

**Insolvency and Bankruptcy Board of India**  
**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi-110001**

**10<sup>th</sup> August, 2023**

**Subject: Judgment<sup>1</sup> dated 9<sup>th</sup> August 2023 of National Company Law Appellate Tribunal Principal Bench, New Delhi in the matter of Ocean Capital Market Limited Vs. Uday Narayan Mitra, former RP of ARSS Infrastructure Projects Limited & Ors. [Company Appeal (AT) (Ins) No. 514 of 2023]**

**I. BRIEF BACKGROUND**

The CoC by a requisite majority has approved the resolution plan. As per the terms of the resolution plan, the personal and corporate guarantee extended to the dissenting banks were to be assigned in favour of SRA. Thereafter, the successful resolution application (SRA) had proposed an addendum to be presented to CoC for approval, which *inter alia* will include the modification of resolution plan pertaining to a condition whereby the dissenting financial creditors can retain to personal/ corporate guarantees them.

An application was filed by the dissenting financial creditors before AA on the grounds that the modifications in the resolution plan were not permitted as the entire plan is required to be placed before the CoC for consideration. AA, Cuttack Bench vide order dated 18.04.2023 had allowed the objections of dissenting financial creditors and rejected the IA submitted by RP for approval of resolution plan. Aggrieved by the orders of AA, SRA filed appeal before National Company Law Appellate Tribunal (NCLAT).

**II. ISSUE**

Whether the resolution plan duly approved by CoC with requisite majority and subsequently modified by an addendum for the benefit of the dissenting financial creditors, is required to be considered by CoC in its entirety?

**III. OBSERVATION**

- IV. NCLAT has observed that there is no lack of jurisdiction with AA. In the present situation revival of the corporate debtor (CD) has been considered and approved by majority of CoC. The SRA's plan proposed over and above the liquidation value of the CD and by not addendum not insisting for the assignment of personal/ corporate guarantee from the dissenting financial creditors. While allowing the appeal of SRA, it held that end of justice would be served in placing the addendum for the approval of CoC; and the AA shall consider the resolution plan along with duly approved addendum submitted by RP.

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