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Latest updates On Insolvency & Bankruptcy

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"Don't settle for average"

➢ Srei CoC offers window for resolution applicants to revise bids by December 15

The Consolidated Committee of Creditors (CoC) of two debt-ridden Srei companies are likely to ask bidders to improve their resolution plans by December 15, a top official said on Sunday.

The CoC, however, remains committed to the January 5 (2023) deadline offered by the adjudicating authority to complete the corporate insolvency resolution process, he said. The Kolkata-based SreiInfrastructure Finance Ltd (SIFL) and Srei Equipment Finance Ltd (SEFL), which are undergoing a resolution process in the National Company Law Tribunal (NCLT), have received three bids.

"Intense negotiations are taking place with each of the bidders, and after another meeting slated on December 12, bidders will be offered to submit their revised bids by December 15," a top official involved in the process told PTI.

The CoC will "vote on the resolution plans after the revised bids are submitted and the RBI nod will be taken" before submitting to the NCLT, he said. "The deadline of January 5 to conclude the resolution process will be met," the official stated.

RBI-appointed Srei administrator Rajneesh Sharma could not be reached for his comment. The CoC has been holding internal meetings besides deliberating with the three bidders -- Varde Partners and Arena consortium, National Asset Reconstruction Co Ltd and Authum Investment and Infrastructure -- in Mumbai for Srei group's NBFCs.

The consortium of Varde Partners and Arena has submitted a bid value of Rs 14,000 crore, while NARCL sent a resolution plan worth Rs 13,500 crore, a government official, who attended the meetings, told PTI. The third bid from Authum Investment and Infrastructure is valued at Rs 7,000 crore, he said.

The value of resolution plans could not be independently verified. The total value of resolution plans submitted by the applicants involves upfront cash payout, deferred payments through instruments like NCDs and OCDs.

The timeline to clear the debt ranges between three and seven years. Authum's cash payout component was the highest at Rs 2,800 crore and it proposed to complete the payout of total committed value within 3.5 years.

The other two bidders will take 5-7 years to clear the payments, the official said. In contrary to banks' expectations, NARCL is not able to offer the government guarantee for deferred payment instruments, he said.

"NARCL has stated that government guarantees are applicable only in nomination cases where banks directly transfer an asset to NARCL and not in an asset acquired through a bidding process," the official said. The three bidders were among 17 final potential resolution applicants for the two companies of the Srei group.

Big names, like Capri Global and AM Mining, a subsidiary of ArcelorMittal, were on the final list of potential resolution applicants.

However, they did not submit resolution plans and opted out of the race. After the insolvency petitions filed by the Reserve Bank ofIndia were approved by the Kolkata bench of the National Company Law Tribunal, proceedings against SIFL and its subsidiary SEFL began in October 2021.

The resolution process is scheduled to be completed by January 5, 2023. Financial creditors have admitted claims totalling around Rs 32,000 crore.

Source: The Economic Times
Read Full news at: *https://economictimes.indiatimes.com/news/economy/finance/srei-coc-offers-window-for-resolution-applicants-to-revise-bids-by-december-15/articleshow/96151750.cms*

➢ A case for stakeholder involvement

When enacted in 2016, the Insolvency and Bankruptcy Code (IBC) was widely hailed as a landmark legislation. Given the economic complexities of a vast country like India, and also as it happens with many commercial and financial sector legislations, the challenges during its implementation and various judicial pronouncements/ interpretations over the period have now led to the emergence of varied views on its efficacy. Since its enactment, the implementation of IBC has remained a subject of discussion. Many changes have been made to the law and processes, and perhaps more are in the pipeline.

In the overall scheme of the insolvency resolution process under IBC, the committees of creditors (COCs) play a pivotal role—some would even argue that they seem to be the only stakeholders who matter. Giving a predominant role to the COCs is logical, as the creditors have the first right over a bankrupt entity's assets. Creditors are believed to have commercial knowledge and are expected to choose the best-suited resolution plan in the interest of all stakeholders. The robustness of the resolution plan depends upon the integrity and competence of the COC.

Unfortunately, some of the resolution plans approved by the COCs in the recent past have cast aspersions on their conduct, as has the fact that a large proportion of resolution cases end up in liquidation. The need for having a code of conduct for the COC has been under consideration of the government/Insolvency and Bankruptcy Board of India (IBBI) for quite some time now—this should be finalised without any further delay, with the enforcing authority being the IBBI.

Some argue that the secured financial creditors may prefer to liquidate even a merely financially distressed business so as to expedite their recovery—this could, in fact, be one potential source of value destruction under the IBC.

A more meaningful involvement of other stakeholders in the resolution process is likely to somewhat dampen the criticism of the IBC implementation. Regulation 38 (IA) of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations 2016 states that a resolution plan shall include a statement on how it has dealt with the interests of all stakeholders, including financial and operational creditors of the corporate debtor. One wonders whether this provision is taken seriously by the resolution professionals and the COC.

As of now, the COC comprises only the financial creditors; however, it should also have operational creditors having sizable dues as a proportion of total outstanding corporate debt, excluding the related parties of the defaulting promoters/management. The operational creditors included in the COC should be given voting rights in proportion to their due amounts.

If one sees from the perspective of minority shareholders, in most cases, the existing share capital of the company is substantially reduced or even extinguished in the resolution plan. No recourse or platform is available to these shareholders to highlight their concerns at any stage. The purists would scoff at the idea of prioritising taking care of shareholders' interests in a company undergoing bankruptcy proceedings.

Nevertheless, a recent Sebi consultation paper, 'Framework for protection of interest of public equity shareholders in case of listed companies undergoing Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC)' is an interesting read. It may be seen from the perspective of investor protection, which is Sebi's statutory mandate. One significant issue in the paper relates to the delisting of a listed company undergoing CIRP.

The 'reverse book building' prescription under the Sebi delisting regulations is a pretty stiff one—again driven by investor protection mandate—making it difficult for the listed companies to delist in normal cases.

With a view to facilitate easier resolution of listed companies undergoing CIRP, these regulations were amended in 2018 to allow delisting without following the reverse book-building route in cases where the delisting is a part of the approved resolution plan. However, no minimum public shareholding was prescribed in case a listed company undergoing CIRP continues to remain listed per the resolution plan. This resulted in certain resolution plans being approved with minuscule public shareholding.

This isn't desirable, as some reasonable minimum percentage of public shareholding is necessary in a listed company to provide liquidity in the secondary market trading and for price discovery. Accordingly, an amendment was made in the Securities Contracts (Regulation) Rules, 1957 (SCRR) in 2021, mandating a minimum of 5% public shareholding in case a listed company undergoing CIRP is to remain listed post the approval of the resolution plan.

Apparently, after this amendment, a large proportion of approved resolution plans involving listed companies have preferred delisting rather than providing for a 5% public shareholding to remain listed. As for the statistics relating to listed companies, the consultation paper states that "So far, it is observed that 28 listed companies have ended in liquidation pursuant to CIRP, 52 listed companies have been delisted pursuant to approval of the resolution plan and 23 companies continued to remain listed pursuant to approval of resolution plan. Further, about 70 listed companies are currently undergoing the CIRP."

Notwithstanding the concerns of the minority shareholders, there could be genuine reasons for delisting in certain cases. For example, the new promoter can want more control and flexibility for turning around the company as a privately owned one, or meeting the regulatory listing obligations may be difficult or costly during the restructuring phase. If the perception is that the existing delisting dispensation might be misused, it may be useful to also explore other possible alternatives to address the issue. This needs to be thought through before taking a considered policy view to avoid unintended consequences. It would be interesting to see the public comments on this paper and Sebi's final view on the matter.

Source: Financial Express
Read Full news at: *https://www.financialexpress.com/opinion/a-case-for-stakeholder-involvement/2908142/*