

## **Financial service providers outside the purview of IBC, says NCLAT**

The National Company Law Appellate Tribunal (NCLAT) and NCLT (Mumbai Bench), in recent judgments, have observed that financial service providers such as non-banking financial companies are outside the purview of the Insolvency & Bankruptcy (I&B) Code.

In an order in the *Randhiraj Thakur, Director, Mayfair Capital Private Ltd versus Jindal Saxena Financial Services and Mayfair Capital Private Ltd*, NCLAT said the Adjudicating Authority failed to notice the provisions relating to I&B Code and passed the impugned order dated January 8, 2018, initiating ‘insolvency corporate resolution process’ against Mayfair Capital Pvt Ltd, a financial service provider (non-banking financial company).

“Mayfair Capital Pvt Ltd had undertaken a financial service by accepting deposit from Jindal Saxena Financial Services Private Limited (first respondent) in terms of Section 3(16) of the I&B Code. Therefore, it cannot be held that the amount was accepted towards public deposits.

“For the said reason, in regard to the transaction, in quest, Mayfair Capital Pvt Ltd cannot be treated as ‘Corporate Debtor,’ as per the judgment.

Mayfair Capital Pvt Ltd (second respondent) being a financial service provider and having been excluded from the definition of ‘corporate person’ under sub-section (7) of Section 3 of the I&B Code, the application under Section 7 was not maintainable against Mayfair Capital Pvt Ltd, said the judgment. “The application preferred by the first respondent under Section 7 of the I&B Code is dismissed. The Adjudicating Authority will now close the proceeding. The second respondent company is released from all the rigour of law and is allowed to function independently through its board of directors with immediate effect,” said Justice SJ Mukhopadhaya and Justice Bansi Lal Bhat.

In the *Union of India versus IL&FS* case, the NCLT, on October 12, said that currently the legal framework does not facilitate making of the necessary application under the I&B Code for resolution of IL&FS as the code does not address resolution relating to financial service providers.

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