

National Company Law Tribunal

Allahabad Bench

CP NO. (IB) 77/ALD/2017, CA No. 166/2017

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 01.09.2017

NAME OF THE COMPANY: IDBI Bank Vs. Jaypee Infratech Limited

SECTION OF THE COMPANIES ACT: U/S

Sl. NO.	Name	Designation	Representation	Signature
1.	MR. SUMANT BATRA	ADVOCATE	IRP (JAYPEE INFRATECH LTD)	Sumant Batra
2.	MR. ABHISHEK ANAND	ADVOCATE	IRP (JIL)	Abhishek Anand
3.	Pradeep Singh Sisodia		CGSC/RD	Pradeep Singh Sisodia
4.	R. P. Agarwal	ADVOCATE	JIL	R. P. Agarwal
5.	RAHUL AGARWAL	ADVOCATE	APPLICANT BANK	Rahul Agarwal
6.	SHUBHAM AGARWAL	ADVOCATE	APPLICANT BANK	Shubham Agarwal
7.	Swarupama Chaturvedi	Advocate	Insolvency & Bankruptcy Board of India (IBBI)	Swarupama Chaturvedi

CA No.166 of 2017

Sh. Sumant Batra alongwith Sh. Abhishek Anand, Advocates on behalf of Sh. Anuj Jain the IRP in Jaypee Infratech Ltd. (CP No.(IB)77/ALD/2017). Sh. Pradeep Singh Sisodia, CGSC. Sh. Rahul Agarwal alongwith Sh. Shubham Agarwal, Advocates for the applicant bank (IDBI). Ms. Swarupama Chaturvedi, Advocate on behalf of Insolvency & Bankruptcy Board of India (IBBI). Sh. R.P. Agarwal, Advocate for Corporate Debtor Company Jaypee Infratech Ltd.

The applicant Shri Anuj Jain, being the Interim Resolution Professional for Jaypee Infratech Ltd. (duly appointed by this Court in the matter of IDBI v/s Jaypee Infratech Ltd. CP No.(IB)77/ALD/2017), has now filed the present application U/s 24(5) of I & B Code read with Regulation 22 of the Insolvency & Bankruptcy Board


of India (Insolvency Resolution Process for Corporate Persons) Regulation, 2016 and Rule 11 of the NCLT Rules, 2016 and praised for an appropriate direction from this Tribunal to be issued in the present matter.

It is a matter of record that this Tribunal vide its order dated 09.08.2017 has admitted the company application of a financial creditor the IDBI in respect of the corporate debtor Jaypee Infratech Ltd. for the purpose to initiate corporate Insolvency Resolution Process against it U/s 7 of I & B Code, 2016. In pursuance thereof, the present applicant has been appointed as IRP and he is now in process of Insolvency Resolution for the corporate debtor company.

By the present application, the IRP informs such in terms of Regulation 24 of the I & B Code that he is required to conduct a meeting in a manner specified therein, and to ensure that the required quorum is present in such meeting under terms of Regulation 24(5). He further points out that in such a meeting from its commencement till its conclusion, no person other than participants and any other unauthorized person are allowed to have access to the place where such meeting is supposed to be held or to be held by the video conferencing or other audio & visual facility, without the permission of resolution professional. Further, as per in terms of Regulation 26, the IRP is required to provide each member of the committee the means to exercise its votes either electronics means or through electronic voting system. Such meeting is required to be convened within a month from the date of his appointment and in terms of Section 21 of the Code. The IRP is legally required to constitute a committee of creditors (COC) comprising of "all financial creditors of the corporate debtor" and further to file a report certifying the member of COC to the Adjudicating Authority on or before the expiry of 30 days from the date of his appointment. He is equally ~~accepted~~ ^{expected} to convene first meeting of the committee of creditors within 7 days from its constitution and filing of the report to this Tribunal

under the Regulation. Since the IRP has filed his such report under the Regulation he is legally expected to convene such meeting within 7 days, however, he is facing some practical difficulty to this effects that there are 7451 financial creditors, as being fixed deposit holders in JPIL who have made deposit pursuant to the scheme of JPIL U/s 58A of the Companies Act, 1956. As per such scheme an amount of Rs.1,316,237,585/- as outstanding principal plus overdue interest thereon which is now payable to such fixed deposit holders. The applicant IRP has filed a list before us of fixed deposit holders as annexure to the present application. It is also submitted that some of the fixed deposit holders have already filed proceedings before this Tribunal, under the provision of the Companies Act.

It is the contention of the applicant that there are nearly 7465 financial creditors out of which 7451 fixed deposit holders although they comprise of 99.8% of the committee of creditors in number, yet are less than 2% in value of debts. That apart there are many fixed deposit holders whose claims are found less than amount of Rs.25,000/-. Therefore, calling for their meeting in the COC at present, is not practically workable nor possible because these 7451 fixed deposit holders are located all over the country, many in remote places, and such offer to invite them through audio or video conferencing will be practically challenging, a huge cost on CIRP, and an immense burden on the administration of meeting in view of disproportionate percentage of debt held by them. It is also pointed out about the procedural difficulties the IRP may face in terms of Regulation 25(5) which provide that, if all members of the COC are not present at the meeting, a vote shall not be taken and the resolution professional shall seek vote by electronic means. Thus, it would be practically impossible to obtain electronic voting of such depositors in absence of their E-mail address. That could again lead to challenge any decision taken in their absence in such meeting. The applicant further drew our attention to Regulation 22(1), CIRP Regulation that quorum will complete if members of the

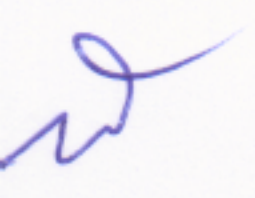


committee representing at least 33% of the voting rights are present either in person or by video conferencing and audio & visual means and as the financial institutions comprising less than 15 in number but having over 99% of debt may constitute the quorum. Therefore, from this angle also the meeting of the other financial creditor/fixed depositor is not required. It is contended that no prejudice will be caused to FD holders (7451) who comprise less than 2% in value of debt as this Tribunal has already protected their interest by passing various order, and by granting extension of time to JIL to make payment of such fixed depositors till 5th September, 2017.

In view of the above stated facts and circumstances of the case, the IRP makes such request that this Tribunal to grant exemption to him to serve a notice to the FD holders under Regulation 19 read with 20 of the I & B Code read with other provisions. He further seeks prayer for a direction to be issued to IBBI to nominate an Insolvency Professional (IP) as representative for such fixed deposit holders.

We heard, the submission at length made before us by the learned counsel for the applicant as well as learned counsel for the Central Government IBBI. Further Sh. R.P. Agarwal the learned counsel also addressed for corporate debtor company on such issue involved in the present matter. Sh. Pradeep Singh Sisodia, the Central Government Standing Counsel sought time to file formal reply to the present application by seeking appropriate instruction from Ministry of Corporate Affairs and other Ministry/Department concern who may have bearing on disposal of the present application.

The learned counsel representing the IBBI orally opposed the grant of such relief and stated that it is necessary to call for a meeting of all the Financial Creditors/FD holders in terms of the relevant Regulation of the I & B Code. Hence, their presence should not be dispensed with, while on the other hand Sh. R.P.



Agarwal, the erstwhile counsel for the corporate debtor company made effort and drew our attention on such issue as to whether such fixed depositors would fall within the category of the financial creditors/operational creditor or otherwise as per the I & B Code and such issue is still under consideration and now is seized of by this Tribunal in some other matter and hence till then the fixed depositors cannot conclusively be categorised as financial creditor. At this stage, they do not necessarily fall within ambit/scope of the financial creditor unless it is ruled so by at this Tribunal or a competent court of law. While on the other hand, the present CIRP has prima facie treated them as the financial creditors/stakeholder within ambit/scope of the financial creditor under the I & B Code.

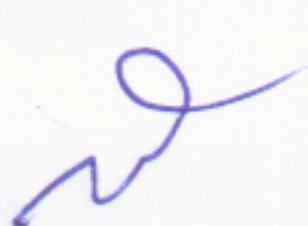
Sh. Pradeep Singh Sisodia, learned Advocate for the Central Government did not express any view on behalf of the MCA/Central Government on such legal aspect as he is awaiting for instruction, hence, seeks time for filing proper reply to the present application. Therefore, at this stage he neither objected nor supported to the relief being sought for by the applicant IRP. Therefore, the issue raise for consideration and determination of this Tribunal as to whether the service of notice to the FD holders under Regulation 19 read with regulation 20 is dispensable with or otherwise and whether the status of the present FD holders as of financial creditors would fall within the ambit/scope of I & B Code. Such issue can be dealt with and decided by this Court after perusing the formal reply if received from the Central Government, Ministry of Corporate Affairs, the IBBI and other concern authorities in this respect on the issue.

Notwithstanding the above, as it has been brought to our notice that if such meeting of COC is not convened within 30 days from the date of the appointment of IRP, it may have serious repercussion and the entire exercise go futile and main purpose of the committee of creditors would be frustrated. Moreover, if all members

from the deposit holders are not found present in such meeting despite a sincere and serious effort made by the IRP for issue of notices, a vote shall not be taken and it would also be practically impossible to obtain electronic voting in the absence of their E-mail address, such can again lead to challenge any decision taken in such meeting held in their absence. Moreover, if a meeting of the committee of creditors is not convened by the IRP within 30 days, in compliance of the mandatory provision of the I & B Code. It may defeat the very purpose of the present I & B Code, 2016, because the terms of the Interim Resolution Professional as appointed by this Court shall not exceed 30 days from the date of his appointment. Thus, the appointment of IRP would become *functionous-officio* and he would not be able to call for a meeting, then this may not be in conformity of the spirit and object of the present Code.

Having heard the detailed submission of the learned counsel for the parties and by considering the above stated factual and legal issue, we feel appropriate to know the view/stand of the Central Government as well as of the IBBI by filing formal reply to the present application. Hence, time is granted.

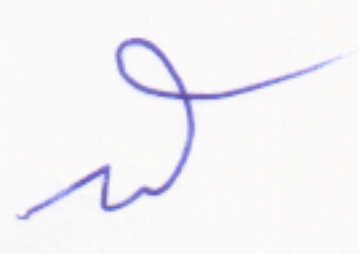
Meanwhile, considering the urgency in the present matter keeping view the statutory provisions of the present code, in case a meeting of the COC is not convened by the IRP within 30 days from the date of his appointment. Then, the entire exercise would go futile it cannot be convened further by the IRP until his terms is extended or he is replaced by a new IRP. This would create a hardship in performance of the committee of creditors as prescribed U/s 18 to 20 of I & B Code and may prejudice the spirit and object of the Code as the time is essence of the present Code. Therefore, without expressing our conclusive finding/view on such issue and as an interim measure in order to remove the procedural difficulty of the committee of creditors as well as to protect the interest of stakeholders at large, even they may be the small investors/FD holders, we feel the IRP should be permitted to



conduct its first statutory meeting and at this stage it is not mandatory for him to make service of notice on all the FD holders (who are stated to have less than 2% of the total debts) for the purpose of convening such meeting of COC within statutory period of 30 days. Hence, service of notice to such FD holders is provisionally dispense with a view to remove procedural difficulty and to enable to convene the first statutory meeting of the committee of creditors, which is a mandate of the I & B Code.

In addition to the above and in order to protect the larger interest of the small investors, FD holders, we advise the Government of India through Ministry of Corporate Affairs/Ministry of Finance to nominate it's an officer not below the rank of Director to act as permanent invitee and observer in such meeting of committee of creditors. In addition to this, we direct the Insolvency & Bankruptcy Board of India to nominate its officer or an Insolvency Professional as the case may be, to attend such meeting and to take care of the adequate interest of the depositors/FD holders in the meeting of the committee of creditors. These nominees are equally expected to submit their independent report/observation to this court in addition to the report submitted by the IRP/RP as the case may be.

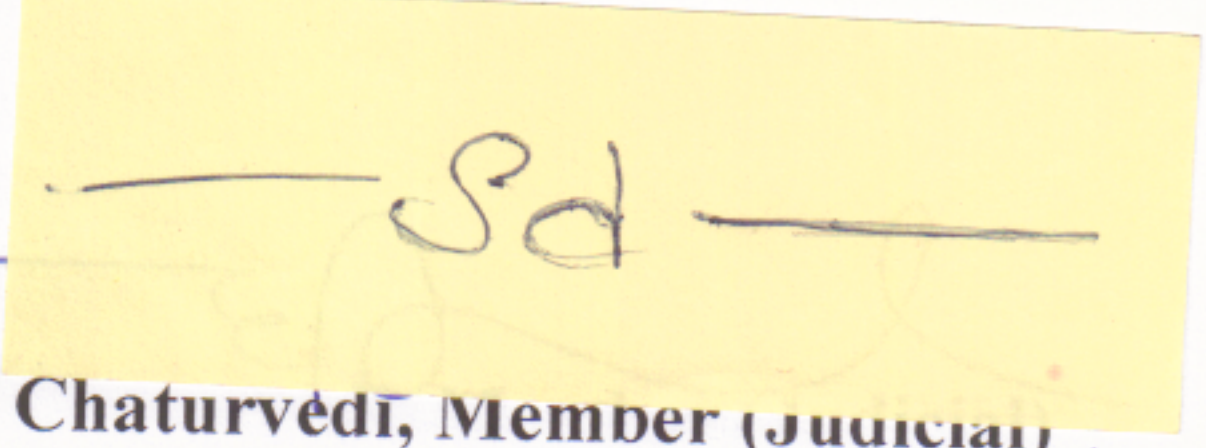
It is further made clear that in the present order, observation is being made with a view to remove the procedural hardship that the IRP and the COC may face for convening of such statutory meeting within stipulated period to come to a conclusion. Such observation is for the time being and in order to protect equally the interest at large of the depositors. Hence, such observation not to be treated as conclusive findings expressed on merits of the case, such issue needs to be dealt with in accordance with law at appropriate stage after receiving the comments/reply from the Central Government and from the IBBI.



With the above stated observation ad-interim prayer as sought for in the application, is partly and conditionally allowed, subject to the final out come to the present application.

The matter be listed on 6th September, 2017.

Dated:01.09.2017


Shri H.P. Chaturvedi, Member (Judicial)

1/09/2017

Typed by:
Kavya Prakash Srivastava
(Stenographer)