



ASC

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Editorial



IBBI likely to make provision for Homebuyers to transfer their allotments during CIRP

Recently, the IBBI has proposed changes and additions to be brought to the present Insolvency regime to facilitate interests of homebuyers in the corporate insolvency resolution process (CIRP).

The Regulator has been reported to indicate the inclusion of provisions to the effect that in case insolvency proceeding is initiated against a real estate Company which is dealing in multiple projects then the proceeding will be considered to be initiated against the specific project in which default has been made.

Even though the Supreme Court has provided the status of 'Financial Creditors' to the homebuyers/allottees in the case of Pioneer Urban, the homebuyers' interest lies more in getting the ownership and possession of their flats instead of getting repayments of their advances

It has also been proposed that, to protect the homebuyers from the hardship caused to them in the legal battle, the Resolution Professional would be able to allow transfer of their flats if CoC approves the same. This is going to be a welcome move as homebuyers' entitlements deserve to be seen with sympathetic eyes in the CIRP and the Apex Court has time and again vouched for the homebuyers' rights.

Expect more vibrancy from Insolvency Resolution Process

Stay Alert!

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The new proposed changes to the Insolvency law may likely to reverse the judgment of the Supreme Court in Vidarbha Industries Case

The Ministry of Corporate Affairs has proposed compulsory admission of an application by a Financial Creditor where certain requirements are fulfilled

The Government's proposal to amend the Insolvency and Bankruptcy Code, 2016 (IBC) such that it permits mandatory admission of Insolvency applications filed by Financial Creditors is being seen as capable of reversing the ruling made by the Supreme Court in the case of Vidarbha Industries.

The Ministry of Corporate Affairs (MCA) has proposed that the Adjudicating Authority must admit an application filed by a Financial Creditor, provided that it established that a default has been committed on a financial debt and that the other procedural requirements were fulfilled. Pertinently, the Government has not defined the "other procedural requirements" in the recommendations.

Earlier, the Hon'ble Supreme Court had held in the Vidarbha judgment that an application filed under section 7 of the Code by a Financial Creditor, even if establishes a default on a financial debt, is still under discretion of the Adjudicating Authority to be admitted or not basis the surrounding circumstances which could indicate that the Corporate Debtor was solvent. The Apex Court had reversed the ruling of the Appellate Adjudicating Authority which had ruled that the Adjudicating Authority had no jurisdiction to reject a Section 7 Petition if the debt and default were clearly established.

Consortium Lenders in Jaypee Insolvency have agreed to assign their debt to NARCL

ICICI Bank, however has declined to assign its debt to the asset recovery company

Debt-ridden Jaypee Infratech, which is facing Insolvency proceedings, has recently been reported to say that all the consortium lenders, excluding ICICI Bank, have assigned their debt to National Asset Reconstruction Company Ltd (NARCL). Jaypee Infratech Ltd (JIL) is currently undergoing Corporate Insolvency Resolution Process (CIRP) under the provisions of the Insolvency & Bankruptcy Code (IBC) following an order passed by the Allahabad-Bench of National Company Law Tribunal (NCLT). The case has been reserved for orders on the approval of the resolution plan in respect of JIL before the NCLT, Principal Bench, Delhi.

As per reports, the company has been financed by a consortium of lenders comprising IDBI Bank Ltd, India Infrastructure Finance Company Ltd, Union Bank of India, Life Insurance Corporation of India, State Bank of India, Canara Bank, Bank of Maharashtra, IFCI Ltd, J&K Bank Ltd and ICICI Bank, which also form part of the Committee of Creditors (CoC). JIL's lenders have submitted a claim of Rs 9,783 crore and CIRP was initiated over an application by an IDBI Bank-led consortium.

Suraksha group had in June 2021 received the approval of Financial Creditors and homebuyers to take over the JIL, raising hopes for homebuyers of getting possession of their dream flats in stalled projects, mainly in Noida and Greater Noida. However, in the first round of Insolvency proceedings, the Rs 7,350-crore bid of Lakshadweep, part of the Suraksha group, was rejected by lenders.

India's first Legal and Insolvency financing NBFC takes form

Legal and Insolvency financing start-up LegalPay has entered into a joint venture with Goldi Solar Group to launch Padmalaya Finserve

LegalPay, which is the country's leading legal and Insolvency financing start-up, has tied up with Surat-based solar manufacturing business house Goldi Solar to launch Padmalaya Finserve, a non-banking financial company (NBFC) focused on legal and Insolvency financing.

The NBFC plans to disburse 1,000 crores worth of loans aimed towards legal expenses by FY24. Incidentally, LegalPay partners with various NBFCs to provide embedded legal financing to businesses at no-cost EMIs. The Delhi based start-up will use this newly formed NBFC to further scale its closed loop legal financing for businesses to pay for their legal expenses without using debt or equity money.

The businesses can pay their legal costs using a credit line of up to 50 lakhs while the law firms get to expand their clientele on account of the flexible payment options. Till date, LegalPay has onboarded more than 150 law firms and 1,000 businesses on its platform.

MCA to roll out e-adjudication before March end

The E-Adjudication facility will be available for compoundable offences and will help in preventing litigation reaching the NCLT, which already has a high load of cases

The Ministry of Corporate Affairs (MCA) will roll out the facility for e-adjudication of company law violations entirely in the virtual mode before the end of this financial year, the Ministry said.

It said the ongoing process of revamping the corporate filing system will also be completed by end of March as it is being done in phases. The ministry said key features of the revamped MCA21 portal, such as e-adjudication, e-consultation and compliance management are proposed to be launched within this financial year. The ministry said it is also setting up a new national centre—the Centre for Processing Accelerated Corporate Exit—to act as a single window facility for companies that wish to voluntarily exit from business.

The planned roll out of the e-adjudication facility follows the decriminalisation of offences under the Companies Act. Once implemented, the facility is expected to lower the compliance burden of businesses. For the de-criminalised offences, a designated government official will be the adjudicating authority. Since these are procedural or technical lapses, they will be resolved within the ecosystem of the ministry of corporate affairs.

Supreme Court refuses to hear SREI Equipment plea

The Apex Court said that the NCLAT will hear appeal against the NCLT order allowing RP to execute sale of land of Corporate Debtor Shree Ram Urban Infrastructure in favour of Kalpataru Properties

The Supreme Court has recently observed that the National Company Law Appellate Tribunal (NCLAT) will hear the SREI Equipment Finance's Appeal against the order of the National Company Law Tribunal that allowed the Resolution Professional of Shree Ram Urban Infrastructure to execute the sale of its "valuable" land in favour of Kalpataru Properties during the corporate insolvency resolution process.

A Bench led by Justice Sanjiv Khanna observed that it is not inclined to interfere with the order of the Appellate Adjudicating Authority towards the sale of the land in favour of Kalpataru Properties. Srei Equipment had challenged the NCLAT's order and the order of the High Court of Tripura that ruled in favour of Kalpataru Properties.

Earlier, Kalpataru Properties had filed a Civil Appeal before the Apex Court showing its willingness to bring money in account of the Corporate Debtor amounting to Rs. 75.30 crores, in terms of the arbitral award, if the Resolution Professional executes the sale deed after receiving the amount.

Gayatri Projects Insolvency to go ahead: Supreme Court throws out Promoters' Plea

The Promoters had challenged the NCLAT order that upheld the Corporate Insolvency Resolution Process of the Hyderabad based Infrastructure Firm

The Supreme Court has quashed a plea of the Hyderabad-headquartered Gayatri Projects' promoters against a National Company Law Appellate Tribunal (NCLAT) order that upheld the Corporate Insolvency Resolution Process (CIRP) of the infrastructure firm. "We find no ground to interfere with the impugned order passed by the National Company Law Appellate Tribunal," said the Apex Court.

Earlier, NCLAT's Chennai Bench turned down the Promoters' Appeal against the National Company Law Tribunal's (NCLT) order to initiate insolvency proceedings against the firm. Following the order, the lenders invited expressions of interest (EOI) for the resolution of the stressed infrastructure firm, which has business of infrastructure in roads, railways, land development, power, irrigation and mining projects, among others.

The Company, with an annual turnover of Rs 3,463 crore and Rs 5,864 crore worth of assets on a standalone basis in the financial year 2019, was admitted for CIRP proceedings in November, 2022 by the NCLT on an application filed by the State Bank of India under the Insolvency and Bankruptcy Code, 2016 (IBC). The public sector bank claimed that the infrastructure company defaulted on Rs 242.33 crore loans.





RECENT JUDGMENTS

Tata Steel BSL Limited v. Venus Recruiter Private Limited

There is no bar on the Adjudicating Authority/ Appellate Authority to adjudicate upon application for avoidance notwithstanding the conclusion of CIRP: Delhi High Court

The High Court of Delhi has recently ruled that an avoidance application will survive the corporate insolvency resolution process (CIRP) if all suspected transactions and applications filed in their respect have been accounted for in the Resolution Plan. The High Court further held that all details of such applications are required to be placed before the National Company Law Tribunal (NCLT) for approval of the plan under Section 31 of the Insolvency and Bankruptcy Code, 2016 (IBC). There is nothing in the impugned judgment to imply otherwise.

The High Court explained in its judgment that CIRP is a time bound process, whereas the avoidance application proceedings require a proper discovery of suspected transactions that are to be avoided by the Adjudicating Authority. Accordingly, adjudication of an avoidance application is independent of the resolution of the Corporate Debtor and can survive CIRP.

The State Court went on to observe that an avoidance application can be filed even after the Resolution Plan has been filed before the Adjudicating Authority and till approval of the Plan. The Resolution Professional will not be functus officio for perusing the avoidance applications and can continue to pursue such applications. The method and manner of remuneration of the Resolution Professional ought to be decided by the Adjudicating Authority itself.

Naveen Kumar Sood, RP v. Ujaas Energy Limited

CoC cannot extinguish right of a particular secured creditor to proceed against Personal Guarantor of the Corporate Debtor: NCLT Indore

The Indore Bench of the National Company Law Tribunal (NCLT) has held that the Committee of Creditors (CoC) of the Corporate Debtor do not have the right to decide on the right of any particular secured creditor of the Corporate Debtor to proceed against a Personal Guarantor of the Corporate Debtor under garb of its commercial wisdom.

The Adjudicating Authority observed that the CoC can take any commercial decision relating to insolvency of the Corporate Debtor only and cannot decide anything which has the effect of taking away or abrogating the right of action of any person including the secured creditors to proceed against a personal guarantor for the default committed by the Corporate Debtor and in lieu of the guarantee entered into by the Personal Guarantor securing the repayment.

The Adjudicating Authority, while cautioning on the limits impliedly existing on the exercise of commercial wisdom by the CoC, observed that such provision in the resolution plan is not only prejudicial to the right of such secured creditor but also against the provisions of law.

The NCLT declined to approve the sought Resolution Plan for the reason that it was in contravention of the provisions enshrined in Section 30(2)(e) of the Insolvency and Bankruptcy Code, 2016 (IBC). The Adjudicating Authority further held that the exercise of commercial wisdom of the CoC cannot be stretched to an extent that right of any person to judicial remedies are curtailed/ prejudiced.

M/s Diamond Entertainment Technologies Pvt Ltd v. Religare Finvest Ltd.

Arbitrability and non=arbitrability of disputes under SARFAESI Act: Delhi High Court

The High Court of Delhi has recently observed that resolution of disputes through arbitration is recognized even under the Securitization and Reconstruction of Financial Assets and Securities Interest Act (SARFAESI Act) and there is no absolute bar on referral of such disputes which may be covered under the SARFAESI Act by way of arbitration.

The State Court of Delhi laid emphasis on the essence and importance of the Arbitration and Conciliation Act, 1996 and held that even if a particular dispute will be covered within the jurisdiction of the Debts Recovery Tribunal (DRT) owing to matter which falls within the domain of the SARFAESI Act, the DRT is barred to entertain such matters if there is an arbitrable dispute involved. That is to say, where the agreement between the parties categorically speak that in case disputes arise regarding thee transaction, the same shall be settled/ decided through arbitration, then even if the subject matter is covered within the contours of the SARFAESI Act, however, it can only be decided by way of arbitration under the designated law and not through litigation in DRT.

The High Court further held there is sufficient precedents that the mere presence of an arbitration clause in the agreement between the parties disables either party to take recourse to any other proceedings in any other courts except for the arbitral tribunal constituted as per the procedure stipulated by the parties in the agreement or the scheme of the Arbitration and Conciliation Act, 1996.

Hero Fincorp Limited v. Hema Automotive Private Limited

Adjudicating Authority is empowered to reverse decision of CoC to liquidate the Corporate Debtor and reconsider its decision

The National Company Law Appellate Tribunal (NCLT) has recently held that the National Company Law Tribunal (NCLT) has rightly, after perusal of facts and circumstances, reversed the decision of the Committee of Creditors (CoC) of the Corporate Debtor for liquidating the Corporate Debtor and asked the CoC to reconsider its decision in light of the assets and liabilities of the Corporate Debtor.

The Adjudicating Authority had noticed that in the instant case, Form G was published inviting expressions of interest (EOIs) from prospective resolution applicants. However, till the last date stipulated in Form G, no EOIs were received by the Resolution Professional. Accordingly, the Resolution Professional convened a meeting of the CoC with the agenda to extend the timelines for submissions of EOIs and thereafter resolution plans in respect of the Corporate Debtor. However, the CoC instead of considering the said extension, decided for liquidation of the Corporate Debtor under Section 33 of the Insolvency and Bankruptcy Code, 2016 (IBC).

Accordingly, the Resolution Professional had filed an application before the NCLT for commencement of liquidation of the Corporate Debtor. The Adjudicating Authority however dismissed the liquidation application and asked the CoC and the Resolution Professional to further explore possibility of resolution of the Corporate Debtor.

The NCLAT agreed with this view and held that the decision taken by the CoC is subject to judicial review and the Adjudicating Authority can very well look into as to whether the decision is in accordance with the Code or not.

Nitin Jain, Liquidator of PSL Limited v. Lucky Holdings Private Limited

NCLAT held that the Successful Auction Purchaser was entitled to withdraw and refund in view of the assets of the Corporate Debtor being attached under Prevention of Money Laundering Act

The National Company Law Appellate Tribunal, New Delhi (NCLAT) has recently observed that the Liquidator cannot compel the Successful Auction Purchaser to adhere to the sale and payment obligations in view of the assets of the Corporate Debtor being attached by the Enforcement Directorate under the Prevention of Money Laundering (PMLA) Act. The NCLAT paid emphasis to the statement of the Successful Auction Purchaser given before the High Court of Delhi that the Successful Auction Purchaser wishes to exit by withdrawing its bid from the auction process of the Corporate Debtor which was taken on record by the Court.

The Appellate Adjudicating Authority decided that in view of the attachment of the assets of the Corporate Debtor, the Liquidator can neither complete the sale, nor can issue sale certificate nor can hand over the assets of the Corporate Debtor and due to the aforesaid event the Successful Auction Purchaser has a genuine case for not proceedings with the deposit of the balance bid amount due to the aforesaid attachment of assets. Moreover, the Appellate Bench noted, that since the period of 90 days stipulated for completion of payment in respect of the auction had not come to an end, the Successful Auction Purchaser was not in any violation of the terms and conditions of the auction.

In view of the foregoing discussion, the NCLAT was of the view that the Adjudicating Authority had rightly permitted the Successful Auction Purchaser to withdraw from e-auction and directed for refund of the EMD of Rs. 5 Crores and 1st Installment of Rs. 30 Crores.



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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