

LEGAL UPDATES

NCLAT RATIFIED THE NCLT ORDER DIRECTING CLUBBING OF REAL ESTATE ALLOTTEES' INITIAL INSOLVENCY APPLICATIONS

Given that the contested order of the National Company Law Tribunal (NCLT) had legal flaws, National Company Law Appellate Tribunal (NCLAT) set aside the same, requiring that all Corporate Insolvency Resolution Proceedings CIRP initiation applications filed by allottees of the same project against the same Corporate Debtor (real estate developer) be heard jointly and instructing the Registry to club such applications together.

The Corporate Debtor argued that the contested order violated the instructions given by the Hon'ble Supreme Court in the Manish Kumar case, which determined that once the Legislature intended for the pending applications to be made compliant with the minimum threshold required under the IBC Amendment Act, 2020, the consequences for not doing so had to be provided. However, Hon'ble NCLT passed an order for clubbing such pending applications filed by the single allottee, thus failing to meet requirements.

The Hon'ble National Company Law Appellate Tribunal at Chennai noted that the 3rd Proviso to Section 7(1) of the Insolvency and Bankruptcy Code (IBC) stipulates that any pending applications that the adjudicating authority has not admitted must be modified to comply with the requirements of the 1st or 2nd proviso within 30 days of the commencement of the said Amendment Act; otherwise, the application will be considered to have been retracted before its admission;

Additionally, after concluding that the contested decision does not contain any directives for the Respondents and other alleged allottees to revise their applications per the modified IBC rules, the Appellate Tribunal noted that *"Without there being a direction issued to the concerned financial creditor/allottees to amend their applications as per Section 7 of the Code, the directions issued by the Adjudicating Authority to its Registry as in the impugned order to club such applications together and place before it for hearing cannot be*

countenanced in the eyes of the law, especially in the teeth of the Hon'ble Supreme Court of India Judgement in the case of Manish Kumar."

In light of this, Hon'ble NCLAT admitted the Corporate Debtor's appeal and remanded the case to the adjudicating authority for de novo orders on the maintainability of clubbing all matters in defiance of the aforementioned Hon'ble SC ruling and compliance with the law.