IN THE NATIONAL COMPANY LAW TRIBUNAL AT ALLAHAHAD BENCH

CA NO.118/2018

(Application under Section 60(5) of the Insolvency & Bankruptcy Code, 2016)

IN

COMPANY PETITION NO.(IB)77/ALD/2017

(Application under Section 7 of the Insolvency & Bankruptcy Code, 2016)

IN THE MATTER OF

CENTRAL BANK OF INDIA

.... APPLICANT

VERSUS

MR. ANUJ JAIN,
Resolution Professional for Jaypee Infratech Limited.

.... RESPONDENT

AND

IN THE MATTER OF

IDBI BANK LIMITED.

.... FINANCIAL CREDITOR

VERSUS

JAYPEE INFRATECH LIMITED.

.... CORPORATE DEBTOR

JUDGMENT/ORDER DELIVERED ON 15.05.2018

CORAM	:	**SH. V.P SINGH, MEMBER (J)** **MS. SAROJ RAJWARE, MEMBER (T)**
For the applicant	:	**Ms. Gunjan Jadwani, Adv.**
For the Resolution Professional:		**Sh. Sudhanshu Batra, Sr. Adv. Along with** **Sh. Abhishek Anand, Advocate &** **Ms. Honey Satpal, Advocate.**
PER SE	:	**SH. V.P. SINGH, MEMBER (J)**

Sd

Sd

JUDGMENT/ORDER

1. The present application is being filed on behalf of the Applicant i.e. **CENTRAL BANK OF INDIA** through Mr. R. Radhakrishnan, who is duly authorized to institute and contest the present application in terms of the Power of Attorney dated 09.01.2017 executed in his favour by the Applicant Bank. A copy of the Power of Attorney dated 09.02.2017 is annexed with the application as **Annexure No.1.**

2. The brief facts as stated in the application filed by applicant are as under:

   I. The Resolution Professional, pursuant to its appointment vide the order dated 09.08.2017, issued a public advertisements dated 12.08.2017 in Time of India, New Delhi edition and Navbharat Times, New Delhi Edition under Section 15 of the code and invited the creditors of the Corporate Debtor to submit their claims on or before 24.08.2017.

   II. In response to the said public announcement, Applicant submitted its proof of claim against the Corporate Debtor before the Resolution Professional for a total amount of ***Rs.30,22,15,996.05*** as on 9th August 2017 vide its **Form-C** dated August 18, 2017 in relation to the financial assistance granted to the Corporate Debtor by the Applicant.

   III. The Resolution Professional, Vide its letter dated 28.11.2017, prima facie rejected the claim of the Applicant under the JAL Form-C *inter alia* erroneously holding that the mortgage created in favour of the ***Applicant do not qualify as a 'Financial Debt' within the meaning of sub-Section 8 of Section 5 of the Code and therefore, the Applicant cannot claim itself to be a 'Financial Creditor'.*** It was further stated by the Resolution Professional in his aforementioned letter dated 28.11.2017 that since no credit facilities have been sanctioned by the Applicant to the Corporate Debtor but only to its

-Sd-

-Sd-

holding company, JAL, therefore no financial debt arises in favour of the Applicant against the Corporate Debtor. By way of the said letter dated 28.11.2017, the Resolution Professional offered an opportunity to the Applicant to make any submission or submit any additional document or material to substantiate its claim within 15 days of the 28.11.2017 letter. A copy of the letter dated 28.11.2017 issued by the Resolution Professional to the Applicant is annexed with the application as **Annexure No.3.**

IV. In response to the Resolution Professional's letter dated 28.11.2017, the Applicant vide its letter date 08.12.2017 clarified *inter alia* that the Corporate Debtor has mortgage its property to secure the repayment of loans granted by the Applicant to JAL and to ensure discharge by JAL of its obligations towards the Applicant under the JAL Facilities (the "**Mortgaged Debt**') and as such the Corporate Debtor is a surety/guarantor to the Applicant with respect to such Mortgaged Debt. It was also brought to the attention of the Resolution Professional that in terms of the Mortgages, the Corporate Debtor has also undertaken to indemnify and keep the Applicant indemnified against all losses, costs, claims and expenses which the Applicant or its security trustee may incur. A copy of the letter dated 08.12.2017 is annexed with the application as Annexure **No.4.** The Applicant also clarified in this letter that by virtue of creating a mortgage, the mortgage has bound himself to pay the mortgage money i.e. the Mortgage Debt.

V. It is pertinent to mention that till date the Applicant has not receive any further communication/letter from the Resolution Professional. However, it is submitted that the claim of the lead Consortium Bank has been rejected by the Resolution Professional on 16.12.2017 and claims of other similarly situated Consortium Banks, like Standard Chartered Bank and Axis Bank has been

-Sd-

rejected. It is submitted that the claim of the Applicant was based on the same footing as that of ICICI Bank, Standard Chartered Bank and Axis Bank and since their claim has been rejected, it is evident that the claim of the Applicant has also been rejected by the Resolution Professional that may be received in future.

3. In view of the facts as stated above applicant has filed this company application and has prayed that the directions may be issued against the resolution professional to accept the claim of the applicant and declare the applicant as a financial creditor of the corporate debtor under sec 5 (7) of the code.

4. We have heard the argument of the Ld. Counsels of the parties of the parties and perused the record. The applicant contends that it had extended various credit facilities in favour of the Jaiprakash Associates Ltd, which is the holding company of the Corporate Debtor. The corporate debtor had, in turn, created security in favour of the applicant by way of execution of various mortgage deeds and other related documents. It had secured the payment of these credit facilities which JAL has availed of from the applicant. Applicant contends that applicant 's claim against the Corporate Debtor amounts to Financial Debt within the meaning of sec 5 the (8) of the code . Applicant calim itself as A Financial Creditor of the Corporate Debtor within the meaning prescribed to such expression under sec 5 (7) there.

5. In company **Application Number 81/2018** the ICICI bank filed a similar application against the Resolution Professional which is rejected by a detailed order passed by this Tribunal. In that CA the ICICI bank was the applicant and had applied to a financial creditor of the corporate debtor. The ICICI bank was

-Sd-

-Sd-

also claiming to be a financial creditor by a mortgage created by Jaypee Infartech Ltd, the corporate debtor, in favour of applicant bank. In the same set of facts in case of ICICI bank we have decided that on the basis of execution of mortgage deed to create the security interest for the Holding Company Jaiprakash Associates Ltd, the applicant bank cannot be treated as a financial creditor of the corporate debtor, and the alleged debt can't be treated as a financial debt. The same reasoning applies in this case also.

6. The applicant has filed this company application seeking a declaration that by the execution of a mortgage in favour of the applicant bank to create security for the loan taken by the holding company Jaiprakash associates Ltd the applicant is a financial creditor and the debt is covered under the definition of financial debt. The facts of this case are similar to that of company application number 81 of 2018. We found no force in this application. Therefore, we reject this application. The reasons assigned for rejection of the application in Company Application Number 81 of 2018 will also be part of this order.

Sd

SAROJ RAJWARE,
MEMBER (T)

Sd

V.P. SINGH,
MEMBER (J)

Dated: 15.05.2018