

NCLAT CHENNAI SETS ASIDE THE APPROVAL OF RESOLUTION PLAN FOR REGEN POWERTECH PRIVATE LIMITED AND DIRECTS A CONSOLIDATED CIRP FOR IT WITH ITS SUBSIDIARY



SKV Law Offices successfully represented Echanda Urja Private Limited (“EUPL”) in an appeal before the National Company Appellate Tribunal, Chennai (“NCLAT”) which was filed challenging the approval of the resolution plan granted by the National Company Law Tribunal, Chennai (“NCLT”) for Regen Powertech Private Limited (“Corporate Debtor”/ “CD”). On 31.08.2023, NCLAT passed its judgment and thereby set aside the approval of resolution, on account of its Judgment and directions to undertake a consolidated Corporate Insolvency Resolution Process (“CIRP”) for the CD and its subsidiary company.

While the Appellate Tribunal did not pass any observations on the merits of appeal, however, interestingly, the NCLAT passed directions in a separate judgment and allowed consolidation of the CD and its subsidiary. Notably, the Appellate Tribunal allowed the Consolidated CIRP, despite the fact that the Committee of Creditors (“CoC”) of the CD had already exercised their commercial wisdom and approved the resolution plan in question (which did not provide for consolidation). In doing so, NCLAT noted that the CoC of the Subsidiary Company was in the favour of consolidation of CIRP.

NCLAT, while directing a consolidated CIRP, noted that the financial revival of the CD is closely linked to financial health of the subsidiary company. It was noted that the companies fulfil the criteria to be treated as a single economic unit, and that there is intricate financial relationship between the two having the same set of directors, as per the parameters set out in Radico Khaitan Judgment. Thus, NCLAT deemed it appropriate to pass the directions for consolidation of CIRP and accordingly, set aside the approval of the Resolution Plan for the CD.

Pertinently, NCLAT also observed that even though the commercial wisdom of the CoC of the CD was of paramount importance, however, it was also necessary to take into account the commercial wisdom of the CoC of the subsidiary. Moreover, NCLAT observed that the directions for consolidation of CIRP could be passed in view of the objectives of the Insolvency Code of ‘maximisation of the value of assets’ and ‘value addition’ which did not involve the exercise of ‘Equity Jurisdiction’ in ordering consolidation in the present case.

EUPL was represented SKV Law Offices’ team led by Mr. Shri Venkatesh (Managing Partner), Mr. Bharath Gangadharan (Senior Associate) and Mr. Siddharth Nigotia (Associate).