

Lenders having vested interest in debtor shouldn't be part of creditors' panel: NCLT

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In a judgement of far-reaching implication in the insolvency and resolution process, the National Company Law Tribunal's (NCLT) Chennai Bench has held that a party having a vested interest /relation with a corporate debtor should not be a part of the Committee of Creditors (CoC).

On an application moved by the Asset Reconstruction Company (India) Ltd (Arcil) in a case relating to commercial realty firm Anandram Developers Pvt Ltd, a corporate debtor, the NCLT reasoned that the decisions of the CoC must remain independent.

It observed that the CoC's decisions will impact the debtor's survival or liquidation, and the debt realisation of all the creditors. Therefore, the institution of CoC needs to be completely independent and free from any kind of influence — either of the promoters or their close relatives who may have stakes, it said.

The Tribunal held that the second respondent, Anandcine Services Pvt Ltd, is a 'related party', which shall have no right of representation, participation or voting in CoC meetings. The first respondent in the case is the Insolvency

Resolution Profession (IRP).

Arcil submitted to the Tribunal that it has to recover a total sum of ₹120 crore which had been determined by the orders of Debts Recovery Tribunal (DRT), Chennai, and Recovery Certificate has been issued. It alleged that the IRP did not admit the entire claim in a bid to ensure that Arcil does not get the required voting percentage; and that he went by the amount said to be reflected in the corporate debtor's books, and failed to recognise the recovery certificate issued by the Debts Recovery Tribunal after adjudication of the debt. Further, it claimed that 55 per cent of the shareholders of Anandcine are relatives of the promoters of Anandram, or shareholders with more than 81 per cent stake in the debtor.

Anandcine had written a letter in August, 2018, annexing a legal opinion to substantiate that it was not a 'related party' to the debtor. The IRP claimed he had taken an independent view to that extent and had declared Anandcine was not a 'related party'.

The NCLT noted that the two loan agreements between Anandcine and Anandram, signed in April 2015 (₹200 crore) and September 2017 (₹200 crore), are not substantiated with the books of accounts of the latter.

The IRP has to conduct a forensic audit to examine the "fraudulent and avoidance transactions" over the claims of the creditors including Anandcine, it said.

The Tribunal, however, made it clear that Anandcine's claim shall remain subject to the outcome of the forensic audit. Consequently, it directed the IRP to delete the name of Anandcine from the list of CoC members with immediate effect.

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