

LEGAL UPDATES

NCLAT: NCLAT UPHELD THE ORDER OF NCLT WHICH REJECTED THE APPLICATION TO PARTICIPATE IN THE CoC OF 'SUPERSEDED DIRECTORS' OF DHFL

The New Delhi NCLAT bench presided by Justice M. Venugopal, Learned V. P. Singh and Dr Ashok Kumar Mishra upheld the order of NCLT which rejected the application to participate in CoC of 'superseded directors' ('Appellants') on the Board of Directors ('BoD') of DHFL. The bench ruled that a promoter cannot intervene in the affairs of the company who have been removed from the BoD. The appellate tribunal further observed that the promoters of DHFL who were on the erstwhile BoD succeeded as they had vacated their office in lieu of the powers exercised by the RBI as per sec.45-IE of the RBI Act. NCLAT observed that the question of participation of BoD in the CoC meetings does not come up as they have already vacated their offices. Further, the Appellants have tried to equalize the suppression of BoD with the termination of BoD as per sec.17(1)(b) of IBC on the ground that the 'legal effect' of both are the same. The Adjudicatory Tribunal held that 'suspension' and 'supersession' are completely varied concepts in law and that the 'supersession' of BoD has an element of finality annexed with it. However, with regard to the Appellants, as RBI has decided to enact as per the Code as an Applicant, the Administrator cannot turn to the RBI act in order to disallow the Appellant from participating in the CoC meetings and get relevant and important documents. The Appellate Tribunal held that a director/promoter who was removed cannot intervene in the affairs of the company however, a director who was suspended always remains a part of the Board thereby, a director who has vacated their office as per the RBI Act cannot claim equality with the suspended director as per IBC. The NCLAT ruled on the Appellant's contentions regarding their disagreement on the impugned order wherein they were refused the copy of the resolution plan, the NCLAT highlights that the resolution plan contains confidentiality provisions which require all parties subject to the resolution process to maintain the confidentiality therein and thus concluded that, the resurrection and Resolution in the form of the effective implementation of the Resolution Plan for the corporate debtor would be compromised if such parties were given access to a copy of the Resolution Plan. Furthermore, the tribunal also held that the copy of the Resolution Plan, however, cannot be considered a secret document until the Adjudicating

Authority has approved it. Thus, upon final approval of the Resolution Plan, a certified copy of it may be issued in accordance with the Rules.