



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



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Latest updates On Insolvency & Bankruptcy

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"Somewhere, something incredible is waiting to be known"

➤ **NCLT directs Insolvency proceeding against Zee Learn, after Yes Bank's plea**

The National Company Law Tribunal (NCLT) has directed to initiate insolvency proceedings against Zee Learn, following a petition filed by private sector lender Yes Bank Ltd.

Yes Bank Ltd (YBL) had claimed a default of Rs 468.99 crore by the Essel Group company.

Out of the default amount of Rs 468.99 crore, the principal amount was Rs 410.67 crore and Rs 58.32 was interest. The date of default was August 2, 2021.

A two-member bench of the Mumbai NCLT said the application made by the financial creditor Yes Bank is complete in all respects as required by law.

"It clearly shows that the Corporate Debtor (Zee Learn) is in default of a debt due and payable, and the default is in excess of the minimum amount stipulated under section 4(1) of the IBC," said NCLT.

Therefore, the debt and default stand established and there is no reason to deny the admission of the Petition.

"In view of this, this Adjudicating Authority (NCLT) admits this Petition and orders initiation of CIRP against the Corporate Debtor," it said.

CIRP stands for Corporate Insolvency Resolution Process. YBL moved NCLT last year and Zee Learn received notice over the petition on April 25.

Source: Mint

Read Full news at: https://www.business-standard.com/article/companies/nclt-directs-insolvency-proceeding-against-zee-learn-after-yes-bank-s-plea-123021300467_1.html

➤ **Partial Payment Of PF & Gratuity Dues Violative Of Section 30(2)(E) Of IBC: NCLAT Chennai Reiterates**

The National Company Law Appellate Tribunal (“NCLAT”), Chennai Bench, comprising of Justice M. Venugopal (Judicial Member) and Ms. Shreesha Merla (Technical Member), while adjudicating an appeal filed in Mrs. C.G. Vijyalakshmi v Shri Kumar Rajan & Ors., has held that Provident Fund and Gratuity dues have to be paid in full to the workmen/employees till the CIRP commencement date. The Bench held that the approved resolution plan violated Section 30(2) of IBC, by paying only 35.13% of the PF and Gratuity dues and thus treating the workmen/employees as Secured Creditors.

Background Facts

Hindustan Newsprint Limited (“Corporate Debtor”) is a wholly owned subsidiary of Hindustan Paper Corporation Limited (HPCL), which is a Public Sector Undertaking of Government of India. The Corporate Debtor was incorporated for establishment of Kerala News Print Project Limited. The Corporate Debtor was admitted into Corporate Insolvency Resolution Process (“CIRP”) on 28.11.2019. The Resolution Plan submitted by Kerala Industrial Infrastructure Development Corporation (“Successful Resolution Applicant/SRA”) was approved by the Committee of Creditors (“CoC”). The Resolution Plan proposed that the Secured Financial Creditors would be paid 45% of the total principal loan amount. The PF Dues and Gratuity Claims of all employees were also paid at 35.13 % of the admitted dues at par with Secured Financial Creditors and workman. Thereafter, the Adjudicating Authority vide an order dated 29.01.2021 approved the Resolution Plan of the SRA.

The employees and workmen of the Corporate Debtor filed appeals before the NCLAT challenging the order of resolution plan approval.

Contention Of Appellants

The Employees/Workmen argued that the approved Resolution Plan contravened Section 30(2)(e) of IBC, since it allocated only a partial amount towards the Provident Fund and Gratuity dues of the employees/workmen which were to be paid in full.

A trust fund was formed under the Corporate Debtor and CIRP was initiated after 11 months of production stoppage date. While placing reliance on the Supreme Court judgment in Sunil Kumar Jain v Sundaresh Bhatt, Civil Appeal No. 5910 of 2019, it was contended that wages/salaries of the Workmen/Employees of the Corporate Debtor for the period during CIRP can be included in the CIRP Cost if the Corporate Debtor continued as a going concern during the CIRP.

Contentions Of Respondent

The Respondent argued that there was no provision of fund. PF and Gratuity dues do not form part of the Liquidation Estate, therefore, the decision of the CoC and Resolution

Professional could not be interfered with. The Secured Financial Creditors and workmen were treated equally under the Plan, with the allocation of 35.13 % of the admitted claim amounts. Therefore, the claims of workmen were fully considered.

Issue

Whether Provident Fund, Gratuity and Workmen/Employees dues have to be paid in full?

Relevant Law

Section 30(2)(e) of IBC

“Section 30(2): The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan – XXX

(e) does not contravene any of the provisions of the law for the time being in force...XXX”

NCLAT Verdict

The Bench relied on the Supreme Court judgment in *Som Prakash Rekhi v Union of India*, (1981) 1 SCC 449, wherein it was held that Social Justice is the conscience of the Constitution; the State being the Promoter of Economic Justice is bound by the statutes governing Gratuity and Provident Fund.

“The root of Gratuity and the foundation of Provident Fund are different but each one is a salutary benefaction statutorily guaranteed independently on the other and hence are having these overriding provisions engrafted in the statutes. The Public Sector, being a modal employer with a social conscience is bound by these welfare and beneficial provisions.” The Bench observed that since the Resolution Plan has been approved, the Corporate Debtor is statutorily obliged to deposit the PF of the workmen/employees with the Employees Provident Fund Organization (EPFO) in accordance with law.

Further reliance was placed on the NCLAT judgment in *Jet Aircraft Maintenance Engineers Welfare Association v Ashish Chhawchharia*, Comp. App. (AT) (Ins.) No.752/2021, wherein it was held that the workmen and employees are entitled for payment of full amount of provident fund and gratuity till the CIRP commencement date. Such amount is payable by the Successful Resolution Applicant after approval of Resolution Plan, in addition to the 24 months workmen dues as the workmen is entitled to under Section 53(1)(b) of IBC. The NCLAT order was upheld by the Supreme Court.

“Having regard to the ratio of the Judgement in *Jet Aircraft Maintenance Engineers Welfare Association* (Supra) of this Tribunal, upheld by the Honble Apex Court, this Tribunal is of the earnest view that PF and Gratuity is to be paid in full as per the provisions of EPF and NP Act, 1952 and payment of Gratuity Act, 1972. Since admittedly the amounts paid are only 35.13% having treated them as Secured Creditors, we are of

the considered view that indeed there was a violation of the provisions of Section 30(2) of the Code, with respect to the payment of PF and Gratuity only.”

The Bench held that payment of merely 35.13% of PF and Gratuity dues to workmen/employees was violative of Section 30(2)(e) of IBC. The Bench directed the SRA to make payment of unpaid Provident Fund, Gratuity Fund and pending dues to the Workmen/Employees of the Corporate Debtor till the date of CIRP, after deducting the amount already paid towards Provident Fund in the Resolution Plan. The disbursement has to be made in accordance to the principles laid down in Jet Aircraft Maintenance Engineers Welfare Association v Ashish Chhawchharia, Comp. App. (AT) (Ins.) No.752/2021.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/partial-payment-of-pf-gratuity-dues-violative-of-section-302e-of-ibc-nclat-chennai-reiterates-221396>

➤ **UBI looks to sell KSK Mahanadi, Raigarh Champa debt to ASREC**

State-run Union Bank of India will likely sell its ₹2,077 crore KSK Mahanadi Power and ₹54 crore Raigarh Champa Rail Infrastructure debt to ASREC (India) Ltd, an asset reconstruction company, said three people aware of the development.

An offer of ₹828 crore for KSK Mahanadi and ₹38 crore for Raigarh Champa Rail by ASREC last week triggered a Swiss challenge auction, the people said. The Swiss challenge auction is scheduled on February 15.

ASREC is backed by Life Insurance Corporation (LIC) and three PSU banks Indian Bank, Bank of India and Union Bank of India. Deutsche Bank has a small stake in the ARC.

The offer by ASREC for KSK Mahanadi equates to a recovery of 40 paise of a rupee on outstanding dues of Union Bank of India. In the case of Raigarh Champa Rail, Union Bank's recovery would equate to 70 paise on a rupee loan. Raigarh Champa, an ancillary company of KSK Mahanadi, carries raw material to the plant. It is undergoing insolvency process separately.

ASREC did not respond to ET's request for comments. This is Union Bank's second attempt to sell its KSK Mahanadi debt in this fiscal year. In August, the bank failed to sell its ₹2,077 crore debt, which was pegged at a reverse price of 44 paise on a rupee.

The proposed sale of KSK Mahanadi loans is within weeks of LIC selling its ₹613 crore KSK Mahanadi debt to Rare ARC. An offer of ₹188 crore for the distressed power producer by Rare ARC had triggered a Swiss auction, as reported by ET on November 2. LIC concluded the sale on January 23 this year.

Last July, SBI sold ₹3,815 crore debt in the thermal power company for ₹1,622 crore, equating to a recovery of 42 paise on a rupee, as reported by ET on August 12. In the last two years, Aditya Birla ARC has also acquired the thermal power producer's loans from Punjab National Bank, Bank of Baroda and Axis Bank.

It now controls 34% of the company's loans, a critical level needed under the IBC since a resolution would not get approved if 34% of lenders voted against it.

The distressed thermal power producer, which operates three 600 MW units in Chhattisgarh, has been undergoing insolvency proceedings for nearly four years. The delay in resolution prompted lenders to exit by selling their exposures to ARCs.

Vedanta, Adani Power, Naveen Jindal's Jindal Power, Dharampal Jindal's Jindal Polymer, Power Finance Corporation and ILabs India Special Situation Fund are the applicants who submitted expressions of interest for acquiring the company. However, a series of litigation delayed the resolution process.

The National Company Law Appellate Tribunal (NCLAT) stayed the resolution process following a plea by ASREC that optimal recovery in KSK Mahanadi was possible only if it underwent group resolution.

Two ancillary companies-KSK Mahanadi Water, which operates a water pipeline to the power plant, and Raigarh Champa Rail-are undergoing insolvency proceedings.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/news/company/corporate-trends/ubi-looks-to-sell-ksk-mahanadi-raigarh-champa-debt-to-asrec/articleshow/97888697.cms?from=mdr>

