

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 708 of 2019

IN THE MATTER OF:

Jaypee Greens Krescent Home Buyers
Welfare Association & Ors. Appellants

Vs

Jaypee Infratech Ltd.
Through Anuj Jain, Interim Resolution
Professional Respondent

Present:

**For Appellants: Mr. Amit K. Mishra and Mr. Shivam Pandey,
Advocates.**

**For Respondents: Mr. Sumant Batra, Ms. Niharika Sharma and
Ms. Priyanka Anand, Advocates for Resolution
Professional.**

**Mr. Bishwajit Dubey and Ms. Surabhi Khattar,
Advocates for IDBI Bank Ltd.**

ORDER

12.07.2019 In 'Corporate Insolvency Resolution Process' against an Infrastructure Company ('Corporate Debtor'), normally the asset of the 'Corporate Debtor' is limited to the infrastructure of that particular project meant for allotment or sale to the allottees. Such project cannot be clubbed with any other project for the purpose of 'Corporate Insolvency Resolution Process' against same 'Corporate Debtor'. Therefore, *prima facie*, it appears that 'Corporate Insolvency Resolution Process' against an infrastructure company ('Corporate Debtor'), which relates to a particular project, is temporary in nature as the asset of the 'Corporate Debtor', i.e., infrastructure do not exist after sale/ allotment to the allottees. The asset of the 'Corporate

Debtor' of that project, which is infrastructure is thereby stands transferred to allottees/ 'Financial Creditors'. Therefore, the maximization of the asset cannot be of the 'Corporate Debtor', but will be of that of the infrastructure meant for the allottees/ 'Financial Creditors'.

2. In normal parlance in a 'Resolution Plan', if less amount is offered, the Counsel use the phrase "**hair cut**", of the "claim of the creditors". But in the case of allottees who are entitled for infrastructure, 'haircut' of infrastructure cannot be made, though the 'Resolution Applicant' may not propose to pay interest or penal interest, if any, which can be termed to be "hair cut" to the extent above.

3. In such peculiar circumstances, in the case of 'Corporate Insolvency Resolution Process' against infrastructure company which relates to a particular project, the question arises for consideration as to whether "Committee of Creditors" while considering viability and feasibility of a 'Resolution Plan' can reject such plan on the basis of insufficient upfront payment, though the 'Plan' is otherwise viable and feasible, and if it proposes to complete the infrastructure project within specified period for sale to the allottees/ allotment to the 'Financial Creditors' and other creditors, in place of upfront payment.

4. Let notice be issued to the Respondent. Mr. Sumant Batra, learned Counsel along with Ms. Niharika Sharma appears on behalf of the Respondent. No further notice need be issued to them.

5. The other Appeals arising out of the same 'Corporate Insolvency Resolution Process' are likely to be listed on 17th July, 2019 at 03:30 PM before the First Bench. The 'Committee of Creditors' including Banks are also parties in those Appeals. Therefore, we order to list this Appeal on **17th July, 2019 at 03:03 PM** before the First Bench along with Company Appeal (AT) (Insolvency) No.536 of 2019 etc.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A.I.S. Cheema]
Member (Judicial)

[Kanthi Narahari]
Member (Technical)

Ash/GC