

## LEGAL UPDATES

### **NCLAT: CIRP UNDER SEC.7 SHALL OVERRIDE THE MORTGAGE DEED AS PER SEC.238 OF THE CODE**

NCLAT bench headed by Justice Ashok Bhusan, Justice J.K. Jain and Dr Alok Srivastava, rejects the appeal of the corporate debtor's suspended director ("Appellant") against the NCLT order whereby the tribunal admitted a claim of the financial creditor ("Respondent") for CIRP under sec.7 of IBC/Code against the corporate debtor on the ground that there was a provision for "covenant for re-conveyance" and by the mortgage, properties were already under mortgagee covenant, and hence no default. The appellant contested/contended that the respondent should not have filed a sec.7 claim as the amount in default was secured by virtue of agreement and mortgaged deed as the mortgaged asset's effective value was considerably higher than the amount due. Thus, the appellant claimed that the respondents ought to have realised their amount from the secured asset as per the terms of the agreement. Furthermore, the appellant contended that NCLT and NCLAT were bound by the pronouncement in the Beacon trusteeship case. However, to this NCLAT clarified that only the jurisdictional tribunal's judgement is binding upon NCLT and pronouncement of NCLT in different jurisdictions merely holds persuasive value. The appellate tribunal while analysing the judgements cited opined that the said judgements neglected to take into account the prevailing effect of Sec. 238 of the Code on any clause of any mortgaged deed. Lastly, the tribunal also pointed out pronouncement in Beacon Trusteeship is in disagreement with sec.7 read with sec. 238 of IBC and hence the respondent is well within its right to file a sec.7 application for default. Hence, NCLAT rejected the appeal and remarked that a mortgage deed cannot impact the sec.7 application and mortgaged deed is bound to be superseded by sec. 7 under sec.238 of IBC/Code.