	Particulars	Amount Admitted (INR Crores)	Treatment under NBCC Resolution Plan	Remarks	Cross Reference in Resolution Plan
			(Equity/ Quasi Equity/ Debt).	payment to operational creditors and financial creditors	*Executive Summary.*
2	Institutional Financial Creditors	9,783	(i) 100% shareholding of Land Bank SPV containing 1,526 acres of land worth INR 5,001 Cr as per NBCC; (ii) 100% shareholding of Expressway SPV including concession rights of Yamuna Toll Expressway and 4,798 acres of land; (iii) Upfront amount equivalent to an amount of Fresh Debt - (less) INR 2,000 Crores. *Fresh debt of minimum of INR 2,000 Crores to be raised by NBCC by*	As per Valuation report under IBC: (i) **Land:** Avera22ge Fair Value (FV) - INR 3,761 Crores, Average Liquidation Value (LV) – INR 2,632 Crores. (ii) **Expressway:** Average FV – INR 4,322 Crores, Avg LV – INR 3,458 Crores (iii) **Total offered to**	*Page – 7. Clause 1.2 of the Executive Summary.*

Sl. No.	Particulars	Amount Admitted (INR Crores)	Treatment under NBCC Resolution Plan	Remarks	Cross Reference in Resolution Plan
			securitizing future cash flows of the Expressway.	**Secured Creditors**: FV INR 8,083 Cr, LV – INR 6,090 Cr. Less INR 2,200 Crores	
3	Real-Estate Allottees	9,588 (Principal amount)	(i) Delivery of completed flats. (ii) Payment of Delay Penalty @ INR 5 per sq. ft. per month to be payable after expiry of a moratorium period of 1 year from the delivery schedule. (iii) Unclaimed home buyers shall be treated in a manner similar to other Home Buyers. The unclaimed unit shall stand forfeited in case any home buyers fails to prove its claim within a	- Payment for delay rebate accrued so far has not been provided in the Resolution Plan. - Total 2,510 home buyers amounting to INR 819 Cr has not filed their claim yet.	*Page – 7. Clause 1.2 of the Executive Summary of Resolution Plan.* *Page – 70. Step 9 clause 5 of Resolution Plan.*

Sl. No.	Particulars	Amount Admitted (INR Crores)	Treatment under NBCC Resolution Plan	Remarks	Cross Reference in Resolution Plan
			window of 90 days provided by the RA through public notice published in leading newspaper to submit proof claims for their units.		
4	Fixed-Deposit Holders	29 (Principal amount)	(i) 100% upfront payment of INR 29 Cr to FD Holders	Total FD amount outstanding is approx. INR 113 Cr out of which only INR 29 Cr have filed their claim.	*Page – 1. Clause 4 of Addendum to Resolution Plan*
4	Refund Seekers	64 (Principal amount)	INR 62.40 Cr of which 20% shall be paid upfront and the remaining amount shall be paid equally over a period of 4 years i.e. 20% each year.		*Page – 10. Clause 1.2 of the Executive Summary of Resolution Plan.*

Sl. No.	Particulars	Amount Admitted (INR Crores)	Treatment under NBCC Resolution Plan	Remarks	Cross Reference in Resolution Plan
5	Operational Creditors	464	Total OC Debt is to be settled by payment of INR 20 Cr.		*Page – 10. Clause 1.2 of the Executive Summary of Resolution Plan.*
6	Employees or workmen of the Corporate Debtor	NIL	NIL	No Claims have been filed by employees or workmen of the Corporate Debtor	*Page 8 clause 1.2 of the Resolution Plan*
7	Dissenting Financial Creditors	612	In terms of Section 30(2) and Section 53 of the IBC read with Regulation 38 of the CIRP Regulations in the form of proportionate share in the equity of the Expressway SPV and transfer of land parcels. Dissenting financial creditors shall not receive any amounts other than the amounts due to them in the nature of	ICICI, SREI and IFCI were dissenting institutional financial creditors with total claim amount of INR 612 Crores. ICICI has filed objection with Hon'ble NCLT Prayagraj in resolution plan approval application	*Page – 7 Clause 1.2 of Executive Summary of the Resolution Plan*

Sl. No.	Particulars	Amount Admitted (INR Crores)	Treatment under NBCC Resolution Plan	Remarks	Cross Reference in Resolution Plan
			liquidation value as stipulated above.	regarding the liquidation value owed to them	
8	Jaypee Healthcare Limited	NA	Jaypee Healthcare Limited (JHL) is 100% subsidiary of Corporate Debtor. NBCC proposes to divest the entire shareholding of JHL or transfer to trust. Further, the lenders of JHL shall not be entitled to deal with the assets of Jaypee Healthcare Limited or adversely interfere with the continued business operations of JHL in any manner whatsoever.	*Yes Bank Limited, lead lender of consortium of lenders of JHL, has filed an petition under section 7 of IBC to initiate CIRP process against the JHL before Hon'ble NCLT Allahabad. The same is not admitted yet by the Hon'ble NCLT. Yes Bank Limited has given its' proposal to the NBCC as well as this Hon'ble Bench. The same is annexed with the written submissions filed*	*Page 45 clause 1.13 of Part B Financial Proposal of Resolution Plan.*

Sl. No.	Particulars	Amount Admitted (INR Crores)	Treatment under NBCC Resolution Plan	Remarks	Cross Reference in Resolution Plan
				by the IRP in CA 5/ 2020.	

3. **Key Reliefs Sought in the Resolution Plan** ***(see Page 72, Schedule 3: Reliefs and Concessions of the Resolution Plan)***

Sl. No.	Matter	Relief Sought	Remarks	Cross Reference in Resolution Plan
1	INR 750 Crore deposited by Jaiprakash Associates Ltd ("JAL"), holding company of JIL in Writ Petition (Civil) No. 744/2017.	NBCC has the right to withdraw from resolution plan in case this INR 750 Cr along with interest accrued thereon is not made available to Corporate Debtor.	As per the Hon'ble Supreme Court's order dated 09.08.2018, the utilization amount (with the interest accrued thereon) was transferred to the Hon'ble NCLT with a direction that such money shall continue to remain invested and parties shall abide by such directions as may be issued by	Page 72 clause 1 of Schedule 3 of the Resolution Plan

Sl. No.	Matter	Relief Sought	Remarks	Cross Reference in Resolution Plan
			the Hon'ble NCLT. The matter is pending before Hon'ble NCLT where applications filed by various parties in respect of use of funds are pending.	
2	Enforcement Directorate ("ED") has initiated investigation under the Prevention of Money Laundering Act, 2002 ("PMLA") against Corporate Debtor.	Investigation under PMLA shall be extinguished upon approval of the Resolution Plan by Hon'ble Adjudicating Authority. NBCC has the right to withdraw from its Resolution Plan in case the said relief is not granted.	ED issued notice on 13.05.2019 based on complaints of some home buyers seeking certain details of Corporate Debtor which was submitted on 16.09.2019.	Page 72 clause 2 of Schedule 3 of the Resolution Plan
3	858 acres of Corporate Debtor's land was mortgaged with JAL lenders to secure debt of JAL	NBCC has sought relief that 858 acres of mortgaged land shall continue to be vested in	RP filed an application for avoidance of Transaction which was allowed by the	Page 72 clause 1 of Schedule 3 of the Resolution Plan

Sl. No.	Matter	Relief Sought	Remarks	Cross Reference in Resolution Plan
	without any consideration or counter guarantee to JIL (Transaction).	Corporate Debtor free of any mortgage, charge and encumbrance.	Hon'ble NCLT vide order dated 16.05.2018 and 758 acres out of 858 acres was avoided. However, appeals were filed against the NCLT order dated 16.05.2018 and Hon'ble Supreme Court vide order dated 26.02.2020 has upheld the NCLT order dated 16.05.2018.**The Hon'ble SC has pronounced the order with respect to the same on 26.02.2020 in Civil Appeal No. 8512-27 of 2019.**	
4	Deemed approval of YEIDA for business transfer	Approval of the Adjudicating Authority shall constitute adequate	YEIDA has filed a caveat in Hon'ble NCLT Allahabad on 11.12.2019 for	Page 72 clause 1 of Schedule 3 of the Resolution Plan

Sl. No.	Matter	Relief Sought	Remarks	Cross Reference in Resolution Plan
		approval by YEIDA for any business transfer to be undertaken between the Corporate Debtor and Expressway SPV.	serving them notice before any orders are passed.	
5	Income Tax Liability	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	Specific approval from Income Tax Authorities may be required.	Page 37 clause 1.3 of the Resolution Plan

Sl. No.	Matter	Relief Sought	Remarks	Cross Reference in Resolution Plan
		subsidy. This amount is being treated as operational debt and is being settled in accordance with the Resolution Plan.		
6	INR 716 Cr advance to JAL	INR 716 Cr was advanced to Jaypee Associates Limited (JAL) towards construction work and maintenance charges/ deposit. This amount of INR 716 Cr outstanding from JAL shall also be available to the Corporate Debtor for the purpose of completion of flats to the Home Buyers and other associated purposes. In case the relief is not	As on 31.12.2019, INR 519 Crores is outstanding from JAL towards construction work and customer maintenance charges deposit.	Page 74 clause 3 of Schedule 3 of the Resolution Plan

Sl. No.	Matter	Relief Sought	Remarks	Cross Reference in Resolution Plan
		granted, the assets currently owned by the Corporate Debtor 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		
7	Additional FAR appeal by YEIDA	YEIDA to withdraw the appeal filed in the District Court, Gautam Budh Nagar challenging the award dated January 23, 2017 passed by arbitral tribunal pertaining to additional FAR and the Corporate Debtor to get the right to use additional FAR	Additional FAR of 12.3 Mn Sq.Ft. at Noida land parcel.	Page 74 clause 4 of Schedule 3 of the Resolution Plan

Sl. No.	Matter	Relief Sought	Remarks	Cross Reference in Resolution Plan
		as per the Resolution Plan.		
8	Additional Compensation to erstwhile land owner	Any Claim/claim of YEIDA in future w.r.t. the land acquired and transferred to the Corporate Debtor 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 the Corporate Debtor or the Resolution Applicant.	YEIDA has filed claim of INR 6,112 Crore as operational creditor out of which INR 464 Cr of claim was reconciled with YEIDA and admitted by the IRP. The said claim includes claim of INR 1,689 Cr towards additional compensation of 64.7% to erstwhile land owners of the land transferred by YEIDA to Corporate Debtor and the same was not admitted by the IRP as the matter regarding additional compensation of 64.7% to erstwhile land	Page 74 clause 5 of Schedule 3 of the Resolution Plan

Sl. No.	Matter	Relief Sought	Remarks	Cross Reference in Resolution Plan
			owners was under arbitration between YEIDA and Corporate Debtor which was awarded in favor of Corporate Debtor by the arbitrators on 02.11.2019. YEIDA, on 30.01.2020, has filed appeal to set aside the arbitration order dated 02.11.2019 in Commercial Court, Gautam Budh Nagar.	
9	Extension of Concession Period	To ensure feasibility and viability of this Resolution Plan, YEIDA and other concerned authorities shall **extend the**	Presently as per Concession Agreement, concession period is 36 years from the commercial operation i.e. 07.08.2012.	Page 78 clause 27 of Schedule 3 of the Resolution Plan

Sl. No.	Matter	Relief Sought	Remarks	Cross Reference in Resolution Plan
		concession period (currently 36 years) under the Concession Agreement for an additional period of ten years.		
10	Liability to repay of capital cost pertaining to Noida-Greater Noida Expressway	This liability shall stand extinguished, on account of failure of YEIDA to allow the Corporate Debtor to collect and retain toll/fee from the users of the Noida-Greater Noida Expressway during the term of the Concession Agreement.		Page 76 clause 14 of Schedule 3 of the Resolution Plan

Jaiprakash Associates Limited

67. As against this Resolution Plan, JAL has filed objections against this Resolution Plan contesting that this Resolution Plan is used as a device for enrichment of NBCC at the cost of the Corporate Debtor because the net worth of JIL as per the valuers is assessed as ₹8,257Crore, against this value, this Resolution Applicant has only proposed to bring in ₹120crore. JAL further states that NBCC is attempting to acquire JIL having net worth of ₹8,257crore for a petty sum of ₹120Crore, which is just 1.45% of the fair net worth of ₹8,257Crore, but this fact has not been taken into consideration by the CoC at the time of voting for the approval of this Resolution Plan.

68. JAL Promoters counsel further submits that this plan is conditional/contingent because NBCC has stated in its key reliefs (1) & (2) as contained in schedule III that it will be free to withdraw from this plan without incurring any liability, provided ₹750crore transferred to the NCLT is not treated as part of the Resolution Plan and provided the assets of JIL has remained attached under PMLA proceedings initiated against JIL.

69. With regard to these two issues, this Bench has already decided that ₹750Crore lying with NCLT shall be utilized for the cause of the creditors of the Corporate Debtor and with regard to PMLA proceedings, for Section 32A being brought into existence by way of Amendment to the Code 28.12.2019, now there need not be any separate protection from the PMLA proceedings over the assets of the Corporate Debtor, therefore we have not dealt with this issue, therefore the argument saying that plan is conditional has no merit.

70. JAL counsel further submits that since this approval is inconsistent with Section 11 (4) (g) of the Real Estate (Regulation and Development) Act, 2016 (RERA), as this Resolution Plan does not conform to the conditions laid down in Section 30 (2) of the Code, it shall be rejected. He further submits that this plan should not have been accepted by the Resolution Professional as it has not complied with the conditions of the process document. He further submits that simultaneous voting on two resolution plans, one filed by present successful Resolution Applicant and another filed by Surksha Limited is not permissible under law, inspite of it, the CoC simultaneously held voting on the two plans. The counsel

further submits that CoC has acted under external pressure in approving the Resolution Plan without exercising its commercial wisdom. The counsel further submits though it has been stated by the applicant that there is no hair cut in the proposed settlement of dues of financial creditors, the ground reality is that hair-cut is as far high as ₹6101Crore, which works out to 62.36% of the total debt of ₹9,783Crore.

71. As against the submission of JAL counsel, the resolution professional has answered all these points stating that the promoters of JAL and JIL have no locus to question the offer accepted by the CoC. He has further stated that in ***Maharashtra Seamless Limited vs. Padhmanabhan Venkatesh & Ors. (Civil Appeal No. 4242 of 2019),*** the Hon'ble Supreme court held that ***there is no provision in the IBC under which the bid of any resolution applicant has to match the liquidation value arrived in the manner provided in clause 35 of CIRP Regulations.***

72. Moreover, the calculation of figures given by JAL to say that figures placed by the Resolution Plan are not supported by material, in any event, this being an issue to be taken up by the CoC, this Bench cannot decide

the fate of the resolution plan on the figures shown by the promoters of JIL and JAL, unless such plan is vitiated by fraud.

73. Apart from this, it is not the case of promoter/directors that company has positive net worth entitling the promoters of the company to receive the residual proceeds in the event company is liquidated. As long as liabilities are more than the assets of the company, the promoters/directors' arguments cannot be seen as a point having bearing on the resolution plan approved by the CoC.

74. On the objections raised by the JAL counsel that both the resolution plans could not have been simultaneously put to voting, the resolution professional submits that, for both the resolution plans are in compliance with Section 30(2) of the code, the CoC in its commercial wisdom voted upon both the plans. This objection over simultaneous voting per se does not look as an act in violation of the Code or Regulations thereto. No provision has envisaged that two plans should not be put to voting. Moreover there is no mandate that if two plans are put to voting, the plan voted in favour to be declared non est in law. Doctrine of severance could be applied by validating the action doable under the law as valid. If any

excess has happened, such excess can be taken out. Besides this, both the plans are not approved. In addition to it, unsuccessful Resolution Applicant has no grievance to the plan present before us.

75. With regard to RERA issue, the IRP submits that the Hon'ble Supreme court in para 28 of ***Pioneer Urban Land & Infrastructure Limited & anr. Vs. Union of India & Ors. (WP (c) no. 43 of 2019*** held that *RERA and IBC must be held to co-exist and be interpreted harmoniously and in the event of clash, RERA must give way to IBC.*

76. When the home-buyers, who are entitled to raise RERA objection themselves have voted in favour of the plan, RERA violation if any, it cannot be the grievance of the promoters/directors.

77. With regard to ₹716Crores claim against JAL by the Corporate Debtor, the IRP submits that after setting off the amount paid to JAL, the amount to be refunded by JAL is a sum of ₹594Crores as on 31.12.2019. It is an admitted fact that mobilisation advance of ₹586Crores is due and payable by JAL and JIL as on 31.12.2019, out of which JAL says, after setting off, the amount due and payable to JIL by JAL is only ₹274Crores. However, JAL counsel has not placed material supporting the figures

shown as set off, since JAL Counsel himself has stated that net receivable by JIL from JAL amounts to ₹274crores, JAL shall forthwith pay ₹274crores to JIL, as to remaining money as sought by the the Resolution Applicant, JIL and JAL shall draft a reconciliation statement, accordingly payment has to be made to whomever any outstanding is payable.

ICICI Bank issue

78. ICICI Bank has filed its objections against the Resolution Plan stating that it, being one of the financial creditors, it has voted against the Resolution Plan in the CoC because this Resolution Plan has included ₹750 crore deposited by JAL as an asset of JIL. Once JAL money is treated as the asset of JIL, especially when JAL itself is in financial distress, ICICI says, it would adversely effect its realisation from JAL.

79. As to the other issue of ₹858acres of land of JIL mortgaged with the Financial Creditors of JAL as a guarantee on behalf of JAL, JAL counsel says, this land, though belonging to JAL, as this asset being mortgaged to the lenders of JAL and legal interest being created over the said asset, it could not have been shown as an asset of the Corporate Debtor/JIL in the Resolution Plan. As on the date of approval of the plan by the CoC, this

issue was pending before the Honourable Supreme Court of India, it was mentioned in the plan that it is subject to the outcome of the litigation pending. However now Hon'ble Supreme Court has already passed an order on 26.02.2020 holding that this mortgage of ₹858acres of land falls under avoidable transaction within the look-back period of two years, therefore this issue is no more res integra before this Bench, now it has to be treated as part of the asset of the Corporate Debtor.

80. Since Resolution Plan has carved out a provision to provide land and equity u/s 30 (2) of the Code to ICICI/dissenting financial creditor in the SPVs proposed to be incorporated instead of making payment as stated under Section 30 (2) of the Code, ICICI submits that it shall be paid as per the liquidation value in such manner as may be specified by the Board, which shall not be less than the amount to be paid to ICICI (such creditor) in accordance with sub section 1 of Section 53 of the Code in the event liquidation is ordered.

81. In this case, the Resolution Plan having not made any provision to make payment towards the obligation of ICICI, and having only provided

land and equity, such provision being hit by Section 30 (2) of the Code, ICICI says, this Bench shall reject the Resolution Plan.

82. On hearing the submissions of either side, we have noticed that ICICI is a dissenting financial creditor having 1.31% of voting share in the Committee of Creditors on the outstanding amount of ₹304.4 crore payable by the Corporate Debtor. It is a fact that ICICI could not muster the stand for rejection of the resolution plan, hence it has remained as dissenting financial creditor.

83. Now the objection of the ICICI is the CoC as well as the Resolution Applicant violated the mandate under Section 30 (2) of the Code by saying that *the dissenting financial creditors would be provided the liquidation value vowed to them in the form of proportionate share in the equity of Expressway SPV and transfer of certain land parcels belonging to the Corporate Debtor with a further clarification that on the account of the transfer of equity and land parcels in favour of dissenting financial creditors stipulated above, there will be a corresponding decrease in the equity of the Expressway SPV and area of land parcels being transferred to the institutional financial creditors who voted in favour of the plan. It has also been further stated that the dissenting financial*

creditors shall bear the stamp duty, registration costs and other applicable taxes including GST and that the Resolution Applicant shall have the sole discretion to determine the location of the land parcels to be transferred to the dissenting financial creditors and the value of such land parcels being transferred shall be save as proposed under this resolution plan for the institutional financial creditors who voted in favour of the plan.

84. On looking at the summary of the resolution plan, it appears that the dissenting financial creditors are not entitled to any payment except a proportionate equity of Expressway SPV and land parcels as per the wish of the Resolution Applicant. As to land parcels are concerned, ICICI Bank says that the Resolution Applicant has not identified the specific parcels of land to be transferred to the land Bank SPV, therefore the proposal is uncertain, vague and cannot be said to be settling the dues of the IFCs. ICICI Bank submits assenting financial creditors are allowed to receive upfront payment of ₹300 crore on the basis of the fresh debt raised by the Expressway, but the same benefit has not been extended to the dissenting financial creditor.

85. Out of all these points, the star argument of ICICI counsel Mr. Arun Katpalia is that the word "payment" envisaged under Section 30 (2) of the Code cannot be called as distribution of equity or the land parcels to the dissenting financial creditors. It has to be a liquidated sum as stated under Section 53 of the Code. Whoever is a dissenting financial creditor, the treatment to such dissenting financial creditor shall be in accordance with Section 53 of the Code. It is a deemed situation, that the CoC shall ensure that the Dissenting Financial Creditor is paid amount equivalent to its/his entitlement under section 51 of the Code. To justify this argument, the dissenting financial creditor has drawn our attention to Section 30(2) of the Code r/w Section 53 and Regulation 38 (1) (b) of the IBBI Regulations, 2016.

30. Submission of resolution plan -

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment payment of other debts of the corporate debtor;

(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than—

(i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or

(ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor.

38. Mandatory contents of the resolution plan.

(1) The amount payable under a resolution plan –

(a) to the operational creditors shall be paid in priority over financial creditors; and

(b) to the financial creditors, who have a right to vote under sub-section (2) of section 21 and did not vote in favour of the resolution plan, shall be paid in priority over financial creditors who voted in favour of the plan."

86. Before discussing over the legal proposition, it is pertinent to look into the stand taken by the IRP and the Resolution Applicant saying that in Section 30 (2) (ii) of the Code, it has not been envisaged that payment of liquidation value to the dissenting creditors shall be in cash. They have extended their argument saying that in Regulation 38 (1) (b) of IBBI

Regulations, it has only been stated that dissenting financial creditors shall be paid in priority over the assessing financial creditors, but not said it should be in cash, therefore they canvass that payment need not be in cash, it can be in kind also. It has been extended further by saying that, for the assenting financial creditors themselves are not getting cash and they are accepting equity and the land parcels, in case cash is asked to be paid to the dissenting financial creditors, it could be nothing but causing prejudice to the rights of the assenting financial creditors and providing treatment to the dissenting creditor better than what the Assenting Creditors receiving.

87. In addition to this argument, the IRP Counsel Mr Batra and the Resolution Applicant Senior Counsel, Mr U.K. Chaudhary argued that in Black's Law Dictionary, payment is defined as ***"payment of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligations."*** The money or other valuable thing so delivered in satisfaction of an obligation is to be construed as payment as stated in Section 30(2) of the Code.

88. Looking at the arguments from both sides, it appears that we shall revisit the basics of a contract between two parties. Whenever any promisor and promisee agree on certain terms and conditions for passing of consideration, both are bound by the said terms and conditions. If promiser says that he would repay the money paid to him along with interest, it cannot be said that promisor is at liberty to pay it in kind, in the place of cash. Of course, if promisee consents for receiving kind from the promisor in discharge of obligation, promisor is at liberty to do so, but as long as promisee has not agreed for anything other than as per the terms of the agreement entered into between the parties, offering something in kind as payment cannot be called as discharge of obligation by promisor.

89. It is pertinent to mention if the statute deals with the rights of the parties, such kind of dealing has to be looked into to the extent that has been modified. It cannot be stretched either by the parties or by the Courts beyond the scope that has been mentioned in the Statute.

90. In any winding up case or liquidation case, it is quite obvious that the assets of the company to be liquidated and to be paid to the

stakeholders on pro rata basis. In the present case, ICICI has no qualms as to either order of payment or quantum of payment.

91. If you come to the resolution under IBC, there are two outcomes in it. One is some creditors agreeing for a resolution to the existing situation. Another is, some creditors may not agree for the resolution. The persons agree for the resolution, they are no doubt bound by the arrangement they agreed upon. But as to the dissenting creditors, who have not agreed for the resolution, they are governed by sections 30(2) & 53 of the Code. In the case of dissenting creditor, the Corporate Debtor or the Resolution Applicant stepping into the shoes of the Corporate Debtor is bound by the earlier contract entered between the Corporate Debtor and the dissenting financial creditor and then by the pro rata distribution entitled u/s 53 of the Code. The only recourse available is, the dissenting creditor shall be paid in cash equivalent to the liquidated sum he is entitled to receive u/s 53 of the Code. It is a deeming fiction to calculate the liquidated sum payable to the dissenting financial creditor and pay the same to the dissenting creditor as if the company is liquidated. To make such payment, the company need not be factually liquidated.

92. With regard to interpretation under Black's Law Dictionary, let us revisit that definition - ***"payment of an obligation by the delivery of money or some other valuable thing accepted in partial or full discharge of the obligations."*** In the definition, what we have to see is what the obligation is, in this case obligation is repayment of money lent along with interest. When obligation is for repayment, how could it be understood that giving something in kind, to which the promise is not agreeable, is payment in discharge of obligation. Therefore this argument will not be ticking to say that payment in kind to the promise is discharge of obligation. If the promisee has agreed to give up the payment obligation, he is free to do so. In this case, for the dissenting financial creditor has not agreed to the approval of the resolution plan, they shall be paid in cash, not only by virtue of the mandate under Section 53 of the Code but also by virtue of terms and conditions of the agreement between the Corporate Debtor and the dissenting financial creditor.

93. Upon approval of the plan by the CoC, it is not open to the parties to say that, since the assenting creditors not getting better treatment than the dissenting creditor, the dissenting creditor shall remain binding to the

plan is not correct proposition of law. It is all perception of the persons- the person at advantage of one situation will have one perception, the person at disadvantage of the same situation will have another perception. When law is clear, and law itself being assortment of equities, in the name of equity, law cannot be eschewed. It is established proposition of law, when law is in force on a particular issue, something that is not present in the law cannot be thrust upon the parties under the cover of equity. Equity is a perception, it keeps differing from person to person depending upon the interest of person seeking it.

94. If we look at the jurisdiction of this adjudicating authority over the resolution plan filed under Section 30 (6) of the Code for the approval of the same under Section 31 of the Code, it is evident that this Bench shall examine as to whether the resolution plan approved by CoC as contemplated under Section 30 (4) of the code is in compliance with the requirements as referred to in Section 30(2) of the code or not.

95. Based on this proposition, on reading Section 30(2) of the code, it can be ascertained that resolution plan has to comply with the following requirements:-

1. Provision for payment of CIRP costs in a manner specified by IBBI in priority to the payment of other debts of the corporate debtor.
2. (i) provision for payment of debts of the operational creditors in such manner as specified by IBBI which shall not be less than the amount payable to such creditors in the event of a liquidation of the corporate debtor under Section 53 of the Code if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section 1 of Section 53 of the Code, whichever is higher.

   (ii) **A provision for payment for the payments of debts of dissenting financial creditors in the manner specified by the IBBI, which shall not be less than the amount to be paid to such creditors in accordance with sub-section 1 of Section 53 in the event of liquidation of the corporate debtor.**
3. a provision for the management of the affairs of the corporate debtor after approval of the plan.
4. the implementation a supervision of the resolution.

5. **This plan shall not be in contravention to any of the provisions of the law for the time being in force.**
6. This plan shall be such as may be specified by IBBI.

96. The regulation corollary to the section is regulation 38 of CIRP Regulations. Though priority has not been envisaged with regard to payment to the dissenting financial creditors in Section 30(2) of the Code, it has been supplanted in the Regulation that the dissenting financial creditor shall be paid in priority over the financial creditor who voted in favour of the plan.

97. Likewise, in Section 53 of the code, it has been categorically mentioned with an overriding effect that *the proceeds* (means money because sale always denotes price) *from the sale of liquidation assets shall be distributed in* the order mentioned in the distribution of assets.

98. If section 30(2) (b) (ii) is carefully examined, and read in the context of the said clause, it is clear that payment will be the amount to be paid to the financial creditors under Section 53 of the code, because it is for payment of the debts of the financial creditors, thereafter it has been

further stated it shall be not less than the amount to be paid to them in accordance with Section 53 of the code.

99. When all these provisions and IBBI specifications made clear payment to the dissenting financial creditors means payment of amount, the resolution professional or the resolution applicant cannot argue that the payment can, not only be in cash but also in kind.

100. The persons agreeing for something, they may agree for anything, it does not mean that the persons disagreeing shall also be treated as the assenting financial creditors are treated. When any financial creditor disagreed for a resolution, he knows that he has to be compromised with the situation befall upon him under Section 53 of the code. It does not matter as to whether his entitlement under Section 53 is more or less than the treatment assenting financial creditors getting. Their rights are already compromised under section 53 slating them to their entitlement on pro rata basis. They cannot be put to further sufferance at the wish of the Resolution Applicant or the CoC. As Section 30 (2) has referred to section 53 entitlement, and this Bench being made custodian to verify as to whether section 30(2) compliance has been accomplished or not, the RP

or the resolution plan applicant cannot say that plan approval is within the ambit of commercial wisdom of the CoC therefore what all that is decided by the CoC is binding upon the dissenting financial creditors. Whenever such compliance is not present in the plan, this Bench is authorised to examine the same and interfere with the plan despite the plan has been approved as contemplated under Section 30(4) of the code.

101. Looking at the resolution plan treatment to the dissenting financial creditor in the light of the aforesaid legal proposition, since it has not been said in the Code that plan should be approved as submitted by the resolution professional under Section 30(6) of the code, we are of the view that this Bench has jurisdiction to approve the plan by modifying the plan to the extent that does not alter the basic structure of the plan.

102. In this plan, the resolution plan applicant itself has mentioned that it could not proceed with its plan in the event ₹750 crores deposited with NCLT is not treated as part of the plan and in the event PMLA proceedings have any bearing on the implementation of the plan. As to these two issues are concerned, first issue has already been decided that ₹750 crores would be the part of the plan, as to second issue by virtue of

amendment it being clear that PMLA proceedings will not have any bearing over the assets of the corporate debtor, we are of the view that this Bench can set right the plan that falls under Section 30(2) of the Code.

103. In view of the same, for the sake of viability and feasibility of the plan, we hereby modify this plan to make it in compliance with the section 30(2) (b) (ii) of the code by holding that the Resolution Applicant shall pay to ICICI an amount that it is entitled to receive u/s 53 of the code within 18 months from the date of approval of this plan, that is in 12 equal monthly instalments along with interest over the admitted claim starting from six months hereof. In the event, the Resolution Applicant has failed to repay as stated above, ICICI is entitled to claim commercial interest over the admitted claim from the date of default, that is from the first month of 12 monthly instalments.

YEIDA issue

104. Yamuna Expressway Industrial Development Authority (YEIDA) has also filed objections against the Resolution Plan filed before this Bench for its approval on the ground that this project (for construction of Expressway and for development of land adjacent to the Expressway) is

governed by the Concession Agreement executed in between YEIDA and JIL on 07.02.2003. YEIDA is a statutory authority constituted under Uttar Pradesh Industrial Area Development Plan, 1976. This Authority was initially called Taj Expressway Industrial Development Authority, subsequently it was renamed as YEIDA by notification dated 11.07.2018. The object of the Authority is to secure planned development of area, where the project is located. This authority has power to allocate and transfer either by way of sale or lease or otherwise plots of land for industrial, commercial, or residential purposes.

105. If the transferee of land makes a default in payment of consideration or commits any breach of any terms or conditions of transfer or the applicable Rules or regulations thereunder, penalty shall be imposed and/or the site or building so transferred shall be resumed.

106. Knowing all these, since JAL has come forward to take up this project, this statutory authority entered into the concession agreement with JIL for leasing the land parcels for construction of the expressway and its allied facilities and also for the purpose of development of the land. This concession agreement is embedded with two parcels of land,

one is for laying expressway and another is as consideration to commercially exploit the land for development.

107. In the agreement, it has been said that the concessionaire (JIL) will bear the acquisition cost for the project land given to it, in consideration, the concessionaire would obtain the right to develop land (LFD) for commercial exploitation and the right to operate the expressway and collect toll for a period of 36 years, after expiry of 36 years from the grant of concession, the expressway reverts to the Authority. As to LFD land is concerned, lease is given for 90 years.

108. Now, this applicant has primarily raised two objections, one is with regard to additional compensation payable to the farmers and two is on rejection of claims against the Corporate Debtor.

109. As to additional compensation, YEIDA submits that Hon'ble Allahabad High Court held that farmers are entitled to additional compensation of 62.7% for their land, pursuant to which a Chaudhary Committee was constituted which, in turn, directed YEDIA to ensure payment of additional compensation to all the land owners. This additional compensation being awarded over the land acquired and

leased out to JIL, whatever additional compensation ordered by Hon'ble Allahabad High Court, YEIDA says, it has to be paid by the Corporate Debtor. As to payment of additional compensation, for arbitration clause being present in the concession agreement entered into between YEIDA and JIL, it was taken before Arbitral Authority, there it was decided against YEIDA holding that Corporate Debtor need not pay additional compensation, but, since YEIDA has filed an application under Section 34 of Arbitration and Conciliation Act assailing the Award, the award cannot be today treated as enforceable unless Section 34 application is dismissed. YEIDA says it is bound by the outcome of Arbitration proceedings.

110. Now the problem to YEIDA is, it has been provided in the Resolution Plan that in case award is overruled, YEIDA shall collect that additional compensation from the end users of the project land by referring to Clause 4.3 (e) of the Concession agreement, but on the contra, it is evident on record in the same concession agreement, two payment components are present – one is payment of acquisition cost payable by the concessionaire and another is lease rent, which could be paid by the sub-lessee/end user as the case may be, therefore the Resolution

Professional or the Resolution Applicant, YEIDA says, cannot say that acquisition cost is to be collected directly from the end users.

111. As to acquisition cost for the land utilized for the expressway, since it has been said by the Resolution Applicant that additional cost need not be paid because expressway will revert to the authority on expiry of period of 36 years, to which YEIDA submits that key component for the model under the concession agreement is, the concessionaire bears all the cost including the cost of acquisition of land. It has not been stated in the concession agreement that additional compensation need not be paid to the expressway by the concessionaire for it would revert to YEIDA after 36 years. YEIDA says, the Resolution Applicant cannot split the transferred land into two and say that payment of additional compensation is applicable to the land used for development alone.

112. For having the Resolution Plan disclosed that the Approval of the plan by the Adjudicating Authority shall constitute deemed approval by YEIDA for any business transfer to be undertaken between the Corporate Debtor and Expressway SPV, YEIDA has raised objection that whenever concessionaire rights and obligations transferred to any other SPV, as per

clause 18.1 of concession agreement, first the concessionaire and YEIDA shall consider that it is necessary to transfer concessionaire's rights and obligations under the concession agreement to an SPV, then there shall be documentation in between YEIDA, the concessionaire and the SPV incorporated. When such clause is present in the concession agreement, this Resolution Applicant or CoC cannot unilaterally transfer its rights and obligations to an SPV without the consent of YEIDA.

113. In this case, the Resolution Applicant proposed to float two SPVs, Expressway SPV and Land Bank SPV, by reading this deemed approval of YEIDA and creation of SPVs, the Resolution Applicant made it clear that it need not take YEIDA into consideration at the time of transferring the rights and obligations of concessionaire to the aforesaid SPVs, which is in violation of the clause aforementioned.

114. To justify that approval of Resolution Plan or discharge of the functions of the Resolution Professional, during the CIRP the Committee of Creditors, cannot transgress its jurisdiction and stifle the rights of third parties. YEIDA counsel has relied upon M/s Embassy Property Development Pvt. Limited v. State of Karnataka dated 3rd December 2019

decided by Honourable Supreme Court to say that the Insolvency and Bankruptcy Code will not have overriding effect on any and every enactment i.e. applicable to the transactions related to the Corporate Debtor.

115. YEIDA has further submitted that since there are some works left to be completed, it has made a claim over those works as well, with regard to these claims, the Resolution Professional as well as the Resolution Applicant have stated that these works not yet been done, therefore there cannot be any occasion to make it as claim before the Resolution Professional, hence no merit on the claim made by YEIDA.

116. For there being a proposal for bifurcation of Corporate Debtor into Expressway SPV and Land Bank SPV in the plan segregating the works between these two SPVs, the character of integrated project which is shown as indivisible in the concession agreement shall not be bifurcated. However, YEIDA further submits if these two SPVs are adherent to the concession agreement and perform their duties as stated under concession agreement, this bifurcation may not become an issue to YEIDA, but for creation of SPVs and transfer of lands in the name of them,

it is necessary on the part of the concessionaire to have fresh agreements between YEIDA and SPVs so that YEIDA can keep exercising its rights over the SPVs proposed to be incorporated.

117. With regard to a clause in the Resolution Plan requiring the authority to withdraw the Arbitration Case 69/2017, such kind of withdrawal cannot be thrust upon YEIDA under the cover of this plan. It is also further stated Resolution Plan cannot deal with the rights enumerated in the concession agreement either for novation, or for extinguishment of liability arisen under the concession agreement. YEIDA further submits since this plan has set out so many provisions curtailing the rights held by YEIDA, YEIDA counsel says that this Resolution Plan shall be rejected. However, the counsel appearing on behalf of YEIDA submits that since the project is for public cause, it has no objection for approval of the Resolution Plan provided necessary changes made in the Resolution Plan by removing the fall outs from the concession agreement.

118. On hearing the submissions of either side, with regard to payment of additional compensation, in the event any direction has been given in

the arbitration proceedings to the Corporate Debtor to pay additional compensation, as per concession agreement, additional cost shall be paid by the concessionaire. We don't go into the point as to whether additional compensation is part of the acquisition cost because i.e. a point already Adjudicated by the Arbitral Authority and the issue is pending before the Hon'ble High Court of Delhi, now the limited point to be dealt with is, as to whether such compensation, if directed to be paid, is to be paid by the concessionaire or by the end users.

119. As said above, there are two payment components come from the concessionaire one is acquisition cost, two is the lease rentals. In the concession agreement, it is obvious that acquisition cost (actual cost) shall be paid by the concessionaire, as to lease rentals are concerned, it has been dealt with in detail that lease rentals could be collected either from sub-lessee or from the end users, wherever the interest is transferred either to the sub lessee or the end users. Therefore, CoC should not have approved the resolution plan stating that the compensation, if awarded, shall be collected from the end users.

120. To iron out all these creases and to make this resolution plan viable, we hereby direct that the resolution plan shall be read as YEIDA has right to collect acquisition cost through the SPVs concerned.

121. With regard to other objections that additional compensation need not be paid with regard to Expressway land on the premise that since Expressway will revert to YEIDA after 36 years, YEIDA counsel submits that this land has been given on consideration of collection of toll for about 36 years.

122. In the backdrop of this factual scenario, we are of view that both are governed by concession agreement, therefore the Resolution Plan is to be read that it is left open to both the parties to have proper recourse over this issue before Competent Forum of law when time comes for payment of additional compensation.

123. On transfer of concessionaire's rights and obligations to SPVs, as per the concession agreement, it is clear that this Corporate Debtor is a concessionaire, for the first time concessionaire having proposed to transfer its rights and obligations to the aforesaid two SPVs, we are of the view that documents shall be executed between the concessionaire,

YEIDA and each of the SPVs. At last we must say that the concession Agreement is based on the statute created by the State Government, therefore any violation of the terms and conditions of the concession agreement is violation of the law in force as contemplated under section 30(2) of the Code, it has been decided as above.

124. Despite YEIDA counsel representing the State Government Authorities with regard to its rights, the counsel has categorically mentioned that YEIDA's endeavour is only for compliance of the terms and conditions of concession agreement so that the State Agencies will have proper monitoring on realization of its dues and will have proper supervision over the works of the Corporate Debtor or its SPVs, but not to ensure that this resolution plan is rejected by this Bench on the grounds aforementioned.

125. Regarding FD holders payments who have not made claims which have been reflected in the records of the Corporate Debtor, the Plan Applicant shall make a provision to clear their dues as and when the unclaimed FD holder claims it, and this right will remain in force as long as they are entitled to claim under Companies Act 2013.

126. One Rashmi Singhal and another applicant calling themselves as dissenting home-buyers, filed IA871/2020, stating that the time lines given in the Resolution Plan for completion of flats are not workable and for there being no clause for refund of money in the event flats are not completed within the time lines envisaged, except to the extent of nominal interest mentioned in the plan, these two submit that they have dissented for the approval of the Resolution Plan . They have further relied upon voting share saying homebuyers voting share is only 57.66% therefore, it cannot be called that cent percent consent has been given for approval of the Resolution Plan by CoC. For there being a rule under IBC, whenever more than 50% voting has come from a class of creditors represented by an authorized representative, the approval given to the authorized representative for more than 50% will become 100% approval, therefore it cannot be said that dissenting homebuyers before authorised representative to be considered as dissenting financial creditors against the total voting of CoC. If the authorized representative dissented in the CoC, then the respective class of creditors would be considered as dissenting financial creditors. Moreover, if at all any dissenting financial

creditor is there, his only look out is as to whether he has been paid as per Section 30(2) of the Code or not but not to see whether the Resolution Plan is workable or not.

127. YES Bank, which has given loan to Jaiprakash Health Care subsidiary of JIL, has also raised an objection against dealing with the shares of the Health Care belonging to the Corporate Debtor. However, since the Resolution Applicant and YES Bank having agreed for constitution of a Committee to deal with the shares and assets of the subsidiary company, we are under no obligation to discuss this issue any further.

128. With regard to the objections raised by JAL and other objectors for inclusion of ₹858 acres as part of the resolution plan, for the Hon'ble Supreme Court on 26.02.2020 held that mortgaged of ₹858 acres of JIL land to the lenders of JAL is an avoidance transaction, it can no more be an objection from JAL or from consortium of ICICI Bank to say that land cannot be part of the resolution plan for it has been mortgaged to the financial creditors of JAL.

129. By looking at clause 21 in the Resolution Plan with regard to *transfer of land parcels by the Corporate Debtor to third parties without proper agreement/sub lease deed and where the consideration amount has not been paid to the Corporate Debtor inter alia including the land parcels listed in Annexure-G, the Resolution Applicant reserves a right to cancel such instruments/agreements/terms sheet and upon cancellation, that title in such land parcels will continue to be legally restrain in the Corporate Debtor without any liability/obligation to the counter party,* one of the persons namely Rajesh Gupta and others filed an application stating that he had executed, on behalf of Murlidhar Infra Estate Private Limited and Bhavishya Constructwell Private Limited, five term sheets with the Corporate Debtor for the properties mentioned under the aforesaid clause.

130. The applicant counsel says that the Corporate Debtor, being a real estate company engaged in selling and purchasing of properties, during normal course of business, the agreements were executed amongst the CD and the applicants prior to commencement of the CIRP, in pursuant thereof, monies are also advanced, therefore this Resolution Plan Applicant cannot unilaterally terminate the lease deeds or reserving a

right to cancel such lease deeds under the cover of Resolution Plan. It is inconsistent with the proposition of law.

131. As against this objection, the Resolution Applicant and Resolution Professional have categorically mentioned that the Resolution Plan has not determined the agreements allegedly executed between the CD and the agreement holders, it has only been said that wherever the CD entered into deals without proper agreements and without support of consideration, it has reserved its right to cancel such instruments.

132. It is a trite law when an agreement is not valid in the eyes of law and consideration has not been paid, then it need not be separately said that such agreement could be cancelled by the effected party.

133. Though such clause has been mentioned, it does not mean that the agreement holders have lost their rights to seek remedy for its grievances before Competent Forum, in view thereof, this clause need not be considered as clause effecting the rights of the alleged agreement holders.

RELIEFS & CONCESSIONS

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.

135. There are various applications along with Resolution Application, therefore they are hereby disposed of as mentioned below:

CA No 19/2019 & CA-20 of 2019:- Jaypee Green Krecsent Home-buyers welfare association & Ors. seeking directions against the IRP to acknowledge the lawful interest which the home-buyers are entitled to on the monies paid by them in anticipation of respective flats and for incorporation of such interest in the admitted claims of the home-buyers.

CA- 10 of 2020 filed by Gaurav Prakash Singh (Home-Buyer) seeking directions against the RP to take decision at the earliest relating to the claims raised by the applicant.

CA- 05 of 2020 filed by the IRP for approval of the NBCC revised resolution plan.

CA- 248 of 2019 filed by Jaypee Green Krecsent Home-buyers welfare association & Ors. seeking directions against the Central Government through R-1 to appoint inspectors to investigate into the affairs of JIL under Section 212 of the Companies Act, 2013 and punish the guilty in accordance with law.

CA- 380 of 2019 filed by IRP seeking termination of the sublease agreement dated 07.05.2014 JC World Hospitality Pvt. Ltd. entered into with the corporate debtor and also the amended sublease dated 07.02.2017.

CA- 331 of 2019 filed by IRP for quash of recovery certificate issued by Social Forestry Division, Agra, for recovery of Rs. 216.31 lacs from the CD.

CA- 311 of 2019 filed by Mr. Arun Kr. Chaudhary(home-Buyer) who entered into provisional allotment on 30.08.2011 for the property in the project Jaypee wishtown, for inclusion of interest of

Rs. 5 lacs in addition to sum of Rs. 28,58,889 /- (initial sum appeared to have been paid by this applicant to the CD).

IA-06 of 2020 is filed on 03.01.2020 by JAL & anr. raising objections to the resolution plan filed by the IRP.

CA- 16 of 2020 filed by ICICI Bank on 06.01.2020 raising objections to the resolution plan filed by the IRP.

CA- 15 of 2020 filed by ICICI Bank to intervene in the CA 05/2020 filed by the IRP for the approval of the resolution plan.

CA – 71 of 2019 filed by Subachidamram for refund of the entire amount along with interest paid by this Home-buyer to the CD.

CA-76/2019 filed by Air Marshal Mr. Hari Kumar & Mrs. Asha Lata Hari Kumar seeking directions against the IRP for transfer/shifting of allotted flat KSI 016-2204 to any ready to move flat in any project developed by the CD.

CA-105/2019 filed by Saurabh Bhasin and Gauri Rao against the IRP to accept and admit the claims of the applicant as

mentioned in Form-C and revise the list of the claims of the home-buyers.

CA-175/2019 filed by Kripa Patel (home-buyer) to compute the interest percentage at 18% per annum instead of 8 % for delay in handing over the possession of the flat.

CA-74/2019 filed by PNB Housing Finance Ltd. for directions to the IRP to induct this applicant in the CoC and if any amount is refunded to the home-buyers, the amount due to the applicant ought to be paid to this applicant because it is the lender to the home-buyers. This application is dismissed as misconceived, as the lender to the home-buyers will not have any right to be financial creditors of the CD.

CA-193 /2018 & CA-139 of 2019 filed by Devayani International Ltd. against the M/s. Sprigo Foods Pvt. Ltd. stating that this CD entered into two sublease agreements dated 04.04.2014 in respect of sublease of pae 741 sq meters. Located at 107 kms. (near Mathura) on left hand side across Yamuna Express way from Gr. Noida to Agra (LHS agreement) and in respect of sublease of peace

of land admeasuring 41 sq. mts. In terms of built up area located at kms. 100.80 (near Mathura on right hand side across the Yamuna from gr. Noida to Agra (RHS agreement) authorising, enabling the applicant to set up and manage the operations of restaurants for commuters by granting it for a lease period of 20 years but thereafter according to this application it appears that the IRP/ the CD granted space to Springo Foods Pvt. Ltd. similarly and strategically located without giving any notice right of first refusal to the applicant, therefore, this applicant sought for declaration of the agreement of LHs and RHS entered into by the RP/CD with Springo Foods Pvt. Ltd. for running, maintaining, and two similar restaurants on Yamuna express way stretch, as null and void.

CA-262 of 2018 filed by the IRP for a directions for completion of construction of the Flats, issue of fresh opposition, sublease deed regulations and delivery to allottees during CIRP , which fall within the ordinary course of business of the CD and not to consider them as preferential transactions.

CA-17 of 2020 filed on 06.01.2020, by Wish Town Home-buyers Association seeking directions to the IRP to serve a copy of the application filed under Section 31 of the Code so that the applicant can file its objections.

1. Krishan Dev Raj filed this application on behalf of the aforesaid welfare society stating that he represents 1100 home-buyers, but no material is before this bench to show that such number of persons are members of the society and they authorised him to file this applicant on behalf of this association.

CA-106 of 2019 filed by one Major General Hemant Kr. Singh & Ors. seeking various reliefs from quashing the minutes of the CoC meeting dated 01.03.2019, a directions to conduct a forensic land audit of the CD, to take a legal opinion on concession agreement, to direct the IRP to get the TRC report, to direct the IRP to follow the IBC, to direct the IRP that all the proceedings of the CIRP be considered only after the issue relating to the voting share and KYC are settled, to direct the IRP to make fresh opinion on

PUFE after discussing audit report in the CoC, to direct the IPR that all proceedings of the CRIP after a final call has been taken on the mortgage case, to direct the IRP to analyse the Yamuna Express way cost escalation along with the provisions of the Concession agreement, to direct the IRP to provide information and documents and the answers to the queries of the home-buyers on priority base, to direct the RP to make a provision to engage a competent legal consultant.

It is an application filed by Mr. Hemant Kumar & two others, who do not have direct voting in the CoC, because there are thousands of home-buyers, out of them these three are minuscule in number, if at all these issues are to be examined and decided, and remain waiting for the remedies, this resolution process will not complete even after two years from hereof. Moreover, at the time of approval of this resolution plan, if objections of this kind are allowed there cannot be any end to it, therefore, this application is hereby dismissed.

136. All these applications, whichever are specifically not dismissed, all of them are disposed of holding that all the stakeholders are bound by this order.

137. Accordingly, the Resolution Plan is approved with modifications.

(B.S.V PRAKASH KUMAR)
ACTG. PRESIDENT

(SUMITA PURKAYASTHA)
MEMBER (TECHNICAL)

03.03.2020
Vineet