INSOLVENCY PROFESSIONAL AGENCY
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LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

"The happiness of your life depends on the quality of your thoughts."

➢ Delhi HC: Advocates Acting as Insolvency Professionals Mandated to Obtain GST Registration

In a crucial ruling for the legal and financial sector, the Delhi High Court has declared that advocates who also provide services as Insolvency Professionals must obtain a separate GST registration.

A Division Bench comprising Justices Pratibha M. Singh and Shail Jain ruled that the services provided by an advocate in the capacity of an insolvency professional are subject to the forward charge mechanism, completely separate from the reverse charge mechanism that typically applies to legal services provided by advocates. The issue stems from a petition filed by Advocate Kanwal Chaudhary, who challenged an order issued by the Insolvency and Bankruptcy Board of India (IBBI) on March 9, 2021.

The IBBI had directed Chaudhary, who was acting as an Insolvency Resolution Professional (IRP), to issue GST-compliant invoices for his professional fees. The IBBI order clarified that “Insolvency and Receivership” services do not fall under the reverse charge mechanism (where the recipient of the service pays the tax) that is standard for advocates.

Chaudhary challenged this before the High Court, arguing that an advocate acting as an IRP is essentially providing a legal service, and therefore, under Section 9 of the Central Goods and Services Tax (CGST) Act, 2017, the reverse charge mechanism should apply. He also questioned IBBI’s jurisdiction to rule on GST matters and claimed the order was passed without proper reasoning or a hearing.

Court’s Observations and Clarifications

The Delhi High Court examined the case and firmly rejected the petitioner’s argument. The Court noted that when an advocate acts as an insolvency professional, they are governed by a separate, specific regulatory framework (the Insolvency and Bankruptcy Code (IBC) and IBBI regulations), distinct from the Advocates Act.

Source: Sag Infotech
Read Full News: *Delhi HC: Advocates Acting as Insolvency Professionals Mandated to Obtain GST Registration*

➢ Bombay HC allows Tata Capital to pursue arbitration against personal guarantors after IBC moratorium ends

The Bombay High Court has allowed Tata Capital to pursue arbitration proceedings and seek protection of assets against the personal guarantors of a borrower, holding that an amendment to the Insolvency and Bankruptcy Code (IBC) has ended the automatic interim moratorium for personal guarantors with effect from May 26, 2026.

The ruling, delivered on July 24 by Justice Somasekhar Sundaresan, could have wider implications for lenders seeking recovery from personal guarantors while insolvency proceedings are pending against them. The case involved Tata Capital Financial Services, now known as Tata Capital Ltd, and Neel Motors LLP, along with its individual partners and another LLP that had stood as guarantors. Tata Capital had extended financial assistance to Neel Motors under a channel finance agreement, with the other respondents providing guarantees.

Source: Insolvency Tracker
Read Full News: *Bombay HC allows Tata Capital to pursue arbitration against personal guarantors*

➢ IBBI flags misuse of insolvency process to evade tax, conceal assets

The Insolvency and Bankruptcy Board of India (IBBI) has flagged the misuse of the insolvency process by companies seeking to evade taxes, conceal assets and avoid regulatory or criminal action, saying the bankruptcy framework is in some cases being used for purposes other than rescuing distressed businesses.

In a recent discussion paper, the insolvency regulator said law enforcement agencies have identified instances where the Insolvency and Bankruptcy Code (IBC) has allegedly been invoked with malicious intent. Such cases include companies using insolvency proceedings to settle private debts, facilitate undisclosed mergers or combinations without regulatory scrutiny, and shield assets from enforcement action. The IBBI has proposed putting greater responsibility on insolvency professionals to identify and report such cases. Since insolvency professionals take control of the affairs and financial records of companies undergoing the corporate insolvency resolution process (CIRP), the regulator believes they are well placed to detect early signs of fraud or misuse.

Source: The New Indian Express
Read Full News: *IBBI flags misuse of insolvency process to evade tax, conceal assets*

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