

LEGAL UPDATES

NCLT: CIRP CAN NOT BE INITIATED BASIS OF A FOREIGN ARBITRAL AWARD PRESUMING DEBT

In an appeal decided by Justice A.B. Singh and Ms Shreesha Merla, NCLAT set aside NCLT's order rejecting Ericsson India Pvt. Ltd. and Ericsson India Global Services Pvt. Ltd. ("Appellants")'s plea to do away with Shareholders' and creditors' meetings despite the merger of Appellants, i.e., parent company and its 100% owned subsidiary ("WOD"). The Appellants claimed that NCLAT has previously allowed the said do away for WOD and parent co. merger in several cases where the transferor and transferee's net worth remains positive and liability to all unsecured creditors is duly discharged without causing any prejudice to the said creditors. Further, the appellants submitted that all compliance of disclosure under affidavit as specified under Rule 6(3) of Companies Rules, 2016 ("Rules") was duly complied with. The appellate tribunal took note of various pronouncements, wherein NCLAT, due to the merging of the parent company and WOD having no impact on their liability to unsecured creditors, has dispensed with Shareholders' and creditors' meetings. NCLAT noted that the merger was of WOD into its holding co. wherein none of the shares would be distributed as consideration for the transaction. NCLAT further noted that such a merger shall not impact the Shareholder's rights in Appellants and the effective value of the appellants shall remain positive. Thus, NCLAT applied the rationale of various pronouncements in the present instance. NCLAT stated that sec 230(2)(a) of the Act read with Rule 6 of Rules, prescribes the appellants that every inquiry or process that is "material" and related to a company is required to be revealed by law and such material facts shall include investigation under process against the company. The Appellate Tribunal duly confirmed that the appellants' affidavit discloses duly audited financial statements align with the investigations and enquiries which are material to the scheme's execution and that such proceedings would not prejudicially affect anyone by the reason of the scheme. Thus, NCLAT allowed the appeal as the affidavit was in consonance with sec 230(2)(a) of the Act read with Rule 6 of Rules.