

National Company Law Tribunal

Allahabad Bench

CP NO. (IB)24/ALD/2017, CA No. 223/2017

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 15.12.2017

NAME OF THE COMPANY: JERPL Ltd

SECTION OF THE COMPANIES ACT/I & B CODE: 60(s) of 98 B code of 2016

Sl. NO.	Name	Designation	Representation	Signature
1.	ANIL KUMAR	PCS	RP of JERPL	Anil Kumar
2.	GUNJAN JADWANI	Adv	Expert - Import Bank of India	Gunjan Jadwani

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Sh. Anil Kumar, PCS alongwith Mr. Sandeep Bisht (the representative), representing the Resolution Professional (RP) of the Corporate Debtor Company (now under CIRP). Advocate Ms. Gunjan Jadwani for the EXIM Bank.

The 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.

The learned counsel appearing for EXIM Bank would submit 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 subjudiced before the Hon'ble NCLAT. However, the PCS representing the RP would submit that he is not aware of filing of such stay application. However, there is no stay till date. Considering such circumstances, we 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. However,

this order would be subject to outcome of pending appeal and appropriate direction that may be issued by the NCLAT in ^{such} pending appeal.

The order in detail in the present CA No.223/2017 is recorded separately. The present CA is allowed with certain observations.

The operative portion of our order reads as under:-

“Having heard the submission of Sh. Nesar Ahmad, PCS for the RP, 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.

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 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**.

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.

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 ^{is} found contrary to ^{the} 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:-

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 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.

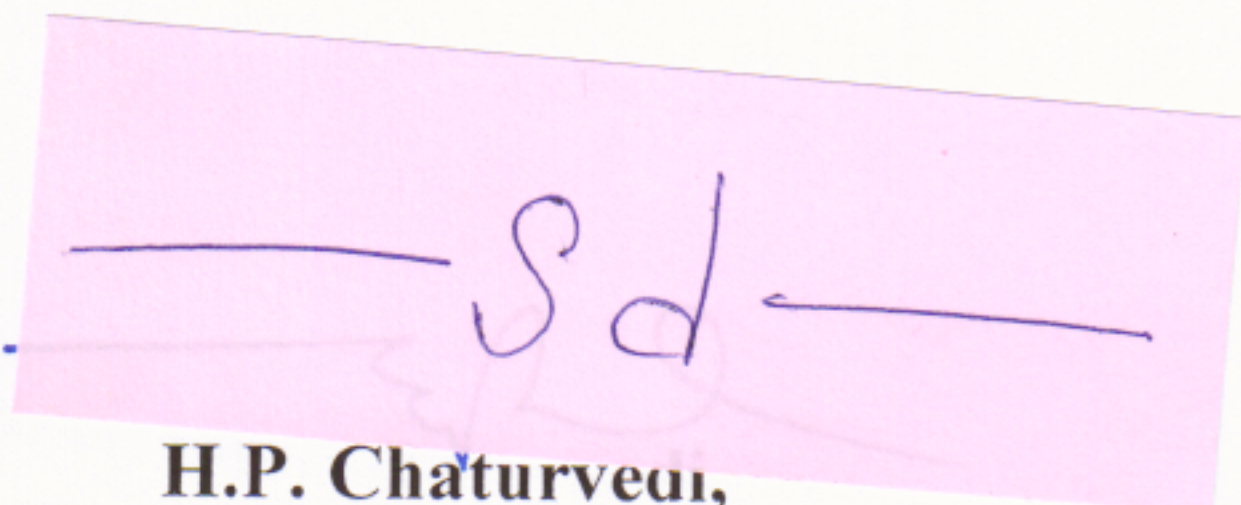
In the light of above discussion and facts of the present Company Application bearing CA No.223 of 2017 in CP No.24/ALD/2017 deserves to be allowed. Hence, it is allowed consequently ^{as} the proposed Resolution Plan submitted by Atyant Capital India Fund – I, stands approved with the following directions:

1. 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.
2. 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.
3. 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, 2006.
4. 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 of the Company to be recorded on its database.

5. 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.
6. 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.
7. The registry of this Tribunal is further directed to forward a copy of this order alongwith a copy of the resolution plan to the Registrar of Companies, Kanpur and to the Insolvency & Bankruptcy Board of India, for information.

Dated:15.12.2017

Typed by:
Kavya Prakash Srivastava
(Stenographer)



**H.P. Chaturvedi,
Member (Judicial)**