

LEGAL UPDATES

NCLAT: FINANCIAL CREDITOR'S ASSIGNEE ELIGIBLE TO SEEK CIRP WITHDRAWAL BEFORE COC CONSTITUTION

The Hon'ble National Company Law Appellate Tribunal overturned NCLT's decision to deny the Financial Creditor's assignee's (Appellant's) request to withdraw the Corporate Debtor's CIRP and lift the suspension of CoC's operation and instructed NCLT to reinstate the request and issue new orders based on the application's merits.

The Appellant had contended that RP assumed the role of an Adjudicating Authority and rejected its request to present the information about the withdrawal that was available to him to the Adjudicating Authority and that NCLT erred in concluding that RP had acted fairly and taken action per the requirements of IBC even though RP had broken the law's mandate.

According to the Appellant's argument that stated the RP purposefully failed to submit the CIRP withdrawal application to the Adjudicating Authority as required by the CIRP Regulations because it was submitted before the formation of the CoC and instead created the CoC, the Appellate Tribunal found that the RP, by creating the CoC after the CIRP withdrawal application was submitted *"...had acted not in tune with the intention of the Amendment dated 25.07.2019 brought in the CIRP Regulations, 2016."*

The NCLAT additionally noted that the Appellant was qualified to request withdrawal under Section 12A of the IBC and Regulation 30A of the CIRP Regulations if it were the Financial Creditor and noted that by establishing CoC, has foiled an attempt by the Appellant to withdraw before CoC's formation per Regulation 30A(1)(a).

Finally, concluding that *"...keeping in mind a pivotal fact that the Appellant/Assignee of 'JSBL', is an 'Applicant' for 'CIRP Regulations' and also because the 'person' to whom debt has been legally assigned or transferred is also a 'Financial Creditor' as per Section 5(7) of the I B Code,*

2016, there does not impede Law for it to reap the benefit of amendment to Regulation 30A(1) of CIRP Regulations...”.

The NCLAT held that the opposing conclusions reached by NCLT in the challenged order are not supported by the law and grants the appeal.