

National Company Law Tribunal

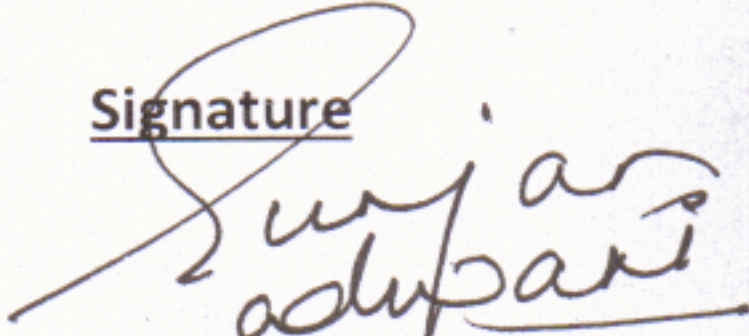
Allahabad Bench

CP NO. (IB) 25/ALD/2017, CA 73/2017

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

NAME OF THE COMPANY: JODPL Ltd

SECTION OF THE COMPANIES ACT: 60(5) of I & B Code of 2016

Sl. NO.	Name	Designation	Representation	Signature
1.	MS. GUNJAN JADWANI	Adv.	For RP - Dinker T. Vipketasubramanian	
2.				

CP NO.(IB)25/ALD/2017, CA NO.73/2017

Parties are represented by their respective counsels. The case is fixed today for the order in respect of the CA No.73/2017.

It is submitted before us that during the course of argument that the Axis Bank is having only less than 2% of the voting rights and further the applicant Axis Bank is already participating in the meeting of the Committee of Creditors (COC) as a regular invitee. Hence, even assuming so the Axis Bank can be treated as a financial creditor, such position is not going to affect the view of the majority of the financial creditor or a conscience arrived at in the COC for the purpose of finalization of resolution plan. Hence, considering the above stated peculiar factual position of the case and keeping in mind the time frame to formulate resolution plan as per the theme and purport of the I & B Code because the Time is Essence of the Code. We feel appropriate to issue such direction to the RP as well as to the COC to treat the Axis Bank as a financial creditor for the purpose of the meetings of COC and to allow to participate in and to contribute to the decision to be taken on finalization of the resolution plan. However, our such direction/observation is without prejudice to the contention and objection raised by the either parties on the definition and criteria to treat a corporate a guarantor as a financial creditor under Section 5(8)(h) read with

other relevant provision of the Code specifically the Section 31. Because, the decision taken by this Court by approving the resolution plan or otherwise shall have a binding effect on the concern parties that includes the corporate debtor, its employee, members, creditors, guarantors and other stakeholders involved in the resolution plan. Since, the judicial precedent and court of law is still in process of being developed by the Hon'ble Apex Court and Hon'ble High Courts. We keep the issue open on interpretation of definition of financial creditor that may be ruled in some other appropriate case.

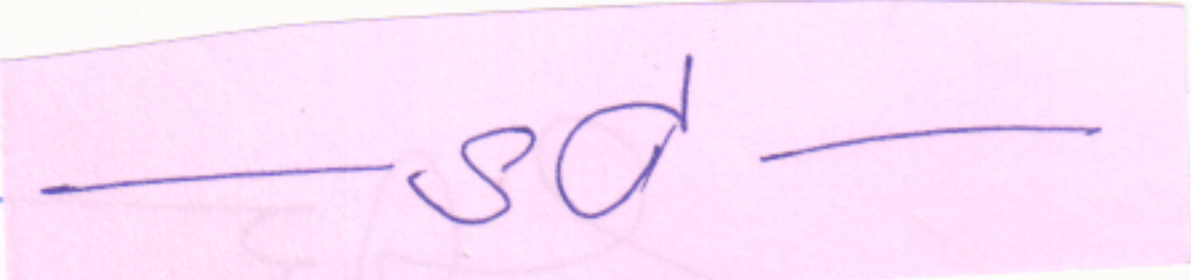
With the above stated observation the present application no.73/2017 is partly allowed and accordingly disposed of. However, our order not to be treated as a precedent for future reference to other cases as we made such observation is based on peculiar facts & circumstances of the present case and in order to avoid in consistency of the opinion or decision taken by the COCs/RP which fall within the jurisdiction of the Bench.

No order as to cost.

Thus, CA No.73/2017 stands partly allowed and finally disposed of.

Dated:27.10.2017

Typed by:
Kavya Prakash Srivastava
(Stenographer)


H.P. Chaturvedi, Member (Judicial)