

Insolvency and Bankruptcy Board of India
7th Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001

13th June, 2023

Subject: Judgment¹ dated 12th June 2023 of National Company Law Appellate Tribunal, New Delhi in the matter Puissant Towers India Pvt. Ltd. Vs. Neueon Towers Limited and Ors., Comp App (AT) (CH) (Ins.) No. 181/2022

I. Brief Background

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.

II. Observations and Analysis

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.

¹ Prepared by Legal Affairs Division for the sole purpose of creating awareness and must not be used as a guide for taking or recommending any action or decision, commercial or otherwise. One must do its own research or read the original text of the judgment or seek professional advice, if it intends to take any action or decision using the material covered here.