

NATIONAL COMPANY LAW APPELLATE TRIBUNAL**PRINCIPAL BENCH****NEW DELHI****COMPANY APPEAL (AT)(Insolvency) No.1158-1162 of 2024****In the matter of:**

Sunil Kumar Sharma
Suspended Board of Directors of
Jaiprakash Associates Ltd

Appellant

Vs

ICICI Bank Ltd & Anr

Respondent

For Appellant: Mr. Sandeep Sethi, Senior Advocate Mr. Abhishek Anand, Mr. Karan Kohli, Ms Palak Kalra, Ms Nisha M Kumar, Ms Riya Kumar, Ms Ridhima, Advocates.

For Respondent: Mr. Sanjiv Sen, Sr. Advocate, Mr. Madhav Kanoria, Ms Neha Shivhare, Ms Anjali Singh, Pragyan Mishra, Mr Abhijeet Kashyap, Advocates. Mr. Sunil Fernandes, Sr. Advocate, Mr Vaijayant Paliwal, Mr Anoop Rawat, Mr Nikhil Mathur, Ms Kirti Gupta, Mr. Aditya Marwah, Mr. Saurav Panda, Ms Anushri Joshi Advocates for R2.

Mr Bhuvan Nadan, Mr Pradeep Mahajan Mr. GP Madan, Mr Tushar Mahajan, Advocates.

ORDER
HYBRID MODE

10.06.2024: This is an appeal against admission of petition under Section 7 of the IBC against M/s Jaiprakash Associates Ltd (JAL)

2. It is the submission of the learned senior counsel for the appellant on 01.07.2017 CRRP envisaged entire debt to be put in 3 buckets viz. Bucket No.1 would consist debt of Rs.11689 crores to be repaid through sale of Plants to Ultratech Cement Ltd. This was accomplished in 2017 itself. Bucket 2a consists of debt of Rs.6367 crores which was to continue on new terms as per MRA dated 31.10.2017. It is still continuing and being served; the third bucket 2b consists of debt of Rs.13,590 crores. This is the bone of contention

between the parties. In bucket 2(b) the debt was to be discharged through SPV (Jaypee Infrastructure Development Ltd(JIDL) by transfer of loan and land of equivalent value through Scheme of Arrangement with appointed date of 01.07.2017 which is now the subject matter of *CP 19/2018*.

3. It is alleged the 1st motion was filed before the Ld. NCLT on 20.11.2017 and a letter dated 07.12.2017 was also issued by Respondent NO.1, countersigned by SBI and IDBI to RBI stating the account of Corporate Debtor be treated as resolved. The 1st Motion was approved by Ld. NCLT on 08.12.2017.

4. During this period another Writ Petition (Civil) *No.744/2017* was filed by Chitra Sharma before the Hon'ble Supreme Court wherein RBI filed an application requesting for permission to follow the IAC's recommendation as per the Ordinance dated 04.05.2017. The second motion was then filed on 23.01.2018.

5. On 09.08.2018 the Hon'ble Supreme Court disposed of Writ Petition (Civil) *No.744/2017* and other connected petitions, *allowing the RBI to initiate proceedings based on the Independent Advisory Committee's recommendations as per the Ordinance dated 04.05.2017*.

6. It is alleged on 13.08.2018 a letter was sent by ICICI Bank to RBI stating there is no need for JAL to be referred to NCLT/IBC. However on 14.08.2018 the RBI directed the Respondent No.1 to initiate CIRP against the Corporate Debtor (JAL). Thereafter on 06.09.2018 the Respondent No.1 filed the Company Petition and the Ld. NCLT reserved its order on 17.05.2024 in the CP(IB) 330/2018 and related applications. On 29.05.2024 the Corporate Debtor submitted a One Time Settlement Proposal (OTS) to the Respondent

alongwith an upfront amount of Rs.200 crores and the balance of about Rs.16000 crores to be paid on or before 18 weeks from the acceptance of OTS. An application was moved by the Corporate Debtor to defer the order in the Company Petition. However, the Ld. NCLT on 03.06.2024 dismissed the application and initiated the CIRP against the corporate debtor.

7. It is the submission for the appellant that he is inclined to make the entire payment within 18 weeks if the OTS is accepted by the Bank.

8. However, the same is vigorously objected to by the learned senior counsel for Respondent saying the Section 7 petition was filed in 2017 and was admitted on 06.09.2018 after a lapse of 7 years, within which the appellants ought to have made the payment or ought to have come forward with an OTS. However, the appellants have been lingering on with the proceedings on one pretext or the other and had failed to settle the matter during such period and now has submitted the proposal once the petition was going to be admitted. It is alleged the total debt is approximately Rs.26000 crores and in case they were serious of settlement they ought to have paid a hefty amount to enable them to take instructions on OTS.

9. So far as the apprehension Appellant *qua* its 25000 employees as also its running of various project, the same is answered by the Learned counsel for the IRP that he has taken over the company as a *running concern* and no adverse impact shall be there in running its project or *qua* fate of such employees.

10. Considering the submission so made, notice is issued to the Respondents. The learned counsels accept the notice. Let the matter be now listed on **24.06.2024**, within which period the Respondent Banks may file

reply and may consider the proposal/OTS submitted by the appellant by the said date. The appellant may also consider the deposit of some bigger amount by the next date.

The matter be now listed on **24.06.2024**.

(Justice Yogesh Khanna)
Member (Judicial)

(Mr. Barun Mitra)
Member (Judicial)

Bm/ravi