

LEGAL UPDATES

NCLAT: COC IS AUTHORIZED TO APPROVE THE LIQUIDATION OF A CORPORATE DEBTOR AT ANY STAGE BY USING ITS "COMMERCIAL-WISDOM"

The Hon'ble National Company Law Appellate Tribunal (NCLAT) dismissed the appeals that challenged the NCLT order. The impugned order had rejected the Appellants' request for direction against RP to accept the resolution plan they had proposed and present it to the Committee of Creditors (CoC) alongside the NCLT order directing the liquidation of the Corporate Debtor, among other reasons, finding that CoC rejected the EOI submitted by the Appellants

The explanation attached to Section 33(2) of the IBC was heavily relied upon by the Tribunal. The provision states that at any time after its formation and before the approval of the resolution, the CoC is empowered to resolve to liquidate the Corporate Debtor.

It further took into account that the observation of the CoC members' that Appellants did not meet the eligibility requirements and held that the CoC was fully empowered to take such a decision under its commercial wisdom.

Referring to the Hon'ble Supreme Court's decision in *Arcelor Mittal India*, the Tribunal noted that the RP must ensure the resolution plan submitted by each applicant is complete in every way before submitting it to the CoC and is not required to make any decisions other than to make sure the resolution plan is complete in every way before it is presented to the CoC, who may or may not approve it.

Additionally, NCLAT took note of the fact that the RP claimed in its testimony before NCLT that the Appellants' group entities owed the Corporate Debtor Rs. 21 crores and had asked the court to order the debtors to make the payment, as well as the fact that NCLT stated in its order that the consortium's plan will be taken into consideration if the consortium settles its debt to the Corporate Debtor;

In conclusion, the NCLAT rejected the Appellants' claim suggesting that the CoC's decision to liquidate the Corporate Debtor before the CIRP period had ended and without taking into account their resolution plan violated IBC. *"Since the COC was authorised to exercise its power under the explanation attached to Sub-section (2) of Section 33 of the I&B Code, its action cannot be questioned."*, and ruled that both appeals lack merit and cannot be allowed.