

LEGAL UPDATES

NCLT: KOCHI NCLT REJECTED THE APPLICATION WHICH SOUGHT DISMISSAL OF RP'S REPORT DIRECTING CIRP PROCEEDINGS TO BE INITIATED AGAINST THE PERSONAL GUARANTORS

The division bench of the Kochi NCLT presided by Hon'ble Shyam Babu Gautam and Shri. Ashok Kumar Borah set aside the application seeking dismissal of the RP report and suggesting admission of the application against the personal guarantors("Appellant") under sec.95(1) of IBC filed against the appellant with the motive to object to initiate the CIRP proceedings against them. The Hon'ble bench pronounced that an application under sec.95 of IBC/Code filed starting CIRP against the Personal Guarantor of Debtor before the NCLT is maintainable even in cases where applications for the initiation of CIRP concerning the Corporate Debtor are still pending before NCLT. Further, the bench noted that (i) the NCLT dismissed the order for initiating CIRP proceedings against the debtor providing time to reach a settlement with the creditor within a span of 6 months, and only in an event of default can the creditor proceed to initiate the CIRP proceedings against the debtor, (ii) As the creditor's debt is still due herein they have initiated an application under sec.7 of Code which is subjudice before the Tribunal. The Adjudicatory Tribunal pronounced that, although the debtor's guarantors could be in both applications for insolvency, however, as per SC's decisions, personal guarantors are distinguishable from other guarantors and hence, creditors may initiate processes against appellants. Finally, as per the report of the RP, he suggests the application under sec.95(1) of IBC be accepted against the Appellant. Thus, NCLT dismissed the application filed by the Appellant in consonance with the Hon'ble Apex Court's judgement in Lalit Kumar Jain wherein it was upheld the notification vide which provisions of the Code were made applicable to personal guarantors.