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"The best time to plant a tree was 20 years ago. The second best time is now"

➤ **NCLT admits Valecha Engineering under Insolvency Resolution Process**

A bankruptcy court in Mumbai has admitted listed infrastructure firm Valecha Engineering under the Corporate Insolvency Resolution Process (CIRP) and has appointed Anurag Kumar Sinha as the interim resolution professional of the company.

The State Bank of India (SBI) had filed an application in the Mumbai bench of the National Company Law Tribunal (NCLT) after the company failed to repay its dues exceeding Rs 347 crore.

Mumbai-based Valecha Engineering is into construction of roads, bridges and tunnels, airports and irrigation dams, among other projects. "The supply of essential goods or services to the corporate debtor, if continuing, shall not be terminated or suspended or interrupted during the moratorium period," said the tribunal in its 34-page order of October 21, which was made available recently.

Counsels for the lender, Subir Kumar and Disha Shah, argued that the infrastructure company availed and enjoyed the credit facilities but failed to repay the dues as a result of which its accounts were classified as NonPerforming Asset (NPA) in June 2016 as per Reserve Bank of India (RBI) prudential norms.

Countering this, advocate Prateek Seksaria, appearing on behalf of the company, said the application of the bankruptcy code is barred by the law of limitation because it has been filed after three years of the purported default.

However, the tribunal, presided by members Kishore Vemulapalli and Manoj Kumar Dubey, allowed the plea filed by the SBI. It observed that the lender had also initiated recovery proceedings against the company before the Debt Recovery Tribunal on August 8, 2018, for recovery of its legitimate dues and hence the application can't be termed as time-barred. In FY2022, the company reported a revenue of Rs 230.81 crore and posted a net profit of Rs 2.33 crore.

As per the stock exchange filing, the promoters of the company hold about 18.9% of the company, while public shareholding stands at about 81.91%.

Originally founded in 1957 as Gopaldas Vasudev & Co, Valecha Engineering had started with small road projects for the Brihanmumbai Municipal Corporation (BMC). In 1977, it entered into the field of irrigation projects such as dams. The company was listed on the bourses in December 2000.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/news/india/nclt-admits-valecha-engineering-under-insolvency-resolution-process/articleshow/95243677.cms>

➤ **Continuation Of RP Till Appointment Of Liquidator Doesn't Contravene IBC: NCLT Chandigarh**

The National Company Law Tribunal ("NCLT"), Chandigarh Bench, comprising of Shri Harnam Singh Thakur (Judicial Member) and Shri Subrata Kumar Dash (Technical Member), while adjudicating a petition filed in Brij Lal Ashok Kumar v Tara Chand Rice Mills Pvt. Ltd., has held that in absence of any order from the Adjudicating Authority appointing a liquidator, the Resolution Professional's continuation in its position is not in contravention of IBC.

The Bench also directed the Liquidator to pay the professional fees to the Resolution Professional for such unauthorized period of service.

Background Facts Tara Chand Rice Mills Pvt. Ltd. was admitted into Corporate Insolvency Resolution Process ("CIRP"). Mr. Sameer Rastogi was appointed as the Interim Resolution Professional ("IRP") on 21.03.2018 and was later confirmed as the Resolution Professional on 03.05.2018.

His fee was fixed at Rs. 4,00,000/- and other expenses. The Resolution Professional had filed an application under Section 33(1) of Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking liquidation of the Corporate Debtor. The matter was first listed for hearing on 20.12.2018.

The Adjudicating Authority vide order dated 12.02.2019 had ordered liquidation of the Corporate Debtor. However, the Resolution Professional continued to manage the operation of Corporate Debtor upto the date of liquidation order i.e. 12.02.2019.

The original CIRP had concluded on 11.09.2018 and was extended upto 10.12.2018. The CoC had approved the professional fees of the Resolution Professional for the CIRP period or any extension thereof.

The period from 11.12.2018 till the RP had managed the affairs of corporate debtor upto 12.02.2019, has been without any approval of the CoC. Thus the CoC did not pay the Resolution Professional for such extended period.

Therefore, Resolution Professional filed an application before Adjudicating Authority seeking direction to the Liquidator to pay its professional fees for the period of 21.12.2018 to 12.02.2019 amounting to Rs. 5,77,102/-. It was prayed that the said fees be paid as a part of Insolvency Resolution Process cost under Section 5(13) read with Section 23(1) of IBC; and the amount be paid to the Resolution Professional before any other amount to be distributed as per Section 53 of IBC on priority basis.

Issue Whether the application for the payment to the Resolution Professional for the period beyond what was expressly approved by the CoC is maintainable?

Decision Of NCLT The Bench observed that in the absence of any order from this Adjudicating Authority appointing a liquidator, the Resolution Professional's continuation in its position was not in contravention of any provisions of IBC. Reliance was placed on NCLAT judgment in CoC of M/s. Smartec Build Systems Pvt. Ltd. Vs. B. Santosh Babu & Ors., [2020] ibclaw.in 10 NCLAT wherein it was held:

"Admittedly, Mr. B. Santosh Babu performed the duty of the 'Interim Resolution Professional' and constituted the 'Committee of Creditors' and thereafter, continued to function even beyond 30 days with designation of the 'Interim Resolution Professional' and as he moved an application for liquidation (though designated "continue as Interim Resolution Professional"), we agree with the observations made by the Adjudicating Authority that the 'Committee of Creditors' is to pay the fees and cost incurred by Mr. B. Santosh Babu, 'Interim Resolution Professional', who also acted during the resolution process beyond 30 days till the date of liquidation having not allowed to continue as Liquidator.

The Bench observed that Corporate Debtor is already under liquidation. The Liquidator was directed to disburse the professional fee of Resolution Professional at the rate approved by CoC for the period from 21.12.2018 to 12.02.2019 i.e., upto the period ending with order of liquidation. The said amount must be disbursed to erstwhile Resolution Professional before any other amount to be distributed as per Section 53 of IBC, as the said fees comes under the heading under Section 5(13) i.e., insolvency resolution process cost.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclt-chandigarh-appointing-a-liquidator-resolution-professional-insolvency-and-bankruptcy-code-213002>

➤ **Change In Composition Of COC Will Not Affect Its Prior Decisions: NCLAT New Delhi**

The National Company Law Appellate Tribunal bench comprising of Justice Anant Bijay Singh and Ms. Shreesha Merla held that the change in composition of the Committee of Creditors (COC) of the Corporate Debtor will not affect its previous decision and the same will be binding on the newly included members of the COC. Previously, NCLT New Delhi directed the DBS Bank to pay Rs. 10.20 Lakhs to the Resolution Professional as the payment towards its fees and an appeal was filed by the DBS against the same.

An operational Creditor initiated the Corporate Insolvency Resolution Process (CIRP) against the Corporate Debtor and thereafter, the COC was constituted by the Resolution Professional (RP) comprising of the Operational Creditor as the sole member. In the first COC meeting held on 27.09.2019, the Operational Creditor approved the fees and expenses of the RP at Rupees 1 lakhs per month.

Subsequently, the COC was reconstituted on 12.10.2019 with the DBS Bank (Appellant) as the Sole Financial Creditor. Thereafter, the DBS Bank participated in all COC Meetings and passed as resolution to liquidate the corporate debtor on fourth COC meeting dated 10.02.2020.

It was contended on behalf of the DBS Bank that the fees of RP was approved by the Operational Creditor who was no longer a member of COC and DBS Bank never ratified the remuneration and expenses of the RP in the reconstituted COC. It was further contended that in any case, the fees of the RP will be paid in priority from the liquidation proceeds as per Section 53 of the IBC and therefore, DBS Bank is not required to pay amount to the Resolution Professional.

The contentions of DBS Bank were countered by the Resolution Professional by relying upon Regulation 12(3) of the CIRP Regulations 2016 which states that inclusion of new member will not affect the validity of prior decision of COC.

NCLAT held that the DBS Bank participated in all the COC meetings and even passed resolution for the liquidation of the Corporate Debtor cannot now turnaround and say that it is not liable to pay the CIRP Costs and fees.

The Bench further held that the proviso to Regulation 12(3) is squarely applicable to the present case and the decision taken by the previous COC comprising of Operational Creditor will not be affected by the inclusion of DBS Bank and therefore, dismissed the appeal filed by the DBS Bank. Case Details: DBS Bank v. Rakesh Kumar Jain, CA (AT) (Ins) No. 540/2021 Counsel for Appellant: Mr. Ashish Mukhi & Ms. Madhurima Sarangi Counsel for Respondent: Mr. Mohit Nandwani.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclat-new-delhi-committee-of-creditors-coc-resolution-professional-rp-corporate-insolvency-resolution-process-cirp-212992>

