

National Company Law Tribunal

Allahabad Bench

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE
NATIONAL COMPANY LAW TRIBUNAL ON 27.10.2017

CP NO. 24/ALD/2017,
CA NO. 159/2017

NAME OF THE COMPANY: J.EKPL Ltd

SECTION OF THE COMPANIES ACT: 60(5) of 1 & B code of 2016

Sl. NO.	Name	Designation	Representation	Signature
1.	ANIL KUMAR	PCS	for RP of JEKPL	Anil K.
2.	MS. GUNJAN JADWANI	Adv.	For Applicant - Exim Bank	Gunjan Jadwani

CP NO.(IB)24/ALD/2017, CA NO.159/2017

Ms. Gunjan Jadwani, Advocate for the EXIM Bank. Sh. Anil Kumar, PCS for the Ld. Resolution Professional (RP).

In the present case, the arguments in respect of the CA No.159/2017 have earlier been heard and the order was reserved.

Meanwhile, another CA No.174/2017 is filed in respect of making certain grievances against attitude of the RP and on the manner the meeting of COC being conducted which appears to be a sensitive issue and such can be decided after ascertaining the facts and knowing the comments of the RP and hearing the parties concerned.

Therefore, we are of the view in the interest of justice to dispose the CA No.159/2017 alongwith CA No.174/2017 which also pertains to the impugned action/decision being taken by the RP and on the practise and procedure being adopted by him which raise question on legality and validity of such action/decision.

Notwithstanding the above prima facie we are constrained to observe such and without prejudice to right and contention of either parties that the impugned order/decision of the Ld. RP to exclude the EXIM Bank from membership of COC

and not to treat it as a financial creditor is prima facie not legally sustainable because such decision is taken without ^{having} active consultation and taking into confidence of the other members of the COC and such may not be theme and purport of the present I & B Code. The RP is expected to play a model role by having effective interaction with the members of the COC and to work out collectively for a resolution plan to take care of the paramount interest of the company under resolution.

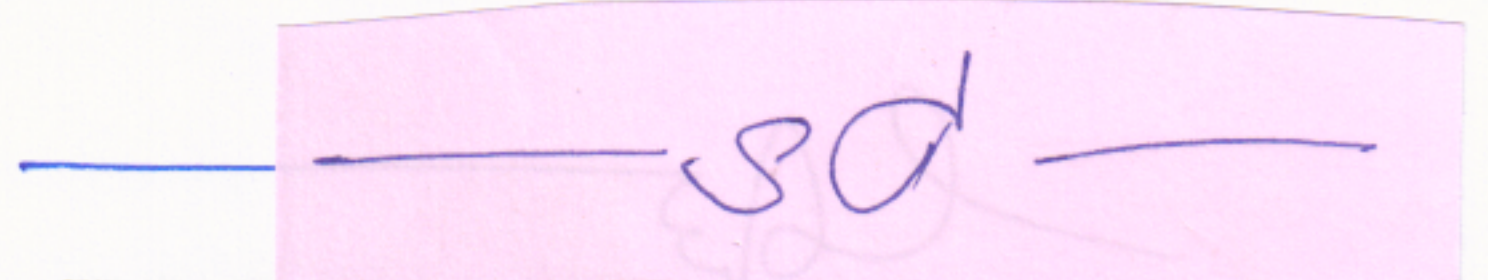
The order impugned prima facie is not legally sustainable because the RP seems to have taken decision based on some legal opinions even without placing it before the other members of COC and without inviting their comments or arriving at their consensus on such opinion as the meeting of COC is said to be held on 04.08.2017 afternoon and the legal opinion is received by the office of the RP in forenoon. Further, the RP communicated its decision impugned to the present applicant in forenoon only. Therefore, it seems that without waiting for outcome of COC meeting there is no effective consultation or interaction with the member of COC has been done in a formal manner. As such decision is expected to be taken collectively. Therefore, prima facie we feel it is collective responsibility of the RP as well as of the COC for reaching to a reasonable conclusion and to safeguard the paramount interest of the company under resolution, otherwise such may not be treated as a healthy practise. Therefore, before deciding the fate of this application, we feel that COC should be given one more opportunity to consider legal opinion before deciding the status of the present applicant EXIM Bank as a financial creditor and to convey its view either collectively or independently (in sealed cover) to this Court, so that Court may form its appropriate view thereon and to rule on the subject. Further, we would like to make a caution to the COC that the **Time is Essence of the Code**. Hence, their energy and efforts should be devoted to the paramount consideration and interest of the corporate debtor company seeking its revival or for resolution plan. As in the present matter more than 200 days has already been passed.

Hence, we direct the RP as well as to the COC to convey the meeting of COC in the first week of November and to peruse and consider the legal opinion as received by the RP from various sources and to take conscious decision thereon further the present applicant EXIM Bank should also be given opportunity to put forth its stand before the COC as well as the view of the RP also to be taken into consideration and thus the COC has to take collective decision. If there arise some serious difference among the member of the Committee of Creditors, then the other financial creditors may express their independent view and opinion which may be conveyed to this Court for perusal and consideration. Meanwhile, the impugned order dated 04.08.2017 passed by the RP excluding the EXIM Bank from the COC as a financial creditor is kept in abeyance.

The matter be listed on 10th November, 2017 for reporting compliance of the direction issued.

Dated:27.10.2017

Typed by:
Kavya Prakash Srivastava
(Stenographer)


H.P. Chaturvedi, Member (Judicial)