



ASC

INSOLVENCY TIMES



Editorial



GOVERNMENT MULLS NEW FRAMEWORK TO PUT IBC CASES ON FAST TRACK

The Indian government is considering a creditor-led insolvency resolution mechanism under the bankruptcy law to fast-track settlement and ease the burden on the National Company Law Tribunal, as reported by the Economic Times of India. As per the said report, creditors and debtors can reach informal agreements on the plans to resolve bankruptcy and then approach the NCLT to quickly admit the cases under this mechanism, the details of which will be finalised after broader stakeholder consultations.

The officials aware of the details have mentioned that the government has studied the best practices of several jurisdictions and a similar, if not the same, insolvency mechanism is followed in the UK and various aspects and structures of the planned framework are being examined for a final decision to be taken in due course. The Insolvency and Bankruptcy Board of India has set up a panel under its whole-time member Sh. Sudhaker Shukla to firm up a 'regulatory approach' for the new fast-track resolution process under the IBC. The panel comprises senior bankers, a former central bank official, and an insolvency expert.

Expect more vibrancy from Insolvency Resolution Process

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NCLT approves Innova Captab's resolution plan for Sharon Bio

The National Company Law Tribunal (NCLT) Mumbai Bench has approved Rs. 256.4 crore resolution plan of Innova Captab for Sharon Bio-Medicine in its order on May 17. Innova Captab resolution plan was approved by 79.28% voting share of the members of the Committee of Creditors (CoC), according to the NCLT order.

Innova Captab and Tirupati Medicare have submitted their resolution plans to the Committee of Creditors (CoC) in September 2022. Tirupati's resolution plan was 25% lower than Innova Captab. Following voting, in November 2022, the CoC accepted the resolution submitted by the Innova Captab. Innova Captab will be paying the amount upfront, and has submitted the performance bank guarantee of Rs 35 crore in accordance with the terms of the Successful Resolution Plan. The total admitted claims by creditors were Rs 920.5 crore out of which around 700 crores claim was from secured lenders who will be getting 50% of the principal.

It is reported that the case is resolved in approximately 6 years as it was one of the first cases admitted after the Insolvency and Bankruptcy Code. The company continued its operations profitably during CIRP, even during Covid, and generated 75 crore of cash, with 15% EBITDA. Lenders had appointed EY-backed Pulkit Gupta as the resolution professional of Sharon Bio-Medicine replacing Sh. Dinkar T Venkatasubramanian, who was the RP since April 2017, when it was admitted for insolvency proceedings.

It is reported that SBI has the largest claim of Rs 142 crore among secured lenders, while Deutsche Trustee Company and India Factoring have total claims of Rs 170 crore in the unsecured creditors' category. Union Bank of India, Indian Overseas Bank, Canara Bank and Punjab National Bank are among the secured creditors of Sharon Bio Medicine. The debt-laden Sharon develops and manufactures pharmaceutical intermediates, actives, and finished dosages, besides generic alternatives for new drugs. The Mumbai-based Innova Captab is engaged in the manufacturing of intermediates, active pharmaceutical ingredients and finished dosages catering to both the domestic Indian and foreign market.

NCLT admits Tulip Hotels into insolvency

The National Company Law Tribunal has admitted JC Flowers Asset Reconstructions' application to initiate insolvency proceedings against Tulip Hotels over defaults of ₹900 crore. The application was originally filed by Yes Bank, the lender. The debt was subsequently assigned to JC Flowers, which filed a substitution application that was allowed on March 6. Tulip Hotels had challenged this debt assignment which was dismissed on March 23.

According to JC Flowers ARC's counsel Nausher Kohli, the hospitality company had defaulted payment under two guarantees in its capacity as a guarantor for repayment of two loans worth ₹450 crore disbursed by Yes Bank to Cox and Kings, and Ezeego One Travel & Tours each. Both the companies committed breach and default in repayment of debt. Both the companies committed breach and default in repayment of debt that included principal amount, interest, and other charges thereon. Following this default, in August and November 2019, the lender invoked the guarantees issued by Tulip Hotels. However, the hospitality company failed to repay the guaranteed amount. Tulip Hotels, through an affidavit, had denied these claims stating that it is not related to either Cox and Kings or Ezeego One Travel & Tours, and has not received any funds from Cox and Kings since March 2011 and never been funded by Ezeego One Travel & Tours Ltd.

While ordering the initiation of insolvency proceedings, the tribunal has stated that it has found the application made by the lender complete in all respects as required by law, and it clearly shows that Tulip Hotels is in default of a debt. However, the hospitality company had stated that there are no investments of both the borrowers in Tulip Hotels and there are no cross holdings of Tulip Hotels in any of these entities. Tulip Hotels had claimed that it was not aware of financial assistance by the lender to these companies and it has not signed any guarantees for these loans while accusing the lender of documents' fabrication. It had also said claims for these dues have already been admitted in these borrowers' currently ongoing insolvency and the lender is attempting to recover the same amount twice over.

NCLAT allows withdrawal of application by McLeod Russel India Ltd.

The National Company Law Appellate Tribunal has allowed the withdrawal of an application filed by the promoters of McLeod Russel India Ltd after taking on record the settlement reached with IL&FS Infrastructure Debt Fund, effectively bringing down the curtains on the insolvency proceedings. The bench heard the matter, took note of the settlement reached between the promoters of McLeod and IL&FS IDF and allowed the appeal to be withdrawn. Legalese aside, the development at the appellate tribunal means that the Khaitan family would be back in charge of India's leading bulk tea producer, warding off the threat of insolvency once again. This is second instance when they managed to bring McLeod back from CIRP in as many years.

Though the exact terms of settlement have not been disclosed but sources suggested IL&FS IDF may have been able to extract the entire principal outstanding from the promoters which involves about Rs 50 crore in cash payment and transfer of land worth about Rs 200 crore. The insolvency case pertains

to a Rs 252.66-crore loan that IL&FS IDF had lent to two of the holding companies of the Khaitan family viz. Babcock Borsig Ltd. and Williamson Magor & Co. Ltd in 2017. McLeod had executed a “shortfall undertaking” in favour of IL&FS Infra Debt Fund in relation to the loan. The two promoter group companies had defaulted in servicing the debt obligations, leading IL&FS to file a petition against the tea producer under section 7 of IBC.

The Calcutta bench of the NCLT sent the company to CIRP on February 10 pursuant to which the chairman of the company moved an application before the NCLAT seeking stay on CIRP. While the appellate tribunal stayed CIRP, it kept IRP in charge of the company. Now that McLeod is effectively out of CIRP, the spotlight will again be on the long pending debt restructuring with the banks who proposed a one-time settlement of the dues worth Rs 1,600 crore. Before McLeod was sent to CIRP, it had entered into exclusive talks with Carbon Resources to jointly explore the OTS with banks.

SC gives go-ahead to resolution plan submitted by Supertech before insolvency court

The Supreme Court on May 11 gave the go-ahead to the resolution plan submitted by Supertech Limited and decided not to interfere with the National Company Law Appellate Tribunal (NCLAT) order of June 2022 that allowed the company to raise funds on priority basis and complete the projects. It also allowed the NCLAT’s order of no formation of a Committee of Creditors (CoC) and not to proceed with the Insolvency Bankruptcy Code (IBC) bidding process.

Supertech had conveyed to both NCLAT and the Supreme Court that it had arranged priority funding of up to Rs 1,600 crore from investment fund Oaktree Financial for the construction and completion of the projects. The NCLAT, in its interim order of June 2022, limited the scope of the CIRP to one project, Eco Village-II, with the condition that construction will be carried out by Supertech Limited.

The Apex Court order reiterated that as a result of the directions of the impugned order dated 10.06.2022, except the Eco Village-II project, all other projects of the corporate debtor are to be kept as ongoing projects and the construction of all other projects is to be continued under the supervision of the IRP with the ex-management, its employees and workmen. Further infusion of funds by the promoter in different projects is to be treated as interim finance, regarding which total account is to be maintained by IRP.

The Chairman of Supertech Group, welcomed the SC order and remarked it as a landmark decision in favour of all stakeholders – homebuyers, authorities, lenders and other financial creditors as the Resolution Plan took care of all liabilities of the company to be discharged in three years while giving priority to completion of projects and giving delivery of flats to homebuyers within the next two years.

Silver Point gets NCLT nod to take over IVRCL Chengapalli Tollways

The National Company Law Tribunal, Hyderabad Bench has approved US-based hedge fund Silver Point Capital's application to acquire IVRCL Chengapalli Tollways through the insolvency process. The fund had submitted its bid through its principal vehicle SPCP Luxembourg Strategies SARL. Before the tribunal's order, the lender had also approved a revival plan submitted by SPCP Luxembourg Strategies with 100% voting in favour of it.

Last year in April, the Hyderabad bench of the National Company Law Tribunal (NCLT) had admitted IVRCL Chengapalli Tollways under the insolvency resolution process in an application filed by Assets Care & Reconstruction Enterprise (ACRE) and appointed Sutanu Sinha of BDO Restructuring & Advisory LLP as its resolution professional. The company had originally borrowed from lenders including IDBI Bank, State Bank of India, Bank of Baroda, Union Bank of India, and Karur Vysya Bank. However, the lenders had assigned their debts to ACRE in 2021, after which they approached the tribunal.

In September 2010, the NHAI awarded IVRCL Chengapalli Tollways a contract to construct and strengthen the National Highway 47, which connects Chengapalli via Coimbatore to Walayar in the border area between Tamil Nadu and Kerala.

The original cost of the 54.83 km project was estimated at ₹1,123 crore, which increased to ₹1,235 crore after cost overruns.

The project achieved a provisional commercial operational date (COD) in October 2015 and started collecting toll revenue from October 2015.

As per the tribunal's order, currently, Silver Point Capital manages \$18 billion in committed and invested capital around the world. Silver Point Capital is familiar with the Indian market and has prior experience in investing in India, such as investment in Patna Highway Projects Ltd, Bhushan Power and Steel Ltd, Asian Color Coated Ispat Ltd and Patna Bakhtiyarpur Tollway Ltd. Also, the successful bidder SPCP Luxembourg Strategies is a principal vehicle used by Silver Point Capital to make a number of debt investments in India including the one in SEW Krishnagar Baharampoer Highways Ltd.





RECENT JUDGMENTS

Subhash Chand Gupta v. Bhavesh Texo Fab (P) Ltd.

No benefit to Corporate Debtor, if Criminal Proceedings were initiated after receipt of Demand Notice: NCLAT Delhi

The facts of the matter pertain to purchase of goods by the Corporate Debtor which was supplied by the Operational Creditor at the office of purchaser. The appellant, Director of the Corporate Debtor and Director of the Operational Creditor with the Director of another company named Rishabh Texco (P) Ltd. entered into a Compromise Agreement dated 21-02-2017 to adjust an amount of Rs. 80 Lakhs as part payment of combined outstanding liability of Corporate Debtor to Operational Creditor as well as to Rishabh Texco (P) Ltd. The Corporate Debtor having defaulted in repayment of the outstanding amount, a Demand Notice under S. 8 of the IBC was issued by the Operational Creditor who, thereafter, preferred an application under S. 9 of the IBC. The Corporate Debtor in reply reiterating its stand as in the reply to Demand Notice that amount due to the Operational Creditor has been adjusted by payment made to sister companies of the Operational Creditor.

The Adjudicating Authority admitted the S. 9 application on the grounds that there was a debt and the Corporate Debtor defaulted in making the payment of debt and aggrieved by the impugned order, the appellant preferred an appeal before the NCLAT. The appellant contended that no amount is due to the Operational Creditor by the Corporate Debtor as the same has been adjusted by payment made to sister companies of the Operational Creditor. The appellant further contended that a criminal proceeding was initiated by the Corporate Debtor by filing an application under S. 156 of the CrPC, as a result a FIR has been registered under Ss. 420, 467, 468, 471 and 120-B of the IPC and a Report under S. 173(2) of the CrPC was also filed. The respondent contended that the Operational Debt remains unpaid and the same is clearly reflected in the balance sheet of the Corporate Debtor, moreover, the argument that the dues have been adjusted is contrary to the Corporate Debtor's own balance sheet. The respondent further contended that the concerned criminal proceedings were initiated after S. 8 Notice was given by the Operational Creditor therefore no credit can be taken of said proceedings by the appellant in the present proceedings.

The NCLAT observed that the settlement agreement contains an acknowledgement of liability by the 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.

Rajeev Gupta v. Standard Chartered Bank (Singapore) Ltd.

Once a document admitted as evidence cannot be objected at a later stage: NCLAT Delhi

In the instant matter, in terms of Sec. 8 IBC, the Standard Chartered Bank Singapore-respondent sent a demand notice to the Corporate Debtor-appellant calling upon to pay the dues, however, the same was in vain as no payment was made. As a result, the respondent preferred an application under Sec. 9 on the basis of six invoices and the Assignment Deed. In the reply to the application, the Corporate Debtor made no averment about the Assignment Deed that the same was not duly stamped in terms of the Stamp Act, 1899. Meanwhile, the Corporate Debtor filed an application before the Adjudicating Authority for examining the Assignment Deed in terms of S. 33(2) IBC, but the same was dismissed. The Corporate Debtor further preferred an appeal before the NCLAT, but the same was also dismissed.

The Adjudicating Authority admitted the Sec. 9 application filed by the respondent considering the assignment deed admissible in evidence and aggrieved by the impugned order, the Corporate Debtor preferred the present appeal before the NCLAT. The Division bench of the Appellate Authority observed that once a document has been relied upon, produced in evidence, opportunity is granted to the other side to object to its admissibility and the said document has not been objected to at all and the decision has been taken on the basis of the said document, it cannot be, thereafter, rejected or ignored. The NCLAT further held that in the present case, Sec. 36 of the Stamp Act, 1899 applies and not Sec. 35.

J.C. Flowers Asset Reconstruction Private v. Deserve Exim Private Limited

The date of default by the principal borrower is irrelevant to determine the date of default on part of the guarantor: NCLAT Delhi

The NCLAT New Delhi Bench has held that for the determination of, if a section 7 application against a corporate guarantor would be barred under section 10 A of the Code, the date of default by the principal borrower is irrelevant and only the date on which the guarantee was invoked would be relevant. The Appellate Authority further held that if the guarantee deed contains an indemnification provision, such indemnity can be enforced against the corporate debtor, but it cannot itself change the date of default on part of the guarantor.

BNK Power Solution Private Limited v. Ranjkumar Poddar

Admission of a reduced amount against the submitted claim cannot be challenged after approval of the resolution plan: NCLAT Delhi

The NCLAT held that where the operational creditor did not challenge the admission of a reduced amount against the submitted claim, the same could not be challenged after approval of the resolution plan. The NCLAT further held that while deciding if the interest of the stakeholders has been protected, the Adjudicating Authority/ NCLAT is only required to examine whether the resolution plan meets with the requirements of Section 30(2) and Section 31 of the Code.

VR Rail Nirman Private Limited v. Isuzu Motors Private Limited

Application under section 9 is maintainable post restoration of corporate debtor u/s 252 of Companies Act, 2013: NCLAT Chennai

In the present case, the respondent had filed a Section 9 application against the appellant, which was rejected by the Adjudicating Authority on the ground that the name of the appellant had been struck down by the MCA. The respondent, had preferred a Section 252(3) application before the Adjudicating Authority and post the restoration of the corporate debtor/appellant's name in the records of the MCA had filed for revival of the Section 9 application, which was allowed by the NCLAT on the grounds that the eclipse caused to the Section 9 application due to the corporate debtor's status was removed by the order of restoration and therefore there was no hindrance to the respondent to maintain and get an order on merits on the Section 9 application.

NuFuture Digital (India) Limited v. Axis Trustee Services Limited

Prohibition u/s 10A of the Code is not applicable where the claim amount does not pertain to the debt accrued during the prohibited period: NCLAT Delhi

In the matter, the NCLAT held that Section 10A of the Code does not apply when the cause of action for default basis which the CIRP has been proposed to be initiated pertains to the period covered when prohibition under Section 10A of the Code, is not applicable. In this case, the NCLAT observed that the debt only included default committed after the period under Section 10A was over, and whilst the original claim of the financial creditor was higher, the debt accrued under the period covered under Section 10A of the Code had not been claimed by the financial creditor and therefore, Section 10A of the Code would not apply.

Kapil Wadhawan v. Piramal Capital and Housing Finance Limited and Ors.

Proceedings of Avoidance Applications to continue by the SRA post CIRP, after approval of Resolution Plan : NCLAT Delhi

The NCLAT considered the matter whether a successful resolution applicant ("SRA") could continue the avoidance applications under the Code, by substituting the Resolution Professional. The NCLAT observed that the legislative scheme delineated under Section 26 of the Code, indicates the avoidance applications are not to affect the proceedings of the CIRP, and therefore it can even continue post the CIRP. Whilst noting that, applications under Sections 43, 45 and 66 have to be filed by the Resolution Professional, the NCLAT refused to agree with the contentions of the Appellant that the said applications become infructuous once the resolution plan is approved, specially considering in the instant matter, the resolution plan provided for the continuation of the avoidance applications by the SRA.

Arun Chadha (Liquidator of Pawan Buildwell Private Limited) v. Ramesh Kumar Suneja

The transaction of the corporate debtor mortgaging property for the benefit of its related parties falls within the scope of the lookback period u/s 43: NCLAT Delhi

In the instant case, the NCLAT took up two separate appeals together and in connection with the appeal filed by the Liquidator set aside the order of the Adjudicating Authority, which held that the security interest created over the 'mortgaged property' by the corporate debtor is not a violation of Section 43, as erroneous and cancelled the Form CHG-1, and directed that the 'mortgaged property' become a part of the liquidation estate of the corporate debtor. The NCLAT noted that the lookback period for when the property of a corporate debtor for benefit of its related parties is in question, the lookback period is of two years from the date of initiation of the CIRP and therefore, the transaction of the corporate debtor mortgaging the property for the benefit of its related parties falls within the scope of the lookback period.

With respect to another appeal filed by the respondent related parties, the NCLAT observed that the corporate debtor had entered into an MoU with SAKS Developers, which was an entity governed by its related parties. Whilst, the NCLAT has raised issues regarding the veracity of such unstamped MoU, the NCLAT noted that the MOU had been purportedly executed between the period when NCLAT had dismissed the order of admission of the corporate debtor, and the order of the Supreme Court by which the said decision of the NCLAT was rejected. The NCLAT noted that whilst, moratorium was technically and legally not in force, the decision of the corporate debtor to transfer an amount of Rs.1,02,09,360 was done at a time hurriedly when the sword of insolvency was hanging over the corporate debtor. Further, the NCLAT considered even if the said could be treated as a bonafide transaction, the transaction would fall within the scope of a preferential transaction under Section 43, and therefore refused to interfere with the order of the Adjudicating Authority which had directed for the sum to be refunded to the corporate debtor.

Vishwajeet Subhash Jhavar v. IDFC First Bank Limited

Settlement cannot be stifled before the CoC in anticipation of the claims against the Corporate Debtor from third persons: NCLAT Delhi

In the instant matter, the NCLAT relied upon the principle delineated by the Hon'ble Supreme Court in Ashok G. Rajani v. Beacon Trusteeship Ltd. & Ors. that Settlement cannot be stifled before the Constitution of Creditors in anticipation of the claims against the Corporate Debtor from third persons and rejected the challenge filed by an intervenor, who had filed a claim before the interim resolution professional, to allow the settlement between the corporate debtor and the financial creditor basis whose application the CIRP was admitted.

Mohd. Shadab v. Colorcity Homes Private Limited and Anr.

The debt amount mentioned in the books of account as unsecured loan cannot be subsequently argued as investment by the corporate debtor: NCLAT Delhi

In the instant matter, the NCLAT noted that where the books of the corporate debtor had mentioned the debt amount as unsecured loan, even in the absence of any written agreement, it cannot be argued subsequently by the corporate debtor that the amount disbursed was for investment, and not for the purpose of loan.

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