

## **Insolvency and Bankruptcy Board of India**

**7<sup>th</sup> Floor, Mayur Bhawan, Connaught Place, New Delhi – 110001**

18<sup>th</sup> February, 2023

***Subject: Judgment<sup>1</sup> dated 9<sup>th</sup> February 2023 of the Principal Bench, National Company Law Appellate Tribunal, New Delhi in the matter Noble Marine Metals Co WLL Vs. Kotak Mahindra Bank Ltd. & Ors. Company Appeal (AT) (Insolvency) No. 653 of 2022***

### **I. Brief Background**

The Adjudicating Authority (AA) approved the resolution plan in the CIR process of Twenty First Century Wire Rods Limited' (CD), submitted after due approval by the CoC ( IDBI Bank having requisite majority- 88%). The other FC, Kotak Mahindra Bank (Kotak Bank) filed an application to reject the resolution plan on the grounds of a mandatory clause containing release of personal guarantee of the promoters. The AA remitted the resolution plan back to the CoC for reconsideration. The successful resolution applicant ("SRA") filed appeal against this order.

### **II. NCLAT Observations**

- a) Resolution plan approved by CoC is binding between the SRA and the CoC. In case of non-compliance of the provisions of Code, the resolution plan can be sent back to the CoC for proper compliance of the parameters.
- b) Kotak Bank had sought reconsideration of a particular clause in the resolution plan regarding the release of personal guarantee of the promoters which is not in accordance with law. The mandatory clause in resolution plan that impedes the provisions of section 128 of Contract Act, would be violation of Section 30(2)(e) of the Code. Pertinently it is noted that FCs are not asking to withdraw from the plan or asking for reviewing the entire resolution plan; rather they have asked for leave of the AA for deleting a clause in the plan i.e., release of promoters from being personal guarantee, more so the same does not harm the SRA.
- c) Accordingly, NCLAT disposed of without interfering with the orders of the AA.

### **Analysis**

The resolution plan is required to be in accordance with the provisions of the Code. In case the resolution plan contains clauses that impedes the provisions of other laws, the same may be reconsidered in the specific facts of the case.

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