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INSOLVENCY TIMES

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INSOLVENCY

Volume 83, November 2023

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ASC INSOLVENCY TIMES - November 2023

Editorial

Eye on more speed & efficiency, govt readies major strength upgrade for NCLT

A major upgrade is soon expected in the functioning of the National Company Law Tribunal. The government is looking to execute a massive expansion of the body by adding up to 100 members to it. At present, the sanctioned strength of the NCLT is 63. The upgrade is expected to go a long way in ensuring more speed and efficiency for India's insolvency resolution regime.

The primary objective is not only to expedite the resolution of insolvency cases, which has significantly slowed down recently, but also to ensure a swifter resolution of company law matters heard by NCLT benches. The Insolvency and Bankruptcy Board of India (IBBI) has been closely monitoring the duration and procedures, engaging with the government and stakeholders to enhance the efficiency of NCLT.

Recent IBBI data reveals that 80% of insolvency resolution cases surpass the 180-day deadline, with 67% extending beyond 270 days, including the 90-day extension allowed under the Insolvency & Bankruptcy Code. A previous IBBI paper highlighted substantial delays at the admission stage. To address the challenges, the government is considering increasing the number of NCLT members, streamlining the appointment process, and contemplating amendments to the IBC for a more seamless process.

Expect more vibrancy from Insolvency Resolution Process.

Stay Alert!

Anju Agarwal
Partner
ASC Insolvency Services LLP

Business related discussion contact Deepak Maini (IP, Advocate) at +91 97111 91523

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In setback for lenders, Supreme Court dismisses pleas over govt dues under IBC

In a setback to lenders, including State Bank of India and Indian Overseas Bank, seeking recovery of their dues, the Supreme Court on Tuesday dismissed their petitions seeking a review of its earlier judgement that statutory creditors like tax authorities and government agencies would be considered secured creditors under the Insolvency and Bankruptcy Code. A Bench comprising Justices AS Bopanna and Bela M Trivedi while affirming its last year's view said it had considered the waterfall mechanism and the other provisions of the Code before arriving at its decision for deciding the priority for distribution of sale proceeds of assets, etc. and noted that the case does not "fall under the ambit of review". On September 6, 2022, the top court had ruled that any insolvency resolution plan, approved by the financial creditors by ignoring the statutory demands payable to state and Central governments or other legal authorities, was liable to be rejected. It held that a committee of creditors that might include banks and financial institutions (FIs) cannot secure its own dues at the cost of statutory dues owed to any government authority.

Lenders argued that the SC's decision was contrary to the legislative intent and the express provisions of the IBC, which is to promote the availability of a line of credit by providing a time-bound resolution mechanism and to ensure promotion of investments. Previous SC judgements had held that IBC would override any central or state legislation which was inconsistent with it and that banks and FIs had priority in asset distribution over dues of "any government or government authority." The judgement has serious ramifications since it ranks the 'crown debts' (central and state tax dues) at par with workmen dues and ignores the settled law that these debts are lower in priority than the dues of lenders. Legal experts said that the decision not only goes against the Parliamentary intent but also the recommendations of two panels - Bankruptcy Law Reforms Committee and Insolvency Law Committee - which had taken the view that the government dues cannot be treated equal to that of secured creditors. It is further stated that this decision acts as a disincentive to the financial creditors to approach the National Company Law Tribunal under the IBC for resolution and change in management of the bankrupt company. Now under the waterfall mechanism, the proceeds have to be shared not only with workmen but also with the government. By virtue of the Rainbow papers judgment as affirmed in review has the effect of treating the government at par with secured creditors where the dues of the former are backed by a statutory charge.

Manufacturing tops the bankruptcy resolution charts, real estate crawls

In India, manufacturing and real estate account for three out five insolvency cases admitted. However, the two sectors have opposing results when it comes to resolution of these cases. Since 2016, when the Insolvency and Bankruptcy Code came into being, manufacturing has had a share of 39 per cent with 49 per cent share in resolved cases. Meanwhile, real estate sector has 21 per cent admit share with a mere 13 per cent resolution rate whereas Manufacturing sector made up 39 per cent of all such cases admitted until June 2023 since the IBC came into being in late 2016, but its share in the resolved cases was as much as 49 per cent. Real estate, meanwhile, accounted for 21 per cent of the admitted cases but only 13 per cent of the resolved ones, according to IBBI data. It is observed that while both the sectors are "asset-heavy", greater investor demand for manufacturing is the key differentiator in resolutions. Moreover, given the involvement of large numbers of homebuyers, who have been accorded the financial creditor status under the IBC, the resolution of insolvent real estate firms has turned out to be both complex and lengthy. Interestingly, the share of construction in both admitted and resolved cases remained at 11 per cent.

It has been further observed that in the case of real estate, the key difference between the two sectors is the number of financial creditors. "In real estate, the number of financial creditors (homebuyers) is huge, so their individual weight is too low to influence outcomes. So, litigations are very rampant in such cases. However, in the case of manufacturing units, the number of financial creditors who make up the committee of creditors is limited. So, it's easier to get to an agreement and also has a greater investor appetite for industrial entities than realty estate ones," he added. To expedite the resolution of real estate cases, the government is considering a proposal to restrict the invocation of the IBC to only bankrupt projects and not extended to the entire company, including other solvent projects.

NCLT dismisses insolvency petition filed against Bajaj Hindusthan Sugar

The National Company Law Appellate Tribunal (NCLAT) at Chennai has dismissed a Corporate Insolvency Resolution Process (CIRPThe National Company Law Tribunal has dismissed an insolvency petition filed against Bajaj Hindusthan Sugar Limited as per an order uploaded on its website. The petition was originally filed by State Bank of India in September 2022 when India's largest lender claimed default on loans of Rs. 5,000 crore disbursed to the sugar producer. Bajaj Hindusthan Sugar ranks amongst India's top two sugar producers. SBI, which is the largest financial creditor of Bajaj Hindusthan Sugar, recently went back to NCLT with a withdrawal application of its original petition stating that its dues had been cleared.

"In view of the averments made in the application and the statement made by the learned counsel representing the financial creditor and there being no objection of the senior counsel for the corporate debtor to the said withdrawal of the main petition, the present application is allowed and the main

petition is dismissed as withdrawn," NCLT ruled. A spokesperson for the Bajaj Group promoted by Kushagra Bajaj expressed gratitude for the support of the company's lenders and gave assurances of good conduct stating that it was a difficult period for the company when so much was at stake, including reputation.

NCLAT junks plea to initiate insolvency process against Inox Wind

The National Company Law Appellate Tribunal (NCLAT) on October 20, 2023 dismissed a plea to initiate insolvency process against wind energy service provider Inox Wind. Dismissing the plea filed by a company called GRI Towers India Private Limited, NCLAT noted that "Insolvency proceedings are not for recovery of contractual dues, it is apparent from the facts of the present case that the company has initiated proceeding for recovery of its contractual dues." GRI had initially approached the National Company Law Tribunal (NCLT) at Chandigarh to initiate insolvency resolution process against Inox alleging that the latter had defaulted in making payments of Rs. 1.7 crore, which included an interest for delaying the payments. However, the NCLT refused the entertain the plea, since the principle amount due is less the Rs. 1 crore. According to the Insolvency and Bankruptcy Code (IBC), 2016, plea to initiate insolvency can be filed only if the amount outstanding is Rs 1 crore or more. Upon the plea being dismissed, GRI approached NCLAT at Delhi.

GRI was engaged by Inox between 2013 and 2017 for providing equipment and manpower. The company alleged that it had not been paid by Inox for the work it did and the dues amounted to over Rs. 90 lakhs, however if an interest of 12 percent per annum was to be added, it would cross the threshold of Rs. 1 crore. GRI had also initiated a civil suit in 2017 to recover the amount due to them. However, in 2022, GRI withdrew the suit and chose to pursue the litigation under IBC at NCLT. The NCLAT in its judgment noted that GRI had filed and suit and withdrew it without getting the court's permission to pursue a litigation elsewhere. Furthermore, since the amount fell due six years old it could be barred by the law of limitation as the suit was withdrawn without a permission to pursue fresh litigation. IBC proceedings cannot be initiated for amounts that have been due for more than three years.

Unless a party is granted permission by a court to pursue fresh litigation elsewhere, the period for which they pursue other litigation cannot be exempt. For instance, if party pursues a suit in a civil court for six years, then chooses to withdraw it to pursue litigation elsewhere, it has to necessarily obtain the permission of the court to do so if the period of the suit is to be exempted from the law of limitations. The NCLAT also noted that GRI had initiated these proceedings only to recover their dues and the intent of IBC is not recovery of dues but reviving companies in financial distress. Thus, NCLAT upheld NCLT's order.

Birla Tyres insolvency: NCLT approves joint offer of Himadri Speciality Chemical, Dalmia Bharat Refractories

In a regulatory filing, Himadri Speciality Chemical informed that the NCLT, Kolkata Bench has now approved the resolution plan submitted jointly by the company (strategic partner) and Dalmia Bharat Refractories Ltd (resolution applicant) for acquisition of Birla Tyres Limited under the corporate insolvency resolution process (CIRP) in terms of the Insolvency and Bankruptcy Code, 2016 (IBC).Himadri Speciality Chemical Ltd mentioned that the National Company Law Tribunal has approved the joint resolution plan submitted by the company and Dalmia Bharat Refractories Ltd to acquire Birla

Tyres under the insolvency process. The NCLT had ordered the initiation of insolvency proceedings against Birla Tyres Ltd in a case filed by chemicals firm SRF Ltd, an operational creditor of the B K Birla group firm.

RECENT JUDGMENTS

Phoenix ARC Pvt. Ltd. v. Patna Highway Projects Ltd. & Anr.

Petitioner has to make out a full-proof case about the wilful violation of the order passed by the Tribunal for the purpose of seeking attention to issue an order of contempt: NCLAT Delhi

The NCLAT held that the contempt is a serious matter because it causes both physical and fiscal punishment specially when the contempt has been alleged against a professional (RP). Thus, the Petitioner has to make out a full-proof case about the wilful violation of the order passed by the Tribunal for the purpose of seeking attention to issue an order of contempt and punish accordingly.

State Bank of India v. Ritesh Prakash Adatiya & Ors.

Adjudicating Authority had no jurisdiction to pass an order in regard to payment of pre-CIRP dues during the CIRP: NCLAT Delhi

The NCLAT held that the Adjudicating Authority had no jurisdiction to pass an order in regard to payment of pre-CIRP dues during the CIRP.

Sunil Tangri vs. Ashu Gupta

Persons who are not covered under Section 29A(g), will remain eligible to submit resolution plans under clause (c) of Section 29A, else will become ineligible: NCLAT Principal Bench

The court noted that 29A(c) of the Code is provision which and has been added with clear intention to ensure that people who were at the helm of the affairs of the Corporate Debtor, do not come back in some other guise to get back the management/ control/ ownership of the Corporate Debtor without clearing its outstanding debts. The Code defined such Promotors etc. of the Corporate Debtor i.e., in clauses (c) of S. 29A of the Code. If a person has been a promoter, or in the management, or control of the Corporate Debtor in which a preferential, undervalued, fraudulent and extortionate transactions have taken place, and in respect of which an order has been made by the Adjudicating Authority under the

Code, such person become ineligible to submit any resolution plan under Section 29A(g) of the Code and such ineligibility cannot be restored back by paying off the debts of the corporate debtor. Therefore, it becomes clear that persons who are not covered under Section 29A(g), will remain eligible to submit resolution plans under clause (c) of Section 29A, else will become ineligible as in the present Appeal.

Raiyan Hotels and Resorts Pvt. Ltd. v. Unrivalled Projects Private Limited

The applicable law clearly provides opportunity to any aggrieved party to obtain certified copy of the order and file an appeal after exclusion of the period obtaining in certified copy of the order: NCLAT Delhi

The NCLAT held that Section 12 of the Limitation Act provides for exclusion of the time taken in obtaining certified copy of an order. Certified copy of the order could have been very well obtained by them and time taken in preparing the certified copy of the order is required to be excluded. It is the scheme of the Limitation Act, 1963 which has been held to be applicable in the IBC proceeding. Thus, the applicable law clearly provides opportunity to any aggrieved party to obtain certified copy of the order and file an appeal after exclusion of the period obtaining in certified copy of the order. Legislative scheme takes care of all situations where order was pronounced by a Court, it is expected for the parties to diligently apply for certified copy of the order in event there may be any chance to file an appeal.

Prem Kumar Khatri v. M/s. Wianxx Impex Pvt. Ltd.

The Appellate Authority is not inclined to interfere in the decision of the Adjudicating Authority in approving RP's action of rejection of belated claims received after the Resolution Plan was approved by the Committee of Creditors and was pending approval of the Adjudicating Authority: NCLAT Delhi

The NCLAT held that Resolution of Corporate Debtor under IBC 2016 is a time bound process and all Stakeholders should show urgency and discipline in timely Resolution of the Corporate Debtor. The claim of the Appellant was filed with a delay of 1270 days and it was filed after the Resolution Plan was approved by the Committee of Creditors and was pending approval of the Adjudicating Authority. Since there was an inordinate delay of 1270 days in filing the claim and in the meantime, CoC has already approved the Resolution Plan, the reopening of the whole issue regarding the liabilities of the corporate debtor will derail the CIRP, thereby making the CIRP an endless process. Following the ratio laid down by the Hon'ble Supreme Court in the case of M/s RPS Infrastructure Ltd., it was held that the there is no point to interfere in the decision of the Adjudicating Authority in approving RP's action of rejection of belated claims of the Appellants.

Gajraj Jain Vs. Shivgyan Developers Pvt. Ltd.

The threshold of Rs. 1 crore denotes the total default of the Corporate Debtor to any Financial Creditor and not necessarily only to the Applicant Allottees: NCLT Jaipur Bench

The NCLT-Jaipur Bench, in the aforementioned matter, has held that the threshold of Rs. 1 crore denotes the total default of the Corporate Debtor to any Financial Creditor and not necessarily only to the Applicant Allottees. Further, for calculating the total number of allottees, only the number of allotted units in a project shall be considered, irrespective of the number of units constructed. In cases of joint allotments, wherein a single unit is allotted to more than one person, the joint allottees of that unit shall be considered to mean a single allottee.

Assets Care and Reconstruction Enterprise Ltd. Vs. Supertech ORB Project Pvt. Ltd.

CIRP can be initiated against Principal Borrower even during ongoing CIRP of Corporate Guarantor where Section 7 application filed by different financial creditors for different projects: NCLT Allahabad Bench

The NCLT-Allahabad Bench, in the aforementioned matter, has held that CIRP can be initiated against Principal Borrower even during ongoing CIRP of Corporate Guarantor where Section 7 application filed by different financial creditors for different projects and filing of claim in the ongoing CIRP against Corporate Guarantor does not preclude the Financial Creditor from filing a CIRP application u/s 7 of IBC against Principal Borrower.

Fervent Synergies Ltd. Vs. Manish Jaju, RP

The doctrine of promissory estoppel cannot be pressed in respect to a Resolution Plan under IBC: NCLAT New Delhi

The NCLAT held that acceptance or admission of the claim of a Financial Creditor including homebuyers is one aspect of the scheme under the IBC. Subsequent steps in the IBC including the preparation of Resolution Plan are based on the list of creditors, admitted claims of the creditors etc. as per the scheme of the IBC, but the principle of promissory estoppel cannot be pressed against the Resolution Applicant, who submits Resolution Plan on the basis of relying on the Information Memorandum, the list of creditors and other aspect of the matter. The Resolution Applicant has not extended any promise to the Financial Creditors of the Corporate Debtor that the claim submitted by Financial Creditor or any other creditor shall be accepted in toto. The mandatory contents of the Resolution Plan are laid down in the CIRP Regulations, 2016. If a Resolution Plan is compliant with the provision of Section 30, sub-section (2) of the IBC and the provisions of the Regulations, 2016, the Plan cannot be faulted on the ground of the promissory estoppel, which the Appellant is pressing against the Resolution Professional, who has admitted the claim.

Vishal Chelani & Ors. Vs. Debashis Nanda

In Resolution Plan of Real Estate Company, No distinction can be made between Home Buyers who had approached RERA and obtained decree for refund and Other Homebuyers, both are remained the same as Homebuyers within a class: Supreme Court

In Resolution Plan of Real Estate Company, No distinction can be made between Home Buyers who had approached RERA and obtained decree for refund and Other Homebuyers, both are remained the same as Homebuyers within a class.

Mr. Ankur Narang & Ors. Vs. Mr. Nilesh Sharma RP of Today Homes and Infrastructure Pvt. Ltd. & Ors.

A hair-cut in Resolution Plan cannot be construed as being violative of Section 30(2)(e) of the IBC: NCLAT Delhi

The NCLAT held that a hair-cut in Resolution Plan cannot be construed as being violative of Section 30(2)(e) of the IBC, the minority Homebuyers have to necessarily sail with the majority within the class.

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For enquiries related to:

- Insolvency Process,
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REGISTERED OFFICE

73, National Park, Lajpat Nagar IV,
New Delhi - 110024 (India)
P: ++91-11-41729056-57, 41601289

CORPORATE OFFICE

C-100,Sector-2,
Noida- 201301
Uttar Pradesh (India)
Phone No: +91-120-4729400

BRANCHES IN INDIA

Gurugram:
605, Suncity Business Tower
Golf Course Road, Sector-54,
Gurugram - 122002, Haryana
Phone No: +91-124-4245110/116

Mumbai:
Office No. 315-316, A wing, Sagar Tech Plaza, Andheri Kurla Road, Sakinaka, Andheri (E), Mumbai - 400072, India.
Phone No: 022-67413369/70/71

Pune:
Office No. 511, City Space, Vimannagar, Nagar Road, Pune MH – 411014
Phone No : +91-9022131399

Bengaluru:
0420, Second Floor,
20th Main, 6th Block,
Koramangala,
Bangalore - 560095, Karnataka
Phone No : 080-42139271

Chennai:
Plot No. 2,S, 12/2A, Industrial Area,
Perungudi, Chenni, Tamil Nadu 600096, India

Hyderabad:
Level 2, Oval Building, Plot no.18, iLabs
Hyderabad Technology Park, Inorbit Mall Rd Hyderabad-500081 Telengana

BRANCH ABROAD

Singapore:
One Raffles Place
Tower 1, 27-03
Singapore - 048616
www.ascgroup.sg
info@ascgroup.sg

Canada:
302-18 Edgecliff Golfway, North York, Toronto, Ontario-M3C 3A3
Mobile No:+1437-774-4488
www.ascventures.ca
info@ascventures.ca

Japan:
Shinjuku Monolith 28F
2-3-1, Nishi Shinjuku, Shinjuku, Tokyo
japandesk@ascgroup.in

Business related discussion contact Deepak Maini (IP, Advocate) at +91 97111 91523

Please write us at: anju@insolvencyservices.in, mahima@insolvencyservices.in

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