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"Change beings at the end of your comfort zone."

➤ **Reliance Cap lenders to run 2nd round of auction for value maximization; decision on Monday**

The battle between Torrent and Hinduja Group for the acquisition of debt-ridden Reliance Capital may take a new turn as the lenders are considering running a second round of 'Challenge Mechanism' or e-auction for the bidders, sources said. The Committee of Creditors (CoC) will meet on Monday to decide on the second round of auction as it is expecting bids upwards of Rs 10,000 crore from this. The first round of auction witnessed both Hinduja and Torrent trying to outbid each other by continuously sweetening their bids and offering more upfront cash, even after the auction got over, sources said.

The second Challenge Mechanism round under Insolvency and Bankruptcy Code (IBC) will be conducted with a reserve price of Rs 9,500 crore, as against the minimum threshold value of Rs 6,500 crore in the first round that concluded on December 21, 2022, as per the sources.

The second round of Challenge Mechanism is also likely to have a threshold of minimum cash upfront payment of around Rs 8,000 crore for the bidders, they said, adding, this will give Torrent an advantage of Rs 640 crore, as the company has already made an all-cash offer of Rs 8,640 crore.

According to sources, the decision to run a second round of Challenge Mechanism has been taken as the commercial viability of the Torrent and Hinduja bids are not acceptable to the CoC.

The bids submitted by Torrent Group (Rs 8,640 crore) and IndusInd International Holdings Ltd.(IIHL) of Hinduja Group (Rs 8,110 crore) are far below the liquidation value and fair value fixed by the independent valuers, sources said. The liquidation value of Reliance Capital is pegged at around Rs 13,000 crore and fair value is Rs 17,000 crore. The new Challenge Mechanism round is likely to be held around January 20, 2023. The current deadline to complete the resolution process of Reliance Capital is January 31, 2023.

The Reserve Bank of India (RBI) had on November 29, 2021 superseded the board of RCL in view of payment defaults and serious governance issues. The RBI appointed Nageswara Rao Y as the administrator in relation to the Corporate Insolvency Resolution Process (CIRP) of the firm. Reliance Capital is the third large non-banking financial company (NBFC) against which the central bank has initiated bankruptcy proceedings under the IBC. The other two were Srei Group NBFC and Dewan Housing Finance Corporation (DHFL).

The RBI subsequently filed an application for initiation of CIRP against the company at the Mumbai bench of the National Company Law Tribunal (NCLT). In February last year, the RBI-appointed administrator had invited expressions of interest for the sale of Reliance Capital.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/industry/banking/finance/reliance-cap-lenders-to-run-2nd-round-of-auction-for-value-maximization-decision-on-monday/articleshow/96834707.cms>

➤ **NCLT Delhi Dismisses Insolvency Plea Against Hindustan Times; “Not A Dispute Redressal Forum”**

The National Company Law Tribunal (“NCLT”), New Delhi Bench, comprising of Shri Bachu Venkat Balaram Das (Judicial Member) and Shri L.N. Gupta (Technical Member), while adjudicating a petition filed in M/s JHS Svendgaard Ltd. v M/s HT Media Ltd., has declined to initiate Corporate Insolvency Resolution Process (CIRP) against Hindustan Times (HT Media Ltd.). The Bench further held that NCLT is not a dispute redressal forum.

Background Facts

HT Media Ltd. (“Corporate Debtor”) is a mass media company engaged in the business of print, electronic and digital media. HT media’s flagship newspaper is Hindustan Times.

M/s JHS Svendgaard Ltd. (“Operational Creditor”) entered into an Advertising Agreement with the Corporate Debtor on 25.01.2017 and made a security deposit of Rs. 80 Crores in view of the same. The security deposit was to be utilized towards supply of advertisement services by the Corporate Debtor. The Corporate Debtor terminated the Agreement on 25.01.2022. Operational Creditor contended that Rs. 5,39,39,475/- remained unutilized from the security deposit and was liable to be returned.

On 21.02.2022, the Operational Creditor issued a demand notice under Section 8 of the Insolvency and Bankruptcy Act, 2016 (“IBC”) to the Corporate Debtor, demanding the balance security amount. The Corporate Debtor did not respond to the notice. Thereafter, the Operational Creditor filed a petition under Section 9 of IBC, seeking

initiation of Corporate Insolvency Resolution Process (“CIRP”) against the Corporate Debtor, over a default of Rs. 5,38,88,866/- inclusive of interest.

The Corporate Debtor while opposing the petition argued that no operational debt was due and payable and there is a pre-existing dispute between the Parties. The security deposit amount stood forfeited and was non-refundable as per the Agreement.

NCLT Verdict

The Bench opined that there has been difference of interpretation between the Parties with regard to the tenure of Advertising Agreement. The Bench held that the petition was pursued for a disputed debt and the NCLT is not a dispute redressal forum.

Reliance was placed on the Supreme Court judgment in Mobilox Innovations Pvt. Ltd. v Kirusa Software Pvt. Ltd., Civil Appeal No. 9405 of 2017, wherein it was held that as long as a dispute truly exists in fact and is not spurious, hypothetical and illusory; the Adjudicating Authority must reject the petition under Section 9 of IBC.

The Bench dismissed the application.

Case Title: M/s JHS Svendgaard Ltd. v M/s HT Media Ltd.

Case No.: (IB) 400 ND/2022

Source: *Live Law*

Read Full news at: <https://www.livelaw.in/news-updates/nclt-delhi-dismisses-insolvency-plea-against-hindustan-times-not-a-dispute-redressal-forum-218373?infinitescroll=1>

➤ **Re-Constituted Bench Cannot Pass An Order Without Re-Hearing The Parties: NCLAT Delhi**

The National Company Law Appellate Tribunal (“NCLAT”), Principal Bench, comprising of Justice Rakesh Kumar (Judicial Member) and Dr. Ashok Kumar Mishra (Technical Member), while adjudicating an appeal filed in Rajesh Narang v Durha Vitrak Pvt. Ltd., has held that after re-constitution of Bench no order should be passed without re-hearing the matter.

Background Facts

Durha Vitrak Pvt. Ltd. (“Corporate Debtor”) was running a hospital named Febris Multispeciality and was admitted into Corporate Insolvency Resolution Process (“CIRP”) on 08.11.2019. Mr. Aishwarya Mohan Gahrana was appointed as the Interim Resolution Professional and later confirmed as the Resolution Professional.

Despite the Corporate Debtor being a going concern, the Resolution Professional did not permit the hospital to run its operations and earn revenue during the Covid-19 pandemic. The Resolution Professional filed an application under Section 33(2) of the Insolvency and Bankruptcy Code, 2016 (“IBC”) before the Adjudicating Authority, seeking liquidation of the Corporate Debtor. The application for liquidation was first heard by the Division Bench of NCLT consisting of Justice BSV Prakash Kumar (Acting President) and Mr. V.K. Subburaj (Technical Member) and order was reserved. However, before the order could be passed, the Mr. V.K. Subburaj demitted the office.

Thereafter, a Bench comprising of Justice Mr. BSV Prakash Kumar (Acting President) and Mr. Hemant Kumar Sarangi (Technical Member) passed an order on 20.05.2021 approving liquidation of Corporate Debtor.

Ex-Director of Corporate Debtor filed an application for rectification of Order dated 20.05.2021. It was argued that the re-constituted Bench did not re-hear the matter which was in violation of principle of natural justice. The Order dated 20.05.2021 was declared void and matter was directed to be reopened and heard by the regular Principal Bench i.e. Acting President and Mr. Hemant Kumar Sarangi (Technical Member). On 31.05.2021, the matter was heard and liquidation of Corporate Debtor was approved. The Resolution Professional was appointed as the Liquidator. However, the Order dated 20.05.2021 was reproduced in Order dated 31.05.2021.

Mr. Rajesh Narang being an Ex-Director of Corporate Debtor filed an appeal before the NCLAT against the order of liquidation. The Ex-Director argued that the Resolution Professional was hand in gloves with the LIC Housing Finance Ltd (Financial Creditor) which holds about 93% voting shares in the Committee of Creditors ("CoC"). The Resolution Professional was not focused on resolution/revival rather liquidation of Corporate Debtor. Further, the Adjudicating Authority also failed to examine viability of Corporate Debtor as a going concern.

NCLAT Verdict

The Bench observed that during the outbreak of Covid-19 pandemic there were shortage of beds in hospitals and citizens died due to the same. The decision of the Resolution Professional to not to run the hospital and facilitate the Corporate Debtor to earn revenue, was detrimental to both society and Corporate Debtor. The Bench held that it is inappropriate to allow liquidation of Corporate Debtor.

Further, the Resolution Professional did not take reasonable steps to continue the Corporate Debtor as going concern, which is mandated under Section 25(2)(h) of the IBC. It was further observed that when the first order was passed on 20.05.2021, one of the Technical Member was not a party at the time of hearing and reserving orders. For this reason alone, the order dated 20.05.2021 was declared void and fresh hearing was conducted on 31.05.2021. The Bench observed that the order dated 20.05.2021 was reproduced in order dated 31.05.2021, without further hearing or rehearing

The Bench set aside the Order of liquidation dated 31.05.2021 and remitted the matter back to Adjudicating Authority to re-examine and consider changing the Resolution Professional. The Bench has also directed IBBI to conduct an enquiry on the Resolution Professional and register an FIR if any cognizable offence is disclosed.

Case Title: Rajesh Narang v Durha Vitrak Pvt. Ltd.

Case No.: COMPANY APPEAL (AT)(INS) NO.612/2021

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/re-constituted-bench-cannot-pass-an-order-without-re-hearing-the-parties-nclat-delhi-218372>

➤ Crane maker Tractors India dragged to NCLT

Bank of India has initiated insolvency proceedings against Kolkata-based commercial equipment manufacturer TIL (Tractors India) to recover its dues as previous recovery efforts have failed, people familiar with the process said.

Five banks, including BoI, have total receivables of ₹600 crore from the company that has been classified as a non-performing asset by banks. "The case has been filed in the NCLT pending admission. There was no other recourse since the company is bleeding and no resolution is in sight," said a person aware of the process. The promoter had proposed restructuring of loans with a repayment tenure stretching 10 years, which banks were not keen on. Hence, the lenders have opted for a court-monitored bankruptcy process. TIL is a manufacturer of cranes, trucks and container handlers, and the company was incorporated before independence.

Its results show that it has been making losses for more than a year. At the end of September 2022, the company reported a loss of ₹21 crore mainly as revenues dwindled. Total income fell to just ₹4 crore at the end of September 2022 from ₹17 crore a year ago, indicating the challenges it faces. In their report accompanying the results, auditors Singhi & Co noted that the company's net worth is negative and its current liabilities exceed its current assets as of September 30 2022.

"The company is contemplating strategic investment by the issue of preferential shares to Indocrest Defence Solutions Pvt Ltd pursuant to the provisions of Regulation 164A of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018, subject to the approval of the shareholders.... The board of directors ... has passed a resolution to this effect at its meeting held on 26th November 2022 and has also informed the stock exchanges," the auditors said.

Lenders are also open to finding a buyer outside the insolvency process and settling the account through a one-time arrangement given the delays in the bankruptcy court, a second person aware of the process said. TIL has objected to the NCLT plea by BoI. The auditors said that though its financial situation has cast doubts on the company's ability to continue as a going concern, the management is confident of mitigating the uncertainties due to the proposed strategic investment and sales orders in hand.

Non-bank lenders Tata Capital Financial Services and Aditya Birla Finance have also initiated SARFAESI proceedings for recovery of dues.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/news/company/corporate-trends/crane-maker-tractors-india-dragged-to-nclt/articleshow/96837723.cms>

