INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

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Latest updates On Insolvency & Bankruptcy

16th August 2022

"Old ways don't open new doors"

➢ Supreme Court rules in favour of ARCIL in Tulip Star Hotels bankruptcy case

The appellate tribunal had accepted the hotel operator's claim that the ARC filed its case against the company under the Insolvency and Bankruptcy Code (IBC) after the limitation period of three years from the date of declaring the asset as non-performing.

The Supreme Court has set aside the ruling of the National Company Law Appellate Tribunal (NCLAT) rejecting Asset Reconstruction Co (India) Ltd's claim in Tulip Star Hotels insolvency case.

The appellate tribunal had accepted the hotel operator's claim that the ARC filed its case against the company under the Insolvency and Bankruptcy Code (IBC) after the limitation period of three years from the date of declaring the asset as non-performing. But the Supreme Court, in its order on August 1, noted the extensions sought by Tulip Star Hotels to pay the arrears and ruled that the entries of debt in the books of account and balance sheet of a company could be treated as an acknowledgement of the liability and considered while fixing the limitation period.

The account of Tulip Star Hotels, which along with affiliate firm Tulip Hotels owns V Hotels in the Juhu area of Mumbai, was declared non-performing on December 1, 2008. Bank of India, which had led a consortium of lenders to the company, assigned its receivables to the asset reconstruction company on December 31 the same year.

In February 2011, within the three-year limitation period for filing a formal claim, the company acknowledged its debt and default and sought an extension of time to repay dues. It sought another extension on Rs 239 crore in April 2013, and subsequently paid Rs 17.50 crore, according to the ARC. The company acknowledged the liabilities in its financial statements from 2008-09 to 2016-17.

The ARC approached the National Company Law Tribunal (NCLT) in April 2018 under the IBC. The hotel group argued that the case under the 2016 insolvency and bankruptcy law was filed long after the time of declaring the account an NPA.

The Mumbai bench of the NCLT, rejecting the company's argument, admitted it for

the corporate insolvency resolution process. While the company successfully challenged the NCLT decision at the NCLAT, the Supreme court has now set aside the appellate tribunal's ruling.

"In our considered opinion, an application under Section 7 of the IBC would not be barred by limitation on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the corporate debtor as NPA, if there were an acknowledgement of the debt by the corporate debtor before the expiry of the period of limitation of three years, in which case the period of limitation would get extended by a further period of three years," observed a bench of Justices Indira Banerjee and JK Maheshwari in its 56-page order.

In this matter, the account of the corporate debtor was declared an NPA in December 2008. The debtor, well within three years, acknowledged its liability and proposed a settlement. This was followed by several requests of extension of time to make payment and revised settlements. The application under section 7(2) of the IBC was filed on April 3, 2018, well within the extended period of limitation, the court observed.

Source: Economic Times
Read Full news at: *https://economictimes.indiatimes.com/news/company/corporate-trends/supreme-court-rules-in-favour-of-arcil-in-tulip-star-hotels-bankruptcy case/articleshow/93536995.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst*

➢ Centre to rework IBC reform proposals

The government is set to further rework reforms planned in the Insolvency and Bankruptcy Code (IBC) to step up the pace of salvaging sinking businesses and open up the distressed assets market in India to overseas creditors to recover their dues.

A bill to amend IBC was originally planned and listed for introduction in the monsoon session of Parliament, but it has now been decided to fine-tune the bill before it is introduced in the winter session, a person familiar with the discussions in the government said.

As part of the revised proposals, more safeguards will be added where substantive changes are planned including in the proposed cross-border insolvency regime, the person said. The safeguards will be weaved into a new chapter on cross-border insolvency to be included in IBC that will make participation of overseas creditors in legal proceedings in Indian tribunals smooth and efficient.

"All efforts are being made so that the Bill can be tabled in the winter session of Parliament. Given that public consultation has been done multiple times, reworking of the proposals will be an internal exercise" the person said on condition of anonymity.

Rolling out a cross-border insolvency regime is seen by experts as a milestone in bankruptcy reform as it could expedite rescue of businesses with assets and liabilities in multiple jurisdictions.

Currently, cross-border insolvency is handled through cooperation among bankruptcy courts in India and in other countries but in the proposed regime, legal action by foreign creditors will shift to Indian tribunals. Indian creditors will also be able to attempt recovery of overseas assets of defaulters more easily. Experts said the proposed amendments need to address several aspects of the Code to make it more efficient.

One of them is related to a Supreme Court ruling in July that in essence said that bankruptcy tribunals have the discretion to look into certain factors other than the payment default by the corporate debtor while deciding on admitting a bankruptcy petition by a financial creditor. The ruling that came in the case of a power company cited the example of a favourable award that the defaulting company received from the electricity tribunal, which if implemented, would let the company sail through its financial troubles. This has raised questions about the sufficiency of a payment default for admission of a bankruptcy petition.

With the Supreme Court pronouncement opening a gate for defence against insolvency proceedings other than based on default, it needs to be made clear in the IBC that the Adjudicating Authority “must" admit insolvency if payment default is established, said Anoop Rawat, partner (insolvency and bankruptcy) at law firm Shardul Amarchand Mangaldas & Co.

Mandating preparation of a good qualitative information memorandum based on which investors take decisions to make bids is also top on the wish list of experts and bankruptcy practitioners.

Source: Mint
Read Full news at: *https://www.livemint.com/companies/news/centre-to-rework-ibc-reform-proposals-11660496798337.html*

➢ Rajasthan High Court Dismisses Plea Challenging Constitutional Validity Of Section 7 Of Insolvency & Bankruptcy Code, 2016

The Rajasthan High Court has dismissed a plea seeking to declare the Section 7 of the Insolvency & Bankruptcy Code, 2016 as unconstitutional to the extent it facilitates a joint application by multiple financial creditors, to prove minimum default of one crore rupees. The petitioner has also approached the court on being aggrieved by the order passed by the National Company Law Tribunal, Jaipur Bench.

Justice Sandeep Mehta and Justice Kuldeep Mathur, while dismissing the petition, observed, "Having considered the entirety of the facts and circumstances as available on

record and after appreciating the arguments advanced at bar, we are of the firm view that the statute i.e., Section 7 of the IBC as amended vide Gazette Notification dated 05.06.2020, admits no other interpretation except that a group of financial creditors can converge and join hands to touch the financial limit of Rs.1 crore stipulated under Section 7 so as to initiate a CIRP under the IBC."

The court, however, granted liberty to the petitioner to avail appropriate lawful remedy against the order passed by the NCLT.

The court opined that there is no ambiguity in Section 7 which requires any interpretation other than what is conveyed in its literary sense. The court noted that the section clearly stipulates that the application for triggering CIRP may be initiated by a financial creditor either individually or jointly with other financial creditor either individually or jointly with other financial creditors. Previously the threshold default limit for filing the CIRP application was only Rs.1 lakh and it has been drastically increased to Rs.1 crore vide Gazette Notification dated 24.03.2020, added the court.

The court observed that in cases of MSMEs, there may not exist financial creditors whose individual debt is Rs.1 crore or above. If the threshold limit was to be fixed at Rs.1 crore qua each individual financial creditor, then there was no reason whatsoever for allowing joint applications by financial creditors, added the court. The court also noted that the statute and the amendment made therein makes it clear that the same was formulated in such a manner so as to provide a means of efficacious redressal to the smaller financial creditors and to give them an opportunity of availing the speedy remedy under the IBC rather than being relegated to other onerous proceedings for securing their money.

It was stated by the court that it can easily be envisaged that in cases of MSMEs, there may not exist financial creditors whose individual debt is Rs s.1 crore or above. The court also stated that if the threshold limit was to be fixed at Rs.1 crore qua each individual financial creditor, then there was no reason whatsoever for allowing joint applications by financial creditors. The statute and the amendment made therein makes it clear that the 8/16/22, 11:01 AM Rajasthan High Court Dismisses Plea Challenging Constitutional Validity Of Section 7 Of Insolvency & Bankruptcy Code, 2016 https://www.livelaw.in/news-updates/rajasthan-high-court-ibc-section-7-insolvency-bankruptcy-code-2016-206494?infinitescroll=1 5/28 same was formulated in such a manner so as to provide a means of efficacious redressal to the smaller financial creditors and to give them an opportunity of availing the speedy remedy under the IBC rather than being relegated to other onerous proceedings for securing their money, added the court. Further, the division bench also stated, "At the outset, we may state here that validity of Section 7 of the IBC was examined by Hon'ble the Supreme Court in the case of Swiss Ribbons Pvt. Ltd. (supra) and the same was found to be compliant to the Constitution of India and the challenge to the validity of the statute was repelled by Hon'ble the Supreme Court in unequivocal terms. Despite that, the petitioner has ventured into questioning the validity of Section 7 of the IBC claiming that the challenge so laid is on a totally different proposition i.e., permissibility of a group of financial creditors jointly triggering CIRP without adhering to the requirement of default threshold of Rs.1 crore in individual capacity."

Adv. Hemant Kothari, counsel representing the petitioner, contended that previously, the threshold limit for triggering Corporate Insolvency Resolution Process qua the private

financial creditors was Rs.1 lakh only. However, because of the serious financial distress brought around by the Covid-19 pandemic, the Government of India increased the minimum amount of default to Rs. 1 crore from the existing threshold of Rs. 1 lakh, he added. He contended that while increasing the threshold limit for initiation of CIRP by a financial creditor either by himself or jointly with other financial creditors from Rs.1 lakh to Rs.1 crore, the clear intent of the legislature was that a joint application could be entertained but the individual liability towards every financial creditor should not be less than Rs.1 crore.

He urged that the private respondents do not claim individual debt or default of Rs.1 crore against the petitioner but despite that, by unjustly invoking the clause of joint application by financial creditors under Section 7 of the IBC, CIRP has been initiated against the petitioner which is an MSME. As per him, the provision needs to be read in a purposive manner so as to lay down a principle that where financial creditors file a joint application under Section 7 of the IBC, the minimum default of Rs.1 crore should be qua every individual creditor and the CIRP cannot be triggered on the basis of joint liability towards multiple financial creditors.

He also argued that the Supreme Court examined and upheld the validity of Section 7 but there was no occasion for the Supreme Court to comment upon the aspect of threshold liability of the corporate debtor towards multiple applicants. The respondents' counsels urged that the language of Section 7 of the IBC is unambiguous. It was added that the remedy to trigger CIRP has been provided to financial creditors in their individual capacity and also through a joint application with the total minimum threshold for initiation of CIRP being fixed at Rs.1 crore. They urged that if an interpretation is made that the threshold of Rs.1 crore would be for every individual financial creditor, the letter and spirit of Section 7 would be diluted and such an interpretation cannot be envisaged by any stretch of imagination.

Adv. Hemant Kothari and Adv. Praveen Vyas appeared for the petitioner while ASG Mukesh Rajpurohit, Adv. Anuroop Singhi, Adv. Prasthant Tatia on behalf of Adv. Sheetal Kumbhat and Adv. Mahesh Thanvi appeared for the respondents.

Source: Live Law
Read Full news at: *https://www.livelaw.in/news-updates/rajasthan-high-court-ibc-section-7-insolvency-bankruptcy-code-2016-206494?infinitescroll=1*