

**IN THE NATIONAL COMPANY LAW TRIBUNAL,
ALLAHABAD BENCH**

CP No. (IB) 68/Ald/2017

(Section 7 of I& B Code, 2016)

IN THE MATTER OF:

1. Prabodh Kumar Gupta
2. Sudha Gupta
3. Nimish Gupta
4. Saanvi Gupta (Minor)
5. Nimit Gupta
6. Abhilash Gupta
7. Kusum Jain

.....Petitioners

Versus

JAYPEE INFRATECH LIMITED

having its registered office at Sector 128,
Noida – 201304, Uttar Pradesh

.....Respondent/Corporate Debtor

Judgement delivered on 28 .08.2017

Coram : Shri H.P. Chaturvedi, Member (J)

For the Petitioners: Shri Mukesh Chadha, CA

For the Corporate Debtor: Shri Ajay Bhanot, Senior Advocate
Shri Siddarth Singhal, Advocate

JUDGEMENT/ORDER

(Per Shri H.P. Chaturvedi)


The present petition is filed U/s 7 of the Insolvency & Bankruptcy Code, 2016 read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016 by the petitioner/ Depositors jointly to initiate Corporate Insolvency Resolution Process on such ground that the

Corporate Debtor company M/s Jaypee Infratech Ltd, commits default in making payment of their maturity amount of the fixed deposits, even after maturity periods and due date of payment, has now become due.

The total outstanding amount on the petitioner's FD's is stated to have been defaulted is Rs.85, 79,105/- (inclusive interest of Rs.13,68,445/-.) The details particulars about the FD's, due date of its payment/or amount of payment are described in the synopsis and dates of events of the present petition.

The petitioners, who made their fixed deposits with the respondent Corporate Debtor Company, claim their status as such of 'Financial Creditor' Under Section 5 (7) of the Insolvency & Bankruptcy Code, 2016, for the purpose of proceeding under the I & B Code.

The present Petition is however strongly opposed by the Respondent/ Corporate Debtor Company raising preliminary objection to the maintainability of the present petition and on locus-standi of the present petitioner as 'Financial Creditor' in terms of the Section 5(7) of the Code. It has been contended on behalf of the of the Corporate Debtor Company that the subject matter of present petition does not fall within ambit and scope of the Insolvency & Bankruptcy code. Hence the present Company Petition is liable to be rejected on such ground. The Respondent/Corporate Debtor counsel further contends that, it cannot be said that the company has committed any 'default' in making payment of its deposits as this bench of NCLT, in exercise of its powers vested in under Section 74(2) of the Companies Act, 2013, vide its order dated 12.04.2017 has already granted extension of time for such repayment of




deposits up to 30.06.2017. Hence, the present petition being not maintainable under the I & B Code, before this Court. Hence to be rejected.

We heard the rival submissions made by learned Chartered Accountant for Petitioners. We have gone through the contents of the present petition as well as objection filed on behalf of the Corporate Debtor Company and have perused the other material placed on record. It is now a matter of record that in subsequent development this bench vide its order dated 09.08.2017 passed in CP(IB)No.77/ALD/2017 **IDBI BANK LIMITED vs JAYPEE INFRATECH LIMITED** in respect of the same Corporate Debtor Company has already initiated Corporate Insolvency Resolution Process and appointed an Interim Resolution Professional Shri Anuj Jain by directing him to take over the management of Company and manage the affairs of the Company.

In the light of aforesaid order, it is now not necessary to go into the merits of the Present Company Petition and to deal with and determine the status of applicants as of Financial Creditors / Operation Creditors as the case may be and their eligibility for filing the present application under Section 7 of the Insolvency and Bankruptcy Code, before this Court.

Considering the above stated factual/ legal position in the matter we feel the present Company Petition now becomes infructuous. The legal issue, which is subject matter of the present petition on the status of fixed depositors as 'Financial Creditors' can be dealt with by this Court in appropriate case on some other occasion. Hence, such issue is kept open. The present petition is being disposed of as become infructuous.




Notwithstanding the above, before parting with the present case, and in order to provide substantial Justice to the party concern, we feel appropriate to observe as such that the position of the present Petitioners is undisputedly as of stakeholders. Therefore, the IRP appointed by this Court (in the above referred matter) in respect of the Corporate Debtor Company is equally expected to consider and take care of interest of petitioners along with other Creditors/ stake holder (e.g. home/flats buyers) and to receive / collect their respective claims in accordance with law.

In this respect it would not be out of context to refer to the relevant recommendation/extract of the Bankruptcy Law Committee Report which has enumerated the basic principles of present Code and pleased to place reliance on Principles of UNCITRAL Legislative Guide on Insolvency, which speaks about the following objectives for a collective insolvency resolution regime (UNCITRAL, 2005): and reads as under; -

Principles for a new Code

- 1. Provision of certainty in the market to promote efficiency and growth.***
- 2. Maximisation of value of assets.***
- 3. Striking a balance between liquidation and reorganisation.***
- 4. Ensuring equitable treatment of similarly situated creditors.***
- 5. Provision of timely, efficient and impartial resolution of insolvency.***
- 6. Preservation of the insolvency estate to allow equitable distribution to creditors.***
- 7. Ensuring a transparent and predictable insolvency law that contains incentives for gathering and dispensing information.***
- 8. Recognition of existing creditor rights and establishment of clear rules for ranking priority of claims.***
- 9. Establishment of a framework for cross-border insolvency.***

These principles are derived from three core features that most well developed bankruptcy and insolvency resolution regimes



share: a linear process that both creditors and debtors follow when insolvency is triggered; a collective mechanism for resolving insolvency within a framework of equity and fairness to all stakeholders to preserve economic value in the process; a time bound process either ends in keeping the firm as a going enterprise, or liquidates and distributes the assets to the various stakeholders. These features are common across widespread differences in structure and content, present either through statutory provisions or their implementation in practice these feature unsure certainly Debt Market Corporate.

BSLR Committee further chose the following principles to design new insolvency and bankruptcy resolution framework, which may be reproduced hereunder;

Principles driving the design

I. The Code will facilitate the assessment of viability of the enterprise at a very early stage.

II. The Code will enable symmetry of information between creditors and debtors.

III. The Code will ensure a time-bound process to better preserve economic value.

IV. The Code will ensure a collective process. - The law must ensure that all key stakeholders will participate to collectively assess viability. The law must ensure that all creditors who have the capability and the willingness to restructure their liabilities must be part of the negotiation process. The liabilities of all creditors who are not part of the negotiation process must also be met in any negotiated solution.

V. The Code will respect the rights of all creditors equally. The law must be impartial to the type of creditor in counting their weight in the vote on the final solution in resolving insolvency.

VI. The Code must ensure that, when the negotiations fail to establish viability, the outcome of bankruptcy must be binding.

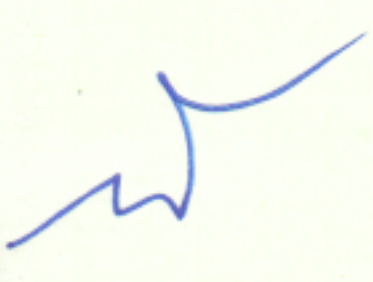
VII. The Code must ensure clarity of priority, and that the rights of all stakeholders are upheld in resolving bankruptcy. The law must clearly lay out the priority of distributions in bankruptcy to all stakeholders. The priority must be designed so as to incentivise all stakeholders to participate in the cycle of building enterprises with confidence. While the law must incentivise collective action in resolving bankruptcy, there must be a greater flexibility to allow individual action in resolution and recovery during bankruptcy compared with the phase of insolvency resolution.

The above mentioned suggestions of the BSLR to the great extent, have been incorporated in the I& B Code which is evident from its Preamble, which is reproduced hereunder;

“An Act to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alternation in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto.”

Considering the above stated Preamble and guiding principles as described in Bankruptcy Law Reform Committee. The IRP/RP is expected to give due weightage to the claim of the present category of petitioners being stakeholders whose needs may appears to be greater, then others.

The IRP/RP may take appropriate decision and to act in accordance with the provisions of Insolvency and Bankruptcy Code read with other applicable provisions of law. With the



above stated observation, the present petition stands finally disposed.

A Copy of this order to be communicated to the IBBI, IRP, Committee of Creditors through the IRP and to the concerned parties through their counsel/representative

— Sd —
Harihar Prakash Chaturvedi
Member (Judicial) 28/8/2017

Dated 28.08.2017

Aparna Trivedi

Law Research Assistant