

National Company Law Tribunal

Allahabad Bench

CP NO. 77/ALD/2017, CA No. 05/2018

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 12.02.2018

NAME OF THE COMPANY: IDBI Bank vs. Jaypee Infomatech

SECTION OF THE COMPANIES ACT/I & B CODE: 12(2) & (3) of I & B Code of 2016

SI. NO.	Name	Designation	Representation	Signature
1.	ABHISHEK ANAND	ADVOCATE	RESOLUTION PROFESSIONAL	
2.	R. P. Agarwal	Adv.	Jai Prakash Associates Ltd Intervener	
3.	M. K. BAGRI	OL/Aud	ADCNAL & NCA	

CP NO.(IB)77/ALD/2017, CA NO.5/2018

Sh. Abhishek Anand, Advocate for Resolution Professional (RP). Sh. M.K. Bagri, OL representing Central Government. Sh. R.P. Agarwal, Advocate for Intervener third party M/s Jai Prakash Associates Ltd. He files vakalatnama today.

Today, the case is fixed for further hearing and for appropriate order in CA No.5/2018, as filed by the Resolution Professional (RP) seeking for extension of the period of Corporate Insolvency Resolution Process (CIRP) in respect of the Corporate Debtor Company for another period of 90 days beyond 12.02.2018 (being 180 days from the CIRP) and praying further for some other order to be passed as may be deem fit by this Court, considering the facts & circumstances of the present application. Since today the period prescribed for the CIRP under the I & B Code is going to over, therefore, it is submitted by the learned counsel for the RP that this Court being an Adjudicating Authority and being an original Court is expected to pass an appropriate order in the application either by extending the period of CIRP or by rejecting such prayer for seeking extension. If it is not considered today, then there may arise serious legal complication and the CIRP may be deemed to be over



and come to halt without submission and approval of a Resolution Plan under the provision of the I & B Code, thus this may lead to attract other legal consequences of liquidation in respect of the Corporate Debtor Company.

This Court is having utmost regard to the Hon'ble Supreme Court and is conscious about an application moved by a third party **Mr. Mohana** (bearing I.A. No.17043/2018) by making prayer for issuance of some direction from the Hon'ble Supreme Court against the RP by restraining him to proceed further with the CIRP and also sought for some other reliefs in the application during the pendency of the writ petition in the matter of "Chitra Sharma & ors. versus Union of India & ors. (WP [Civil] No.744/2017)".

The Ld. Counsel appearing for the RP duly informs that the matter was listed today, but is adjourned simplicitor by the Hon'ble Supreme Court due to paucity of time and the Hon'ble Apex Court did not feel expedient to issue any direction today and the matter is simply adjourned to 23rd February, 2018.

This Court through its previous orders, specifically in the order dated 16.11.2017 has already expressed directing to the RP that our order/direction issued, shall always be subject to further order/direction that may be given time to time by the Hon'ble Supreme Court/Higher Forum as the case may be in respect of the present matter. Further in our previous order dated 07.02.2018 we have expected from the parties concern to apprise of the Hon'ble Apex Court about filing of the present extension application before this Court.

We also heard the submission of Sh. R.P. Agarwal, learned counsel for third party opposing the present application for extension contending such the stay of the Hon'ble Supreme Court against this Court's order dated 09.08.2017 still continues and has not been fully vacated nor recalled but stands simply modified. Therefore,



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this Court being an Adjudicating Authority under the Code is not expected to proceed further in respect of Corporate Insolvency Resolution Process during continuance of such stay and till the pendency of above mentioned writ petition before the Hon'ble Supreme Court.

We have got an opportunity to peruse the application bearing no.17043/2018 of the third party filed before and now is subjudiced in the Hon'ble Supreme Court, which reflects that the third party Jai Prakash Associates Ltd., itself has made certain alternative prayers including of such direction to be issued, the Resolution Professional (RP) as not to proceed with the CIRP, as such prayer are under consideration and the order therein is awaited.

On previous haring, we also heard the argument of Sh. Sumant Batra, Ld. Counsel for the RP, he contended such in respect of the present extension application that, if the Hon'ble Supreme Court please to take such view that the order dated 09.08.2017 of this Court stands restored and the stay granted earlier against is modified, then this Court being an Adjudicating Authority may expected under the provision of I & B Code to decide the present extension application filed before it by the RP, which is properly filed.

By considering the above stated rival contentions of the parties, we feel, if the present application moved by the petitioner is not considered under Section 12(2) & (3), then the process of Corporate Insolvency Resolution may come to halt, if the Hon'ble Supreme Court rules that there is no stay at present, if such situation arises and no further extension of CIRP is granted by this Court, then this may lead to failure of submission of Resolution Plan not submitted within stipulated period. Therefore, this may lead to attract the legal consequence of liquidation of the company. Hence, this may not serve the purpose of the present I & B Code.



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Therefore, we duly considered the broader interest of the CIRP in respect of the Corporate Debtor Company as well as the interest of the Financial Creditor/other Stakeholders etc. under the provision of the I & B Code, if the period of CIRP is treated to be legally over, then Committee of Creditors (COC) may be deemed to be defunct and all Financial Creditors as being member of the COC may become *functious officio* under the provision of the Code.

Thus, it is a matter of record that today the period of CIRP is going to be over and non-passing of any order in this respect may lead to legal complication which may have impact on smooth functioning of the CIRP and the COC for preparation and submission of a Resolution Plan before the Hon'ble Supreme Court under Article 32 & 142 of the Constitution of India or under the provision of the I & B Code before this Court. Hence, we feel that the present application of RP deserves for consideration by this Court for passing an appropriate order.

In the light of the above discussion and by considering the above mentioned facts & circumstances of the present case, we are of the view that there appears some urgency to grant of further extension of the CIRP. Further, the provision of the Code as stipulated in Section 12(2) & (3) authorize the Adjudicating Authority to grant single extension for maximum upto 90 days.



It would not be out of context to mention here that the period prescribed under the Code for completing such CIRP are mandatory in nature as the Time is Essence of the Code as per the law laid down by the Hon'ble Supreme Court in its Judgment in the matter of *M/s. Innoventive Industries Ltd. versus ICICI Bank & Anr. (Civil Appeal No.8337-8338 of 2017)* and *Surendra Trading versus J.K. Jute Mills Company Ltd. (Civil Appeal No.8400 of 2017)*. The relevant extract of the judgment reads as under:

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Para 31:

“The rest of the insolvency resolution process is also very important. The entire process is to be completed within a period of 180 days from the date of admission of the application under Section 12 and can only be extended beyond 180 days for a further period of not exceeding 90 days if the committee of creditors by a voting of 75 per cent of voting shares so decides. It can be seen that time is of essence in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.”

In addition to above, Hon'ble Supreme Court in its matter of M/s Surendra Trading Company versus M/s Juggilal Kamlatpat Jute Mills Company Ltd. & ors. took the same view. The relevant paras of the abovesaid judgment, for the sake of convenience may also be reproduced herein below:

Para 16:

“On admission of the application, the adjudicating authority is required to appoint an Interim Resolution Professional (for short, 'IRP') in terms of Section 16(1) of the Code. This exercise is to be done by the adjudicating authority within fourteen days from the commencement of the insolvency date. This commencement date is to reckon from the date of the admission of the application. Under sub-section (5) of Section 16, the term of IRP cannot exceed thirty days. Certain functions which are to be performed by the IRP are mentioned in subsequent provisions of the Code, including management of affairs of corporate debtor by IRP as well as duties of IRP so appointed. One of the important functions of the IRP is to invite all claims against the corporate debtor, collate all those claims and determine the financial position of the corporate debtor. After doing that, IRP is to constitute a committee of creditors which shall comprise of financial creditors of the corporate debtor. The first meeting of such a committee of creditors is to be held within seven days of the constitution of the said committee, as provided in Section 22 of the Code. In the said first meeting, the committee of creditors has to take a decision to either appoint IRP as Resolution Professional (RP) or to replace the IRP by another RP. Since term of IRP is thirty days, all the aforesaid steps are to be accomplished within this thirty days period. Thereafter, when RP is appointed, he is to conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the said period. It is not necessary to state the further steps which are to be taken by the RP in this behalf. What is important is that the entire corporate insolvency resolution process is to be completed



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within the period of 180 days from the date of admission of the applicant. This time is provided in Section 12 of the Act. This period of 180 days can be extended, but such extension is capped as extension cannot exceed 90 days. Even such an extension would be given by the adjudicating authority only after recording a satisfaction that the corporate insolvency resolution process cannot be completed within the original stipulated period of 180 days. If the resolution process does not get completed within the aforesaid time limit, serious consequences thereof are provided under Section 33 of the Code. As per that provision, in such a situation, the adjudication authority is required to pass an order requiring the corporate debtor to be liquidated in the manner as laid down in the said Chapter.

Para 17:

The aforesaid statutory scheme laying down time limits sends a clear message, as rightly held by the NCLAT also, that time is the essence of the Code.”

By following the above stated judicial precedent, we feel that, if such period is not extended by this Court as being an Adjudicating Authority, then it may lead to attract legal consequences of liquidation of the Corporate Debtor Company after the expiry of such statutory period meant for CIRP. Hence, in order to remove such legal difficulty that may be faced by the RP and the COC and with a view to be aid of the Hon'ble Supreme Court by following the spirit of Article 144 of the Constitution of India, which mandates that, **all authorities Civil & Judicial shall act in the aid of the Supreme Court**, we grant extension of time of CIRP for another 90 days (beyond 180 days) of the Corporate Debtor Company. The present application no.5 of 2018 is allowed and stands disposed of accordingly.



Before parting with this order, we must express and humbly submit that our this order is not meant for creating any impediment to the issue subjudice before the Hon'ble Supreme Court or order/direction that their Lordship may please to issue as may deem fit, but our such order being passed in the sense to remove procedural difficulty being faced by the RP and by following the spirit of Article 144 of the

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Constitution of India and our this order shall be subject to further direction/order as may be issued by the Hon'ble Apex Court.

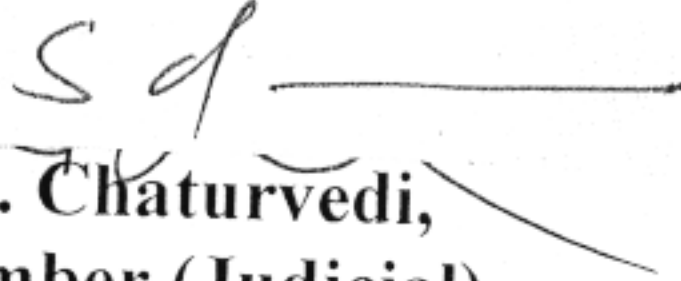
The parties concern are equally expected to apprise of the Hon'ble Supreme Court about the filing of the present extension application and our this order for its kind perusal and for appropriate direction, as may be deem



The matter to be listed on 12th March, 2018.

Dated:12.02.2018

Typed by:
Kavya Prakash Srivastava
(Stenographer)


H.P. Chaturvedi,
Member (Judicial)