

**Whether an Asset Reconstruction Company (ARC) is required prior approval of RBI for participating as a Resolution Co-Applicant under the IBC :**

**Sec. 238 of IBC Prevails over SARFAESI, Adjudicating Authority Erred in Rejecting Resolution Plan for Lacking RBI's Approval u/s 10(2) SARFAESI**

*Puissant Towers India Pvt. Ltd. Vs. Neueon Towers Limited and Ors., Comp App (AT) (CH) (Ins.) No. 181/2022, Dated the 12th June, 2023*

**Facts of the Case:**

In the corporate insolvency resolution process ("CIRP") of the corporate debtor (CD), the Adjudicating Authority ("AA") rejected the approval of the resolution plan submitted by the RP under section 31 after due approval of the Committee of Creditors with 98.70% majority. The AA while rejecting the resolution plan held that an asset reconstruction company (ARC) as a co-applicant along with successful resolution applicant (SRA) cannot submit resolution plan, without the prior approval of Reserve Bank of India (RBI) under Section 10(2) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (the SARFAESI Act). AA held that the resolution plan is a conditional resolution plan subject to the approval of RBI as a regulator for ARCs; and the resolution plan is not compliant in terms of section 30(2) of the Code.

**Observation and Analysis with the decision of NCLAT:**

In the appeal filed before the National Company Law Appellate Tribunal (NCLAT) against aforesaid order of the AA, the Appellate Tribunal held that section 238 of the Code will prevail over any of the provisions of the Act, if it is inconsistent with any of the provisions of the Code. It observed that AA ought not to have placed reliance on section 10(2) of the SARFAESI Act. It further observed that Hon'ble Supreme Court in a catena of judgments had upheld the commercial wisdom of CoC. It stressed on importance of revival of the CD and the liquidation ought to be the last resort, keeping in view the scope and spirit of the Code. The Appellate Tribunal also took note of the submission of RBI that no prior permission is required for ARCs to participate in resolutions under IBC provided any of the activities undertaken by the ARC as part of the resolution plan submitted by it is not prohibited under SARFAESI Act. NCLAT held that the liquidation order of the Adjudicating Authority was to be set aside and the matter was remanded back to the Adjudicating Authority for the approval of the Resolution Plan.

**Whether NCLT has jurisdiction to declare that the Gift Deed is valid or not.**

*Satori Global Ltd., Ujjwal Agarwal Vs Stocknet International Limited and Ors., Comp App (AT) NO. 379 of 2018, Dated the 2nd June, 2023*

**Observation and Analysis with the decision of NCLAT:**

1. NCLAT set aside an order of NCLT, which allowed restoring the respondent as Executive Director and declaring void the alleged transfer of entire shareholding in the company by respondent to her mother-in-law (Appellant) vide an instrument of transfer (viz. Gift Deed)
2. NCLAT further stated the execution of the Gift Deed itself is strongly disputed by the first Respondent, the adjudication whether the Gift Deed is valid or not requires elaborate evidence and determination of validity of the legal documents.
3. NCLAT relied on a catena of Apex Court decisions where Supreme Court held that if a seriously disputed question of title arose, the Company Court should relegate the parties to a suit, which was the more appropriate remedy for investigation and adjudication of such seriously disputed question of title.