

LEGAL UPDATES

NCLAT: NCLAT ASKED COC TO REEVALUATE THE APPROVED RESOLUTION PLAN AND HELD RESOLUTION APPLICANT CAN NOT EVADE THE OUTCOME OF TRANSACTIONS

The NCLAT bench composed of Justice M. Venugopal, Dr A.K. Mishra and Mr V. P. Singh decide an appeal against the NCLT order approving the resolution plan (“RP”) as presented by Piramal /Successful Resolution Applicant (“SRA”) and DHFL/Corporate Debtor. The question before the Appellate Tribunal was that if the possibility of future recoveries from avoidance applications being maintained by the SRA would be unlawful or if the same is within the powers of the CoC, as if the same suffers from illegality it cannot sustain even if it is within the ambit or domain of CoC. The Appellate Tribunal while considering the Respondent's claim that Sec.66 of IBC does not violate the rights of the resolution applicant, pronounced that, although, this code does not put any express embargo on the resolution applicant to avail benefits of avoidance, however, the lack of express provision shall not give rise to any presumption of any express authority in favour of resolution applicant to the avail the benefit of avoidance. NCLAT held that recoveries from avoidance applications as per sec.66 of IBC will be apportioned to Piramal and directed DHFL to reconsider the approved RP by CoC. NCLAT further pronounced that, if Piramal were to avail the profiteering of the outcome of avoidance applications, that shall result in unjust enrichment of Respondent No. 2/RA at the expense of all the creditors, hence the same is vitiated by illegalities and material irregularities, which could not have been cured on the pretext of the commercial wisdom of CoC. NCLAT ruled that the SRA cannot be given the benefit of the result of avoidance transaction and it must be given to creditors of the company, therefore, it is imperative to reconsider the resolution plan. Finally, the bench stated that NCLT's order was not in consonance with the recommendations of the Insolvency Law Committee and had incorrectly dismissed the Appellant's application basis the commercial acumen and knowledge of CoC. Thus, NCLAT allowed the appeal, sets aside the earlier decision and upheld that while the proposition that the CoC's commercial wisdom supremacy is not disputed in concerned commercial aspects of the plan, the said principle does not apply to the present facts where the issue of illegality has been raised.