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15th February 2023

"Beauty is hidden in everything, just learn how to observe"

➤ **Section 9 IBC Application Not A Suit, Hence Bar U/S 69(2) Of Partnership Act Not Attracted: NCLAT Delhi**

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Mr. Barun Mitra (Technical Member), while adjudicating an appeal filed in Rourkela Steel Syndicate v Metistech Fabricators Pvt. Ltd., has held that an application under Section 9 of IBC is not a suit and hence, the bar under Section 69(2) of Indian Partnership Act, 1932 is not applicable to a Section 9 application.

Background Facts

Rourkela Steel Syndicate ("Operational Creditor"), a partnership firm, filed an application under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Metistech Fabricators Pvt. Ltd ("Corporate Debtor"). On 09.06.2022 the Adjudicating Authority rejected the application while holding that the same is barred by Section 69(2) of the Indian Partnership Act, 1932. It was observed that Section 69(2) bars a suit instituted by an unregistered partnership, therefore, the application filed by Operational Creditor against the third party for enforcing a right arising out of contract is barred.

The Operational Creditor filed an appeal before NCLAT against the order of dismissal and contended that an application under Section 9 of IBC is not akin to a suit. Hence, the bar under Section 69(2) is not attracted.

Relevant Law

"Section 69(2) in Indian Partnership Act, 1932 69(2)

No suit to enforce a right arising from a contract shall be instituted in any Court by or on behalf of a firm against any third party unless the firm is registered and the persons suing are or have been shown in the Register of Firms as partners in the firm”.

NCLAT Verdict

The Bench held that an application under Section 9 of IBC cannot be said to be a suit. The Supreme Court judgment in B.K. Educational Services (P) Ltd. v. Parag Gupta and Associates, (2019 11 SCC 633), has held that Section 5 of Limitation Act, 1963 is fully applicable to applications under Section 7 & 9 of IBC. Since Section 5 of Limitation Act is not applicable to a suit, this indicates that applications under Section 7 & 9 are not a suit.

“The Judgments of Hon’ble Supreme Court relied by the Adjudicating Authority regarding bar of Section 69(2) is not attracted in the present case since the application under Section 9 cannot be treated as suit.”

The Bench opined that the Adjudicating Authority erroneously rejected the Section 9 Application on the ground that it is barred by 69(2) of the Partnership Act. The Order dated 09.06.2022 has been set aside and Section 9 application has been revived before the Adjudicating Authority, to be heard and decided in accordance with law.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/section-9-ibc-application-not-a-suit-hence-bar-us-692-of-partnership-act-not-attracted-nclat-delhi-221535>

➤ **Srei insolvency: Kanorias' offer to pay off dues rejected under technical ground**

Srei Administrator Rajneesh Sharma has rejected the group promoters' offer under section 12A of Insolvency and Bankruptcy Code (IBC) to pay off dues of around Rs 32,000 crore to creditors to withdraw their companies from the ongoing insolvency process, sources said on Monday.

Section 12A allows erstwhile management of corporate debtors to settle matters between creditors and withdraw cases under Corporate Insolvency. Srei Equipment Finance Ltd and Srei Infrastructure Finance Ltd are currently undergoing insolvency proceedings in NCLT.

The RBI has already superseded the respective boards earlier. "The offer was rejected on technical grounds. The offer should have been sent to the Reserve Bank of India which is the applicant to NCLT for the insolvency proceedings and not to the administrator," a top source aware of the developments said.

The voting process on the three resolutions is on track and it will continue till February 14. The Committee of Creditors is expected to finalise one among the three prospective resolution applicants who are in the fray for the Srei twin companies.

"Both RBI and the Committee of Creditors (CoC) have to accept the offer under the section. It is very unlikely that their offers will be accepted. Back in 2020, there was a similar proposal from the promoters under Section 230.

But the offer was rejected, as there are allegations of fraud," the source said. The latest offer from the Kanorias was the highest with a net present value of Rs 7,000 crore, including upfront cash of Rs 3,500 crore.

While the rest of the entire debt will be repaid through a combination of financial instruments such as cash, non-convertible debentures, optionally convertible debentures, and equity over a period of five years.

Reacting to the development, a spokesperson of the Kanorias said, "While we have not received any formal intimation as yet, it would be preposterous for the administrator or the bankers to reject a proposal which is highest in value and merit. We have followed due process after legal understanding by experts." After the completion of the challenge mechanism process, the Srei companies received three bids.

The state-backed National Asset Reconstruction Company Ltd (NARCL) offered a Net Present Value bid of Rs 5,555 crore. Authum Investment and Infrastructure's bid was for Rs 5,526 crore while the consortium of Varde Partners and Arena submitted a financial bid of approximately Rs 4,680 crore.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/industry/banking/finance/srei-insolvency-kanorias-offer-to-pay-off-dues-rejected-under-technical-ground/articleshow/97879721.cms>

➤ **NCLT admits Zee Learn for resolution on Yes Bank 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.

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

Out of the default amount of Rs 468.99 crore, principal amount was Rs 410.67 crore and Rs 58.32 crore was interest. Date of default was August 2, 2021. Yes Bank moved NCLT last year and Zee Learn received notice over the petition on April 25.

A Mumbai NCLT bench said the application made by financial creditor Yes Bank is complete in all respects as required by law. "It clearly shows corporate debtor (Zee Learn) is in default of a debt due and payable, and the default is in excess of minimum amount stipulated under section 4(1) of 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 (Corporate Insolvency Resolution Process) against the Corporate Debtor," it said.

Source: The New Indian Express

Read Full news at: <https://www.newindianexpress.com/business/2023/feb/14/nclt-admits-zee-learn-for-resolution-on-yes-bank-plea-2547312.html>

