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ASC INSOLVENCY TIMES

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Editorial

Registration of IPEs as IPs gaining momentum

Recently, the IBBI had come out with a much needed amendment that allows the Insolvency Professional Entities (IPEs) to register themselves as Insolvency Professionals (IPs). The move was extensively appreciated among the players in Insolvency domain, particularly because it was clear that an individual IP is not always equipped with the expertise and manpower to handle Insolvencies in a limited time frame, more so when the playground involves bigger companies. The institutional engagement of IPEs as Resolution Professionals in the corporate insolvency resolution processes (CIRPs) is a more reliable structure that instils credibility and confidence amongst the stakeholders.

Going with the amendment and need of the hour, we are pleased to inform our readers, that we, ASC Insolvency Services LLP, are now registered and acting as an Insolvency Professional (Registration no. IBBI/IPE-0060/IPA-1/2022-23/50012) under the Code.

It is expected that this key change in the domain of Insolvency processes would further efficiency with organizational assistance of IPEs bringing in better handling of the process, marketing of the Companies and bringing in favorable interests and better resolutions/values for the Corporate Debtors.

Expect more vibrancy from Insolvency Resolution Process

Stay Alert!

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Enforcement Directorate has power to attach properties even in the case of Moratorium under IBC, rules Delhi High Court

The Resolution Professional of Era Infra Engineering Limited had challenged the orders of attachment passed by the ED under Prevention of Money Laundering Act

The Delhi High Court has recently held that the power of the Enforcement Directorate to attach properties under the Prevention of Money Laundering Act (PMLA) would not be affected by moratorium imposed under the Insolvency and Bankruptcy Code, 2016 (IBC). The High Court ruled that such power would not fall within the ambit of Section 14(1) of the IBC. The order came in response to a challenge by the Resolution Professional of Era Infra Engineering Limited who opposed orders of attachment passed by the ED under the PMLA.

One of the arguments taken by the RP was that once the moratorium had come into effect, the ED stood denuded of jurisdiction to exercise powers under the PMLA. Specific reliance was placed on Section 14(1)(a) of the Code, which specifies that the Adjudicating Authority shall declare moratorium for prohibiting the institution of suits or continuation of proceedings against the Corporate Debtor.

The High Court observed that PMLA seeks to subserve a larger public policy imperative and is an enactment representing a larger public interest, namely the fight against crime and debilitating impact that such activities ultimately have on the society and the economy of nations as a whole. Further, the Bench observed that the attachment of property only enables the authorities under the Act to restrain any further transactions with respect to the attached property till the time the trial, with respect to the commission of an offence of money laundering, comes to an end. The Court was of the considered opinion that on a fundamental plane, it would be incorrect to read Section 14 as completely shutting out actions under Section 5 and 8 of the PMLA.

Government to amend Insolvency law to reduce the time taken for resolution process

To ensure that there is no significant value erosion, the amendments will aim at provisions whereby assets can be handed over to the winning bidder at the earliest, Government officials said

As per reports, the government is looking to amend the Insolvency law in order to reduce the time taken for or completion of resolution process of stressed assets and prevent significant erosion of value of the assets. The amendments to the Insolvency and Bankruptcy Code, 2016 (IBC), which came into force in 2-16 for timely resolution of stressed assets, are likely to be introduced in the Budget session of Parliament early next year.

The Ministry of Corporate Affairs' (MCA's) move to amend the law comes against the backdrop of concerns in various quarters that many of the corporate insolvency resolution processes (CIRPs) are taking a longer time due to litigations and other issues. The senior government officials said that consultations are going on with various stakeholders, including bankers and lawyers, and the changes are expected to be finalised in the coming weeks, reported agencies.

The reports have said that one of the options being looked at is how fast a company undergoing CIRP can be handed over to the winning bidder as that would help in preserving the value of the assets concerned. The IBC time frame for the resolution process is 330 days, inclusive of the time taken for litigation. In 2020-21, as many as 120 cases were resolved and the average time taken was 468 days.

The NCLT, Mumbai admits VHM Industries into Corporate Insolvency Resolution Process

The State Bank of India had filed petition against the Company for dues of 221 crores

The National Company Law Tribunal (NCLT), Mumbai Bench has admitted VHM Industries to undergo the corporate insolvency resolution process (CIRP) and appointed an Interim Resolution Professional for the Mumbai based textile manufacturer.

The supply of essential goods and services to the company should not be terminated, suspended or interrupted during the moratorium period under the CIRP, the NCLT said in the order.

VHM Industries has two manufacturing facilities, one each in Gujarat and Maharashtra, and has an installed production capacity of 18 million metres of textiles per annum. Prior to the Tribunal's ruling, the company through its counsels had argued that it had made several attempts to arrive at an amicable resolution with its consortium of lenders, where it had first offered 61 crores as a one-time settlement and increased that to ₹76.28 crores when the lenders rejected it.

The Lender argued through its counsel that no bank could be compelled to accept a lesser amount under the one time settlement scheme when the bank could recover the entire loan amount.

IDBI Bank files for Insolvency against Zee Entertainment for a default of ₹149.60 crores

The Bank's claim arises under a Debt Service Reserve Agreement entered into by the bank and the Company for the financial facility availed by Siti Networks Ltd.

IDBI Bank has moved the National Company Law Tribunal (NCLT) against Zee Entertainment Enterprises Ltd (ZEEL) seeking commencement of Insolvency proceedings against the media firm to recover dues of Rs 149.60 crore.

IDBI Bank has claimed an amount of Rs 149.60 crore, which has been disputed by ZEEL, said a regulatory update from the media major. IDBI Bank has filed an application under section 7 of the Insolvency and Bankruptcy Code, 2016 (IBC) before the NCLT, claiming itself to be a Financial Creditor for initiation of Corporate Insolvency Resolution Process (CIRP) against the company for the alleged default.

"The bank's purported claim arises under a Debt Service Reserve Agreement entered into by the creditor bank and the Corporate Debtor company for the financial facility availed by Siti Networks Ltd," it said. ZEEL is reported to have been vehemently disputing the bank's claim in other proceedings filed by the bank against the company for recovery of its alleged dues.

SITI Networks, formerly known as SITI Cable Network, is a part of the Essel Group. The Company provides its cable services at 580 locations and adjoining areas, reaching out to over 11.3 million digital customers. In April this year, Housing Development Finance Corporation Ltd (HDFC) moved NCLT against the country's leading multi-system operator SITI Networks Ltd for alleged default of Rs 296 crore.

Scope of Enquiry in Insolvency proceedings before NCLT and Arbitration proceedings before the High Court are distinct: Rules Delhi High Court

The Court held that merely because a Petition under Section 9 has been filed in NCLT does not amount to affect arbitration proceedings pending in the High Court

The High Court of Delhi has recently held that proceedings under the Insolvency and Bankruptcy Code, 2016 and the Arbitration and Conciliation Act, 1996 are for different purposes and the provisions of each of the said statutes have their individual scope and it cannot be said that resort to one has the effect of ousting the other forums for redressal. The Court laid emphasis on the doctrine of election and held that where the law provides distinct remedies in a case, it is open to the Petitioner/ Applicant to elect or opt any or all the options for redressal of its grievances.

The High Court was hearing a petition filed under Section 11 of the Arbitration and Conciliation Act, 1996 for appointment of an arbitrator. It was noted that various proceedings were initiated by the Petitioner for different amounts that had become due and payable at different times and also interest component which was being claimed, was a variable. The Court however observed that merely because the Petitioner had approached different forums for redressal of its claims, it cannot be said to be a ground to hold that it is a case of forum shopping.

The Court further went on to hold that there was no functional similarity in the proceedings under IBC and Arbitration Act which could lay some sort of deceit on part of the litigant.

The minority homebuyers have to necessarily sail with the majority within the class: Observes NCLAT

The Appellate Adjudicating Authority declined to interfere with commercial wisdom of CoC in approving Resolution Plan on grounds of procedural impropriety

The National Company Law Appellate Tribunal (NCLAT) has ruled that the democratic principles of the determinative role of the opinion of the majority have been duly incorporated in the scheme of the Code and the minority homebuyers have to necessarily sail with the majority within the class. The majority homebuyers of the project had approved the Resolution Plan which approval was sought to be challenged by one set of homebuyers.

The Appellant had submitted before the NCLAT that the Authorized Representative had not obtained opinion of the homebuyers on different agenda items which have been considered in the Committee of Creditors (CoC) meeting. For the Authorized Representative, who is the representative of the homebuyers to participate in the CoC has to represent the interest of the CoC and it is incumbent upon the Authorized Representative to obtain instructions to vote for the majority for any agenda item where CoC obtain votes.

However, the NCLAT observed that where there is no voting of the CoC in an agenda item, the Authorized Representative's opinion can very well be taken note of and considered in the CoC meeting. Regarding the issue of viability and feasibility of the resolution plan, NCLAT observed that when the CoC approved the Resolution Plan in its commercial wisdom, it is presumed that the approval was given to a viable and feasible plan. The NCLAT for the said reasons refused to interfere with the commercial wisdom of the CoC in approving the Resolution Plan.

RECENT JUDGMENTS

Amardeep Singh Bhatia v. Abhishek Nagori, Liquidator

There is no look back period for ascertaining fraudulent transactions under Section 66 of the Code: NCLAT

The National Company Law Appellate Tribunal, New Delhi (NCLAT) has recently held that there is no look back period for the Resolution Professional/ Liquidator for determination with respect to fraudulent transactions as envisaged under Section 66 of the Insolvency and Bankruptcy Code, 2016 (IBC). Further, the Appellate Adjudicating Authority observed that in Section 43, 45 and 46 of the Code, though the relevant time is provided for under the Code, the fact remains that unless the Liquidator scrutinizes and peruses the material which is relevant to determine whether the Preferential transactions or Undervalued transactions took place at the relevant time, he cannot come to a conclusion as to whether these transactions took place during the relevant time.

The Appellate Adjudicating Authority also observed that there is no look back period specified under Section 66 of the Code, which refers to fraudulent transactions. Therefore, the Appellate Bench held that, in case the Liquidator finds that there is a fraud committed by the Corporate Debtor at any time, he can approach the Adjudicating Authority and file an Application seeking necessary directions.

Axis Bank Limited v. Vidarbha Industries Power Limited

Supreme Court dismisses Review Petition filed against the Apex Court ruling in Vidarbha Industries v. Axis Bank

The Supreme Court of India recently upheld its decision in the case of Vidarbha Industries v. Axis Bank and dismissed a Review Petition filed against the said judgment upholding the view that the Adjudicating Authority and the Appellate Adjudicating Authority under the Insolvency and Bankruptcy Code, 2016 (IBC) need to be mindful of the Corporate Debtor's financial health and viability while admitting a petition under Section 7 of the Code and that they should exercise reasonable discretion while admitting or rejecting such an application for the initiation of corporate insolvency resolution process (CIRP) against a Corporate Debtor for a single instance of default.

The decision in Vidarbha had changed the pattern and asked the Adjudicating Authorities to look beyond merely the existence of a financial debt and its default even in cases where action is initiated by financial creditors under Section 7 of the Code. The judgment had established that the Adjudicating Authority has discretion to reject an application even when the factum of debt and default are undisputed.

Siti Networks Limited v. Assets Care and Reconstruction Enterprises Limited

During pendency of Insolvency proceedings, the assignee of the debt is eligible and competent to continue the proceedings: NCLAT

The National Company Law Appellate Tribunal, New Delhi (NCLAT) has held that when during the pendency of Insolvency proceedings against a Corporate Debtor, if the Creditor/ Applicant has assigned the debt to another entity, such assignee is competent to pursue and continue the legal proceedings post assignment of debt thereto.

The Appellate Adjudicating Authority observed that mere assignment of the debt, in respect of which the Insolvency proceedings had been filed, would not necessarily require the assignee to initiate fresh Insolvency proceedings in respect of the same debt owed by the Corporate Debtor to the assignor.

The Appellate Bench made its firm opinion that devolution of right to another entity does not give right to a fresh cause of action, but the same proceedings can be continued with respect to the devolved rights in the form of the debt. However, the Appellate Adjudicating Authority made it clear that even though there is no dispute in continuation of Insolvency proceedings in the present case, it has to be kept in mind that not all proceedings can be continued post acquisition of financial creditor, and therefore the order must no mean a precedent for every right being devolved on the acquirer entity.

The Bench placed reliance upon Section 5(7) of the Insolvency and Bankruptcy Code, 2016 (IBC) defining Financial Creditor and held that the term includes a person to whom such debt has been legally assigned or transferred to. By virtue of the said assignment, it has every right to continue the proceedings which were initiated by the former applicant.

Kalinga Allied Industries India Pvt Ltd v. CoC of Bindal Sponnge Industries Ltd

Whether after approval of Plan, CoC can seek to consider a new Resolution Plan of a third party: NCLAT

The New Delhi Bench of the National Company Law Appellate Tribunal (NCLAT) has recently dealt with the question whether Committee of Creditors (CoC) after having approved a Resolution Plan can seek direction to consider a new Resolution Plan of a third party who was not a part of the corporate insolvency resolution process (CIRP), and seek to withdraw their approval after more than two years of the approval of the erstwhile Resolution Plan.

NCLAT held that the existing framework does not provide any scope for effecting any further modification or withdrawal of the CoC approved Resolution Plan by the Successful Resolution Applicant (SRA) or the creditors of the Corporate Debtor. The Appellate Adjudicating Authority further observed that the Adjudicating Authority can interfere only if the Resolution Plan is against the provisions of the Insolvency and Bankruptcy Code, 2016 (IBC).

The Appellate Bench held that once the Resolution Plan is submitted to the Adjudicating Authority, it is binding and irrevocable as between the CoC and the SRA in terms of the provisions of the Code. The maximization of Value of Assets ought to be within the specified timelines and if it is not a timebound process, the entire scope and objective of the Code would fail merely because there is another higher offer made by a third party.

NCLAT went on to conclude that once the Plan is submitted for approval, it is binding between the CoC and the SRA, unless there is any material irregularity or is against the provisions of Section 30(2) of the Code in which case the Adjudicating Authority has the limited jurisdiction to interfere.

Shah Paper Mills Limited v. Shree Rama Newsprint & Paper Limited

Administrative adversities within Corporate Debtor's management cannot amount to a pre-existing dispute for turning down a Section 9 Application under IBC

The National Company Law Appellate Tribunal was faced with the question whether non-payment of dues of the Operational Creditor by the Corporate Debtor owing to issues attributable to internal mismanagement of the Corporate Debtor cannot amount to a pre-existing dispute so as to defeat an application by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code, 2016 (IBC) before the Adjudicating Authority.

In the instant case, the Adjudicating Authority had turned down the Section 9 Application of the Operational Creditor placing reliance upon the reply given by the Corporate Debtor to the Demand Notice under Section 8 of IBC wherein the Corporate Debtor had denied its liability to pay the outstanding amount.

NCLAT observed that merely because the Corporate Debtor had contended in its reply to the Demand Notice that they are not liable for claims of the Operational Creditor prior to change in management was not a tenable argument and therefore, cannot be a ground for extinguishing/ wiping off the past liabilities that they owed to the Operational Creditor. The untenability of this contention was further reinforced by the fact that they had already categorically acknowledged and admitted their outstanding liability in

Kalyan Dombivali Municipal Corporation v. NRC Limited

Government dues get extinguished after approval of Resolution Plan if the Authority has failed to file its Claim before RP: NCLAT

The National Company Law Appellate Tribunal, New Delhi (NCLAT) has recently observed that after the amendment in Regulation 12 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, filing of claim before the Resolution Professional is a sine qua non for every legal person who claims to be a creditor of the Corporate Debtor. Therefore, when the Appellant statutory authority has failed to file its claim in the corporate insolvency resolution process (CIRP) of the Corporate Debtor, it is the Appellant who is to be blamed for not initiating the steps to set up its claim and the same are not part of the Resolution Plan.

The NCLAT went on to hold that the said claim which has not been filed in the CIRP, shall be deemed to have been extinguished post approval of the Resolution Plan by the Committee of Creditors (CoC). The Appellate Adjudicating Authority ruled that once the CoC in its commercial wisdom approves the Resolution Plan of the Corporate Debtor, any and all claims of creditors which do not form part of the said plan get extinguished on such approval.

NCLAT differentiated the judgment of the Hon'ble Supreme Court in Rainbow Papers to hold that since in the present case, the Appellant Authority had clearly failed to submit its plan, while in the Rainbow case, the authority had filed its claim, therefore differentiating the present case from the cited judgment, the Appellant Bench dismissed the Appeal of the Appellant Authority and did not consider its claim.

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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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