

LEGAL UPDATES

NCLAT: AFTER PAYING EMD, THE BIDDER CAN NOT MAKE CONDITIONAL BIDS OR RESCIND BIDS

In an appeal decided by the division bench of Justice L. N. Rao and Justice B.R. Gavai, the appellant questioned the NCLAT order ("impugned order") directing the Corporate Debtor's CIRP resume from the consideration stage. The SC quashed the impugned order holding that NCLAT made a grave error by interfering with the CoC's verdict. The division bench ruled that the IBC, 2016 ("the Code") has given the highest status to CoC's commercial wisdom for the timely disposal of resolution plans as prescribed by the Code. The court reiterated that NCLT or NCLAT should refrain from considering any other factor other than the factors prescribed under Sec. 30(2) or 61(3) of IBC/Code as decisions of CoC are collective business decisions which are reached after various meetings, deliberations and votings. Such decisions by CoC are non-justiciable subject to provisions under Sec. 30(2) or 61(3) of Code. The Apex Court noted that NCLAT and NCLT had erroneously set aside a settlement plan and withdrawal of CIRP and the NCLAT should have taken the CoC's decision while exercising its wisdom. Further, the highest court, while relying on its catena of judgements, noted that when more than 90% of creditors, after exercising their due wisdom allowed a settlement plan and subsequent withdrawal of CIRP, then NCLT or NCLAT cannot exercise their authority to adjudicate CoC's wisdom in an appeal. The court also underlined that the NCLAT and NCLT should not meddle with the legal process excessively. The division bench upheld the appeal and overturned the NCLAT and NCLT rulings.