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Latest updates On Insolvency & Bankruptcy

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"If you cannot do great things, do small things in a great way"

➤ **Fixing domestic bankruptcy regime gets top policy priority**

India's cross-border bankruptcy resolution mechanism will have to wait a while as the government focuses on fixing the domestic bankruptcy regime with a set of amendments to the Insolvency and Bankruptcy Code (IBC).

The ministry of corporate affairs is working on letting foreign lenders to Indian businesses initiate bankruptcy action in local tribunals and enabling Indian lenders to access global assets of defaulting companies, but the contours of the proposed cross-border insolvency regime are yet to be finalized, a person familiar with discussions in the government said.

Parallelly, work is going on in revamping IBC for speedy admission of cases and creation of corporate rescue plans while ensuring lenders are able to realize maximum value for their investments in the distressed firm. The urgency on improving outcomes of the domestic bankruptcy regime also stems from the fact that its shortcomings were flagged by the parliamentary standing committee on finance led by Bharatiya Janata Party leader Jayant Sinha in August.

Talks on the cross-border insolvency regime are taking place on finer points at the highest levels in government, said a second person, who also spoke on condition of anonymity. In contrast to improving the domestic bankruptcy resolution regime, the proposed cross-border insolvency framework involves structural changes.

It seeks to let foreign creditors and bankruptcy professionals initiate or take part in bankruptcy action in an Indian tribunal. It would cover Indian lenders requiring assistance in another country against Indian businesses and corporate guarantors with overseas assets. A cross-border insolvency regime is expected to help creditors to trace global assets of defaulting debtors and recover dues.

An email sent to the spokesperson of the corporate affairs ministry on Tuesday remained unanswered.

Experts said while developing the domestic regime is critical, it is also important to give creditors and debtors cross-border insolvency tools to maximize the value of the distressed firm's assets.

L. Viswanathan, a partner at law firm Cyril Amarchand Mangaldas, said cross-border insolvency resolution could also help offset some challenges in domestic insolvency resolution, including accessing established legal and insolvency resolution framework available in overseas jurisdictions for resolving assets that have an inherent cross-border nexus.

"Framing the legislation to mitigate against abuse would be important. Access to established offshore jurisdictions should be balanced with the relative stage of evolution of our insolvency tribunals. The economic benefit of quicker resolution and access to well-established and advanced insolvency regimes is certainly welcome," he said.

Experts also said a framework to deal with cross-border insolvency would strengthen India's position in negotiating bilateral treaties and improve the ease of doing business. The learnings from the resolution of Jet Airways, with assets spread across different jurisdictions, should be a role model for the rollout, Asish Philip Abraham, a partner at Lakshmikumaran and Sridharan Attorneys, said. The framework for cooperation between bankruptcy administrators should be streamlined with due regard to global and territorial aspects, he said. "The framework should also focus on time-bound resolution with due recognition of judicial process and lenders' claim under domestic law based on reciprocity," Abraham said.

Ruby Singh Ahuja, a senior partner at law firm Karanjawala and Co., said a cross-border insolvency regime would help banks and financial creditors in India deal with corporate debtors whose valuable assets are parked outside the country. "However, it will not be an easy task for the creditors and the resolution professional to lay claim on those assets which vest in a related party of the corporate debtor as a result of complicated structures, especially in tax havens," Ahuja said.

Source: Mint

Read Full news at: <https://www.livemint.com/politics/policy/fixing-domestic-bankruptcy-regime-gets-top-policy-priority-11667933424955.html>

➤ **Govt appoints 15 judicial, technical members at Company Law Tribunal**

The government has appointed a total of 15 judicial and technical members at the National Company Law Tribunal (NCLT), which is grappling with a shortage of judges.

The NCLT adjudicates matters related to the Insolvency and Bankruptcy Code (IBC) and companies law.

As many as 9 judicial members and 6 technical members have been appointed to the NCLT, according to an official order. These members have been appointed for a period of five years from the date of taking charge or till they attain the age of 65 years, whichever is earlier.

Former Madras High Court Judge Justice (Retd) T Krishna Valli, former Allahabad High Court Judge Justice (Retd) Vikas Kunvar Srivastav, Senior Government Advocate at the Department of Legal Affairs Mahendra Khandelwal, CAT Judicial Member Bidisha Banerjee, advocates Praveen Gupta and Ashok Kumar Bhardwaj are among the judicial members.

Others are Retd District Judge - Punjab Kuldeep Kumar Kareer, Retd District Judge - Gautam Budh Nagar Vishesh Sharma and District Court Judge in Commercial Court, Delhi Higher Judicial Service Sanjiv Jain.

The technical members are Chartered Accountant Prabhat Kumar; UCO Bank's former Executive Director Charan Singh; former Central Board of Direct Taxes (CBDT) Member Anu Jagmohan Singh; Retd Principal Chief Commissioner of Income Tax Ashish Verma; former Director and Head of AML Compliance at CitiBank India Madhu Sinha; and former Secretary at the Department of Animal Husbandry and Dairying Atul Chaturvedi (IAS (Retd)), as per the order dated November 5.

The NCLT has a total of 28 benches, with a sanctioned strength of 63 members. This includes 31 each from the judicial and administrative sides along with its president, who heads the principal bench in New Delhi.

In October, NCLT President Chief Justice (Retd) Ramalingam Sudhakar said the scope of adjudication under IBC has been rewarding and result oriented despite "several apparent and noticeable shortcomings like periodical reduction of members, presently 28 out of 63, and infrastructure which requires to be improved in metropolitan cities like Mumbai, Delhi, Chennai and Kolkata."

The tribunal is also facing shortage of support staff, including court masters, officers, assistant registrars and stenographers.

Source: Business Standard

Read Full news at: https://www.business-standard.com/article/companies/govt-appoints-15-judicial-technical-members-at-company-law-tribunal-122110801680_1.html

➤ **Vodafone Idea clearing dues to banks first to avoid a visit to bankruptcy court: Experts**

Loss-making Vodafone Idea (Vi) is prioritising clearing its dues to banks and financial institutions over vendor payments to possibly avoid getting dragged to the bankruptcy court, if the telco was to face such a situation in the future, industry executives and legal experts said.

The cash-strapped telecom operator, they said, would be aware that banks, in their capacity as financial creditors, could directly take a company that had defaulted on a payment to the National Company Law Tribunal (NCLT), which is the dedicated bankruptcy court, without any prior notice under the Insolvency & Bankruptcy Code.

Vendors, who are operational creditors, however, will have to follow a lengthier process that involves several steps to initiate bankruptcy proceedings against a client. Over the past year, Vi's dues to banks and other lenders had fallen by more than a third — from Rs 23,400 crore in the April-June, or first, quarter of last fiscal year to Rs 15,080 crore in the just ended September quarter of FY23.

But its trade payables, reflecting dues to vendors such as tower firms and suppliers including network providers, increased 10% to almost Rs 15,030 crore from Rs 13,658.6 crore in the first quarter of FY22.

There though has been no talk so far of the beleaguered telco being dragged to the NCLT.

“From a strategic perspective, it would make sense for Vi to ensure its bank dues are paid on time, in precedence to vendor debt, to avoid being potentially dragged to the NCLT by financial creditors in future,” Sanjeev Kumar, partner, Luthra and Luthra Law Offices India.

This is since in the case of financial debt, the NCLT only needs to be convinced of a default on debt over Rs 1 crore, irrespective of any disputes, which leaves an extremely narrow scope for debtors who default on a financial debt, as compared to operational debt, he said.

This is not the case with operational creditors, Kumar said. “In the event of an alleged payment default, (vendors) would have to first serve a statutory demand notice to the telco under Section 8 of the Code, following which, the debtor company is given 10 days to respond, and only thereafter, can an operational creditor approach the NCLT.”

Also, in case the corporate debtor (like Vi) can show existence of prior disputes over the goods or services in question, the operational creditors' case may not proceed before the NCLT, he added.

Vi did not respond to ET's queries till press time Tuesday. At Vi's fiscal second-quarter earnings call last week, chief executive Akshaya Moondra said there was a schedule of repayment of loans and that the telco would continue to pay on the scheduled date.

He had added that Vi was also trying to close its funding quickly to address its backlog of vendor payments. Vi's efforts for over a year to raise Rs 20,000 crore via a mix of debt and equity have still not yielded any results.

Besides funding the roll out 5G services, it needs money to clear its over Rs 12,000 crore of dues to large vendors such as Indus Towers, Nokia and Ericsson. It also must invest in 4G network to rein in heavy customer losses to rivals Reliance Jio and Bharti Airtel.

Vi had net debt of around Rs 2.2 lakh crore at the end of the September quarter. Its quarterly Ebitda, or operating income, at Rs 4,097.5 crore was 5.3% lower sequentially due to higher network costs and selling, general & administrative

spending. "Per the company, \$1.2 billion (Rs 9,600 crore) of debt is payable by Sep'23, while gross cash balance as of Sep '22 is Rs 200 crore ... so without a capital raise, ARPU (average revenue per user) for Vi will have to rise by Rs 35 for the company to be able to meet its immediate repayment needs by Sep '23 (including capex, debt and interest expenses)," Goldman Sachs said in a recent note.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/industry/telecom/telecom-news/vodafone-idea-clearing-dues-to-banks-first-to-avoid-a-visit-to-bankruptcy-court-experts/articleshow/95387010.cms?from=mdr>

