

LEGAL UPDATES

NCLT: CREDITORS DIRECTED BY NCLT TO HANDOVER THE MORTGAGED PROPERTY OF CORPORATE DEBTOR FOR SETTLEMENT OF CLAIMS

The division bench of NCLT Kochi presided by Hon'ble Shyam Babu Gautam and Hon'ble Ashok Kumar Borah directed the Respondents to forward/handover the physical possession of the secured asset of Corporate Debtor to the Applicant so that the same can be utilized as the Liquidation Estate. The Hon'ble bench observed that it is imperative that the RP obtain ownership of the property in order to complete the procedures, as it is the RP's responsibility to sell the Corporate Debtor's liquidation assets in order to satisfy all claimants, including the Financial Creditors. Further, the Adjudicatory Tribunal pronounced that Respondent Bank has agreed to hand over the possession while Respondent 2 ("R2") has agreed to hand over the possession on a condition that its interests are not hampered. Further, the bench dismissed the R2's contentions that the instant application which prays for releasing of the property of personal guarantors defeats the scheme of IBC and violates its right to execute the security interest as per SARFAESI Act and other relevant provisions. The Adjudicating Authority observed that the actions of the Liquidator are being opposed by the Personal Guarantors and hence, the bench pronounced that they are not empowered/entitled to do so, as their properties have been leased out to the Debtor and the Debtor has been liquidated thereby stopping R 3 to 8 from getting any relief from the Tribunal, and that the properties cannot be treated of as those of the Debtor. Further, expressing their opinion the bench stated that personal guarantors cannot be treated as third parties as they were part and parcel of the Corporate Debtor. The Adjudicating Authority directed the Applicant to take over the physical possession of the property as per the prescribed procedures and regulations and further upheld that the action of the Applicant to proceed against the property by taking physical possession is rightly done in accordance with the rights that they were entitled to properties and also to take measures for completion of the liquidation process.