

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

CA NO.223/2017
(UNDER SECTION 30(6) OF
THE INSOLVENCY & BANKRUPTCY CODE, 2016)
IN
CP NO.24/ALD/2017
(u/s 10 of I&B Code, 2016)

IN THE MATTER OF

**JEKPL PRIVATE LIMITED
THROUGH ITS RESOLUTION PROFESSIONAL**

.....CORPORATE APPLICANT

JUDGMENT/ORDER DELIVERED ON 15.12.2017

CORAM: SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

For the Corporate Applicant: Shri Nesar Ahmad

PER:SH. HARIHAR PRAKASH CHATURVEDI, MEMBER (J)

JUDGMENT/ORDER

1. The present application (CA No. 223 of 2017 in CP. No.24/ALD/2017) is filed by Shri Mukesh Mohan, Resolution Professional of the M/s JEKPL Private Limited under Section 30(6) of I&B Code, 2016 read with Regulation 39(4) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation 2016 seeking approval from this Tribunal about the Resolution plan for the Company, which is duly approved by Committee of Creditors.

2. Brief fact of the present case, as narrated in the present application are stated as under:



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I. The Corporate Debtor JEKPL Private Limited earlier filed an application CP. No.24/ALD/2017 under Section 10 of the Insolvency and Bankruptcy Code, 2016 read with Rule 7 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 before this Bench for initiation of corporate insolvency resolution process as a corporate debtor against itself. The same was admitted by this Bench vide order dated March 17, 2017 by appointing Mr. Dinkar T. Venkatasubramanian as an IRP.

II. That on the recommendation of the COC, this Tribunal vide its order dated June 1, 2017 had appointed Mr. Mukesh Mohon as Resolution Professional, replacing Mr. Dinkar T. Venkatasubramanian.

III. Thereafter, as per decision of the COC, the R.P got published the Expression of Interest for Resolution Plans for JEKPL Private Limited in the Financial Express, Business Standard, Economic Times and Hindustan Times on July 14, 2017 and July 17, 2017 respectively. As per publication the last date for submission of Expression of Interest was fixed as July 31, 2017. Committee of Creditors in their meeting dated July 12, 2017 had decided that one of the major criteria to be fulfilled for sharing the Information Memorandum with the prospective Resolution Applicants is that the prospective Resolution Applicant should have minimum Net Worth of Rs.100 crores as on 31.03.2017.



IV. That 13 Expression of Interest were received from the following persons: -

- i. Oil India Limited
- ii. Hindustan Oil Exploration Company Limited
- iii. Atyant Capital India Fund-I
- iv. Asset Reconstruction Company (India) Limited [ARCIL]
- v. UV Asset Reconstruction Company Limited
- vi. PFH Oil and Gas Private Limited
- vii. Quippo Oil and Gas Infrastructure Limited (A SREI Initiative)
- viii. Edelweiss Asset Reconstruction Company Limited
- ix. Infina Finance Private Limited
- x. Nauticawt Energy Solutions
- xi. Geopetrol International Inc.
- xii. Mitcon Consultancy and Engineering Service Limited

xiii. IPR Energy.

V. That the Information Memorandum was to be shared with the prospective Resolution Applicants who fulfilled the below conditions:

- i.** Minimum Net Worth of Rs.100 Crores as on March 31, 2017, as stipulated by Committee of Creditors, and
- ii.** Received undertaking as per Section 29(2) of the Code, before the last date fixed up by the Committee of Creditors i.e. September 30, 2017.

VI. That base on the above, the Information Memorandum was shared with the following five prospective Resolution Applicants: -

- i.** Oil India Limited
- ii.** Hindustan Oil Exploration Company Limited
- iii.** Atyant Capital India Fund
- iv.** Asset Resolution Company (India) Limited [ARCIL]
- v.** UV Asset Resolution Company Limited.

VII. However only two Resolution Applicants Namely M/s Atyant Capital India Fund-I and M/s Hindustan Oil Exploration Company Limited came forward to submit their Resolution Plans.

VIII. That Resolution Professional in compliance of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017 sought an affidavit from both the Resolution Applicants that they comply with the requirements of the Code. Both the Resolution Applicants i.e. M/s Hindustan Oil Exploration Company Limited and M/s Atyant Capital India Fund-I submitted their affidavits in compliance of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2017.

IX. Further the Resolution Professional in the meeting of Committee of Creditors held on November 13, 2017, placing reliance on the CA Certified given by M/s AKG & Associates, Chartered Accountants, which has conducted the special investigative audit of M/s JEKPL Private Limited on behalf of State Bank of India and also conducted forensic audit/special audit as



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directed by the Committee of Creditors, has confirmed which meet the requirement of the Code specifically covered under Section 43, 45, 50 and 66 of the Code. This was in compliance of Regulation 39(2) of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016.

X. That Resolution Professional presented the Resolution Plans before the Committee of Creditors in its meeting held on November 13, 2017 after examination of the Resolution Plans received from M/s Atyant Capital India Fund-I and M/s Hindustan Oil Exploration Company Limited as per Section 30(2) of Insolvency and Bankruptcy Code, 2016 read with Regulation 39(2) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulations, 2016.

XI. That the next meeting of COC to discuss the revised Resolution Plan submitted by the Atyant Capital India Fund-I and M/s Hindustan Oil Exploration Company Limited was held on November 20, 2017. The COC have requested the Resolution Applicant to further enhance the consideration and also decided to call for earnest money deposit of Rupees Five Crores from the Resolution Applicants.

XII. That pursuant to the instructions of the Committee of Creditors, the Resolution Professional sought revised Resolution Plans with the following clarifications/ modifications:

- i. Rate of Interest should be at least 12% on deferred payments.
- ii. Equity and Royalty payments should be monetised and consolidated consideration should be offered.
- iii. Substantial increase in the consideration amount offered.

XIII. That Committee of Creditors met on December 04, 2017 to finalize the Resolution Plan. Both the Resolution Applicants were also invited to the meeting to present their final Resolution Plans. Before inviting the Resolution Professional proposed for inter-se bidding/auction to realise better consideration and value discovery, to which the Committee of Creditors agreed.

XIV. That as decided by the Committee of Creditors in its meeting held on November 20, 2017 at Mumbai, the Liquidation Value was revised by the Committed of Creditors to Rs.222.06 Crores at its



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meeting held on December 04, 2017, based on the clarification submitted by the Duffs and Phelps ad M/s RBSA Advisors (Valuers appointed by the Interim Resolution Professional to provide the Liquidation Value of JEKPL Private Limited as per the Code) as well as report provided by Gaffney Cline & Associate (being the consultant appointed for Reserves and Resources Assessment of the Kharsang Field Onshore India appointed by GeoEnpro Petroleum Limited (Operator of Kharsang Field with the approval of the Operating Committee of Kharsang Field), who have estimated the value of participating interest in Kharsang Field only) and the Legal Opinion provided by M/s Luthra and Luthra.

XV. That the inter-se bidding/auction was conducted in the meeting of the Committee of Creditors held on December 04, 2017 and that after three biddings by both the Resolution Applicants, M/s Hindustan Oil Exploration Company Limited refused to proceed further in the bidding process. Despite request by all the members of Committee of Creditors the representatives of M/s Hindustan Oil Exploration Company Limited quit the meeting room without even signing the Bid documents. Thereafter, it was decided by the Committed of Creditors that they will seek approval of their competent authorities for the Resolution Plan submitted by M/s Atyant Capital India Fund-I. It was further decided that the next meeting of Committee of Creditors will be held on December 07, 2017 for the voting on the Resolution Plan by the Financial Creditors.



XVI. That the revised claim submitted by the EXIM Bank in Form F on December 06, 2017, was not reviewed by the Resolution Professional as the matter of claim by the EXIM bank is sub-judice, since the advance copy of appeal by EXIM Bank has also been received by the Resolution Professional.

XVII. That the Committee of Creditors at their meeting held on December 07, 2017 at New Delhi, has discussed on the communication received from M/s Hindustan Oil Exploration Company Limited on December 06, 2017 and decided against

considering the Resolution Plan submitted on December 06, 2017 as the same is conditional, which condition "*This proposal is inclusive of JEKPL loan given to JOGPL Private Limited which holds Tripura asset. Therefore, it is requested that the existing bankers who are creditors to JEKPL will not claim or retain any interest on JOGPL and the existing promoter group companies to JEKPL shall have no rights to the assets to JOGPL whatsoever. This should be ensured and facilitated.*" Cannot be enforced or tenable as the lenders can only assign those rights/securities which they hold. Further, despite the request by the Committee of Creditors, M/s Hindustan Oil Exploration Company Limited chose not to participate in the process adopted by the Committee of Creditors during its meeting held on December 04, 2017 and the Committee of Creditors had decided to proceed with the Resolution Plan submitted by Atyant Capital India Fund-I.

XVIII. That the Committee of Creditors at their meeting held on December 07, 2017 at New Delhi approved the Resolution Plan of **Atyant Capital India Fund I** through voting as per Section 30(4) of the I&B Code, 2016 read with Regulation 39 (3) of the IBBI (Insolvency Resolution Process for the Corporate Person) Regulation, 2016.



The result of voting is as under:

Agenda Item	For	Against	Abstained
Approval of Resolution Plan of M/S Atyant Capital India Fund I	82.63 %	0%	17.37%

3. Thus the **Atyant Capital India Fund I** proposed to takeover JEKPL Private Limited (JEKPL) as a going concern on the basis of the terms and conditions of the resolution plan. The Prominent measures as proposed under the Resolution Plan submitted by Atyant Capital India Fund may be described as under:

I. 100% of equity and preference shares in JEKPL Private Limited to be transferred on an unencumbered or free of lien basis to Atyant Capital or its SPV (Invenire Energy Private Limited) after rescinding or cancelling the existing equity and preference shares.

II. JEKPL has several financial creditors including but not limited to the entities listed through Serial No.3 through 8.

III. All Security including any guarantees, sureties and undertakings proved by JEKPL Private Limited for the term loans granted by State Bank of India and Central Bank of India are to be rescinded.

IV. All Security including any guarantees, sureties and undertakings provided by the Shareholders of JEKPL Private Limited, its Promoters, JE Energy Ventures Private Limited, JODPL Private Limited, JOGPL Private Limited, JE (NELP-V) Private Limited and any other guarantors of JEKPL Private Limited for the terms loans granted by State Bank of India and Central Bank of India are to be assigned to Atyant Capital or its SPV (Invenire Energy Private Limited).

V. All Security including any guarantees, sureties and undertakings provided by JEKPL Private Limited in favour of Export Import Bank of India (EXIM) or to any other person for the term loans extended by EXIM to JE Energy B.V. (formerly Jubilant Energy B.V.) and Jubilant Energy (Holding) B.V. are to be rescinded.

VI. All liabilities of JEKPL Private Limited, i.e. current and non-current liabilities appearing on the balance sheet of JEKPL Private Limited on the Effective Date excluding the net income tax asset/liability are to be extinguished or annulled.

VII. All contingent liabilities of JEKPL Private Limited, whether claimed or unclaimed, excluding the bank guarantee provided by Axis Bank is to be extinguished or annulled. For the sake of clarity this waiver of liabilities includes the liabilities to the Government of



India under the production sharing contracts for the blocks AA-ONN-2009/1 and AA-ONN-2009/2. In case the waiver of liabilities by the Government of India is not enforceable by the order of the Adjudicating Authority and if the bank guarantee provided by Axis Bank is invoked. Axis Bank shall only be entitled to receive the pro-rata amount of the consideration provided under this Resolution Plan in proportion to their claim to the total claim accepted at any point of time which shall be kept in an escrow account (modalities to be discussed with lenders). No additional amount shall be paid to Axis Bank and any guarantee or counter guarantee provided by JEKPL Private Limited shall be extinguished.

VIII. There shall be no liability under the Income Tax Act, 1961, including any liability under the Minimum Alternate Tax on account of the transactions envisaged under this resolution plan and the Adjudicating Authority shall pass an order to that effect.

IX. In summary, all the liabilities of JEKPL Private Limited including term borrowings, current, non-current and contingent liabilities and various guarantees issued by the banks shall be written off/cancelled/annulled with no further liability to Atyant Capital or its SPV (Invenire Energy Private Limited) or JEKPL Private Limited in lieu of the Consideration as ascribed from the Effective Date will be to the benefit of the SPV.

X. All cash, Bank Balance and cash equivalents of JEKPL Private Limited excluding lien marked deposits on the Effective Date will be handed over to the Financial Creditors and Atyant Capital or its SPV (Invenire Energy Private Limited) will have no claim on it. Cash surplus accruing from the Effective Date will be to the benefit of the SPV.

XI. All other current assets including all receivables and sundry debtors of JEKPL Private Limited will transfer to the Resolution Applicant on a going concern basis.



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XII. The Resolution Applicant through its SPV has paid an Earnest Money Deposit of INR 5 Crores to the committee of creditors. This EMD will be considered an advance against the consideration proposed below if this Resolution Plan is implemented in its entirety. If this Resolution Plan or any part of it is not implemented in its entirety, the EMD alongwith any cash consideration already paid will be refunded to the Resolution Applicant without any prejudice.

XIII. Any approvals required from the Government of India or the other participating interest holders in the Kharsang Production Sharing Contrast (PSC) as per the provisions of the PSC and JOA of Kharsang Field will be granted by both Government of India and the other participating interest holders.

XIV. Save and except to the extent set out herein the Resolution Applicant shall not be required to provide any credit support, corporate support or any other credit enhancement to the Financial Creditors.

4. We duly considered the averments made in the present application for the approval of Resolution Plan, we also heard Sh. Anil Kumar, Learned PCS along with Mr. Sandeep Bisht representing the Resolution Professional (RP) of the Corporate Debtor Company (presently under CIRP). We also heard the submissions of Advocate Ms. Gunjan Jadwani for the EXIM Bank.

During the course of hearing, Learned PCS appearing for the RP clarified such that no stay has so far been granted by the Hon'ble NCLAT against the proceeding of this Court till 14th December, 2017 and the appeal as preferred by the EXIM bank stands simply adjourned to 5th January, 2018. Hence, there can be no impediment for this Court to pronounce an order in respect of approval of a resolution plan.



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5. The learned counsel appearing for EXIM Bank submitted that the bank has not yet been supplied with a copy of the resolution plan. Further, an application seeking for stay of the present proceedings has been filed and is now sub-judice before the Hon'ble NCLAT. However, the PCS representing the RP submitted that he is not aware of filing of such stay application. However, there is no stay till date.

Considering such circumstances, we can presume that as of today there is no stay from Hon'ble NCLAT in respect of proceeding of this Tribunal or for pronouncement of order on approval or otherwise of the resolution plan, therefore, this court can proceed further to pass an order. However, this order would be subject to outcome of pending appeal and appropriate directions that may be issued by the NCLAT in pending appeal.

6. During the course of hearing previously we have heard the submission of Sh. Nesar Ahmad, learned PCS for the RP. Having heard his submission we find that the resolution plan as submitted by the **Atyant Capital India Fund – (I)** have been duly examined and found to be in conformity with the mandatory provision/compliance under Section 30(2) of the insolvency and Bankruptcy Code.

7. In addition to the above, the Committee of Creditors in its meeting held on **December 07, 2017** has approved the resolution plan as submitted by **M/s Atyant Capital India Fund – I** through voting (of more than 80%) in its favour as per Section 30(4) of the Insolvency and Bankruptcy Code, 2016 read with Regulation 39(3) of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Person) Regulation, 2016. Subsequently, the State Bank of India also which earlier remained absent in such voting. Later on it has



duly concurred with the COC, such decision dated 07.12.2017 for approval of the resolution plan. Hence, it is deemed that 100% of COC member has agreed for and approved the resolution plan as submitted by the Atyant Capital India Fund.

8. As per material available on record, it may be seen that the Resolution plan as approved by the COC has further been vetted through various reputed Law Firms. The RP received a legal opinion and vetting from M/s Luthra & Luthra, M/S Vinod Kothari & Co. and M/s J. Sagar & Associates, all of them have confirmed the resolution plan opining that such Plan is in conformity with the provisions of Insolvency and Bankruptcy Code, 2016. As the Resolution Applicant M/s Atyant Capital India Fund has made such declaration that the Resolution Plan does not contravene any provision of the law for time to time being in force which is annexed with the present application and to be form part of the resolution plan.

9. A perusal of Proposed Resolution Plan shows that all the requirement of the IBC and CIRP regulations have been complied with. Further, the proposed Resolution Plan seems to be bonafide and beneficial to the interest of the company, nor it is forbidden by law. Therefore, this court being an Adjudicating Authority is not expected to substitute its view with Commercial Wisdom of the RP and COC nor it should deal with technical complexity and merits of Resolution Plan unless it found contrary to express provision of law and goes against the public interest. Our such observation finds support from the UNICITRAL Legislative Guide, which recommends for similar approach to be taken by a court. The relevant extract of such guide may be reproduced herein below: -



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63. *The more complex the decisions the court is asked to make in terms of approval or confirmation, the more relevant knowledge and expertise is required of the judges and the greater the potential for judges to interfere in what are essentially commercial decisions of creditors to approve or reject a plan. In particular, it is highly desirable that the law not require or permit the court to review the economic and commercial basis of the decision of creditors (including issues of fairness that do not relate to the approval procedure, but rather to the substance of what has been agreed) nor that it be asked to review particular aspects of the plan in terms of their economic feasibility, unless the circumstances in which this power can be exercised are narrowly defined or the court has the competence and experience to exercise the necessary level of commercial and economic judgement. For these reasons, it is desirable that the requirements for approval of the plan by creditors and confirmation by the court be carefully designed to minimize potential problems of the kind discussed here.* 9. *Effect of an approved and, where required, confirmed plan*

64. Where the plan is approved by the requisite majority of creditors and equity holders and, where required, confirmed by the court, insolvency laws generally provide that it will bind all affected ordinary unsecured creditors, including creditors who voted in support of the plan, dissenting creditors, creditors who did not vote on the plan and equity holders.

Some insolvency laws also provide that the plan will bind directors and other parties as determined by the court. Some insolvency laws stipulate that the parties who are bound will be prevented from applying to the court to have the debtor liquidated (except in specific circumstances, such as where implementation fails or the debtor fails to perform its obligations as required under the plan), to start or continue legal proceedings against the debtor or to pursue enforcement without approval of the court. Some laws also provide that once the plan is approved by creditors and, where required, confirmed by the court, the property of the



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insolvency estate returns to the control of the debtor for implementation of the plan (unless the plan provides otherwise) and the debtor may obtain a discharge from debts and claims pursuant to the plan.

10. In the light of above discussion and facts of the present Company Application bearing CA No.223 of 2017 in CP No.24/ALD/2017 deserves to be allowed. Hence, it is allowed consequently and the proposed Resolution Plan submitted by Atyant Capital India Fund – I, stands approved with the following directions:

- I. That the Resolution Plan shall be binding on the Corporate Debtor and its employees, members, creditors, guarantors and other stakeholders involved in the Resolution Plan as per Section 31(1) of the Insolvency and Bankruptcy Code, 2016.
- II. As per Regulation 39 Clause 6 of CIRP Regulation, it is further directed that a provision in a resolution plan which would otherwise require the consent of the members or partners of the corporate debtor, as the case may be, under the terms of the constitutional documents of the corporate debtor, shareholders' agreement, joint venture agreement or other document of a similar nature, shall take effect notwithstanding that such consent has not been obtained.
- III. All the parties to the Resolution Plan are to be bound by the terms and conditions mentioned therein. If any deviation in implementing the Resolution Plan the concerned parties/entity will be liable for punishment as per Chapter 7 (Offences & Penalties) of IBC, 2016.

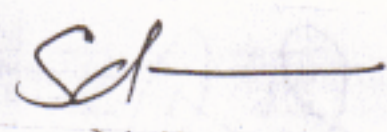


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- IV. We hereby direct that the RP shall forward all records relating to the conduct of the Corporate Insolvency Process and Resolution Plan to the Board to be recorded on its database.
- V. The Moratorium order passed by this bench vide its order dated *17th March, 2017 in CP No.24/ALD/2017 in the matter of JEKPL Private Limited* shall cease to have effect.
- VI. The RP is directed to send a copy of this order (NCLT, Allahabad Bench) approving the proposed Resolution Plan to all the participants and invitee of the COC as well as the Resolution Applicant.
- VII. The registry of this Tribunal is further directed to forward a copy of this order along with a copy of the resolution plan to the Registrar of Companies, Kanpur and to the Insolvency & Bankruptcy Board of India, for information.

Date: 15.12.2017

Typed by
Aparna Trivedi
Law Research Associate


H.P. Chaturvedi
Member(Judicial)

