

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

CP No. 36/ALD/2017

**ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF
ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW
TRIBUNAL ON 28.04.2017.**

NAME OF THE COMPANY: J.K. Jute Mills Mazdoor Morcha

SECTION OF THE COMPANIES ACT: u/s 9 of I & B Code, 2016

Sl. No.	Name	Designation	Representation	Signature
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Order Dated 28.04.2017

CP No. 36/ALD/2017:J.K. Jute Mills Mazdoor Morcha

The case is fixed for order today. The order in detail is recorded separately. The petition is not found fit for admission hence is liable to be rejected. The operative of the detailed order reads as under:

“With above stated observation the present application is not found fit to be admitted hence hereby is rejected. The main reasons for rejection of application may be summaries as under:”

The Operational Creditor in its application (in prescribed format Part V Column III) has made such statement that there are none case pending before the Tribunal /Court or Arbitrator on the adjudication of the default at the time of filing of the present Application on 28 March, 2017. However, a perusal of the objections filed by Corporate Debtor in reply to the demand notice of the Operational Creditor, It is seriously disputed informing such the Corporate Debtor has already filed a civil suit



249/2017 before the court of the Civil Judge Kanpur, UP on 21st March, 2017 wherein the learned Civil Court has pleased to issue notice to opposite parties including the Operational Creditor, in support of its contention the Corporate Debtor has enclosed a copy of the tracking report of delivery of speed post (the demand notice issued) dispatched by the Optional Creditor. The same was delivered to the Corporate Debtor Company through its director Mr. Shashi Kant Jha at 4.17 PM on 21st March, 2017.

There is no rebuttable evidence available on record to show that there ~~was~~^{is} no dispute about the debt ~~was~~^{is} pending in a Civil Court before receipt of notice by the Corporate Debtor Company. In normal prudence it can be expected well that the suit in question has been filed on 21.03.2017 during court hours and after the presentation of a suit the Civil Court could be able to issue notices to dependants including the operational creditor, hence by no stretch of imagination it can be concluded that the suit has been filed by Corporate Debtor after receipt of demand notice.

As per matter available on record of record the demand notice was delivered though Speed Post on 21.03.2017 at 4.17 PM in the office of the director of the Company situated at R. K Nagar, Kanpur while the suit in question was filed before the Civil Court on situated locality in different not necessarily nearby locality.


It is also matter of record the worker's union / creditor issued a demand notice to the Corporate Debtor on 14th March, 2017 and prepared the present Application for the purpose of filing on 25th March, 2017.

As the notice is received by Corporate Debtor only on 21st March it cannot be presumed concluded that 10 clear days were given enabling the Corporate Debtor for either making repayment of debts or to inform about the dispute in existence. Hence, we find that present application on

this ground alone is not complete and found fit for admission.

It is also a matter of record that the present Operational Creditor has earlier been impleaded as one of the Respondent's before Hon'ble Delhi High Court in a pending Writ Petition (C) No. 1110 of 2017 filed by another workers union named as J.K. Jute Mills Mazdoor Ekta Union through its President / General Secretary having office at Kalpi Road, Zarib Chowk, Kanpur wherein it has impleaded the President / GS of Mazdoor Morcha darshan Purwa Baba Road, Kanpur as a Respondent No. 20 among other respondents e.g. Union Of India, General Manager, IDBI, BIFR and J.K. Jute Mills Company Ltd. through its director including management official in the said writ petition. The relief sought for therein is to ~~by~~ challenge the Constitutional Validity of Section 252 of Insolvency & Bankruptcy Code, 2016 read with Section 4(b) of SICA special Repeal Act contending such the I & B Code does not provide for efficacious remedy to workmen for implementing ^{the} direction passed by Supreme Court by 13.11. 2015 and 18.11. 2015 to approach the NCLT once the BIFR reference stands abated.

It is also pleaded such in the Writ Petition that due to abetment of Proceedings before BIFR, it rendered the Petitioner remedy less and the workers union cannot initiate the proceeding before the NCLT for redressal of its grievance in the light of the SICA Repeal act 203 and the present I & B Code. Therefore, it is only open for Companies whose appeal / inquiry since abated to initiate a fresh proceeding before NCLT in accordance with Section 252 read with 8th Schedule of the code within 180 days from commencement of code. As per the petitioner that section does not make it compulsory to make ^a reference before NCLT and does not provide for protection of the assets akin ⁿ Section 22 (a) of SICA till such time Company starts proceeding before NCLT.



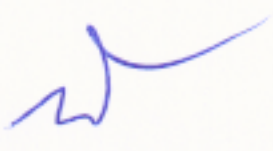
According, the petitioner union on behalf of the workers of Corporate Debtor Company has made such prayer to grant of ex-parte stay on the assets of the Company and pass an order for appointment of receiver.

In view of the above, we feel that almost similar nature of reliefs has been sought in the present petition as has been claimed before the Hon'ble Delhi High Court in pending Writ Petition by seeking stay on the assets of and for appointment of court Receiver in the corporate debtor company.

The above stated Writ Petition has been filed before Hon'ble Delhi High Court in January, 2017. However, the present applicant being respondent No. 20 did not disclose such facts about the pendency of the writ petition nor its stand taken in support of or opposing to the writ petition or about its reply filed if any in the said writ petition.

Since the eligibility and *locus standi* of a workers union as an operational creditor / financial creditor to file petition before the Adjudicating Authority under I & B Code under consideration and *sub-judice* and before the Hon'ble Delhi High Court wherein the present applicant union / Operational Creditor has also been impleaded as respondents and similar nature of relief for appointment of a receiver has been sought for. Hence, we are of the view that the present petition under the I & B Code ought not to be entertained with a view to avoid multiplicity of proceedings.

As per material available on record and pursuant to the direction issued by the Hon'ble Supreme Court in the matter ***Ghanshyam Sarda Vs. Shiv Shankar Trading Company and others, (2015) 1 SCC 298***, the Hon'ble Supreme Court pleased to direct to the BIFR (Paras 37 & 38 of the Judgment) to complete such exercise within 2 months from the date of receipt of the order to determine the issue whether the net worth of the corporate




debtor turned positive or not and in case the BIFR is satisfied that company has turned positive then it shall deregister the reference of the company. Upon such deregistration the company will come out of the supervisory jurisdiction of the BIFR . In case it is not satisfied then it shall consider the scheme for revival of the sick company.

However, as per record such enquiry could not be completed by the BIFR till the present code came into effect and thereafter all the proceedings pending before it stood abated.

Notwithstanding, the above, as per Section 252 read with 8th Schedule of the I & B Code a liberty has been granted to a Corporate Debtor to make a reference within 180 days from the date of I & B Code came into effect to this tribunal. For consideration of DRS scheme / pending reference which could not be finalized. Therefore, in the light of the above mentioned decision of the Hon'ble Apex Court and read with the provision under Section 252 and 8th schedule of the Code, the corporate debtor is legally expected not to create third party interest over the assets of the Company till such statutory period for filing reference is over. Thereafter it would be subject to outcome of / order passed by a competent court of Law / Statuary Labour Authority, if union or worker's approach to it by filing suit / claim for recovery of their labour dues or / and suit / proceedings filed against them before a competent court of law.

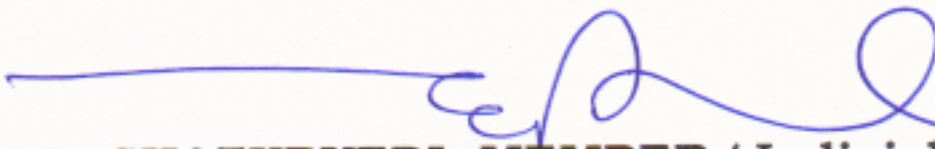
However, our above stated observation is subject to final decision / interim direction / order passed by the Hon'ble Allahabad High Court in pending writ petition No. 7208 (M/S) of 2014 and in another Writ Petition No. 1110 of 2017 pending before Hon'ble Delhi High Court or by a Competent Court of Law as the case may be.

Our above stated observation shall not meant to come in the way to implement an order / direction issued



by a Competent Court / Statutory Authority, Labour Forum.

Hence the present petition is not maintainable and not found fit for admission under Section 9 of the I & B Code. Hence, the application is hereby rejected. However, no order as to costs.


(H.P. CHATURVEDI, MEMBER (Judicial))

28/04/2017

Order Date : 28.04.2017
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