

**BEFORE THE NATIONAL COMPANY LAW TRIBUNAL
ALLAHABAD BENCH**

COMPANY PETITION NO.(IB)69/ALD/2017

**(UNDER SECTION 7 OF INSOLVENCY &
BANKRUPTCY CODE, 2016)**

IN THE MATTER OF

1. **SUDHA GUPTA**
W/o MR. PRABODH KUMAR GUPTA
2. **NIMISH GUPTA**
S/o MR. PRABODH KUMAR GUPTA
3. **SAANVI GUPTA (MINOR)**
D/o MR. NIMISH GUPTA
4. **NIMIT GUPTA**
S/o MR. PRABODH KUMAR GUPTA
ALL R/o HOUSE NO.66, SECTOR 10-A,
CHANDIGARH-160 011
5. **KUSUM JAIN**
W/o LATE MR. O.P. JAIN
R/o HOUSE NO.847, SECTOR 8,
PANCHKULA-134 109

.....PETITIONERS

VERSUS

JAI PRAKASH ASSOCIATES LTD.

Having its registered office at,
Sector 128, Noida (UP) 201 304,
CIN: L14106UP1995PLC019017

.....RESPONDENT

JUDGMENT/ORDER DELIVERED ON 22.12.2017



CORAM

: Sh. Harihar Prakash Chaturvedi, Member(J)

FOR THE PETITIONERS : Sh. Mukesh Chadha, Chartered Accountant

FOR THE RESPONDENT : Sh. R.P. Agarwal, Advocate

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

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ORDER/JUDGMENT

1. The present petition is filed under Section 7 of the Insolvency & Bankruptcy Code, 2016 read with rule 4 of the I & B Rules, 2016 by the petitioners, who have made fixed deposits in the respondent company i.e. Jai Prakash Associates Ltd. claiming themselves as Financial Creditor.
2. On previous hearings, Sh. R.P. Agarwal, learned counsel for the respondent company appeared and intimated this fact that the amount due under the fixed deposits, (which is the subject matter of the present petition) has now been paid, hence, nothing survives in the present petition and it is liable to be rejected. In this context the respondent company also filed its objection (through its Senior President Mr. Harish K. Vaid) by giving such assurance to this Court that the amount outstanding in deposits alongwith interests would be repaid to all depositors including the present petitioners in one go latest by 31st July, 2017, now it is reported to have been repaid.
3. Thereafter, the respondent company filed a subsequent memo dated 11.08.2017 before this Court informing that the amount outstanding against the FDR of present petitioners has already been paid through cheque/money transfer as per the list enclosed with the memo.
4. The respondent company has made repayment of the amount due under fixed deposits of the present petitioners within the time permitted by this Tribunal. As per the memo dated 11.08.2017 the necessary details of payment made to the petitioners towards principal amount alongwith interest due thereon (as per the terms of deposit) are given as under:



SL. NO	NAME	FDR NO.	FDR DATE	DEPOSIT AMT	MAT. DATE	MAT. AMT	PAY DETAIL	Interest Paid Quarterly/ with maturity amount
1	NIMIT GUPTA	337371	26.03.2012	300000	26.03.2015	300000	Chq No.747667 dtd. 11.02.2016 of Rs.300000 encash on 18.02.2016	Quarterly Annexure - 1
2	NIMIT GUPTA	550632	21.10.2012	390000	21.10.2015	390000	Chq No.807122 dtd. 06.07.2017 of Rs.390000 encash on 15.07.2017	Quarterly Annexure - 2
3	NIMIT GUPTA	555478	05.11.2012	240000	05.11.2015	240000	Chq No.807123 dtd. 06.07.2017 of Rs.240000 encash on 15.07.2017	Quarterly Annexure - 3
4	NIMIT GUPTA	586075	04.09.2013	900000	04.09.2016	900000	Chq No.761387 dtd. 06.07.2017 of Rs.900000 encash on 15.07.2017	Quarterly Annexure - 4
5	NIMIT GUPTA	587005	09.10.2013	600000	09.10.2016	600000	Chq No.761388 dtd. 06.07.2017 of Rs.600000 encash on 15.07.2017	Quarterly Annexure - 5
6	NIMISH GUPTA	586074	10.09.2013	1000000	10.09.2016	1000000	Chq No.762015 dtd. 06.07.2017 of Rs.1000000 encash on 15.07.2017	Quarterly Annexure - 6
7	SUDHA GUPTA	587004	09.10.2013	500000	09.10.2016	500000	Chq No.762071 dtd. 06.07.2017 of Rs.500000 encash on 15.07.2017	Quarterly Annexure - 7
8	SAANVI GUPTA	375943	08.11.2012	200000	08.11.2015	290440	Chq No.781841 dtd. 06.07.2017 of Rs.281396 encash on 15.07.2017	Rs.90,440 - 9044(TDS) = Rs.81,396/- (paid alongwith maturity amount)
9	KUSUM JAIN	324284	04.01.2012	300000	04.01.2015	300000	Chq No.742671 dtd. 18.12.2015 of Rs.300000 encash on 24.12.2015	Quarterly Annexure - 8



5. In view of such payments made by the respondent, there remains no such debt due by the respondent company towards the petitioners nor it has been defaulted. Hence, the present petition is liable to be rejected on above stated ground alone.
6. During the course of hearing, when the present matter came for hearing on 26.10.2017, that day this Court required some more clarifications from both the parties. Hence, the registry was directed to issue further notice to the petitioners, thereafter the matter was again fixed for hearing on 20.11.2017. That day, none appeared from the petitioners' side instead of this, petitioners sent a memo dated 11.08.2017 stating that the Court may pass an order as per the written submission already filed and after perusing the record of the case, as the case have previously been argued by counsel/representative of both the parties on 11.08.2017 and the order has been reserved. As there is no specific say on behalf of the petitioners in the present matter except to their petition, written submission and other material available on record, hence, if this Court feel necessary then to raise written and specific query, then only it would be responded.
7. Thus, the way the petitioner sent such memo, it appears that the petitioner is not inclined to appear before this Court either in person or through their representative. Thus, by their such attitude, it can be presumed that they are no longer interested further in the matter except insisting for an order from this Court.
8. We have gone through the averment made in the present petition and perused the record of the case including reply/objection of the respondent



company, it is now matter of record that principal amount due under the fixed deposits receipt is reportedly paid to the present petitioner by the respondent company, as per the subsequent memo dated 11.08.2017 of the company. The petitioners have not made any specific denial that they did not receive at all the maturity/principal amount at all. There may be some dispute on receiving full payment towards interest, rate of interest against such FDs, but as per the settled legal position that the provision of Section 7 & 9 of the I & B Code are not expected to be invoked as measure for enforcing recovery because the proceeding under the I & B Code cannot be termed as recovery/execution proceeding and if there is only dispute in respect of the payment of interest or otherwise then such can be adjudicated and decided in other statutory proceeding like Section 71 of the Companies Act, 2013 or in other statutory proceedings before an appropriate forum including this Bench of NCLT.

9. Therefore, we are of the view that the present company has now become infructuous and this Court at this stage, does not feel necessary to go into the details of merits of the present case nor is required to determine and decide the status of the petitioner/fixed depositors as a financial creditor/stakeholders to initiate the CIRP against the Corporate Debtor Company in the present I & B petition.

10. We are of the view that as the present company petition can be disposed as being infructuous after receiving payment from the Corporate Debtor Company towards the amount due under FDs by 31st July, 2017, which is duly confirmed and reported through memo dated 11.08.2017.



11. Therefore, the present company petition cannot be continued as reason for initiating a CIRP against the Corporate Debtor Company no longer survives. Therefore, on such limited ground, the present petition is rejected, but no order as to cost.

12. Accordingly, the present company petition stands disposed of.



Dated: 22.12.2017

Typed by:
Kavya Prakash Srivastava
(Stenographer)

— Sd —

H.P. Chaturvedi,
Member (Judicial)