

National Company Law Tribunal

Allahabad Bench

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

ATTENDANCE-CUM-ORDER SHEET OF THE HEARING OF ALLAHABAD BENCH OF THE NATIONAL COMPANY LAW TRIBUNAL ON 27.11.2017

NAME OF THE COMPANY: JEKPL Ltd

SECTION OF THE COMPANIES ACT/I & B CODE: 60(S) of I & B Code of 2016

<u>Sl. NO.</u>	<u>Name</u>	<u>Designation</u>	<u>Representation</u>	<u>Signature</u>
1.	ANIL KUMAR	PCS	for RPA	Anil K.
2.	Ms. Gunjan Jadwani Adv.		JEKPL For Applicant - EXIM Bank	Gunjan adubani

CA No.159/2017

The present case is fixed for pronouncement of order in CA NO.159/2017 (in CP No.24/ALD/2017) and the order in detail is recorded separately. The operative portion of the order reads as under.

Without going into the details of controversy involved in respect of financial debts and of Financial Creditor in the present matter and on the claim made by and status of the present applicant, this Court feels appropriate to be bound by the proposition as already laid down by the Hon'ble Principal Bench NCLT, New Delhi in the matter of Axis Bank Vs. Edu Smart Pvt. Ltd. [CP No.(IB)102(PB)/2017] read with another decision of the Division Bench of NCLT Kolkata in the matter of Bank of Baroda vs. Benani Cement Ltd. [CP No.(IB)/359/KB/2017], hence, we feel that the claim of the present applicant cannot be deemed to be lying with, or found due and payable against the Corporate Debtor Company as on 17th March, 2017 when this Court has declared a moratorium under Section 14 of the I & B Code in respect of Corporate Debtor Company. Because the applicant Bank admittedly itself invoked its Counter Corporate Guarantee against the Corporate Debtor Company only on 30th March, 2017. Thus, it is having no legal effect nor can be validly enforceable till the moratorium period of the Corporate Debtor Company is over.

By considering the above stated Legal Proposition, the status of the present applicant cannot be categorized as a Financial Creditor in the Committee of

Creditors. Therefore, we see no infirmity in such impugned action/decision of the RP dated 04.08.2017 which is communicated through e-mail by rejecting the claim of applicant as Financial Creditor.

Further, in the light of the Principal Bench's decision in the matter of *Vertex Chemicals and Mahaan Proteins Ltd. in CA No.283(PB)/2017 in CP No.(IB)103/2017* dated 30.08.2017, wherein it has been held that such subject to decide the status of a particular claimant/class of creditor as Financial Creditor or otherwise falls within the domain of the RP for taking appropriate decision thereon. Further, we would reiterate this Bench's earlier order dated 22.08.2017 in this matter on an application of the *Axis Bank* by directing to the concern applicant (e.g. Axis Bank) to agitate its claim and to agitate its issue to be treated as Financial Creditor before the RP for reconsideration and to take an appropriate decision in accordance with law. Hence, we are of the considered view that RP possess necessary jurisdiction to consider such claim of a particular class of creditors and further to update or revise the same in accordance with law. Hence, there is no legal infirmity in the impugned order/decision dated 04.08.2017 as passed by the RP.

It is also matter of record that during the course of hearing and in order to provide substantial justice to the party concern by following the principle of natural justice, which is equally applicable to the present nature of proceedings which is a quasi-legal proceeding, in the light of the decision of the **Hon'ble Supreme Court in the matter of *Mohinder Singh Gill Vs. Chief Election Commissioner and others Reported in 1978 (1) SSC 405***, this Court earlier referred back the issue to the RP for reconsideration of his decisions in consultation with Committee of Creditors and for taking a conscious decision on impugned action by affording an opportunity to the present applicant for hearing and for expressing its views. Till then the impugned order dated 04.08.2017 as being interim measure was kept in abeyance. It is now a matter of record that the RP in follow up of the direction of this Court dated 27.10.2017 duly convened a meeting of the COC and having discussed the issue in the COC took a fresh decision by retreating its earlier stand.

Since, we feel that in the present matter the principle of natural justice appears to have been followed, hence, we see no illegality in the impugned action/decision as taken by the RP to exclude the applicant as a Financial Creditor from the COC.

Consequently, our earlier order dated 27.10.2017 for keeping the impugned order in abeyance is hereby recalled by restoring the same (e.g. order dated

04.08.2017). Notwithstanding the above, we affirm the impugned order/decision of the RP with such direction that the present applicant shall be allowed to participate as permanent invitee in the COC, (as the applicant was earlier being allowed to participate in the meetings of Joint Lender's Forum), but without having voting rights for the purpose of CIRP.

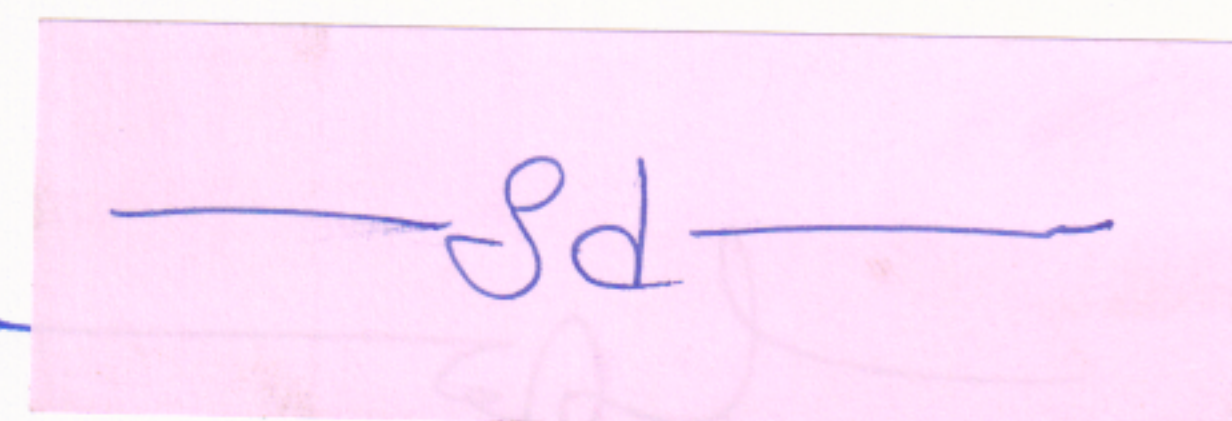
Such direction is being issued considering the peculiar circumstances of the present case of the applicant that in an identical matter, the application being treated as a Financial Creditor and Member of the Committee of Creditors by the concern RP/COC, almost on the basis of similar terms & conditions of guarantee executed by another Corporate Debtor Company (M/s JODPL in CP No.25/ALD/2017), which also come within the territorial jurisdiction of this Bench. Since, this Court in its normal course is not expected to substitute its view against a commercial wisdom of a statutory body and to consider the paramount interest of a Corporate Debtor Company. Hence, in order to avoid inconsistency of practice in this Bench, such directions are being issued.

With the aforesaid observation, the present application is partly allowed and stands disposed of.

No order as to cost.

Dated:27.11.2017

Typed by:
Md. Zaid
(Stenographer)



H.P. Chaturvedi,
Member (Judicial)