



NCLAT refuses to stay implementation of plan in DHFL

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The National Company Law Appellate Tribunal has rejected the plea made by 63 Moons Technologies Limited (“63 Moons”) to stay the implementation of the Resolution Plan for Dewan Housing Finance Corporation Limited (“DHFL”) that was submitted by Piramal Capital & Housing Finance Limited (“Piramal”).

Piramal’s Plan that was approved by the Committee of Creditors (“CoC”) with 93.65% votes provided that the benefit of any orders passed in avoidance applications shall pass on to Piramal and not to DHFL’s creditors and made provision for a notional payment of Re. 1 for future recoveries under the avoidance applications. 63 Moons, a creditor of DHFL and a member of the CoC argued that it was the creditors of DHFL who were defrauded by fraudulent transactions for which the avoidance applications have been filed and therefore the benefit of orders under such applications should flow to the creditors. 63 Moons’ case was that this benefit had not been adequately factored in the Resolution Plan as ascribing a notional value of Rupee 1 for future recoveries in excess of Rs. 45,000 crores did not take into consideration the aspect of value maximization of assets of DHFL.

The National Company Law Tribunal (“NCLT”) while approving Piramal’s Resolution Plan had rejected these submissions made by 63 Moons, reiterating the settled principle of CoC supremacy in making commercial decisions. The NCLT had observed that 63 Moons was a member of the CoC, had voted in favour of Piramal’s Resolution Plan including the aspect of monies to be recovered from avoidance applications, and therefore it was not available to them to call foul the Plan.

In appeal, 63 Moons have relied on the Delhi High Court judgment in *Venus Recruiters Pvt. Ltd. v. Union of India*, where the High Court had observed that avoidance applications were meant to give benefit to the creditors of the corporate debtor and property acquired under an order in an avoidance application would have to form part of a final resolution plan.

While, the NCLAT will examine this aspect at the stage of final disposal of the appeal, the CoC’s approval of Piramal’s Plan and the subsequent approval by the NCLT mean that the Plan is compliant with the mandatory requirements under the Insolvency and Bankruptcy Code. Moreover, as 63 Moons did not dissent, but rather cast its vote in favour of the Resolution Plan, the NCLAT will be circumspect in entertaining 63 Moons’ challenge. As the CoC accorded its approval to the Resolution Plan, any interference by the NCLAT will amount to substitution of its own view with that of the CoC, which after the Supreme Court’s decision in *Essar Steel*¹ is not permissible.

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¹The Committee of Creditors of Essar Steel India Limited v. Satish Kumar Gupta & Ors.