

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 33 of 2018

IN THE MATTER OF:

Hindustan Oil Exploration Co. Ltd.

...Appellant

Versus

JEKPL Pvt. Ltd. & Anr.

...Respondents

Present:

For Appellant : **Mr. Rana Mukherjee, Senior Advocate assisted by
Mr. Krishna Kumar, Mr. K. S. Mahadevan, Ms.
Sreoshi Chatterjee, Mr. Sunil Mathew, Ms. Sabah
Iqbal Siddiqui, Ms. Approva Vijh and Ms. Daisy
Hannah, Advocates**

For 2nd Respondent: **Mr. Dheeraj Nair and Mr. Kumar Kislay, Advocates**

O R D E R

28.01.2019 The appellant – ‘*Hindustan Oil Exploration Company Ltd.*’ ‘Resolution Applicant’ has challenged the order dated 15th December, 2017 passed by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench whereby and whereunder while disposing of the application filed by the ‘Resolution Professional’ for approval of the ‘resolution plan’, the ‘resolution plan’ submitted by ‘*M/s. Atyant Capital India Fund I*’ was approved.

2. Learned counsel appearing on behalf of the appellant brought to our notice that the aforesaid impugned order dated 15th December, 2017 passed by the Adjudicating Authority was challenged by ‘*Export Import Bank of India & other connected appeals*’ in ‘*Company Appeal (AT) (Insolvency) No. 304 of 2017 etc.*’ and the impugned order has been set aside. In the said judgment while dealing

with the matter, this Appellate Tribunal observed that the claim of one of the 'resolution applicant' who is 'Hindustan Oil Exploration Company Limited' has been wrongly not considered and that is one of the ground taken to set aside the order, which is as quoted below:

“60. So far as order dated 15.12.2017 passed in CA No. 223/2017 in CP No.24/ALD/2017 having been passed in violation of the order passed by this Appellate Tribunal on 08.12.2017 and resolution plan having been approved by the Committee of Creditors which was not competent in absence of 'Export Import Bank of India', and taking into consideration that the claim of one of the Resolution Applicant viz. Hindustan Oil Exploration Company Limited has been wrongly not considered, the judgment dated 15.12.2017 is also set aside.”

3. Earlier when the matter was taken up, the learned counsel for the appellant relied upon the judgment aforesaid.

4. Today, it has been brought to our notice that the decision aforesaid in 'Export Import Bank of India & other connected appeals' in 'Company Appeal (AT) (Insolvency) No. 304 of 2017 etc.' passed on 14th August, 2018 was challenged before the Hon'ble Supreme Court in Civil Appeal Nos. 9090-9091/2018. The said appeal has been dismissed by the Hon'ble Supreme Court by its order dated

23rd January, 2019 and thereby the observation made at paragraph 60 in *'Export Import Bank of India & other connected appeals (Supra)'* has been affirmed.

5. Learned counsel appearing on behalf of 2nd Respondent - *'M/s. Atyant Capital India Fund I'* submits that subsequently the appellant has withdrawn the 'resolution plan' prior to the impugned order dated 14th August, 2018 but such question is no more required to be determined in this appeal as the 'resolution plan' submitted under Section 30(2) is required to be considered by the 'Committee of Creditors' in terms of the directions in paragraph 63 of *'Export Import Bank of India (Supra)'* as quoted below:

“63. *Having held that the 'Export Import Bank of India' is 'Financial Creditor' in relation to 'JEKPL Pvt. Ltd.' (Corporate Debtor) and 'Axis Bank Limited' is 'Financial Creditor' in relation to 'Edu Smart Services Pvt. Ltd.' (Corporate Debtor), we hold and direct respective 'Resolution Professionals' and 'Adjudicating Authorities' to treat the Appellant Banks as members of their respective Committee of Creditors, who in their turn are directed to hold meeting of Committee of Creditors in accordance with law and reconsider/consider the Resolution Plan(s) submitted in each Corporate Insolvency Resolution Process which are in accordance with Section 30(2) of the I&B Code.*”

6. For the reasons aforesaid, no specific direction is required to be given and the impugned order dated 15th December, 2017 already stands quashed and the appeal stands disposed of with the directions as given in '*Export Import Bank of India (Supra)*' .

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

/ns/uk