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➤ **RBI allows asset reconstruction cos to submit resolution plans under IBC**

The Reserve Bank of India (RBI) has allowed asset reconstruction companies to act as resolution applicants under the Insolvency and Bankruptcy Code (IBC).

According to revised guidelines released by RBI on Tuesday, ARCs can operate as resolution applicants, which is not allowed under Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest, or the SARFAESI Act.

However, to qualify as an RA, the companies need to have a minimum net owned fund of ₹1000 crore and a board-approved policy to take up the role of an applicant.

According to RBI, the ARC should also have a committee comprising a majority of independent directors to take decisions on proposals of submitting resolution plans under the IBC and it should explore the possibility of preparing a panel consisting of sector-specific management firms and individuals with expertise in running firms and companies.

According to the guidelines, ARCs shall not retain any significant influence or control over the corporate debtor after five years from the approval date of the resolution plan by the adjudicating authority.

The ARCs should also make additional disclosures in their financial statements on assets acquired under IBC, in addition to the existing disclosure requirements, RBI said.

The changes in regulatory framework were made following the recommendations of an RBI-appointed committee, which was set up last year to review the working of ARCs.

Earlier RBI had objected to UV Asset Reconstruction Co.'s plan to acquire telecom operator Aircel Ltd under the insolvency process on grounds that it was outside the scope of the Sarfaesi Act.

The revised guidelines also prescribe certain measures to bring in more transparency in the ARC sector and to improve corporate governance standards for ARCs.

RBI has also raised the minimum capital requirement for setting up ARCs to ₹300 crore from the existing ₹100 crore.

Existing ARCs have been given a glide path to meet the minimum net owned fund requirement by April 2026.

"In case of non-compliance at any of the above stages, the non-complying ARC shall be subject to supervisory action, including prohibition on undertaking incremental business till it reaches the required minimum NOF applicable at that time," RBI added.

Source: Mint

Read Full news at: <https://www.livemint.com/companies/news/rbi-allows-asset-reconstruction-cos-to-submit-resolution-plans-under-ibc-11665515979361.html>

➤ **PF Dept.Attachment Of CD's Bank Account Before CIRP, Can't Continue During Moratorium: NCLAT Chennai**

The National Company Law Appellate Tribunal ("NCLAT"), Chennai Bench, comprising of Justice M. Venugopal (Judicial Member) and Mr. Naresh Salecha (Technical Member), while adjudicating an appeal filed in Mr. B. Parameshwara Udpa v Assistant PF Commissioner & Anr., has held that an order issued by Employees' Provident Fund Organization for attachment of bank account of Corporate Debtor, cannot be continued during Moratorium period. Further, Resolution Professional is not duty bound to make provisions for Provident Fund when Corporate Debtor did not have a separate Provident Fund Account.

The Adjudicating Authority vide an Order dated 05.05.2020 had initiated the Corporate Insolvency Resolution Process ("CIRP") against M/s. Easun Reyrolle Limited ("Corporate Debtor"). Mr. B. Parameshwara Udpa was appointed as the Interim Resolution Professional ("IRP") and later confirmed as Resolution Professional ("RP"). The IRP came across the 'Orders of Attachment' issued by Employees' Provident Fund Organization ("EPFO/Respondents") in 2018-19, attaching the Bank Account of the Corporate Debtor maintained with the State Bank of India. The State Bank of India responded to EPFO, stating that in terms of Section 18(f) of Insolvency and Bankruptcy Code, 2016 ("IBC"), the RP has ownership over all the Assets of the Corporate Debtor till the conclusion of CIRP. Hence, Bank is bound to allow operations/withdrawals done by the RP in the concerned bank account.

The RP filed an Application before the Adjudicating Authority, seeking removal of Attachment Orders. The Adjudicating Authority vide Order dated 20.04.2021 directed the RP to make adequate provisions in relation to the amount stated in the 'Orders of attachments', as due towards PF dues. Further, subject to making adequate provisions to their satisfaction, EPFO can remove the Orders of

Attachment. The RP filed an appeal against the order dated 20.04.2021, for the same being contrary to the Section 14 of IBC.

Issue

(i) Whether an 'Attachment Order' on Corporate Debtor's bank account that was imposed before the initiation of CIRP, can continue during Moratorium under Section 14 of IBC? (ii) Whether, the Resolution Professional is duty bound to make adequate provisions for 'Provident Fund' to make adequate provisions for 'Provident Fund' even though the 'Corporate Debtor' did not have separate 'Provident Fund Account'.

Decision Of NCLAT

The Bench opined that Section 14(1)(a) imposes complete embargo on any proceeding against the Corporate Debtor by any Authority till CIRP completion. Moratorium covers attachment of Bank accounts by any Authority including 'EPFO' and it is required to be lifted to grant Corporate Debtor a fair chance of revival and to ensure that Resolution Plans are received. It was held that attachment of Bank Account of Corporate Debtor by 'EPFO' cannot be continued during Moratorium and proceedings are required to be kept in abeyance till lifting of moratorium. Liberty can, however, be given to the EPFO to continue/ initiate proceedings against the Corporate Debtor after lifting of the Moratorium and completion of CIRP. It was further observed that amount deducted for Provident Fund, purely belongs to an Employee and is not an Asset of the Corporate Debtor. The PF amount cannot be touched by IRP, RP or Liquidator. "However, it is important to note that the 'Provident Fund', is to be of 'Establishment Fund' kept separately by the company and then only this proviso will be applicable. If, even wrongly and in violation of the laws of the land, the company fails to establish such 'Provident Fund', then 'Interim Resolution Professional/Resolution Professional/Liquidator' is not expected to provide for same, except under Section 53 of the I & B Code, 2016."

The Bench observed that the Corporate Debtor did not have any specific fund towards 'Provident Fund'. Therefore, RP had rightly sought lifting of Attachment Orders on Bank Account of Corporate Debtor and the Adjudicating Authority should have done accordingly. It was further held that RP is not duty bound to make adequate provisions for Provident Fund when Corporate Debtor did not have separate Provident Fund Account.

Source: LiveLaw

Read Full news at: <https://www.livelaw.in/news-updates/nclat-chennai-employees-provident-fund-organization-moratorium-corporate-insolvency-resolution-process-cirp-211342>

