INSOLVENCY PROFESSIONAL AGENCY
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Latest updates On Insolvency & Bankruptcy

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"It's not whether you get knocked down, it's whether you get up."

➢ 'Filed Only For Recovery Of Balance Interest Amount': NCLAT Delhi Upholds Dismissal Of Section 9 Petition

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 Permali Wallace Pvt. Ltd. v Narbada Forest Industries Pvt. Ltd., has held upheld the Adjudicating Authority's dismissal of a Section 9 petition, which was filed merely for recovery of balance interest amount in view of a settlement agreement and not for resolution of the Corporate Debtor.

Background Facts

In 2017, Permali Wallace Pvt. Ltd. ("Operational Creditor") filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Narbada Forest Industries Pvt. Ltd. ("Corporate Debtor"). The principal amount in default was Rs. 1,74,16,527/- alongwith an interest of Rs. 48 Lakhs. The petition was withdrawn by the Operational Creditor when the Parties entered into a settlement agreement dated 07.11.2017. The Corporate Debtor paid Rs. 1,74,16,527/- towards full settlement of principal amount and Rs. 16 Lakhs towards settlement of the interest component.

The Operational Creditor preferred yet another Section 9 petition before the Adjudicating Authority, claiming an additional amount of Rs. 1,28,00,000/- towards the interest, which amount is disputed by the Corporate Debtor.
On 03.11.2022 the Adjudicating Authority rejected the Section 9 petition. It was observed that the petition was filed for execution of terms of settlement agreement. The amount arising out of a settlement agreement is not an operational debt under Section 5(21) of IBC.

The Adjudicating Authority further observed, "The balance amount of Rs. 32,00,000/- remained unpaid against Rs. 48,00,000/- towards interest as per settlement agreement.

However, now the Operational Creditor is before us to claim a sum of Rs. 1,28,00,000/- (Rs. 1,44,82,040-Rs. 16,00,000/-) towards the interest.

We sincerely feel that the Operational Creditor has been using the IBC proceeding for recovery of disputed amount and which is not object of the Insolvency and Bankruptcy Code, 2016. On this ground alone, this application is not maintainable. Moreover, there appears to be a dispute about the terms of settlement agreement as far as calculation of interest amount is concerned. It cannot be resolved before this Adjudicating Authority."

The Operational Creditor filed an appeal before NCLAT challenging the order dated 03.11.2022.

NCLAT Verdict

The Bench placed reliance on the Supreme Court judgment in Swiss Ribbon Pvt. Ltd. v Union of India, (2019) 4 SCC 17, wherein it was held that IBC is not a recovery proceeding. The Bench opined that the Section 9 petition was only for recovery of balance amount of interest and not for resolution of the Corporate Debtor's insolvency. The Bench upheld the decision of the Adjudicating Authority of dismissing the petition and accordingly, dismissed the appeal.

Source: Live Law
Read Full news at: *https://www.livelaw.in/news-updates/filed-only-for-recovery-of-balance-interest-amountnclat-delhi-upholds-dismissal-of-section-9-petition-219447*

➢ NCLT admits Union Bank's insolvency plea against Rolta

A bankruptcy court on Thursday admitted military-focussed software developer Rolta India for the corporate insolvency resolution process (CIRP), allowing a petition filed by state-owned Union Bank ofIndia.

The Mumbai Bench of the National Company Law Tribunal (NCLT) appointed Mamta Binani as the interim resolution professional for the listed firm. Union Bank had approached the bankruptcy court in February 2020 after the Mumbai-based company defaulted on dues of over ₹1,413 crore to the lender.

The lender's counsel, Rohit Gupta, had argued that the company owed more than ₹5,523 crore to its financial creditors and that it was a fit case for the tribunal to admit for the resolution process. He said the petition was filed almost three years ago and that it was necessary to initiate CIRP to save the company and its assets.

The NCLT's detailed order was not available until the time of going to press on Thursday. The company did not respond to an email seeking comment. As per a stock exchange filing, the company reported a loss of ₹606.14 crore on revenue of ₹7.53 crore in fiscal year 2022.

Besides its dues to banks, Kamal Singh-promoted Rolta India also had additional senior notes (overseas borrowings) of ₹3,382 crore outstanding as on March 31, 2022, according to a disclosure made by the company to stock exchanges.

Last year, government-owned National Asset Reconstruction Comapany has offered Rs. 600 Crores in a combination of cash and security receipts for the company.

In 2021, one of Rolta India's employees had filed a petition in the NCLT, seeking to initiate CIRP after the company failed to clear his dues.

The petitioner decided to withdraw his plea after the promoters settled his dues. However, the tribunal rejected his withdrawal petition after the financial lenders opposed it.

Source: The Economic Times
Read Full news at: *https://economictimes.indiatimes.com/news/company/corporate-trends/nclt-admits-union-banks-insolvency-plea-against-rolta/articleshow/97147776.cms*

➢ Individual insolvency misuse by personal guarantors in govt cross hairs

The Ministry of Corporate Affairs (MCA) has taken a strict view of the misuse of individual insolvency by some personal guarantors, proposing that they not be allowed any moratorium period when they file for insolvency, in the latest draft amendments to the Insolvency and Bankruptcy Code (IBC).

The MCA has said that the move has been suggested to remove perverse incentives of applying for individual insolvency. There were concerns regarding the misuse of initiation of the individual insolvency resolution process by personal guarantors to take advantage of the interim moratorium, it said.

The moratorium under Section 96 of the IBC provides that upon the filing of an application, all legal actions or proceedings pending in respect of the debt concerned shall remain stayed, and creditors shall not initiate any legal action or proceeding in respect of such debt.

To address fraudulent transactions by insolvent individuals, the MCA has proposed to address these transactions in a manner consistent with similar provisions applicable to the corporate insolvency resolution process (CIRP). Currently, there is no such provision in the individual insolvency law.

The MCA has proposed appointing a common resolution professional for better coordination between the insolvency resolution of individual insolvency of personal guarantors and the corporate insolvency where the personal guarantor has extended a

guarantee. The avoidance action proceedings against personal guarantors in such processes will also be exempt from moratorium.

"The meeting of creditors should be necessary in the case of personal guarantors as such cases are complex in comparison to other cases of individual insolvencies," the government has proposed.

Currently, the resolution professional recommends calling a meeting of creditors, if necessary.

If a repayment plan is not submitted by an individual debtor within the stipulated period, the MCA has proposed that the resolution professional will submit a report intimating the adjudicating authority of such non-submission and the adjudicating authority shall terminate the insolvency resolution process.

Thereafter, the MCA proposed that the creditors may be granted the right to file for bankruptcy of the debtor, in the Code.

Operational creditors get relief

In a move that will provide relief to the operational creditors, the government has proposed to amend the IBC to treat all unsecured creditors equally for the distribution of proceeds during liquidation. These would include unsecured financial creditors, operational creditors, and any government or authority, but not workmen and employees who will continue to enjoy greater priority, along with secured creditors.

Creditors providing interim finance during the CIRP may be allowed to participate in the meetings of the committee of creditors (CoC) as non-voting members to keep themselves informed about the proceedings under the Code.

Recasting liquidation process

The government has proposed to amend the IBC to allow the direct dissolution of the company if the CoC believes that conducting the liquidation process may not be feasible or beneficial to stakeholders.

"The adjudicating authority should allow the dissolution of the corporate debtor in such cases where it thinks it is just and reasonable to do so," said the MCA.

To eliminate duplication of activities between the CIRP and the liquidation process, the MCA has suggested that the Code be amended to do away with activities like inviting fresh claims, and instead maintain a list of creditors during the liquidation process.

Source: Business Standard
Read Full news at: *https://www.business-standard.com/article/economy-policy/draft-ibc-amendments-address-misuse-of-individual-insolvency-by-pgs-123011901119_1.html*

➢ IBC - When Does Limitation Begin To Run? Analysing SC Judgment In "V.Nagarajan vs. SKS Ispat"

V.Nagrajan vs. SKS Ispat is a much-misunderstood case. The National Company Law Appellate Tribunal (NCLAT), while dealing with appeals under the Insolvency & Bankruptcy Code, 2016 ("IBC"), has been dismissing many as being barred by the statute of Limitation.

NCLAT cites Nagarajan to conclude it has no power to condone delay for any period over and above 15 days after the expiry of 30 days from the 'date of the order' ("Order") of the Adjudicating Authority ("AA"). Consequently, an aggrieved person will need to appeal to NCLAT within 45 days of the date of the Order.

Is it a correct approach for the NCLAT to dismiss appeals filed beyond 45 days from the date of the order of the AA? I aim to examine whether such an approach is tenable.

In Nagarajan, the Supreme Court dealt with an appeal filed by a Liquidator, whose application under Section 43 of the IBC was dismissed by the AA. The Liquidator was present at the hearing when the AA pronounced its Order.

Liquidator did not even apply for a certified copy of the Order. While appealing, the Liquidator relied upon provisions in the National Company Law Tribunal Rules and the Companies Act, 2013 that entitled him to receive a 'free copy' of an Order.

The Supreme Court analysed the differences in the provisions of the IBC and the Companies Act, 2013 and concluded that the Liquidator's appeal was beyond the 'condonable' period of 15 days. The Court noticed that the Liquidator had not been diligent in even applying for a Certified copy of the Order and instead waited to receive a free copy.

While discussing the law on the subject, the Supreme Court had approved the application of Section 12 of the Limitation Act, 1963. It also cited, with approval, the judgment in Kalpraj Dharamshi v. Kotak Investment Advisors Ltd.

Limitation Act, 1963 is applicable to only court proceedings and not tribunals, unless expressly made applicable by the statute creating the tribunal . IBC, as originally enacted, did not contain any provision that made the Limitation Act, 1963. By introducing Section 238A Parliament wanted to apply the Limitation Act, 1963 to proceedings under the IBC.

Section 29(2) of the Limitation Act, 1963 enables a special law to provide for a period of limitation different from the one prescribed in the Schedule to the Limitation Act, 1963 and even to provide a limitation on the application of Sections 4 to 24.

Consequently, the special law, i.e. the IBC, could prescribe a limitation period for filing appeals that was different from the one contained in the Schedule to the Limitation Act, 1963.

The power to condone also could be restricted. Under the IBC “any person aggrieved” by the Order can file an appeal to the NCLAT. However, Section 61 is conspicuously silent about date from which the thirty day period is to be reckoned.

In contrast, Section 62 of the IBC clearly states any person aggrieved by an order the NCLAT may file an appeal on a question of law arising out of such Order within forty five days from the date of receipt of such Order. IBC deals with Corporate Insolvency Resolution Process (CIRP), the liquidation of corporate entities, and individual insolvency and bankruptcy.

The proceedings are in the nature of being In Rem. Many situations could arise during CIRP & liquidation whereby the rights of many stakeholders could be affected in their absence. No third party other than the Resolution professional and occasionally the Resolution Applicant or any dissenting member of the Committee of Creditors (“COC"), is usually heard when the Adjudicating Authority (AA) considers a Resolution Plan.

The Resolution Professional (“RP”) presents a Resolution Plan (“Resolution Plan”) to the AA on the basis of a resolution passed by the COC. In fact, when the Resolution Plan is submitted to the AA, it remains a confidential document until it is approved by the CoC.

The AA considers this and either approves the Resolution Plan under Section 31 of the Code or could dismiss it. The effect of this approval or rejection has many ramifications and could affect the rights of very many persons who are not before the AA.

Ordinarily a person who is not party to a lis can ignore any order that is passed in legal proceedings since it doesn’t bind him. In proceedings under IBC, such an approach cannot be adopted as they are in the nature of proceedings in rem. It is only when the person affected by the Order gets knowledge of the Order can such a person even be expected to file an appeal.

Suppose the AA approves a Resolution Plan, and that affects the right of a non-party; such an affected party would necessarily have to know to what extent its rights have been affected. They are likely to know this only when the Resolution Plan gets implemented or gets notice from the Resolution Applicant or the IRP.

In order to once and for all foreclose any chance of a challenge by “aggrieved persons”, all that is to be done by the AA, is to wait for 30 days before notifying the approved Resolution plan to the public. No appeal by any aggrieved person would be possible within the time prescribed, the limitation period under Section 61 having apparently run out.

In Nagarajan, on the facts of the case, the Supreme Court observed that the Liquidator was present when the AA passed the Order. The Liquidator did not even apply for a copy of the Order of the AA. The Court held that the appeal was barred by limitation. Does this not mean that ‘date of knowledge’ is crucial to reckon the thirty-day period?

Nagarajan, it is submitted, cannot be cited as an authority to hold that every appeal requires to be filed within 30 days from the date of the Order. The words "date of the Order" is not found in Section 61 of IBC. Nagarajan had very correctly dismissed the appeal of the Liquidator as being barred by time on the facts presented.

In doing so, certain observations regarding the object of the IBC and the time bound manner of the Code have been made. These observations tend to get quoted for inappropriate fact situations, thereby leading to confusion. The object of statute of Limitation is to ensure that persons whose rights get affected are vigilant and they do the needful in approaching the appropriate fora at the earliest. For that to happen, knowledge, actual or constructive is the foremost requirement.

Even Section 17 of the Limitation Act, 1963 has embodied this principle and noticed in Pallav Sheth v Custodian [9], that a party should not be penalised for failing to adopt legal proceedings when the facts or material necessary for him to do so have been wilfully concealed from him.

Having such a carelessly drafted Section 61 has only created confusion and difficulties for the general public and professionals in particular. It would therefore be in public interest that Parliament makes appropriate amendment to Section 61 of the IBC clearly mentioning the date of knowledge of the aggrieved person as the date from when the thirty days period would start running for filing an appeal to the NCLAT.

It would also help if there is a duty imposed on the AA to ensure that all aggrieved persons are notified of the order. It may be best to ensure that the order of the AA is widely publicised in case it is not possible to ensure that all aggrieved persons are aware of the order of the AA.

Source: Live Law
Read Full news at: *https://www.livelaw.in/columns/ibc-when-does-limitation-begin-to-run-analysing-sc-judgment-in-vnagarajan-vs-sks-ispat-219347*