



ASC

INSOLVENCY TIMES



Editorial



IBBI open to innovative suggestions that can reduce delays, help in better recovery

Urging stakeholders for suggestions that can be incorporated in the policies to help reduce delays, the chairman of the Insolvency and Bankruptcy Board of India (IBBI) have stated that IBC has evolved over the years and NCLT has been approving over 35 resolutions a month, reducing delays. He further added, "Major objectives of IBC are not only recovery but revival and rehabilitation as well. It was always thought of as a resolution mechanism and not a recovery mechanism,"

Addressing the concerns raised on delays and low recoveries it is assured by the chairman of IBBI to speed up the process and are open to suggestions from stakeholders. It is further stated that though direct benefit of IBC is recovery, the indirect benefit is even bigger called behavioural change which is the change in creditor and borrower relationship. Last year the National Company Law Tribunal (NCLT) approved the maximum number of resolution plans, 180, and recovery was 36 per cent, that the average recovery was 32 per cent over the last 6-7 years and helped in recovering over Rs 12 lakh crore since 2017.

The chairman of IBBI has pointed out that delays usually happen during the time of approval of the restoration plan when around 30-40 IAs (interim applications) are filed, and stated that "We are trying to find out or analyse the cause of delays at various levels and are trying to speed up the processes,"

Expect more vibrancy from Insolvency Resolution Process.

Stay Alert!

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NCLAT admits IDBI Bank's plea against Zee Entertainment

The National Company Law Appellate Tribunal (NCLAT) has issued notice to Zee Entertainment Enterprises Limited (ZEEL) in a plea by IDBI Bank to initiate insolvency proceedings against the company. IDBI Bank has submitted that it was unable to recover unpaid dues of around ₹150 crore from Zee.

The tribunal instructed both parties to submit replies and rejoinders, acknowledging that the case requires consideration and fixed the matter for further hearing on 11th October, 2023. IDBI Bank contested the decision of the National Company Law Tribunal (NCLT) Mumbai bench, dated 19 May, which had denied IDBI's request to commence insolvency proceedings against ZEEL based on the statutory restriction in section 10A of the Insolvency and Bankruptcy Code (IBC) that prevents the initiation of insolvency proceedings for defaults that occurred during the Covid-19 period, defined as 25 March 2020 to 25 March 2021.

ZEEL argued that the guarantee was limited and did not cover the entire debt. According to the NCLT Mumbai Bench order, ZEEL, the corporate guarantor for a loan taken by Siti Networks (the principal borrower of IDBI Bank), had defaulted within the specified period under Section 10A. However, IDBI Bank contended that the default occurred before the Section 10A period. The bank claimed that the default stemmed from a debt service reserve account (DSRA) guarantee provided by ZEE to secure loans given by IDBI Bank to Siti Networks Ltd, both of which were part of the Essel Group.

Future Retail RP says BOI cannot initiate any action against company under IBC

The resolution professional in the bankruptcy proceedings of Future Retail has told the Bank of India that it cannot initiate any kind of action to classify the retail company's loan account as fraudulent as it was under moratorium and as such the IBC prohibited any such action including legal suits. This was in response to a letter written by the bank earlier to the former management of the company, citing a forensic audit initiated by the bank where certain transactions undertaken by the company and its promoters were liable to be classified as fraudulent under banking regulations. Incidentally, it was the Bank of India that had dragged Future Retail to the bankruptcy court, over non-payment of dues.

The forensic audit was conducted by BDO India LLP and submitted to the bank. In its letter to Future Retail, the State-owned bank has stated that it would be looking at the 'fraud' angle with respect to the transactions that the forensic audit has covered. It also asked for an explanation and submission from the former management about the transactions. The transactions pertained to the period from April 1, 2017, to April 30, 2022.

The RP, in his response, pointed out that the time period during which the transactions had been carried out was prior to the date that insolvency proceedings had been initiated. He also said that the suspended management had not provided information about the details of many transactions, and it was still seeking data from them. He also told the bank that it could not initiate any action against the RP for any action of the company prior to the insolvency commencement date.

SC refuses to stay NCLAT proceedings looking to approve Hinduja's resolution plan to acquire Reliance Capital

The Supreme Court refused to stay the proceedings before NCLAT, which is looking into the grant of approval to the Hinduja Group company's resolution plan for the acquisition of Reliance Capital. The Gujarat-based Torrent Investments had emerged as the highest bidder with its Rs 8,640 crore in the initial bidding in the first auction on December 21, while the Hinduja Group entity offered Rs 8,110 crore. However, within 24 hours, Hinduja made a revised, improved offer of Rs 9,000 crore, a development Torrent contested at the National Company Law Tribunal (NCLT), saying that it violated the sanctity of the auction process as it was made after the deadline. The NCLT bench ruled in favour of Torrent, barring lenders from holding a second auction.

However, the appellate authority overturned the tribunal order. In mid-April, the Supreme Court directed lenders to hold a challenge-mechanism auction, but also said it would again hear the matter in August.

Further, the following auction was held on April 26, wherein Hinduja offered Rs 9,640 crore while Torrent did not participate. The deal would also require the SC's approval since Torrent Investments, one of the initial bidders, had appealed over the extension of the first round of auction beyond the original deadline. The Hinduja family has sounded out global credit funds to raise up to \$1 billion (about Rs 8,200 crore) to finance the potential acquisition of Reliance Capital for which it is the favored bidder after lenders to the insolvent financial services company approved Hinduja's resolution plan. Reliance Capital's lenders have approved a Rs 9,650-crore resolution plan made under the insolvency and bankruptcy code (IBC) rules from Hinduja Group company IndusInd International Holdings Limited (IIHL).

ts offer could result in a successful debt resolution for the debt-laden Reliance Capital, which will be only the second large financial services company after Dewan Housing Finance (DHFL) to be sold under provisions of the IBC. Financial creditors of the company have filed claims worth Rs 24,000 crore for recovery of their dues.

Srei twins resolution plan: Authum appeals against NCLT order

Authum Investment & Infrastructure, the losing bidder in the takeover battle for the Srei twins has appealed against the National Company Law Tribunal (NCLT) order approving the resolution plan of the National Asset Reconstruction Co Ltd (NARCL).

Also, in a new twist to the tale, the Mumbai based NBFC has increased its offer for the Kolkata based companies by another Rs 450 crore.

On Wednesday, a two judge bench of the National Company Law Appellate Tribunal (NCLAT) issued notices to the committee of creditors (CoC), NARCL, Reserve Bank of India (RBI) and administrator Rajneesh Sharma on the appeal filed by Authum, giving the respondents two weeks to reply to the notice. Authum will get another two weeks after the respondents file their replies.

NCLT warns Viceroy Hotels' resolution professional for not seeking fresh bids

The National Company Law Tribunal (NCLT) has warned the resolution professional of bankrupt Viceroy Hotels to face the consequences for not implementing its orders issued on June 9 to call for fresh bids of resolution. The Tribunal had in March 2018 admitted the petition filed by the financial creditor - the Asset Reconstruction Company, and ordered the commencement of the CIRP proceedings. In all, Rs 714.24 crore of claims from financial creditors were admitted after the resolution professional constituted the CoC and invited bids from resolution applicants.

The Tribunal's Hyderabad bench had on June 9 rejected the plan of the successful resolution applicant, Anirudh Agro Farms (AAFL), for Viceroy Hotels (VHL) following the expiry of bank guarantees furnished by AAFL.

Viewing liquidation of the corporate debtor as the last resort, the tribunal had directed the continuation of the corporate insolvency resolution process (CIRP) and asked the resolution professional to call for fresh bids. In its latest order dated August 1, the NCLT has directed the resolution professional, Govindarajula Venkata Narasimha Rao, was bound to implement the order of the Tribunal "in its letter and spirit, especially when the proceedings relating to corporate insolvency resolution are time bound." The resolution professional has contended that the Committee of Creditors (CoC) had resolved to prefer an appeal against the Tribunal's order dated June 9 before the National Company Law Appellate Tribunal (NCLAT). Responding to this, the Tribunal has made it clear that the mere filing of an Appeal does not operate as stay unless there is an interim order.

Meanwhile, Hyderabad-headquartered construction firm Vasavi Realty Pvt. Ltd. has evinced interest to revive and resolve the insolvency of Viceroy Hotels at Rs 200 crore and filed an application before the Tribunal. Making it clear that no further directions to call for fresh bids was required at the behest of Vasavi Realty Pvt Ltd, the Tribunal observed that the consequences of not implementing our order dated 09-06-2023 shall follow suit.



RECENT JUDGMENTS

Gp. Capt. Atul Jain (Retd.) v. Tripathi Hospital Private Limited

Existence of a financial debt being owed by the corporate debtor to the financial creditor has to be satisfied: NCLAT Delhi

The NCLAT noted that before admitting a Section 7 application, the requirement of the existence of a financial debt being owed by the corporate debtor to the financial creditor has to be satisfied. It was further observed that, while the record of information utility would be relevant to establish default under Section 3(12) of the Code, mere reliance on such record is not permissible where the status of creditor as financial creditor has not been established.

In this case, the NCLAT, after noting that the creditor had failed to establish the loan given by him to directors was utilized for the purpose of the corporate debtor, refused to lift the corporate veil to identify the corporate debtor as liable for repayment.

Ashique Ponnamparambath & Anr. v. BMW India Financial Services Private Limited

Section 7 application is maintainable against an entity agreed to act as co-borrower: NCLAT Chennai

The NCLAT held that a Section 7 application is maintainable against an entity which has agreed to act as co-borrower in respect of certain loan facilities, regardless of whether any disbursement was made to it. Appellant towards the Operational Creditor and the Corporate Debtor himself has not taken any set off of the said amount, therefore, the Adjudicating Authority has rightly rejected the appellant's defence that no amount is due to the Operational Creditor.

The Appellate Authority held that the Appellant cannot take any benefit of Criminal Proceedings initiated by filing an Application under Section 156 of the CrPC pursuant to receipt of Demand Notice for which proceedings were initiated subsequently.

Mudhit Madanlal Gupta v. Supreme Constructions and Developers Private Limited

Date of default by a corporate guarantor would be the date of invocation of corporate guarantee: NCLAT Principal Bench

The NCLAT held that even though the liability of a corporate guarantor is co-extensive with the principal borrower, if the guarantee deed requires invocation, the date of default by a corporate guarantor would be the date of invocation of corporate guarantee and not the date of default of the principal borrower.

ABB India Limited v. Shailesh Verma (Resolution Professional of South East U.P. Power Transmission Company Ltd. & Ors.)

Where the approved resolution plan provided nil payment to all operational creditors, appeal of a single operational creditor against it is not maintainable: NCLAT Delhi

The NCLAT held that a challenge by an operational creditor against notional admission of its claim and consequently the approval of the plan cannot be entertained, where the approved resolution plan provided nil payment to all operational creditors.

Monica Jajoo v. PHL Fininvest Private Limited

The insolvency petition of a personal guarantor should be considered by the same bench of NCLT in which the CIRP or liquidation proceedings of the corporate debtor is pending: NCLAT Delhi

In this matter, the appellant, who was a personal guarantor to a corporate debtor named Hema Engineering Industries Limited (“HEIL”), had challenged an order of Bench IV of the National Company Law Tribunal (NCLT), New Delhi admitting an application of personal insolvency against the appellant, inter alia on the ground that since liquidation proceedings against HEIL were pending before Bench III of the NCLT, the Bench IV of NCLT New Delhi lacked jurisdiction on account of provisions contained in sub-section (2) and (3) of Section 60 of the Code.

In other words, the contention of the appellant was that a Section 95 application should have been considered and heard by the same bench of NCLT, New Delhi which was considering the liquidation proceedings regarding HEIL.

The aforesaid submission found favour with NCLAT which took note of the fact that sub-sections (1) and (2) of Section 60 stipulated and mandated that an application relating to insolvency resolution and liquidation of the corporate debtor is required to be filed within “such” NCLT where a CIRP or liquidation proceedings of the “same” corporate debtor is pending. Accordingly, it held that Bench IV of NCLT, New Delhi lacked the jurisdiction to adjudicate upon the application and that it should have transferred the application to Bench III which was already considering the liquidation proceeding of HEIL under the Code.

Jaydip Ghosh and Others v. Niraj Agarwal and Ors.

Suspended board of directors or an unsuccessful resolution applicant has no locus to file an appeal against the approval of the resolution plan: NCLAT Principal Bench

The NCLAT held that it is a settled position of law that the suspended board of directors or an unsuccessful resolution applicant has no locus to file an appeal against the approval of the resolution plan by the committee of creditors and the Adjudicating Authority.

Further, the NCLAT, by relying upon Regulation 37 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016, held that a plan can provide for a change in business of the corporate debtor as part of the revival strategy.

Technico Industries Limited v. Debashis Nanda, Liquidator of J.V. Srips Limited & Ors.

Transactions with no cogent evidence to establish that discounts were given to the appellant in the ordinary course of business would qualify as avoidable transactions: NCLAT Delhi

The NCLAT noted that a failure to produce documents, combined with the absence of a cogent explanation to establish that discounts were given to the appellant in the ordinary course of business,

within the look-back period of one year, infringes Section 45(2)(b) of the Code and that such a transaction would qualify as avoidable transactions as stipulated in Section 46(1)(i) of the Code.

Simbhaoli Sugars Limited v. Pramod Kumar Sharma Resolution Professional of Uniworld Sugars Private Limited & Ors.

Distribution to Creditors in accordance with provisions of Section 30(2) of IBC is in the discretion of the COC and the scope of judicial review by NCLT and NCLAT is very little: NCLAT New Delhi.

The NCLAT held that the distribution to the creditors in accordance with Section 30(2) of the Code is in the discretion of the committee of creditors and that the Adjudicating Authority and NCLAT have very little scope of judicial review with regards to the distribution.

The NCLAT further held that the provision relating to mutual credits and set off which is contained under Regulation 29 of the IBBI (Liquidation Process) Regulations, 2016 is not applicable in the context of approval of a resolution plan.

Vineet Gupta Vs. Monitoring Committee Through Shri Kumar Gaurav

Adjudicating authority has jurisdiction to entertain any matter which is subsequently invoked after implementation of Resolution Plan and an ex-director who is also a Guarantor has the locus to file an application on statutory compliance have not been taken to implement Resolution Plan: NCLT Chandigarh

The NCLT Chandigarh Bench has held that an ex-director, who is a personal guarantor of the Corporate Debtor have a substantial interest for the resolution process of the Corporate Debtor. The implementation of a resolution plan will be considered to be complete only when all the steps to implement the terms and conditions mentioned in the approved plan are executed in letter and spirit.

As a prima facie case was made out in this application that certain steps have not been taken to implement the plan in its totality, we are of the opinion that this Authority can entertain an application and issue necessary directions. With regard to the Increase in share capital relating to the issuance of shares and subsequent reduction, the Corporate Debtor has not followed the statutory provisions under the Companies Act, 2013 nor has obtained any exemption in this regard from the concerned authorities (RoC). In this context, the Successful Resolution Applicant is directed to approach the relevant authorities for seeking necessary reliefs and concessions within 15 days of this order.

Ocean Capital Market Ltd. Vs. Uday Narayan Mitra Former RP of Arss Infrastructure Projects Ltd.

There is no lack of jurisdiction in Adjudicating Authority to remit Resolution Plan to CoC for reconsidering the amendment which Successful Resolution Applicant himself was requesting to be carried out: NCLAT Delhi

The NCLAT has allowed the appeal and set aside NCLT order observing that the present is a case where the Corporate Debtor is sought to be revived by a Resolution Plan which was approved by the majority. The Appellant's Resolution Plan value is Rs.432.90 Crore where the liquidation value of the Corporate Debtor was only Rs.147.11 Crores. The Successful Resolution Applicant has proposed an excess amount of Rs.285.79 Crores. The Resolution Applicant having himself expressed not insist for assignment of Personal and Corporate Guarantees and to be continued with the Dissenting Financial Creditors, the Adjudicating Authority ought not to have rejected the Resolution Plan and accepting the request of the Dissenting Financial Creditor ought to have remitted the plan to the CoC for reconsideration.

For enquiries related to:

- **Insolvency Process,**
- **Bankruptcy Process,**
- **Filing petition with NCLT/DRT,**
- **Appointment of Insolvency Professionals,**
- **Assets Management of the Company,**
- **Hearing of Cases or any other enquiries**



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