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➤ **Jio seeks to speed up insolvency process for Reliance Infratel**

Reliance Jio Infocomm, in a bid to expedite the acquisition process of the debt-laden Reliance Infratel (RITL), has offered to deposit the total resolution amount of `3,500 crore in an escrow account.

Reliance Projects and Properties Management Services, a subsidiary of Reliance Jio, has moved a fresh application before the Mumbai bench of the National Company Law Tribunal (NCLT), stating that the delay in the resolution process is causing "severe harm" to the interests of the corporate debtor and the resolution applicant.

Reliance Projects had emerged as the winning bidder for RITL, the holding company of debt-laden Reliance Communications' tower and fibre assets, in March 2020.

"It is submitted that the resolution applicant (Reliance Projects) is committed to and is in readiness and willingness to implement the resolution plan. However, pendency of inter-creditor disputes is resulting in further delays in implementation, which, in turn will also deteriorate the value of assets of the corporate debtor, if urgent actions are not taken," it said.

"In order to avoid further delays, the applicant proposes to deposit the total resolution amount (as defined in the resolution plan) in an account as was directed by the tribunal," Reliance Projects said in an interlocutory application filed last month.

The company has also sought direction from the tribunal to the monitoring committee and respondents to take all steps to implement the resolution plan.

The funds deposited in an escrow account would be distributed among the lenders after settlement of the resolution plan and creditors' disputes. State Bank of India, Doha Bank, Standard Chartered Bank and Emirates Bank are among a number of banks involved in a legal battle, now pending before the Supreme Court, over the distribution of funds.

In May 2018, Reliance Communications' Indian lenders referred the company and its subsidiaries — RITL and Reliance Telecom — to the NCLT after the firm, then

controlled by Anil Ambani, failed to pay dues worth `46,000 crore. In 2020, with a bid of `4,000 crore, Reliance Projects emerged as the successful resolution applicant. The Committee of Creditors approved the resolution plan in March 2020, while it received NCLT approval in December 2020.

The process came to a halt in November 2020, after SBI, Union Bank of India and Indian Overseas Bank tagged RITL as a "fraud account" following a forensic audit. In May 2021, Reliance Projects moved the NCLT, asking it to direct the lenders to share the audit report, saying that terming the accounts fraudulent had not been disclosed before the NCLT.

Source: Financial Express

Read Full news at: <https://www.financialexpress.com/industry/jio-seeks-to-speed-up-insolvency-process-for-reliance-infratel/2777547/>

➤ **Interim Moratorium Under Section 96 Of Insolvency & Bankruptcy Code, 2016 Is Limited To Particular Guarantor And Will Not Protect The Other Personal CoGuarantors Of Same Debt: Delhi High Court**

The Delhi High Court recently while dealing with two summary suits filed by creditors of Bhushan Steel limited against the ex-promoters of Bhushan Steel namely Brij Bhushan Singhal and Neeraj Singhal for recovery of money held that the interim moratorium under section 96 of the Insolvency & Bankruptcy Code, 2016 (IBC/Code) is specific to all debts of a particular debtor and will not be applicable to other personal co-guarantors.

Single Judge bench of Justice Amit Bansal had previously heard the parties on various occasions and reserved the judgement on 05.09.2022. Thereafter, Defendant No.1 filed an application under Order VII Rule 11 of Code of Civil Procedure on the ground that insolvency proceedings have also been filed against himself before National Company Law Tribunal, New Delhi (NCLT) after the judgement was reserved therefore, by virtue of interim moratorium under Section 96 of the Code, suit cannot proceed against any of the Defendant.

The said applications were opposed by the Plaintiffs on the ground that by virtue of Section 78 & 79 of Code, the adjudicating authority for personal guarantors is Debt Recovery Tribunal and therefore, an application under Section 95 of IBC cannot be filed before NCLT as it has no jurisdiction to entertain the same and the very same objection is also taken by the Defendants before NCLT.

It was further contended by the Defendants that interim moratorium would only apply against all debts of a particular co debtor and not any other person or co-guarantor. The Single judge bench interpreted the provisions of Section 60(2) & Section 179 of the Code and after referring the judgment of NCLAT in the case of State Bank of India v. Mahendra Kumar Jajodia held that; " 18. In view of the legal position elucidated above, it clear that

Section 179(1), which provides the jurisdiction for the DRT with respect to insolvency matters of individuals and firms, is subject to Section 60 of the IBC. Sub-section (1) of

Section 60 of the IBC provides that in relation to insolvency resolution for corporate persons, including corporate debtors and personal guarantors, the Adjudicating Authority shall be the NCLT..."

The Court also held that interim moratorium against one of the Coguarantors will not protect the other co-guarantor even though the liability of both the co-guarantors arise from the same debt.

"The reference to „all the debts“ in Section 96(1)(a) has to be in respect of all debts of a particular debtor. This is clear from the language used in Section 96(1)(b)(ii) to the effect that the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.' Therefore, the effect of the interim moratorium is only in respect of the debts of a particular debtor.

By no stretch of imagination can it be said to include other independent guarantors in respect of the same debt of a corporate debtor.

Merely because an interim moratorium under Section 96 is operable in respect of one of the co-guarantors, the same would not apply to the other co-guarantor(s)" But since, insolvency proceedings were also subsequently filed against the Defendant No.1 after the judgement was reserved, the High Court stayed the proceedings against both the defendants.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/delhi-high-court-section-96-of-insolvency-bankruptcy-code-personal-guarantor-interim-moratorium-213421>

➤ **When Corporate Debtor Does Not Create A Gratuity Fund, No Gratuity Is Payable: 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 an application filed in Small Industries Development Bank of India (SIDBI)v International Mega Food Park Limited, has held that if the Corporate Debtor had not created a Gratuity Fund, then the Resolution Professional cannot be directed to pay Gratuity to the employee(s). Further, the salary and leave encashment of employees accrued during CIRP period fall within the definition of insolvency resolution process cost under Section 5(13)(c) of IBC.

International Mega Food Park Ltd. ("Corporate Debtor") was admitted into Corporate Insolvency Resolution Process ("CIRP") by the Adjudicating Authority on 28.02.2019. Mr. Sumat Gupta was appointed as the Resolution Professional. Mr. Rakesh Sharma ("Applicant") has worked in the Corporate Debtor as AGM Accounts and Finance for 7 years and his services were terminated post commencement of CIRP on 18.05.2019. The Applicant had sought full and final clearance of pending Gratuity dues, Leave Encashment and salary from the Corporate Debtor. When the amounts were not released, the Applicant filed an application before the Adjudicating Authority, seeking release of Gratuity dues, Leave Encashment and salary during the CIRP period, as the same does not form part of the liquidation estate of the Corporate Debtor.

Contentions Of Resolution Professional The Resolution Professional submitted that the Corporate Debtor had not created any Gratuity Fund. Thus, no funds were available for payment of Gratuity to the Applicant for services rendered prior to commencement of CIRP. Further, no details were furnished by the Applicant regarding period of leave encashment and there was no Leave Encashment Fund created by the Corporate Debtor either.

It was argued that Gratuity liability, if any, cannot be part of liquidation estate since only assets can be part of liquidation estate. Had there been any gratuity fund of the Corporate Debtor as contemplated under Section 36(4)(a)(iii) of IBC or Section 4A of the Payment of Gratuity Act, 1972, only then the issue of inclusion or non-inclusion in liquidation estate would arise.

Decision Of NCLT

The Bench observed that it is undisputed that the Applicant worked for the Corporate Debtor during CIRP. Thus, the expenses incurred by Applicant will come under the Insolvency Resolution Process cost under Section 5(13)(c) of IBC. "The issue at hand is whether Gratuity is payable when no Gratuity fund is created. The Resolution Professional cannot be directed to make payment of gratuity to the applicant as there is no gratuity fund created by the corporate debtor." The Bench held that in absence of a Gratuity Fund created by the Corporate Debtor, the Resolution Professional cannot be directed to pay gratuity to employee. Further, the salary and leave encashment of employees accrued during CIRP period fall within the definition of insolvency resolution process cost under Section 5(13)(c) of IBC.

Reliance was placed on the Supreme Court judgment in Sunil Kumar Jain and others v Sundaresh Bhatt and others, (2022) ibclaw.in 23 SC, wherein it was held that the Wages/Salaries of the Workmen/Employees during CIRP period can only be included in the CIRP costs if it is established that the IRP/Resolution Professional managed the operations of the Corporate Debtor as a going concern and the concerned workmen/employees actually worked during the CIRP.

The Bench directed the Resolution Professional to make provisions for payment of salary and leave encashment to the Applicant after taking necessary information. Also, as per the Applicant's entitlement, the Resolution Professional may modify the resolution plan to that extent with the approval of CoC. The application was disposed off accordingly.

Source: Financial Express

Read Full news at: <https://www.livelaw.in/news-updates/nclt-chandigarh-small-industries-development-bank-of-india-sidbi-corporate-debtor-gratuity-213420>

