

**NATIONAL COMPANY LAW APPELLATE TRIBUNAL**  
**NEW DELHI**

**Company Appeal (AT) (Insolvency) No. 410 of 2020**  
**Company Appeal (AT) (Insolvency) No. 411 of 2020**

**IN THE MATTER OF:**

**Geopetrol International Inc.**

**...Appellant**

**Versus**

**JEKPL Pvt. Ltd. & Anr.**

**...Respondents**

**Present:**

**For Appellant :**

**Mr. Arun Kathpalia, Senior Advocate with  
Mr. Ravi Raghunath, Ms. Aakash Lodha, Mr. Kauser  
Hussain and Ms. Diksha, Advocates**

**For Respondents :**

**Mr. Abhinav Vasisht, Senior Advocate with  
Mr. Saurav Panda and Ms. Charu, Advocates for 1<sup>st</sup>  
Respondent  
Mr. Arvind Nayar, Senior advocate with  
Mr. N.P.S. Chawla, Mr. Kaustubh Prakash, Ms.  
Manishat Karia, Mr. Adarsh Kumar, Ms. Upasana,  
Mr. Chandrashekar, Ms. Pragati Banka, Advocates  
for 2<sup>nd</sup> Respondent**

**O R D E R**

**13.03.2020** The 'corporate insolvency resolution process' against the 'JEKPL Private Limited' (Corporate Debtor) was initiated in the year 2017 but it could not proceed because of different petitions/applications preferred before the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench and followed by the appeal before this Appellate Tribunal (National Company Law Appellate Tribunal) in '*Company Appeal (AT) (Insolvency) No. 254 of 2017*' and this Appellate Tribunal directed the Adjudicating Authority to decide the question of eligibility of 'Exim Bank' uninfluenced by the opinion of the 'Resolution Professional' and the 'Committee of Creditors'.

2. During the pendency of the above appeal, the 'resolution plan' of 'Atyant Capital India Fund-I' was approved by the Adjudicating Authority on 15<sup>th</sup> December, 2017. However, on account of the pendency of the appeal of 'Exim Bank' before this Appellate Tribunal, the same could not be given effect as this Appellate Tribunal directed not to give effect to the 'resolution plan' approved by order dated 15<sup>th</sup> December, 2017 without prior permission of this Appellate Tribunal.

3. Finally, this Appellate Tribunal by judgment dated 14<sup>th</sup> August, 2018 disposed of the matter and made it clear that the 'Committee of Creditors' cannot go in for 'rebidding' on account of the resolution plans having already opened. The aforesaid issue was raised because one of the resolution applicant wanted for rebidding or enhancement of the plan. At that stage 'Hindustan Oil Exploration Company Limited (HOEC) was one of the 'resolution applicant' which was second to 'Atyant Capital India Fund-I', whose 'resolution plan' was earlier approved.

4. The judgment of this Appellate Tribunal dated 14<sup>th</sup> August, 2018 was challenged before the Hon'ble Supreme Court in '*Civil Appeal No. 9090-9091 of 2018*' titled '**Atyant Capital India Fund I vs. Resolution Professional, JEKPL Private Limited**' whereby the Hon'ble Supreme Court vide order dated 7<sup>th</sup> September, 2018 while issuing notice directed for maintenance of status quo as on the said date. Subsequently the said appeal was dismissed by order dated 23<sup>rd</sup> January, 2019.

5. The case was re-heard and by order dated 17<sup>th</sup> January, 2020 the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench again approved the resolution plan of the 'successful resolution applicant i.e.

‘Atyant Capital India Fund-1’ wherein facts of some other case were also recorded. However, it appears that the facts of other case had been recorded in the order dated 17<sup>th</sup> January, 2020 which was brought to the notice of the Adjudicating Authority (National Company Law Tribunal) by the ‘Resolution Professional’. The Adjudicating Authority thereafter by impugned order dated 4<sup>th</sup> February, 2020 made necessary corrections in the facts of the case with exclusion of the period and approval of the plan.

6. The Appellant – ‘Geopetrol Internation Inc.’ has challenged the aforesaid order dated 4<sup>th</sup> February, 2020 in these 2 appeals. Learned counsel appearing on behalf of the Appellant submits that Government of India, in exercise of the powers conferred under Section 5 and 6 of the ‘Oil Fields Act and in supersession of the ‘Petroleum Concession Rules, 1949 framed (PNG Rules) for regulating the grant of exploration licenses and mining leases in respect of petroleum and natural gas which belong to the Government of India and for conservation and development thereof. Rule 5 of the PNG Rules empowers the Central Government, while granting a license or lease, to prescribe such other additional terms, covenants and conditions by an agreement between the Central Government and the licensee or the lessee. It is submitted that Oil India Limited carried out exploration in the Kharsang Field pursuant to a Petroleum Exploration License granted under the Oil Fields (Regulation and Development) Act, 1948 and the Petroleum and Natural Gas Rules, 1959 which led to discovery of Petroleum in commercial quantities in the Kharsang field.

7. Since the Government of India desired that the petroleum resources in the Kharsang field should be exploited with utmost expedition in the overall interest of India, the Government had invited bids from persons interested in

development of the petroleum resources in the Kharsang field. Based on the representations and bids from the Appellant – ‘Geopetrol International Inc.’ and other companies including the ‘Corporate Debtor’ which had the necessary financial and technical resources, competence and experience, the Government of India granted a mining lease to Oil India Limited and the ‘Corporate Debtor’ (formerly known as ‘Enprol India Limited’).

8. Their production sharing contract, the initial participating interest is as follows:

|                              |     |
|------------------------------|-----|
| Oil India Limited            | 40% |
| Geopetrol International Inc. | 25% |
| Enpro (now JEKPL)            | 25% |
| Geoenpro Petroleum Limited   | 10% |

9. Learned counsel for the Appellant submits that the principal assets of the ‘Corporate Debtor’ is 25% participating interest in and any direct or indirect sale of the said participating interest which was strictly governed by the provisions of the Production Sharing Contract and the Joint Operating Agreement. The Appellant has first charge of the participating interest of the ‘Corporate Debtor’ which rank above the charge holding by any other secured creditor. Further according to the Appellant pursuant to Article 7.4 of the Production Sharing Agreement, the Appellant and the Corporate Debtor, Oil India Limited and Geoenrpo also executed a joint operating agreement dated 16<sup>th</sup> June, 1995 to define their respective rights, interest and obligations for the proper regulation of the Petroleum Operations pursuant to the contract. Therefore, according to the Appellant, the appellant has pre-emptive right under Article 12.3 of the Agreement. However, we are not inclined to consider the issue as raised in this appeal for the reasons mentioned below:

10. During the ‘corporate insolvency resolution process’ against ‘JEKPL Private Ltd.’ (earlier known as ‘Enpro India Limited’) the Appellant did not file any claim as ‘operational creditor’ or ‘financial creditor’. Appellant does not come within the meaning of ‘creditor’ as defined under Section 3(10) of the ‘I&B Code’. The Appellant is neither ‘operational creditor’ nor ‘financial creditor’ or ‘secured creditor’ or ‘unsecured creditor’ or a ‘decree-holder’. Therefore, in the present case, the Appellant’s claim is not a security interest or any other right as ‘operational creditor’ or ‘financial creditor’ and the appeal can be filed against approval of a plan by any aggrieved person on any ground, mentioned in sub-section (3) of Section 61 of the ‘I&B Code, which reads as follows:

*61 (3) An appeal against an order approving a resolution plan under section 31 may be filed on the following grounds, namely:—*

- (i) the approved resolution plan is in contravention of the provisions of any law for the time being in force;*
- (ii) there has been material irregularity in exercise of the powers by the resolution professional during the corporate insolvency resolution period;*
- (iii) the debts owed to operational creditors of the corporate debtor have not been provided for in the resolution plan in the manner specified by the Board;*
- (iv) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or*
- (v) the resolution plan does not comply with any other criteria specified by the Board.*

11. There is nothing on record to show that the approved resolution plan is in contravention of the provisions of any law for the time being in force or there has been any material irregularity in exercise of the powers by 'Resolution Professional' (i) during the corporate insolvency resolution period; it is not the case of the Appellant that (ii) the 'debt' owed to the operational creditors of the corporate debtor have not been provided in the resolution plan in the manner specified by the Board; or (iii) the insolvency resolution process costs have not been provided for repayment in priority to all other debts; or (iv) resolution plan does not comply with the criteria specified by the Board. As none of the criteria fulfils in this appeal, we hold that Section 61(3) of the 'I&B Code' is not attracted.

For this reason, we find the appeal bereft of merit. Both the appeals are accordingly dismissed.

[Justice S.J. Mukhopadhaya]  
Chairperson

[ Justice Bansi Lal Bhat ]  
Member (Judicial)

[ Alok Srivastava ]  
Member (Technical)

/ns/gc/