



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



IBC AU-COURANT

Latest updates On Insolvency & Bankruptcy

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"Inspiration does exist, but it must find you working"

➤ **Bankers uncomfortable taking haircuts in Prepackaged Insolvency Resolution Process**

The Pre-packaged Insolvency Resolution Process (PIRP) has not found many takers as bank officials are wary of taking voluntary haircuts that may be questioned later. It was notified more than a year ago but so far only two insolvency cases have been initiated under this regime, available exclusively to micro, small, and medium enterprises (MSMEs).

"Bankers are not comfortable taking haircuts in pre-packaged insolvency since they are concerned that such decisions may come into question at a later stage," said Manoj Kumar, partner, Corporate Professionals.

"So they are processing even potential PIRP cases through the regular corporate insolvency process, which typically puts more pressure on the business of MSMEs." Insolvency experts say PIRP will need a push from both the government and the Reserve Bank of India (RBI) to gain wider acceptance.

The government introduced the PIRP process through an ordinance in April 2021, setting up an alternative process to speed up bankruptcy resolution and ensure business continuity for MSMEs.

Under the PIRP process, the defaulting borrower continues to exercise management control while a resolution professional monitors the resolution, ensuring business continuity for the MSME.

In contrast, under the normal corporate insolvency resolution process (CIRP), after default, the debtor company is put under a moratorium and a resolution professional takes over the company and manages it in coordination with creditors. Only two companies-Ahmedabad-based GCCL Infrastructure & Projects and Delhi-based Loonland Developers-have opted for PIRP resolution. Resolution specialists say public sector bankers are more hesitant as any allegations of impropriety could lead to vigilance investigations.

Indeed, in many recent cases, debtors have levelled allegations against decisions taken by bankers and resolution professionals under the Insolvency and Bankruptcy Code (IBC).

Under PIRP, lenders and debtors look for suitors ready to infuse funds and handle debt through an initially informal process. Once a suitor is identified, lenders negotiate the deal and then approach the National Company Law Tribunal (NCLT) for final approval.

"Financial institutions are growingly hesitant at the mere perception of the consultative process, i.e., voluntarily taking a potential haircut in a PIRP instead of accepting the same as a so-called last resort in a CIRP and are thus avoiding the former altogether," said Ruby Singh Ahuja, senior partner, Karanjawala & Co. One of the key industry suggestions is that the Reserve Bank of India (RBI), in consultation with the government, could shortlist a group of debtor companies and put them mandatorily under PIRP.

When the IBC was first introduced, the RBI released a list of 12 entities for CIRP resolution. "The RBI can similarly earmark certain MSMEs and give the banks a mandate to bring about a resolution, if the same is possible, through PIRP," Ahuja said.

Globally, PIRP is considered a viable alternative to the regular insolvency process not just for small industries but even large corporate defaults.

Source: *The Economic Times*

Read Full news at:

<https://economictimes.indiatimes.com/industry/banking/finance/banking/bankers-uncomfortable-taking-haircuts-in-pre-packaged-insolvency-resolution-process/articleshow/94160962.cms>

➤ **Central Bank withdraws IBC case as Aban Offshore pays one-time settlement**

Central Bank of India has withdrawn insolvency case against Chennai-based Aban Offshore Ltd after the troubled oil rig paid dues under One-time settlement. The company has been in talks with lenders for a debt resolution plan.

The company, which provides offshore drilling services for exploration and production of oil and gas, has paid an outstanding principal of Rs 121.78 crore to Central Bank. The public sector lender had filed suit against the company under section seven of Insolvency and Bankruptcy Code 2016 (IBC), the company informed BSE. Its stock closed 8.6 per cent higher at Rs 59.35 per share.

Lenders who have exposure to ailing the company include Bank of Baroda, Export Import Bank of India and IDBI Bank, according to the firm's annual report for FY22.

One senior executive with a private bank said this borrower has been selling oil rigs in stages and paying off dues of the lenders in small amounts. The securities or collateral provided for each bank or lender is different.

The company embarked on the exercise to sell 14 rigs owned by the Company and its step-down subsidiaries (including five rigs in the current financial year) following Board and shareholder approval. Six rigs have already been delivered and transactions completed, which helped moderate debt, it said in FY22 report.

The Company generated revenues worth Rs 598.3 crore in 2021-22 compared to the previous year's revenue of Rs 1,069.4 crore. The company reported a net loss of Rs 2,689.7 crore in 2021-22 compared with a net loss of Rs 1,502 crore in 2020-21. At the close of 2021-22, the Company's rigs were operating under a balanced mix of long-term and short-term contracts.

Source: Business Standard

Read Full news at: https://www.business-standard.com/article/finance/central-bank-withdraws-ibc-case-as-aban-offshore-pays-one-time-settlement-122091201107_1.html

➤ **IBC Cases Weekly Round-Up: 5 September To 11 September, 2022**

Case Title: K Paramasivam vs Karur Vysya Bank Ltd

Case No.: 2022 LiveLaw (SC) 742, CA 9286 OF 2019

The Supreme Court Bench comprising of Justice Indira Banerjee and Justice JK Maheshwari, has held that Corporate Insolvency Resolution Process (CIRP) can be initiated against the Corporate Guarantor without proceeding against the principal borrower. The liability of the guarantor is co-extensive with that of the Principal Borrower. The court further noted that, under Section 7 of the IBC, CIRP can be initiated against a Corporate entity who has given a guarantee to secure the dues of a non-corporate entity as a financial debt accrues to the corporate person, in respect of the guarantee given by it, once the borrower commits default and the guarantor is then, the Corporate Debtor.

Case Title: State Tax Officer (1) vs Rainbow Papers Limited

Case No.: 2022 LiveLaw (SC) 743, CA 1661 OF 2020

The Supreme Court Bench comprising of Justice Indira Banerjee and Justice AS Bopanna held that a Resolution Plan which ignores the statutory demands payable to any State Government or a legal authority, altogether, is liable to be rejected. If the Resolution Plan ignores the statutory demands payable to any State Government or a legal authority, altogether, the Adjudicating Authority is bound to reject the Resolution Plan.. In other words, if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, uniform

proportional reduction, the company would necessarily have to be liquidated and its assets sold and distributed in the manner stipulated in Section 53 of the IBC.. In our considered view, the Committee of Creditors, which might include financial institutions and other financial creditors, cannot secure their own dues at the cost of

statutory dues owed to any Government or Governmental Authority or for that matter, any other dues."

The court also held that the Section 48 of the Gujarat Value Added Tax Act is not contrary to or inconsistent with Section 53 or any other provisions of the IBC. Under Section 53(1)(b)(ii), the debts owed to a secured creditor, would include the State under the GVAT Act.

Case Title: Wadhwa Rubber v Bandex Packaging Pvt. Ltd

Case No.: Company Appeal (AT) (Ins.) No. 576 OF 2021

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Rakesh Kumar Jain (Judicial Member) and Mr. Alok Srivastava (Technical Member), has dismissed the appeal for being time barred while observing that limitation is to be counted from the date of preparation of the certified copy and not from the date of delivery of the certified copy. "It is well settled that the limitation is to be counted not from the date of delivery of the certified copy but from the date of preparation of the certified copy."

Case Title: Dinesh Mehta v Amit Kumar Mehta & Anr.

Case No.: Company Appeal (AT) (Insolvency) No. 1035 of 2022

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson), Justice M. Satyanarayana Murthy (Judicial Member) and Mr. Barun Mitra (Technical Member), has allowed an appeal which was re-filed after 197 days of delay by the Appellant, subject to payment of cost of Rs. 10,000/- to the Respondent. The delay in filing had occurred in obtaining a document which was to be filed alongwith the Appeal which had foreign origin – Sharjah, United Arab Emirates and time taken in obtaining translated copy of the document.

Case Title: Bharat Hotels Ltd. v Tapan Chakraborty

Case No.: Company Appeal (AT) (Insolvency) No. 1074 of 2022

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Mr. Barun Mitra (Technical Member), has held that question of item wise CIRP cost and its approval lays in the domain of the CoC and the latter may ratify, modify or set aside the cost claimed. The

issue of cost is to be decided in the meeting of the CoC and not to be examined by the Adjudicating Authority even before the CoC takes a decision. The Bench rejected a Financial Creditor's plea seeking disclosure of item wise insolvency resolution cost.

Source: *Live Law*

Read Full news at: <https://www.livelaw.in/news-updates/ibc-cases-weekly-round-up-ibc-cirp-nclat-nclt-209023>

