



IBC16's Easy Explainers

Jaypee Infratech Limited



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The Background

Jaypee Infratech Limited (“JIL”) is a part of the Jaiprakash Associates Limited (“JAL”) a.k.a. the Jaypee Group, an Indian conglomerate. JIL was incorporated in 2007 as a Special Purpose Vehicle for the development of Yamuna Expressway. In 2008, it began working on residential projects.

Troubles Brewing

The enterprise had a comfortable [debt-equity ratio](#) to begin with, but over time, business failures resulted in defaults. Not only did the enterprise default on the loans by banks, but also on its commitment to thousands of homebuyers — construction delays and failure to hand over possession, years after receiving deposits from them.

These insolvency proceedings had been going on for around 3.5 years before a resolution was recently (and hopefully final) approved. Multiple stakeholders with different concerns, and substantial amendments that necessitated some halts and restarts, were behind the long-drawn process.

The timeline

- **Admission and No-Objection in the Interest of the Stakeholders**

(9 August 2017; NCLT, Allahabad Bench)

IDBI Bank, the Financial Creditor (“FC”) of JIL filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 (“the Code”) for initiation of Corporate Insolvency Resolution Process (“CIRP”) against JIL after it committed default of approximately 526 crore rupees.

The Corporate Debtor (“CD”) JIL had raised an objection against the initiation of the CIRP, but later withdrew it in the interest of the stakeholders, including the depositors.

The NCLT admitted the application.

- **Another Default, Another Section 7 Application**

(28 August 2017; NCLT, Allahabad Bench)

Shortly after admission, JIL defaulted on paying around 85 crore rupees to some of the fixed deposit account holders. That led to a jointly filed Section 7 application.

The NCLT held the application to be infructuous, as the CIRP had already been initiated against JIL and an Interim Resolution Professional (“IRP”) had also been appointed. It directed the applicants to file their claims with the IRP.

- **Financial Creditor or Not?**

(9 May 2018; NCLT, Allahabad Bench)

The Standard Chartered Bank filed an application against the IRP because the IRP rejected its proof of claim made as an FC. The applicant claimed to have extended credit to JAL (the holding company of JIL), which had offered assets of JIL as security for that credit.

The NCLT held that the applicant could not be considered an FC, simply because of the existence of a mortgage deed.

- **Fraudulent, Preferential, and Undervalued Mortgages**

(16 May 2018; NCLT, Allahabad Bench)

The Resolution Professional filed an application claiming that the promoters and directors of JIL had entered into fraudulent and preferential transactions, by creating mortgages of certain immovable property to secure the debts of JAL.

The CD, while continuously being in default of its obligations to the FCs and the homebuyers, had mortgaged 858 acres of land that could have been used for its operations. JAL did not even provide a counter-guarantee for these transactions.

Several such transactions made during the two years preceding the commencement date of CIRP were held to be preferential, undervalued, or fraudulent under Sections 43, 45, and 60 respectively.

- [Insolvency and Bankruptcy \(Amendment\) Ordinance, 2018](#)

(6 June 2018)

The CIRP of JIL had ended without any resolution in place when the Ordinance declared that homebuyers were financial creditors, and added an Explanation to Section 5(8)(f) of the Code. The amendment enabled the recognition of the home buyers of JIL, who were one of the major stakeholders in the CIRP.

- **Clock Reset:** [Chitra Sharma and Ors. v. Union of India and Ors.](#) (“Chitra Sharma case”)

(9 August 2018; Supreme Court)

After the promulgation of the ordinance, several Writ Petitions were filed before the Supreme Court under Article 32 of the Constitution by the concerned home buyers of JIL, seeking protection of their rights with respect to insolvency proceedings against JIL.

The Supreme Court noted that even after including the extensions granted, the period for CIRP had ended on 12 May 2018. The Committee of Creditors (“CoC”) had undergone negotiations and discussions with four Resolution Applicants, but none of the Resolution Plans had been approved by the requisite majority.

The consequent liquidation order had been stayed due to several representations made before the Supreme Court by the homebuyers, who might have suffered huge losses in the event of liquidation. The RBI also urged before the Court for a quick resolution to be adopted for JIL, in the interests of the stakeholders.

The Supreme Court, in the exercise of its powers under Article 142, directed recommencement of CIRP for 180 days from 9 August 2018. The IRP was directed to constitute a new CoC, which would include the homebuyers.

- **Starting Over**

(14 August 2018; NCLT, Allahabad Bench)

The pending applications by the fixed deposit holders, the homebuyers, and the Resolution Applicant Lakshdeep Investments and Finance Pvt. Ltd. were held to be infructuous in light of the amendments to the Code and the *Chitra Sharma* case.

The NCLT permitted the Resolution Professional to invite fresh expressions of interest.

- **Divided Opinion of the Division Bench on the Voting Share of the Homebuyers**

(13 December 2018; NCLT, Allahabad Bench)

An application was filed by the IRP, seeking directions on the voting share of the homebuyers. The homebuyers had the largest voting percentage on paper, but due to abysmal levels of participation, that was not reflected in the CoC meetings. This was not only detrimental to their own rights but was also worrying on another count — without their vigorous participation, the requisite threshold to approve a resolution plan could not be met.

The Judicial Member of the NCLT Bench opined that to remedy the situation, the resolution plan with the highest number of votes in favor must be simply accepted, and the threshold requirement could be dispensed with. The Technical Member felt that the number of votes cast by any percentage of the homebuyers should be taken to represent them as a whole. Since the two-member Bench was split, it was decided to refer the issue to a third member for a decision.

- **CIRP Period Extended**

(28 January 2019; NCLT, Allahabad Bench)

Meanwhile, a resolution was passed by the CoC with the requisite majority to extend the CIRP by an additional period of 90 days. The NCLT allowed the extension.

The reasons that necessitated the extension were:

A. The pending decision regarding the voting deadlock caused by the absenteeism of the homebuyers.

B. There was a delay in deciding upon the Evaluation Matrix and the Process Note.

- **Another Reference on the Voting Share**

(16 April 2019; NCLT, New Delhi Bench III)

The question of the high absenteeism of the homebuyers in voting on resolution plans was referred to a third member of the New Delhi Bench.

The Bench was of the opinion that the issue would affect the operation of the Code in the future, and thus, it must be decided to take larger public interest into consideration.

The Tribunal believed it necessary to consult the Central Government before deciding how to remedy the situation.

- **Voting Annulled**

(17 May 2019; NCLAT, New Delhi Principal Bench)

Considering that the decision on the voting share of the homebuyers and that of the other financial creditors was pending, the voting that had already taken place was annulled. Further, the homebuyers needed a legal professional to assist them in deciding on a resolution plan and therefore, a legal professional was allowed to attend the future meetings of the CoC.

The CoC was in the process of voting on the resolution plan presented to it by the Resolution Applicant NBCC (India) Ltd. ("NBCC").

- **Concluded, but Referred Again: The Voting Deadlock**

(4 June 2019; NCLT, Allahabad Bench)

The Bench opined on the matter of the voting deadlock of homebuyers, after taking all the views into consideration.

The Bench reached the conclusion that all the financial creditors must be treated alike and the CoC has to be considered as a whole. The existing provisions with respect to the share and the threshold are both mandatory and are not to be tampered with.

Therefore, in its opinion, the status quo must be maintained and the position of law was not to be changed for homebuyers, owing to the apprehensions that had been brought to the notice of the court.

The conclusion was directed to be placed before the President of NCLT for further transmission to the Division Bench.

- **Fresh Round of Voting**

(10 June 2019; NCLAT, New Delhi Bench)

The voting share issue was finally decided in the light of the judgment in [Tata Steel Ltd. v. Liberty House Group Pte. Limited & Ors.](#) (February 04, 2019), as was noted by the NCLAT.

In that case, it was held that the voting percentage of a Financial Creditor who remains absent should be excluded for the purpose of counting voting shares.

Accordingly, the voting deadlock was resolved and the CIRP of JIL began again.

- **Exclusion of the Time taken for the Voting Share Decision**

(17 July 2019; NCLAT, New Delhi Principal Bench)

The period spent in deciding the voting share of the homebuyers was sought to be excluded from the period of 270 days, as the 90 days' extension had also come to an end.

The same was allowed on the condition that after the exclusion of that period, the CoC would allow fresh resolution plans to be accepted.

- **The Order Regarding Preferential, Undervalued, and Fraudulent Transactions Set Aside**

(1 August 2019; NCLAT, New Delhi Principal Bench)

An appeal was made before the Appellate Tribunal against the NCLT order and it was held that none of the transactions were preferential, fraudulent, or undervalued, and the impugned order was set aside. Further, it was also held that Standard Chartered Bank and other enterprises were entitled to exercise their rights under the Code.

- **Another Extension: [Jaiprakash Associates Ltd. & Anr. v. IDBI Bank & Anr.](#)**

(6 November 2019; Supreme Court)

Despite buying time by the exclusion of certain periods, the question of the expiry of the CIRP period and of consequent liquidation arose again before the Supreme Court. It was noted that extraordinary circumstances and a series of amendments led to a lack of clarity in the conduct of the CIRP. Also, that liquidation would not be in the interest of the stakeholders, and all the involved parties agreed on the need for finding a viable solution.

The Supreme Court directed the IRP to finally conclude CIRP within 90 days. The IRP was allowed to invite the revised plans from Suraksha Realty and NBCC, who were the final bidders.

It was also clarified that these directions had been given in exceptional circumstances, and were not to be treated as a precedent.

- **Resolution Plan Approved**

(17 December 2019)

The CoC approved the resolution plan presented by the Resolution Applicant NBCC with an overwhelming majority of 97%. {See: ¶ 2.1 of this [Judgement](#)}

- **NCLT Orders Restored: [Anuj Jain Interim Resolution Professional for Jaypee Infratech Limited v. Axis Bank Limited](#)**

(26 February 2020; Supreme Court)

These proceedings were running parallel to the CIRP and on appeal, the Supreme Court restored the orders of the NCLT concerning preferential, undervalued, and fraudulent transactions; and also confirmed that banks like Standard Chartered Bank are not financial creditors of JIL.

- **[Seal of Approval](#)**

(3 March 2020; NCLT, New Delhi Principal Bench)

After considering and disposing of all the intervening applications, the resolution plan of the Resolution Applicant NBCC was approved by the NCLT with a few modifications.

The NCLT accepted the objections of the dissenting FC ICICI Bank Ltd., of the land agency Yamuna Expressway Industrial Development Authority ("YEIDA"), and of the unclaimed fixed deposit holders.

- **[Appeal by the Successful Resolution Applicant](#)**

(22 April 2020; NCLAT, New Delhi Bench)

Aggrieved by the modifications made by the NCLT, NBCC filed an appeal.

During the pendency of the appeal, directions were made for the constitution of an Interim Monitoring Committee consisting of NBCC, IDBI Bank Ltd., IIFCL, and LIC.

The approved plan was directed to be implemented, subject to the outcome of the appeal.

- **Jaypee Kensington Boulevard Apartments Welfare Association & Ors. v. NBCC (India) Ltd. & Ors.**

(24 March 2021; Supreme Court)

Appeals were filed in the Supreme Court by several associations of homebuyers against the order dated 22.04.2020. The already pending appeals before the NCLAT against the order dated 03.03.2020 were combined with these appeals, to be decided by the Supreme Court.

Some of the major findings of the Supreme Court in the judgment were as follow:

A.The Adjudicating Authority i.e. NCLT has only a limited jurisdiction in the approval of a resolution plan and in case it finds any commercial shortcomings, it can, within a limited jurisdiction, only send it back to the CoC for reconsideration.

B.The simultaneous voting on two plans to select one of them is permissible and therefore if the plan of NBCC is selected after simultaneous voting with another plan, it will be valid.

C.The Adjudicating Authority was correct in requiring modifications to be made with respect to dealings with YEIDA and the dissenting FC ICICI Bank, but the same could only be made by sending the plan back to the CoC.

D.The direction to make the payment to fixed deposit holders was held to be beyond the jurisdiction of the NCLT, and it was set aside.

Based on these findings, the following directions were given by the Court:

A.The resolution plan was remitted to the CoC of JIL, and another 45 days were given for approving the plan.

B.The IRP was allowed to invite modified or fresh plans only from Suraksha Realty and NBCC, and the entire process had to be completed in 45 days.

C.The directions had been given in exceptional circumstances and were not to be treated as a precedent.

- **[Scales Tipped: Suraksha Realty Emerges As the Successful Resolution Applicant](#)**

(24 June 2021)

After the final bidding war between the two bidders, the resolution plan of Suraksha Realty was approved by a majority of 98.66%, as opposed to the plan of NBCC which received 98.54% votes of the CoC. Though most homebuyers voted in favor of NBCC's plan, the FC Srei Infrastructure Finance Ltd. dissented to it.