



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

IBC AU-COURANT

LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

The cost for the good life is giving up comfort.

➤ **Insolvency Resolution Professional Is Public Servant, Sanction Needed To Prosecute Him Under Prevention Of Corruption Act: Madras High Court**

The Madras High Court has recently directed the Insolvency and Bankruptcy Board of India to consider granting sanction for prosecuting a Resolution Professional for allegedly mismanaging funds of a company during a resolution process.

Justice Bharatha Chakravarthy noted that the resolution professional performed duties in connection with the administration of justice, was a person from whom a report was called for by the court of justice, and was performing a public duty. Thus, the court noted that the Resolution Professional would come within the definition of public servant as provided under Section 2(c)(v), 2(c)(vi), and 2(c)(viii) of the Prevention of Corruption Act.

As per Section 2(c)(v) of the Act, a public servant includes any person authorised by court of justice to perform any duty in connection with the administration of justice, including a liquidator, receiver or commissioner appointed by the court. As per Section 2(c)(vi) of the Act, a public servant includes an arbitrator or other person to whom any cause or matter had been referred for decision or report by a court of justice or by a competent public authority. As per Section 2(c) (viii) of the Act, a public servant also includes a person who holds an office by virtue of which he was authorised to or required to perform a public duty.

The court was hearing a petition filed by Anil Kumar Ojha seeking direction to the Inspector of Police (CBI ACB) to investigate a complaint given by him and to file a chargesheet. Ojha was the former Managing Director of a company named M/s. S.L.O Industries Limited. When a petition was filed under Section 7 of the IBC, an Interim Resolution Professional was appointed by the NCLT. Thereafter, the company went into liquidation and a liquidator was appointed.

Source: Live Law

Read Full news: [Insolvency Resolution Professional Is Public Servant, Sanction Needed To Prosecute Him Under Prevention Of Corruption Act: Madras High Court](#)

➤ **Conversion Of Corporate Debtor To Private Company Can't Be Denied On Grounds Of Pending SFIO Probe After Approval Of Resolution Plan: NCLT Mumbai**

The **National Company Law Tribunal (NCLT)**, **Mumbai Bench** of **Sh. Prabhat Kumar (Technical Member)** and **Sh. Sushil Mahadeorao Kochey (Judicial Member)** has held that an application for conversion of a company from a public limited company to a private limited company under an approved resolution plan cannot be rejected on the ground that prosecutions or SFIO investigations are pending against the corporate debtor, as all such investigations abate once the plan is approved.

The present application has been filed under section 60(5) of the Insolvency and Bankruptcy Code, 2016 (IBC) seeking a declaration that Rule 41 of the Companies Incorporation Rules, 2014 does not apply as the Applicant was acquired on a clean slate basis pursuant to an order passed by the Tribunal. It is further prayed that the respondents should be directed to convert the applicant from a public limited company to a private limited company.

Source: Live Law

Read Full news: [Conversion Of Corporate Debtor To Private Company Can't Be Denied On Grounds Of Pending SFIO Probe After Approval Of Resolution Plan: NCLT Mumbai](#)

➤ **Power Of Attorney Can Be Executed By Officers Nominated By Designation, Not Necessarily By Name: NCLAT New Delhi**

The **National Company Law Appellate Tribunal**, Principal Bench, New Delhi, comprising Justice N. Seshasayee (Member – Judicial) and Arun Baroka (Member – Technical), has held that a power of attorney (POA) executed by bank officers nominated by their designation, rather than by name, is legally valid for instituting proceedings under the IBC, 2016.

The appeal was filed against the decision of the adjudicating authority, by which it had dismissed the appellant's application seeking amendment of Form-1. The adjudicating authority dismissed the application on the basis of maintainability without considering its merit. It reasoned that the application for amendment was filed by the officer who was not appointed by a validly executed power of attorney. The adjudicating authority observed that the General Manager and Deputy General Manager were nominated, but they were not specifically named, and the nomination should have been by their names.

Source: Live Law

Read Full news: [Power Of Attorney Can Be Executed By Officers Nominated By Designation, Not Necessarily By Name: NCLAT New Delhi](#)



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