



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



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Latest updates On Insolvency & Bankruptcy

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"It is during our darkest moments that we must focus to see the light"

➤ **NCLT disposes insolvency plea against Gannon Dunkerley citing settlement talk**

The Mumbai bench of the National Company Law Tribunal (NCLT) has disposed of an insolvency petition filed by Canara Bank against Gannon Dunkerley & Co, as lenders are considering a settlement proposal from the construction and engineering firm.

The insolvency petition had been filed by Canara Bank, after Gannon Dunkerley defaulted on dues of more than Rs 43.26 crore. Subsequently, the company approached the consortium of eight lenders, led by State Bank of India, with the settlement proposal.

The division bench of HV Subba Rao and KK Singh, in its order last week, said Canara Bank could file an application for the restoration of the petition in case restructuring of the loans did not materialise.

Advocate Nausher Kohli, appearing for Gannon Dunkerley, informed the tribunal that the company had already submitted its proposal to Canara Bank and other lenders for restructuring the loan facilities.

The matter is pending with the consortium of banks, he told the NCLT. Advocates AK Mishra and Umar F Azam, appearing for the lenders, informed the tribunal that it was not fair to once again ask for an adjournment on the same ground and therefore requested the bench either to adjourn the matter sine die or to dispose of the petition by granting liberty to the bank to file restoration application in case the compromise talks failed.

The tribunal, while allowing the submission of the lenders, disposed of the case. Founded in 1924, Gannon Dunkerley has executed several infrastructure projects including manufacturing plants, cement and power plants and bridges and highways. According to the company's website, it has also completed many irrigation and hydroelectric projects and pioneered precast RCC construction in the country.

As per latest data from the Insolvency & Bankruptcy Board of India, 5,636 companies had been admitted for the corporate insolvency resolution process till the end of June 2022 and 3,637 of these had been closed. Manufacturing (43%), real estate (17%) and retail trade (12%) are the sectors that have seen the highest number of companies facing liquidation in the last five years.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/industry/indl-goods/svs/engineering/nclt-admits-insolvency-plea-against-infrastructure-firm-valecha-engineering/articleshow/95238712.cms>

➤ **Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2022: Radical Needs and Moderate Reforms**

With an aim to maximise recoveries in a time-bound manner and to mitigate the practical difficulties faced in the liquidation process, Insolvency and Bankruptcy Board of India (“IBBI”) recently amended the IBBI (Liquidation Process) Regulations, 2016 (“Liquidation Regulations”).

The (Liquidation Process) (Second Amendment) Regulations, 2022 (“Amended Regulations”) were notified by the IBBI on September 16, 2022. The Amended Regulations have brought radical changes including but not limited to constitution of Stakeholders Consultation Committee (“SCC”), stricter timelines for exploring a compromise or arrangement and conducting auction, filing of claims, replacement of liquidator, treatment of avoidance applications etc.

Brief Background and Existing Framework

Regulation 44(1) of the Liquidation Regulations as a part of the Insolvency and Bankruptcy Code (“IB Code”) provides that liquidation process with respect to corporate debtor (“CD”) ought to be completed within one year from the liquidation commencement date (“LCD”).

Per contra, the records available in public domain speak differently wherein out of 16, 661 corporate insolvency resolution processes (“CIRP”) which ended up with an order for liquidation, only in 346 cases liquidators have submitted final reports with the Adjudicating Authority (“AA”).

Such delay was totally in contrast to the time-bound liquidation process as envisaged in the Bankruptcy Law Reforms Committee report, 2015. Further, the Liquidation Regulations did not contain any timelines for undertaking and concluding the various stages in auction proceedings, with respect to selling the corporate debtor as a going concern, causing delay in the process leading to value erosion of the assets of the CD.

This also caused great difficulty because the liquidator use to conclude the auction in reasonably short first explore the mechanism of compromise or arrangement under Section 230 of the Companies Act, 2013 (“CA, 2013”) before proceeding to auction mechanism. This also led to delay in realization of assets.

The IB Code did not contain any provision for replacement of liquidator on any grounds at the behest of the stakeholders during the liquidation process. The AAs were finding it difficult to replace the liquidator even in existence of valid grounds in absence of a specific provision.

The AA, Chennai Bench in IDBI Bank Limited Vs V. Venkata Sivakumar relied on the principles of General Clauses Act to replace the liquidator. However, to the contrary, the NCLAT in the case of Punjab National Bank v. Kiran Shah, Liquidator of ORG Informatics Ltd has held that after passing of the liquidation order, the Committee of Creditors ("CoC") has no role to play and they are simply a claimant whose matters are to be determined by the liquidator and it cannot move an application for removal of liquidator in absence of any provisions under the law.

Therefore, there was a pressing need to bring an amendment to fill this gap to empower the stakeholders to replace the liquidator. The Liquidation Regulations were also silent on the treatment of proceedings pertaining to avoidance/fraudulent/preferential transactions after the closure of the liquidation process.

The confusion escalated after the recent judgments passed by the High Court of Delhi and NCLAT which held that for the purpose of CIRP, the ultimate beneficiary of proceeding arising out of avoidance application must be the creditors of the CD.

Unlike CIRP, the Liquidation Regulations did not contain any mechanism for oversight and monitoring of liquidation process and liquidator by creditors. The existing framework did not stipulate any mechanism for conducting meetings of SCC and scope of consultation given was even limited.

The power to consult the SCC during the liquidation process was only discretionary and liquidator had to with the challenges and gaps emerging in an expanding financial ecosystem.

Progressive steps were required to be undertaken in order to empower the stakeholders involved in the liquidation process including the banks who have been facing massive haircuts in the current framework.

Major Amendments:

1. Constitution of SCC

- For first 60 days from LCD, CoC as constituted during CIRP based on admitted claims shall continue to function as SCC during liquidation process.
- After adjudication of claims and within 60 days of initiation of process, the SCC shall be re-constituted with voting rights based on amount of admitted claims.
- First meeting of SCC shall be conducted within seven days of LCD.
- Shareholders/ partners and related creditors will have representation in SCC but without voting rights.

2.Consultation with SCC

- The liquidator shall put the agendas for deciding on remuneration of professionals, sale under Regulation 32 of the Liquidation Regulations, including manner of sale, pre-bid qualifications, reserve price, amount of earnest money deposit, and marketing strategy, need for fresh valuation, etc. before the SCC.
- The SCC shall advise the liquidator by a vote of not less than 66% of the representatives of the SCC, present and voting.
- In case of taking decision contrary to the advice of the SCC, the liquidator is required to file a form recording reasons for the same and forward to AA.

3. Replacement of Liquidator

- By a vote of not less 66% present and voting, SCC may propose replacement of the liquidator and file an application before the AA for appointment of the proposed liquidator.

4. Proposal for Compromise or Arrangements under Section 230 of the Companies Act, 2013

- Exploring the process of compromise or arrangement, at first instance during liquidation is not mandatory and can be skipped if SCC is of such opinion.
- In case, CoC decides, that process of compromise or arrangement may be explored, only in such case the liquidator shall file application before AA for considering the proposal of compromise or arrangement, within thirty days.

5. Timelines for certain auction events

Timelines for certain auction events	
Submission of Eligibility Documents by Prospective Bidder (Section 29A Affidavit, etc.)	Min.14 days
Data Room Access, Site Visits and Discussion Meeting	Min. 7 days
Submission of Earnest Money Deposit (EMD)	Any time up to 2 days before the auction date

- The above timelines proposed will act as minimum threshold and can be extended in consultation with SCC (except submission of bids which is on 35th day).
- First auction notice to be issued within 45 days if there is no compromise or arrangement proposal by the CoC.

- In the event of failure of an auction, the successive auction notice shall be issued within next 15 days of a failed auction unless SCC agrees to extension of this timeline, on specific grounds as indicated by the liquidator.

6. Treatment of Avoidance Proceedings

- Before application for dissolution or closure of process is filed before AA, the SCC shall decide the manner in which proceedings in respect of avoidance transactions or fraudulent or wrongful trading, if any, will be pursued after closure of liquidation proceedings and the manner in which the proceeds, if any, from such proceedings shall be distributed. This shall be filed as a part of the final report to be filed before AA.

7. Submission of Claims

- If any claim is not filed during liquidation process, then claim collated during CIRP shall be deemed to be submitted for the purpose of Section 38 of IB Code.

Analysis of the Amendments

The Amended Regulations are no doubt laudatory steps which will help to maximize recoveries for creditors since the amendments will lead to concluding the liquidation process in a time bound manner.

It will also make the liquidator and the SCC more accountable towards the creditors and prospective bidders. The amendments will empower the operational creditors who are generally at the mercy of the financial creditors during the whole process.

This will especially take care of small operational creditors who after filing their claims with the Resolution Professional during CIRP tend to become ignorant about the steps to be taken in liquidation.

This is because it involves repeated exercise of filing claims through advocate or other professionals requiring additional money to be spent on this. However, at the same time, certain issues are simmering on the backburner and requires strict scrutiny.

Though the amendments concerning the constitution of SCC in an effort to make the liquidator more accountable is a welcome step, however from the way things stand currently, the Amended Regulations have still not filled the gaps.

Pursuant to Amended Regulations, the existing CoC constituted during the CIRP shall function as SCC for first 60 days till the time the SCC is re-constituted basis their claims adjudicated by the liquidator.

This means that the existing CoC (functioning as SCC) will advise to the liquidator on certain matters pertaining to the liquidation process which might conflict with the views taken by the re-constituted SCC because of the diverse nature of interests all stakeholders have in the liquidation process. The Amended Regulations does not address this issue which might lead to more litigation thereby delaying the liquidation process.

While it may be understood that prescribing timeline for successive auction may streamline the process, it might also lead to value erosion of assets.

Prescribing timeline of 15 days between two auctions will be looked by the prospective buyers as an opportunity to buy the assets or the CD at a reduced prices since in every next auction, liquidator may reduce the sale price and thus no prospective buyers will be coming forward in first round of auction.

Currently, the law is not very clear regarding the beneficiaries of the avoidance or fraudulent proceedings after liquidation.

The Amendment Regulations provide that SCC will decide the manner in which the proceeds, if any, from avoidance proceedings shall be distributed appears to be contrary to the latest decision of the NCLAT where it was held that it was not for the CoC to decide the beneficiaries of an avoidance application, and such decision is to be taken by the AA.

Another relevant argument might be that this NCLAT Judgment was only in the context of the CIRP.

The question of the same being applicable to Liquidation is still debatable. Unless these inconsistencies are resolved, the AA will still be stuck with the question concerning closure application vis-vis pending avoidance proceedings because even after formal closure, the successful bidder or the CD will not have clarity regarding the beneficiaries of the proceedings causing lack of interest in prospective bidders.

In terms of the Regulation 31A (10) of Liquidation Regulations, the role of the SCC is only to advise the liquidator and the liquidator is not bound by the advice given by the SCC.

However, the language of the draft regulations doesn't align with this since it provides that SCC has more power than merely to advise the Liquidator. Like, the Amendment Regulations provides that the successive auction notice shall be issued within the next 15 days of a failed auction **unless the SCC agrees indicating that Liquidator cannot take decision to issue the** successive auction notice after 15 days in contrary to the decision arrived at by the SCC.

Further, the Amendment Regulations provides **that SCC shall decide** the manner in which proceedings in respect of avoidance transactions or fraudulent or wrongful trading, if any, will be pursued after closure of liquidation proceedings.

This is clearly in conflict with the scheme of the IB Code as captured in Regulation 31A (10) of the Liquidation Regulation which provides that SCC will only have advisory role and thus IBBI can probably look to change the language of the Amendment Regulations.

It is important to bear in mind that a lot of these amendments will have a strong bearing on the outgoing liquidation process. Therefore, the Amendment Regulations will not doubt solve a lot of problems being faced by all the stakeholders including the

liquidator in the process, the IBBI still needs to clarify the specific applicability of these provisions to the ongoing liquidation, if any.

The Amendment Regulations are a welcome step and will strengthen and improvise the current regulatory framework of liquidation process.

However, it must be emphasized that whether the fresh set of reforms are addressing the difficulties faced by stakeholders and meeting the evolving requirements can only be adjudged when the same is implemented in full force. The key lies in the implementation of the amendments so as to achieve the objectives of time-bound resolution of stressed assets while maximising its value.

Source: Bar and Bench

Read Full news at: <https://www.barandbench.com/law-firms/view-point/insolvency-and-bankruptcy-board-of-india-liquidation-process-second-amendment-regulations-2022-radical-needs-and-moderate-reforms>

➤ **IBBI Rescinds Circulars Pertaining To Insolvency Professionals**

The Insolvency and Bankruptcy Board of India ("IBBI") vide its circular dated 09.11.2022 has rescinded its certain circulars pertaining to Insolvency Professionals, as these circulars now form a part of the IBBI (Insolvency Professionals) Regulations, 2016; IBBI (Model Bye-Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016; and the IBBI (Information Utilities) Regulations, 2017.

Brief background

The IBBI had issued the following circulars in order to facilitate Insolvency Professionals to carry out processes under the Insolvency and Bankruptcy Code, 2016 ("IBC"): Circular No. IP/001/2018 Dated January 3, 2018 for Use of Registration Number etc.

1. Circular No. IP/002/2018 Dated January 3, 2018 for IP to ensure compliance with provisions of the applicable laws.

2. Circular No. IP/003/2018 Dated January 3, 2018 for IP not to outsource his responsibilities.

3. Circular No. IP/004/2018 Dated January 16, 2018 for Fees payable to IP and to other professionals appointed by the IP.

4 Circular No. IP/005/2018 Dated January 16, 2018 for Disclosures by IPs and other Professionals appointed by IPs conducting Resolution Processes.

5 Circular No. IP(CIRP)/007/2018 Dated February 23, 2018 for Confidentiality of information relating to processes under the Code.

6 Circular No. IBBI/IP/021/2019 Dated May 2, 2019 for Surrender of Membership.

7 Circular No. IPA/009/2018 Dated April 19, 2018 for Annual Compliance Certificate for Insolvency Professional Agencies.

8. Circular No. IBBI/IPA/43/2021 Dated July 28, 2021 for Monetary Penalties to be imposed by an Insolvency Professional Agency.

9 Circular No: LA/010/2018 Dated April 23, 2018 for Commencement of Disciplinary Proceeding.

10 Circular No. IBBI/IU/025/2019 Dated September 7, 2019 for Statutory Repositories under regulation 21(2)(c)(ii) of IBBI (Information Utilities) Regulations, 2017.

The IBBI opined that the aforementioned circulars are no longer required on account of being already provided in the Insolvency Professionals Regulations, Model Bye-Laws Regulations, and the Insolvency and Information Utilities Regulations. These circulars have been rescinded with immediate effect.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/ibbi-rescinds-circulars-pertaining-to-insolvency-professionals-213696>

