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➢ AA Empowered To Remove The Liquidator: NCLAT Chennai

The National Company Law Appellate Tribunal ("NCLAT"), Chennai Bench, comprising of Justice M. Venugopal (Judicial Member) and Mr. Barun Mitra (Technical Member), while adjudicating an appeal filed in CA V. Venkata Sivakumar v IDBI Bank Limited & Ors., has held that the Adjudicating Authority has the power to remove the Liquidator.

Background Facts

The Jeypore Sugar Company Ltd. ("Corporate Debtor") is engaged in manufacturing of sugar in Andhra Pradesh and Orissa. The IDBI Bank Ltd. ("Financial Creditor") had filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor. The Adjudicating Authority initiated CIRP against the Corporate Debtor on 25.02.2019. Mr. V. Venkata Sivakumar ("Appellant/Mr. Sivakumar") was appointed as Interim Resolution Professional and subsequently confirmed as the Resolution Professional. On 29.05.2020 the Adjudicating Authority ordered for liquidation of the Corporate Debtor and appointed Mr. Sivakumar as the Liquidator.

The Financial Creditor filed an application before the Adjudicating Authority seeking replacement of Mr. Sivakumar with another Liquidator. It was alleged that Mr. Sivakumar did not possess a valid Authorisation for Assignment ("AFA") on the relevant date and had suppressed the facts. It was contended that Regulation 7A of IBBI (Resolution Professional) Regulation, 2016, mandated that no Insolvency Professional shall accept or undertake any assignment after 31.12.2019, unless he holds a valid AFA on the date of acceptance or commencement of such assignment. Mr. Sivakumar was appointed as the Liquidator on 29.05.2020 and did not possess an AFA on the relevant date. The Adjudicating Authority vide an order dated 01.07.2020 replaced Mr. Sivakumar with the new liquidator, Mr. S. Hari Karthik.

Mr. Sivakumar challenged the Order dated 01.07.2020 before the NCLAT.

Issue

Whether the Adjudicating Authority can remove the Liquidator?

NCLAT Verdict

The Bench observed that Mr. Sivakumar had admitted that the application for AFA was filed on 31.12.2019 and the same was rejected on 14.01.2020. It cannot be claimed that there was no requirement for issue of fresh AFA for his assignment as the Liquidator. Mr. Sivakumar's assignment as the Liquidator got confirmed on 29.05.2020, which is beyond the prescribed threshold date i.e. 31.12.2019. Therefore, the regulatory provisions of IBC were not complied with.

Reliance was placed on NCLAT judgment in Subrata Maity v Amit C Poddar, Company Appeal (AT) (Ins.) No. 1234 of 2022, wherein it was held that: *"The Liquidator does not have any personal right to continue in the Liquidation Process and the reasons which have been noted in the order are sufficient to exercise even the inherent power by NCLT to replace the Liquidator. It is not a fit case to interfere in exercise of our Appellate Jurisdiction."*

The Bench held that no Liquidator has any personal rights to continue in Liquidation and the Adjudicating Authority can order for replacement of the Liquidator, recording sufficient reasons as per Law.

"Further, since the 'Adjudicating Authority', is vested with the power, to `appoint a Liquidator', under Section 33 and 34 of the I & B Code, 2016. It is by the virtue of the Section 16 of the General Clauses Act, 1897, that an 'Adjudicating Authority', who also, has the power, to remove the `Liquidator'."

It was observed that the combined reading of Case Laws along with Section 33 and Section 34 of IBC, clarifies that the Adjudicating Authority also has the power to remove the Liquidator for reasons it may find fit, just, valid and proper. The Bench upheld the Adjudicating Authority's order and dismissed the appeal.

Case Title: CA V. Venkata Sivakumar v IDBI Bank Limited & Ors.

Case No.: Company Appeal (AT) (CH) (Ins.) No. 269/2022

Source: Live Law
Read Full news at: *https://www.livelaw.in/news-updates/aa-empowered-to-remove-the-liquidator-nclat-chennai-217728?infinitescroll=1*

➢ NCLT admits Marvel Realtors under insolvency on IDFC First Bank plea

The bankruptcy court has admitted Marvel Realtors & Developers Ltd under the corporate insolvency resolution process (CIRP) and appointed Manoj Kumar Mishra as the interim resolution professional for the Pune-based realty firm. The Mumbai bench of the National Company Law Tribunal (NCLT) allowed the petition filed by company's lender IDFC First Bank to initiate the insolvency proceedings. The lender had approached the bankruptcy court after the realty firm defaulted on its dues of over Rs 44.50 crore.

IDFC First Bank had sanctioned a term loan of Rs 48 crores in favour of Marvel Realtors & Developers at interest rate of 17.5% per annum in July 2017. As per the loan agreement, the debt was scheduled to be repaid in 48 monthly instalments and the principal amount was to be repaid in 10 instalments. In August 2017, the lender disbursed Rs 44.51 crore of the total sanctioned amount. In November 2017, the real estate developer sought disbursement of additional Rs 30 lakh. By the end of December 2017, the company's account turned irregular and interest payments were overdue.

In January 2018, the bank addressed a demand notice to the developer to pay an amount of Rs 2.04 crore, including penal interest, which was due and payable towards outstanding payment of interest. As Marvel Realtors & Developers failed to make payment as per the agreement, IDFC First Bank, in 2018, filed a commercial suit before the Bombay High Court for the outstanding loan amounts. Following this, the company entered consent terms in May 2018 and accordingly the commercial suit was disposed of.

However, the company did not repay the defaulted amount under these consent terms despite notices served in October 2018 and March 2019. IDFC First Bank moved the bankruptcy court following this in December 2019. During the pendency of this petition, the developer had approached the lender for settling the outstanding dues with the Financial Creditor. Accordingly, the lender and the developer executed a pact in February 2021 for paying settlement of Rs 35 crore and this was captured through consent terms in June 2021, following which the lender withdrew its petition. However, the dues are yet to be repaid.

"The application made by the Financial Creditor (IDFC First Bank) is complete in all respects as required by law. It clearly shows that the Corporate Debtor (Marvel Realtors) is in default of a debt due and payable, and the default is more than minimum amount stipulated under section 4(1) of the IBC," said the NCLT Mumbai bench comprising of judicial member PN Deshmukh and technical member Shyam Babu Gautam.

According to the bench, the debt and default stands established and there is no reason to deny the admission of the lender's petition. As per the latest data from the Insolvency & Bankruptcy Board of India (IBBI), 5,893 companies were admitted under the CIRP till September-end this year. Of these, - 21% or 1,238 companies –

admitted for insolvency were from the real estate sector. Some of the major realty firms being admitted under the CIRP in recent times, include Rajesh Landmark Projects, Satra Properties, Vijay Group Realty and Kumar Urban Development among others.

Source: The Economic Times
Read Full news at: *https://economictimes.indiatimes.com/industry/services/property-/-cstruction/nclt-admits-idfc-firsts-plea-against-marvel-realtors/articleshow/96630782.cms*

➢ Capex to be driver of economic engine

India Inc, which has weathered a spate of inclement tidings in recent years, stands firm even as inflationary pressures and tightening monetary policies have cast a shadow on global growth. The Ratings Round-Up published by Crisil Ratings on October 2022 highlighted positive credit quality outlook for India Inc stemming from resilient domestic demand, continuing infrastructure-driven investments and strengthened balance sheets.

Green shoots of a pick-up in the private sector investment cycle are visible now. Continuing government focus on infrastructure development is increasing investments in related sectors, while a series of salutary trends improving capacity utilisation driven by strong domestic demand, production-linked incentive (PLI) scheme and China+1 strategy of global companies are conducive as well. The evidence on the ground is also getting stronger. According to a Reserve Bank of India survey, capacity utilisation in the manufacturing sector is inching up and touched 75% in the fourth quarter of last fiscal. Our interactions with companies, which have pencilled in higher capex for next fiscal, indicate as much.

Our recent analysis of 43 sectors that account for over 70% of rated debt (excluding the financial sector) in Crisil portfolio, shows capex activity would be broad-based across infrastructure and consumption-linked sectors. Of these, 26 sectors are consumption-linked (including services) where we see capex levels largely surpassing pre-pandemic levels, barring export-oriented ones.

At an aggregate level, the planned capex in consumption-linked sectors could exceed pre-pandemic level by 30% in fiscal 2024. In absolute terms, this number is estimated to rise to ₹1.8-2 lakh crore in fiscal 2024 compared with ~₹1.45 lakh crore in fiscal 2019 (before the pandemic). This represents more than half of the capex in the entire consumption-linked industry. Sectors likely to drive this pick-up include automobiles and auto ancillaries, steel, brick and mortar retail, hospitality, healthcare and chemicals. In exportsoriented sectors, capex is likely to come down. The remaining 17 are infrastructure and linked sectors and will continue to see capex facilitated by the government thrust. For instance, as per Crisil Research, investments through National Infrastructure Pipeline are expected to be ~₹15 lakh crore per annum on an average over fiscals 2023-2025. This will also crowd in private sector investments in infrastructure and linked sectors.

<u>Healthier Financial system</u>

Also facilitative is a healthier domestic financial system with banks' cleaner balance sheets and improved capital ratios, and deleveraged corporate financials.

Asset quality at banks has improved sharply following the resolution of large gross non-performing assets (NPAs) driven by Insolvency and Bankruptcy Code. With a significant clean-up of books in recent years, bank GNPAs are expected to fall to ~4% next fiscal, compared with ~11% as of fiscal 2018 and average capital adequacy ratios of public sector banks have improved to over 15% in fiscal 2022 from about ~11% in fiscal 2018.

India Inc's deleveraging trend augurs well as it creates headroom to fund capex. For the Crisil portfolio, gearing is likely to decline below 0.5 time this fiscal from 1.4 times nearly a decade back, in fiscal 2014 led by healthy operating cash flows and equity infusion. However, as private sector capex picks up, the extent of debt funding will be monitorable. While the much-awaited private sector capex is expected to kick off sooner than later, a bigger-than-expected decline in global growth amid tighter financial conditions and a surge in Covid-19 infections in China could potentially push it back by a few quarters.

On the domestic front, inflation continues to be tenacious and the recent rate hikes are expected to impact demand. Crisil has pared down India's GDP growth forecast to 6% next fiscal from 6.5% previously. So, if you ask whether animal spirits in terms of private sector capex have been invoked, the answer is yes - though not a resounding one yet.

Source: The Economic Times
Read Full news at: *https://economictimes.indiatimes.com/news/economy/finance/capex-to-be-driver-of-economic-engine/articleshow/96667333.cms*