INSOLVENCY PROFESSIONAL AGENCY
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IBC AU-COURANT

LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

"In the middle of every difficulty lies opportunity."

➢ IBC Cannot Be Used to Validate Illegal Constructions or Defeat Town Planning Laws: NCLAT

The National Company Law Appellate Tribunal (NCLAT) in Delhi has held that while a corporate debtor's subsisting contractual and development rights under a hire-purchase agreement may constitute assets under the Insolvency and Bankruptcy Code (IBC), the insolvency process cannot be used to legitimise unauthorised construction or defeat statutory town planning laws.

A bench of Judicial Member Justice Mohd. Faiz Alam Khan and Technical Member Naresh Salecha observed:

"We emphasise that insolvency jurisprudence cannot become an instrument for validating illegal constructions or defeating statutory town planning laws, unless the same could be legally compounded by the appropriate authority. If the project suffers from violations incapable of regularisation / Compounding under the governing statute, no Resolution Plan can compel the UPAVP to compound such violations."

The case arose from a commercial plot allotted by the Uttar Pradesh Awas Evam Vikas Parishad (UPAVP) in 2006. K.S.N. Buildwell Pvt. Ltd. became a joint allottee in 2010 under a hire-purchase agreement. The agreement required payment of quarterly instalments with interest, permitted construction subject to approved plans and provided that ownership would pass only after all dues were cleared and a conveyance deed executed.

According to UPAVP, the company defaulted on its instalment payments and raised construction beyond the approved building plan. Demolition notices followed in 2017. The authority sealed the property in August 2019 and, two years later, issued a recovery certificate for more than ₹81 crore.

Source: Live Law Biz
Read Full News: *IBC Cannot Be Used to Validate Illegal Constructions or Defeat Town Planning Laws: NCLAT*

SARFAESI Action Against Personal Guarantors Can Continue Without No Pending IBC Case: Telangana High Court

The Telangana High Court has held that a secured creditor is not barred from proceeding against personal guarantors under the SARFAESI Act merely because insolvency proceedings are pending against the corporate debtor.

It observed that where no insolvency proceedings have been initiated against the guarantors before the National Company Law Tribunal (NCLT), there is "no legal argument against a secured creditor proceeding against personal guarantors for realization of its dues" under the SARFAESI Act.

The Telangana High Court has held that a secured creditor is not barred from proceeding against personal guarantors under the SARFAESI Act merely because insolvency proceedings are pending against the corporate debtor.

Source: Live Law Biz
Read Full News**:** *SARFAESI Action Against Personal Guarantors Can Continue Without No Pending IBC Case: Telangana High Court*

Liquidator's Sale of Corporate Debtor's Shell Entity Valid After Creditor Consultation: NCLAT New Delhi

The New Delhi Bench of the National Company Law Appellate Tribunal (NCLAT) on 14 June held that a liquidator can sell the shell legal entity of a corporate debtor through public auction during liquidation after consulting creditors, where all assets of the corporate debtor have already been realised and dissolution is the only remaining option.

Judicial Member Justice Mohd Faiz Alam Khan and Technical Member Naresh Salecha upheld the sale of Abhijeet MADC Nagpur Energy Pvt. Ltd.'s legal entity, holding that Maharashtra Airport Development Company (MADC) could not challenge the sale when dissolution was the only alternative after the sale of all assets.

Source: Live Law Biz
Read Full News**:** *Liquidator's Sale of Corporate Debtor's Shell Entity Valid After Creditor Consultation: NCLAT New Delhi*

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