

NATIONAL COMPANY LAW APPELLATE TRIBUNAL
NEW DELHI

Company Appeal (AT) (Insolvency) No. 254 of 2017

IN THE MATTER OF :

Export-Import Bank of India

... Appellant

Versus

**Resolution Professional
JEKPL Private Limited**

... Respondent

**Present: For Appellant : Shri Rajeev Mehra, Senior Advocate with
Shri Ashish Rana and Shri Surekh Baxy,
Advocates**

**For Resolution Professional : Dr. U.K. Chaudhary, Senior
Advocate with Shri Himanshu Vij, Ms.
Manisha Shri Sarvesh Kashyap, Advocate**

O R D E R

06.11.2017 In the present case, on hearing the counsel for the parties, we are of the opinion that it is not the stage for deciding the issues raised in this appeal and leave the question open for decision by the Adjudicating Authority (National Company Law Tribunal), Allahabad Bench (hereinafter referred to as 'Adjudicating Authority') for the reasons mentioned below.

A 'Corporate Insolvency Resolution Process' has been initiated under Section 10 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as 'I&B Code') against the 'Corporate Debtor'- JEKPL Private Limited at the instance of the 'Corporate Applicant'.

After initiation of the 'Corporate Insolvency Resolution Process', the Resolution Professional objected the applicant-Export Import Bank of India ('Exim Bank' for short). While the appellant requested to allow it to continue as a member in the Committee of Creditors, in view of such objection, the appellant-Exim Bank preferred Company Appeal (AT) (Insolvency) No. 188 of 2017, wherein the following order as passed by this Appellate Tribunal on 18th September, 2017 :

"3. Having heard learned counsel for the 'Corporate Debtor' and Mr. Rajeev Mehra, Senior Advocate appearing on behalf of the respondent, while we are of the view that appeal at the instance of 'Corporate Debtor' is not maintainable, but make it clear that the Resolution Professional has right to oppose induction of a third party as a creditor. However, in view of the fact that the Exim Bank has been provisionally permitted to continue as a member of the Committee of Creditors and final order is yet to be passed by the Adjudicating Authority, Allahabad Bench and time has been granted to the contesting party to file rejoinder, we are not expressing any view at this stage. After hearing the parties, if the Adjudicating Authority allows Exim Bank to continue as Member of the Committee of Creditors, it will be open to the

Resolution professional to challenge the final order before this Appellate Tribunal.

4. *It is expected that the Adjudicating Authority will decide the question of continuity of 'Exim Bank' as a member of the Committee of Creditors either way and will not continue with interim arrangement for days together. An early decision be taken on production of copy of this order."*

After the matter was remitted to the Adjudicating Authority, the issue was not decided by the Adjudicating Authority in terms with the order of the Appellate Tribunal and the Adjudicating Authority remitted the matter to the Resolution Professional and Committee of Creditors to decide the application of the appellant, which was supposed to be decided by the Adjudicating Authority. For the said reason, the appellant-Exim Bank has challenged the order dated 27th October, 2017 whereby the Resolution Professional and Committee of Creditors have been asked to take collective decision.

Having heard Shri Rajeev Mehra, learned senior counsel for the appellant and Dr. U.K. Chaudhary, learned senior counsel appearing on behalf of the Resolution Professional, we are of the view that the final decision in terms of the order of this Appellate Tribunal dated 18th September, 2017 is to be taken by the Adjudicating Authority, which cannot abdicate its power by asking other authority to decide the

question. However, it is always open to the Adjudicating Authority to take opinion from the Resolution Professional or the Committee of Creditors.

For the reasons aforesaid, while we observe that the report, if any, filed by the Resolution Professional or the Committee of Creditors is not binding on the Adjudicating Authority or the appellant or any other creditor, direct the Adjudicating Authority to decide the question as ordered by this Appellate Tribunal on 18th September, 2017 about the continuity of the Exim Bank as a member of the Committee of Creditors, immediately, preferably within three weeks, uninfluenced by the opinion if any submitted by the Resolution Professional and the Committee of Creditors.

We leave all the questions for determination by the Adjudicating Authority at the first instance and in case of any adverse decision, it will be open to the aggrieved person to move before this Appellate Tribunal.

The appeal stands disposed of with the aforesaid observations and directions. However, in the facts and circumstances of the case, there shall be no order as to costs.

[Justice S.J. Mukhopadhaya]
Chairperson

[Justice Bansi Lal Bhat]
Member (Judicial)

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