

## LEGAL UPDATES

### **NCLAT: RELATIONSHIP BETWEEN DHFL AND NHB IS NOT JUST A DEBTOR-CREDITOR RELATIONSHIP; NHB CAN NOT BE COMPARED TO OTHER FINANCIAL CREDITORS**

Appeals challenging NCLT's order were dismissed by NCLAT headed by Justice M.Venugopal, Mr V.P. Singh and Dr A.K.Mishra, which holds, inter alia, that any funds received by DHFL (Corporate debtor) for the purpose of repaying or realizing loans refinanced by National Housing Bank (the 'Respondent') and remaining outstanding will be treated as receipts 'in trust' for the NHB, in line with the provisions of Sec. 16B(1) of the NHB Act. Appellate Tribunal while observing that the impugned NCLT order is free from any legal infirmities, ruled that NHB clearly holds the funds with the corporate debtor, to the extent they pertain to the flag loans refinanced by the body in trust. The property is held in trust by DHFL, not by the company. Accordingly, Section 238 of the Code is not applicable for 3rd party assets. But NCLAT notes that this was a refinancing transaction, and the Corporate Debtor financed against a pool of tagged loans, and toward these tagged loans respondent had already passed on the consideration in the form of refinancing to the Corporate Debtor. Further, as per the clear mandate of Sec. 16 B(1) of the Act, upon realization of the loans, the Corporate Debtor is required to hold it in trust for the benefit of the refinancing institution (the Respondent). Thereby NCLAT rejected the contention by the Appellant (CoC) that NHB's statutorily assigned status does not give NHB any advantage over other financial creditors, according to the Tribunal, to equalize NHB with other financial creditors is a misplaced conclusion and must be avoided because it is classified as a special institution under the statute. Housing sector development is being supported by the NHB as an institution of development finance. In view of the larger objective behind setting up NHB, it cannot be equated with other Financial Creditors. As a result, the apex court held that NHB is a one-of-a-kind financial creditor with statutory rights. Finally, the NCLAT concludes that "...the relationship between the DHFL and NHB is not only that of a debtor and creditor. However, under Section 16B of the NHB Act, the NHB has special rights that are not in conflict with the express provisions of the Code."