INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

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7th September 2022

"Either you run the day or the day runs you"

➢ Srei firms' creditors to urge bidders to raise bid values, upfront cash offered

The consolidated committee of creditors of two insolvent Srei group companies has decided to negotiate with the two resolution applicants — a consortium of Varde Partners and Arena Investors, and entrepreneur Shon Randhawa and her partner Rajesh Viren Shah — to increase the financial bid values and upfront cash offered.

The two insolvent NBFCs, which are under the corporate insolvency resolution process, have received two resolution plans; the consortium of Varde Partners and Arena Investors has put forward a bid of around Rs 14,000 crore, while the second bid submitted by Randhawa and her partner is of around Rs 10,000 crore.

The 14th meeting of the consolidated committee of creditors (CoC) of Srei Infrastructure Finance (SIFL) and Srei Equipment Finance (SEFL) was conducted on September 5. The resolution applicants presented the detailed resolution plans during the meeting. "In Monday's CoC meeting conducted by the administrator, points of negotiations with the two resolution applicants have been crystallised. The CoC and the resolution applicants have agreed on the points of negotiations. Negotiations will commence now," sources told FE.

The CoC will hold talks with the resolution applicants regarding increasing the bid values, among other points. "They will be urged to increase the amounts of upfront cash as well. Also, the applicants will be requested to consider reducing the time periods (tenure) offered by them to make the total payments," the sources said. The CoC meeting is likely to take place later this week.

The creditors will also discuss the matter of the earnest money deposit (EMD), as Randhawa and Shah did not furnish it in the prescribed format. Moreover, they have requested some modifications in the prescribed norms for the EMD, required to be furnished along with the financial bids. "In order to take a decision on the EMD matter a committee has been constituted," the sources said.

A mail sent to Rajneesh Sharma, the administrator for the two firms, was unanswered till the time of going to print. As of January 31, the administrator

admitted total claims of Rs 22,964.64 crore of commercial banks of SIFL and SEFL, against the combined amount of Rs 25,115.29 crore claimed by them.

The final list of the prospective resolution applicants for SIFL and SEFL consisted of 13 entities, including Vedanta, Jindal Power, ARCIL, JM Financial Asset Reconstruction Company and Edelweiss Alternative Asset Advisors.

Insolvency proceedings against SIFL and its subsidiary SEFL commenced in October 2021 after insolvency petitions filed by the Reserve Bank of India were approved by the Kolkata bench of the National Company Law Tribunal.

Source: Financial Express
Read Full news at: *https://www.financialexpress.com/industry/srei-firms-creditors-to-urge-bidders-to-raise-bid-values-upfront-cash-offered/2657641/*

➢ View: Delay in implementing cross-border insolvency law is detrimental to Indian creditors

The introduction of the Part Z of The Insolvency and Bankruptcy Code (IBC), i.e., the cross-borderinsolvency law (CBIL), is turning out to be a mirage on the Indian insolvency horizon. The dithering of the legislature is surprising as the delay is detrimental to the Indian creditors. This article discusses CBIL, an adaptation of the UNCITRAL Model Law on Cross Border Insolvency (MLCB), in conjunction with other elements of insolvency & bankruptcy ecosystem, i.e., US Bankruptcy Code (USBC), comprising of liquidation (Chapter 7), reorganization (Chapter 11) and cross-borderinsolvency (Chapter 15); English scheme of arrangements (English Scheme); insolvency of personal guarantors, and insolvency of Indian operations of Multinational Corporations (MNCs).

MLCB and its variations apply to a single company. In-practice, filings under USBC as well as English Schemes, have been made for several companies jointly, which has been a well-accepted practice. This is the soft-intersection of group insolvency and MLCB as illustrated in few of the examples below.

One of the early examples to use cross-border insolvency law was Ashapura Minechem Limited (AML). AML's Director, acting as a foreign insolvency representative, had sought Chapter 15 recognition, in 2011, to desist judgement creditors from enforcing their arbitration awards of USD 102M in the United States. US courts determined that the proceedings under Board for Industrial and Financial Reconstruction (BIFR) were foreign main proceedings, and the centre of main interest (COMI) was in India. However, during the periodic status conferences of the court, it became obvious that the proceedings under BIFR were at standstill. Also, the court had directed AML to post security of 10%; as AML did not comply, the case was subsequently dismissed.

In India, AML filed section 10 application under IBC in December 2018. The case was admitted in March 2019. The judgement of National Company Law Tribunal (NCLT), Mumbai, is perplexing, as it dispensed with the requirement of expression of interest

and pronounced that the resolution plan under SARFAESI will be deemed to be the resolution plan.

Another example pertains to Rolta India Limited (RI). Six subsidiaries of RI filed for Chapter 11, namely, Rolta International, Rolta Middle East, Rolta UK, Rolta Americas, Rolta LLC, and Rolta Global BV, collectively the Rolta Debtors, to get a stay on orders of the New York Court. In September 2020, the court had awarded a judgment in favour of the bondholders amounting to USD 180M. Thereafter, in October, the court passed a turnover order requiring Rolta entities to turn over the cash and shares to the bondholder.

Rolta Debtors Chapter 11 application was dismissed, as they could not demonstrate that a successful reorganization was possible, and a receiver was appointed; in September 2021, certain subsidiaries were turned-over to the bondholders.

Meanwhile, in India, RI's proceedings under IBC have not commenced. The application of Union Bank of India, filed in 2018, under section 7 of IBC, was dismissed in May 2019 as it was based on the Reserve Bank of India (RBI) circular which was annulled by the Hon'ble Supreme Court. RI got admitted under IBC in November 2019, on application of the aforesaid bondholders; the admission was cancelled by the Bombay High Court on procedural grounds.

Subsequently, several operational creditors filed for insolvency; one group reached a settlement; one operational creditor did not appear in court; and one requested withdrawal under section 12A. Nevertheless, RI got admitted the second time in May 2021. However, the SC dismissed the admission, based on the judgement in Swiss Ribbons, that the committee of creditors (COC) had not been formed and thus an application for withdrawal was justified. Currently, an application by UBI is pending in NCLT for admission.

In the aforesaid examples, the fact, that both the companies were trying to forestall action of creditors implies that valuable assets existed. Therefore, if such companies are admitted under IBC, and CBIL is in operation, the Resolution Professional (RP) with the permission of COC may file for insolvency as a group of companies overseas, wherein the RP may plead for COMI as India; not a certainty that it would be granted as determination depends on the circumstances of each case. Alternatively, the RP in his capacity as major shareholder may put the overseas companies in liquidation. Thus, Indian creditors may have their claims against a larger pool of assets. The case also demonstrates the importance of timely admission under IBC.

The corollary of an unsuccessful reorganization is liquidation; two cases wherein liquidation was the outcome for the subsidiaries of Indian companies, are discussed below.

Liquidation

Three US subsidiaries of Firestar International Limited (FIL) namely Firestar Diamond, Fantasy, and Old AJ, filed for Chapter 11 in February 2018, collectively the Firestar Debtors. The final plan mimicked Chapter 7, except that it incorporated a settlement with Punjab National Bank (PNB). In the interest of overall settlement

PNB agreed to reduce the unsubordinated portion of its claim to USD 2.5M against the asserted claims exceeding USD 1Bn against the estates. PNB has thereafter received USD 3.25M from the estate.

However, the claims of Bank of India and Union Bank of India were rejected by the courts. In case CBIL was in existence, and insolvency proceeding in India would have started in time, an effort could have been made to recognise Indian proceedings as main and initiating insolvency of other entities as non- main. Indian proceedings started in September 2019; one and a half year after the US proceedings.

Currently, Firestar Debtors and FIL have been subjected to bankruptcy/insolvency proceedings. NCLT in August 2021 passed an order for liquidation of FIL. Furthermore, based on the filings in US courts there are 12 other FIL entities, encompassing jurisdictions of Belgium, UAE, India, and US as well as 16 shadow entities. Thus, filing across jurisdictions could have been attempted by the COC if CBIL was in-force which may have resulted in higher recovery. The caveat being, that India in its CBIL, has prescribed reciprocity with jurisdictions who have adopted the MLCB; not all the aforesaid jurisdictions have adopted the MLCB.

The second example pertains to Gitanjali Gems Limited (GGL). Samuels Jewelers (SJ), a 100% subsidiary of GGL filed for Chapter 11 in August 2018 and requested to convert it to Chapter 7 in March 2019. SJ has 122 stores across US and an e-commerce site. The absence of CBIL, possibly prevented GGL creditors in India, to move an application under Chapter 15. GGL was admitted under IBC in October 2018 with ascertained claims of over INR 12,500 crores and a liquidation order is likely. Apart from SJ, GGL has 18 foreign subsidiaries/associates, as per its annual report of 2017. CBIL may have enabled filing in foreign jurisdictions and recover money.

Let us now evaluate examples wherein overseas reorganization of subsidiaries of Indian companies had been successful.

Successful Foreign Restructurings

GCX Limited (GCX) was a subsidiary of Reliance Communication Limited (RCL); the balance equity being held by Reliance Communications Infrastructure Limited. GCX assets comprised of five subsea systems with over 66,000 route kilometres ("rkms") of cable in 27 countries. Also, it owned and leased terrestrial networks with a total length of over 9,839 rkms in 14 countries. GCX filed for Chapter 11 in September 2019, consisting of 16 entities organized under the laws of US, Australia, Bermuda, France, Germany, Ireland, and UK.

GCX was successfully reorganized under Chapter 11 with debt-to-equity-swap by senior noteholders i.e., Värde Partners, Portsea, and Bardin Hill. In November 2021, the new shareholders, sold their stake to 3i Infrastructure plc for USD 512million.

Would the Indian creditors have benefitted if the RP sought recognition under Chapter 15 arguing that India was the COMI and had filed for the group of companies? Maybe, yes, as this was a rare instance where proceedings under IBC started before Chapter 11. The concomitant challenge for the RP and COC would have been the pendency of proceedings under IBC.

In Jain Irigation Systems Limited (JIL) the Indian creditors made the right decision. One of the condition precedents of Indian restructuring was a successful restructuring of overseas operations; the outcome would not have been different if the RP had access to a functioning CBIL. JIL filed for an English Scheme of its international business in May 2021. The international business had three components irrigation, machinery, and foods. Irrigation business was based in the US and Israel comprising of nine factories servicing 120 countries. The plastics business was based in Ireland and the food business in the UK and the US. The international business was successfully restructured in October 2021. Subsequently, it was merged with Rivulis, a Temasek backed company in June 2022; JIL will receive 22% stock of merged entity. The Indian restructuring was finalized in March 2022 under RBI's Prudential Framework for Resolution of Stressed Assets. After an exposition of both the unsuccessful and successful reorganizations as well as liquidations, lets deliberate two other scenarios i.e., insolvency of a personal guarantors and of MNCs in India.

Personal Guarantors

In the case of State bank of India vs Sudip Bijoy Dutta, Director of Ess Dee Aluminium Ltd. , the plea taken by the personal guarantor was that he is no longer a citizen of India. NCLT Kolkata, pronounced that by renouncing the citizenship, liability of the guarantor to discharge his obligations created in terms of deed of guarantee executed as citizen of India shall not be extinguished. However, without a CBIL, it will be difficult to enforce the judgement in Singapore, the country where the guarantor has taken up citizenship.

Multinational Corporations

Urban Transit Private Limited (UTPL) was a wholly owned subsidiary of Scomi Engineering Berhad, Malaysia (SEB), and was admitted under IBC in October 2019. The value of claims received were INR 142 crores. It was unfortunate that SEB too went into liquidation, else in a scenario wherein the Indian subsidiary defaults and a parent guarantee exists, the RP could pursue insolvency against parent if CBIL is in-force.

The Way Forward

After traversing through various cases above it is apparent that introduction of CBIL will be beneficial to Indian creditors; in any case they will not be worseoff. It is true that a lot will depend on the stand the foreign courts will take visà-vis the centre of main interest and the classification as main or non-main`proceedings. The courts overseas have taken a reasoned stand in determining COMI and have not stuck to a rigid criterion. US, has been liberal in COMI analysis, having considered factors like location of debtor's headquarters; the location of those who manage the debtor; the location of debtor's primary assets; the location of the majority of debtor's creditors; and/or the jurisdiction whose law would apply to most disputes. It would be a rare Indian promoter who will not have an iron-fisted control over its entities and thus in most cases an argument for the COMI in India can be furnished. Infact, the CEO and CFO of Firestar Debtors, pleaded that the operations and decisions were controlled by the Indian promoter.

Paradoxically, it is the delays at NCLT that will wipe out the advantages of CBIL. This is because in most cases, a court judgement would be pronounced and enforced overseas, even before a case is admitted in India and/or is in early stages of IBC. Thus, the legislature should introduce CBIL at the earliest, preferably without reciprocity, and simultaneously improve the efficiency of NCLTs.

Source: The Economic Times
Read Full news at: *https://economictimes.indiatimes.com/news/company/corporate-trends/view-delay-in-implementing-cross-border-insolvency-law-is-detrimental-to-india-creditors/articleshow/94029391.cms*