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14| October | 2026

IBC AU-COURANT

LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

"Don't let what you cannot do interfere with what you can do."

➤ **NCLT Delhi Admits Yes Bank Plea Against Johnson Watch Guarantor, Says SARFAESI Notice Invokes Guarantee**

On 12 October, the Principal Bench of the National Company Law Tribunal (NCLT), New Delhi, admitted an application filed by Yes Bank Limited under Section 95 of the Insolvency and Bankruptcy Code (IBC) against Anil Madan, personal guarantor of Johnson Watch Company Pvt. Ltd.

A Bench comprising President Justice Anupinder Singh Grewal and Technical Member Ravindra Chaturvedi held that a notice under Section 13(2) of the SARFAESI Act can validly invoke a personal guarantee if it demands payment from the personal guarantor in accordance with the terms of the guarantee. The Tribunal held: *"...whether a guarantee may be invoked by giving notice under Section 13(2) of the SARFAESI Act depends on the terms of the guarantee and the content of the notice. If the notice clearly demands payment from the personal guarantor in terms of the guarantee, it can be treated as an invocation of the guarantee."*

Johnson Watch Company initially availed a cash credit facility of Rs. 14 crore from Yes Bank in June 2013, secured by personal guarantees from Madan and other individuals. The bank subsequently increased the credit limit to Rs. 32 crore, reduced it to Rs. 27.90 crore, and further reduced it to Rs. 25.50 crore on 2 December 2022.

Following repayment defaults, the bank classified the company's account as a non-performing asset on 16 March 2023. It recalled the credit facilities and issued a notice under Section 13(2) of the SARFAESI Act on 10 July 2023, demanding Rs. 34.69 crore from the corporate debtor and the Personal Guarantors. Madan challenged the validity of the guarantee invocation.

His counsel argued that the bank had not served an earlier notice dated 24 May 2023 on him and that the SARFAESI notice sought to enforce the security interest against the borrower rather than independently invoke the personal guarantee.

Source: Live Law Biz

Read Full News: <https://www.livelawbiz.com/nclt/nclt-delhi-admits-yes-banks-insolvency-plea-against-personal-guarantor-of-johnson-watch-company-554434>

➤ **Secured Creditors Cannot Keep Asset Realisation Deadline Open-Ended During Liquidation Citing Recovery Proceedings: NCLT Hyderabad**

The National Company Law Tribunal (NCLT), Hyderabad, has held that the statutory 180-day deadline for a Secured Creditor to realise its security interest during liquidation cannot be kept open-ended merely because recovery proceedings have been initiated.

“The IBC is a time-bound legislation and the statutory period prescribed under Regulation 21A of the IBBI (Liquidation Process) Regulations, 2016 cannot be kept open-ended merely on the basis of an assertion that recovery proceedings have been initiated,” The Bench of Judicial Member Rajeev Bhardwaj and Technical Member Sanjay Puri observed.

Source: Live Law Biz

Read Full News: <https://www.livelawbiz.com/nclt/secured-creditor-must-realise-security-within-180-days-or-asset-becomes-part-of-liquidation-estate-nclt-hyderabad-554494>

➤ **Bankrupt's Jewellery Handover To Son Not Preferential Merely Because It Occurred Within Look-Back Period: NCLT Jaipur**

The Jaipur bench of the National Company Law Tribunal (NCLT) has recently held that a bankrupt handing over jewellery to her son within the two-year look-back period does not, by itself, make the transaction preferential under the Insolvency and Bankruptcy Code, 2016 (IBC).

“The mere fact that the beneficiary is an associate and that the transaction occurred within two years preceding the bankruptcy application cannot cure this fundamental deficiency,” The Bench of Judicial Member Reeta Kohli and Technical Member Kavita Bhatnagar observed.

Source: Live Law Biz

Read Full News: <https://www.livelawbiz.com/ibc/personal-guarantors-transfer-of-jewellery-to-son-within-two-year-look-back-period-does-not-automatically-constitute-preferential-transaction-nclt-jaipur-554483>



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