



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



IBC AU-COURANT

Latest updates On Insolvency & Bankruptcy

20th February 2023

"Quality is not an act, it is a habit "

➤ **Videocon bankruptcy: IBBI bars RBSA from taking new insolvency-related work**

The Insolvency and Bankruptcy Board of India (IBBI) has directed RBSA Valuation Advisors LLP not to take any new assignments for six months, alleging violation of rules in arriving at liquidation and fair value of Videocon Industries and its 12 units that are undergoing corporate insolvency.

The valuer could continue to handle the assignments it had in hand, as per an order posted on the insolvency regulator's website Friday evening. The order will come into force within 30 days from the date of issue. Lenders are seeking the resale of bankrupt Videocon and its 12 units.

The move has been opposed by Twin Star Technologies, which was declared the winning bidder by the National Company Law Tribunal (NCLT) for the assets after 95% of lenders approved its plan.

Twin Star, owned by Vedanta promoter Anil Agarwal, has approached the Supreme Court against the lender's move. The controversy over the sale of Videocon erupted after the NCLT questioned if the liquidation value was leaked.

While approving the plan, the tribunal also observed that "the successful resolution applicant is paying almost nothing". This prompted the lenders to rethink the sale of the Venugopal Dhootpromoted companies to Twin Star.

The liquidation value was pegged at Rs 2,568.13 crore. Twin Star's offer was Rs 2,962 crore, which was 4.15% of the outstanding claims, according to the court order. For insolvency cases, the resolution professional has to appoint two valuers to arrive at a fair value and the liquidation value.

The average of the two valuers for each category is taken as a benchmark. Rakesh Narula & Co was the other valuer for Videocon.

IBBI on Friday said the “element of synergy among the different units of the corporate debtor and the value derived from such synergy has not been considered” by RBSA. RBSA has denied all charges against it.

In a reply to the board, the valuer said in its professional opinion, no material value could have been attributed to the market participant’s synergy. This was due to the diverse nature of businesses of various Videocon Group companies, operational losses, and a beating taken by the Videocon brand and quality issues with its products that resulted in an inventory pile up.

Also, the group’s telecom business was shut down due to intense competition and spectrum was sold to Bharti Airtel, among other things, it said. The order said the second contravention was that RBSA did not conduct any site visits for valuation exercise and that it relied on the information provided by the resolution professional (RP) and the company management.

RBSA conducted site visits when the RP mandated it to value each company on a standalone basis, but it was not done after the tribunal permitted a consolidated resolution of Videocon and its units, the order said.

While approving the plan, the tribunal requested IBBI to frame appropriate regulations and safeguards so that maximisation of the value of the assets would further improve, which in turn would benefit all the stakeholders. The tribunal had also directed IBBI to examine this issue in depth.

This directive from the tribunal may have prompted the regulator to investigate the valuation issue, a legal expert said.

Source: *The Economic Times*

Read Full news at:

<https://economictimes.indiatimes.com/news/company/corporate-trends/videocon-bankruptcy-ibbi-bars-rbsa-from-taking-new-insolvency-related-work/articleshow/98049370.cms>

➤ **NCLAT ruling on RCap to have huge impact on insolvency process**

The legal battle between the lenders to Reliance Capital (RCap) and a bidder will be the litmus test for bankruptcy proceedings, as it would end the debate on the core objective of the Insolvency and Bankruptcy Code (IBC). The ongoing dispute is over what is of paramount importance – completion of the resolution plan in a time-bound manner, or maximisation of value for lenders.

The deadline for the completion of RCap's resolution plan was extended many times due to various reasons. The latest deadline is expiring on March 15. The case is being heard by the National Company Law Appellate Tribunal (NCLAT), after a February 2 order by the National Company Law Tribunal (NCLT) declared the proposed second e-auction as violation of bankruptcy rules.

"The entire IBC process aims at maximising value in a time-bound manner as the debt is mainly public money. There are these two views – time or money – and resolution professionals need to strike a balance. The committee of creditors should be permitted to pursue its commercial wisdom and given more time to complete the insolvency process," Mahesh Agarwal, managing partner at Agarwal Law Associates, said. "Why shouldn't the firm be given to the highest bidder? The cut-off has to be the date of awarding of the letter of Intent (LoI)," he added.

According to Rajiv Chandak, partner at Deloitte India, "Value maximisation in a time-bound manner is core principle of the IBC process. Certainty of closure increases interest from market participants. Select situations may need a differential approach and may take more time to conclude."

Though the NCLT had rejected RCap lenders' proposal to conduct the second auction, the lenders moved the NCLAT citing the need for value maximisation.

"Looking at the entire eco-system and legislative and regulatory objectives, value maximisation has to be a time-bound process, and in IBC resolutions, recovery must be seen along with feasibility and viability of the entire process, including overall revival of the company. The toppling bidders post successful completion of the challenge mechanism are driven by the desire to remain in the race and don't value the sanctity of the process which is the most important pillar of time-bound insolvency process," Anoop Rawat, partner, Shardul Amarchand Mangaldas & Co, said.

"Unending negotiations may potentially create an unviable entity once again, having an unsustainable level of leverage or erosion of investors' value, which might again slip into bankruptcy. No true value discovery and timely resolution can happen if unrestricted time is given," Rawat added.

In a landmark decision in 2018, the NCLAT approved UltraTech Cement's revised ₹7,900-crore bid to acquire Binani Cement, stating that the purpose of the bankruptcy process was to extract the maximum value. The dispute stemmed after Binani Cement's CoC had decided to consider an improved bid from UltraTech after Rajputana Properties' (owned by Dalmia Bharat) ₹6,930-crore bid was declared the highest.

Similarly, Essar Steel received a counter offer of ₹42,000 crore, up from ₹32,000 crore it had got in the first round of the auction, while Bhushan Power and Steel got a revised offer of ₹24,500 crore, more than the original offer of ₹15,000 crore.

“Time is money. The quicker the cases are heard and concluded, the greater the value realisation. The interests of the NCLT and the RP are not aligned for quicker closure of IBC cases,” Shriram Subramanian, founder and MD at InGovern Research Services, said.

Source: Financial Express

Read Full news at: <https://www.financialexpress.com/industry/nclat-ruling-on-rcap-to-have-huge-impact-on-insolvency-process/2986094/>

➤ **Khaitans move NCLAT against McLeod Russel insolvency**

Aditya Khaitan, an erstwhile promoter of tea major McLeod Russel, has moved the National Company Law Appellate Tribunal (NCLAT) against the NCLT's order admitting the company for the corporate insolvency resolution process (CIRP).

The Kolkata bench of the National Company Law Tribunal (NCLT) on February 10 admitted IL&FS Infrastructure Debt Fund's insolvency petition for initiating the CIRP against McLeod Russel India, the country's largest tea producer. IL&FS Infra Asset Management, an asset management company, manages IL&FS Infrastructure Debt Fund (IIDF). IIDF, a financial creditor to McLeod, filed the petition under Section 7 of the Insolvency and Bankruptcy Code (IBC) for default in payment of ₹347.47 crore as on November 12, 2019.

The NCLT has appointed Ritesh Prasad Adatiya as the interim resolution professional (IRP) of the corporate debtor to carry out the functions as per the IBC. Powers of the board of directors were suspended, and a statutory moratorium under Section 14 of the Code commenced.

Khaitan, whose plea against the NCLT is listed for hearing before the NCLAT on Monday, was not available for comment.

Meanwhile, the IRP has asked the creditors to submit claims by February 24. Bankers to the company are State Bank of India, Punjab National Bank, HDFC Bank, ICICI Bank, Axis Bank, Indian Bank, UCO Bank, Yes Bank, IndusInd Bank and RBL Bank, according to the latest annual report.

Notably, FE reported on February 13 that Khaitans are likely to consider both the options — approaching NCLAT and an out-of-court settlement — to pull McLeod out of the insolvency process.

For the Khaitan family, regaining control of McLeod Russel seems to have become the foremost target at present.

In July last year, the Burman family, promoters of Dabur India, reclassified itself as the promoters of dry cell battery maker Eveready Industries, replacing Khaitans, after the completion of an open offer. McNally Bharat Engineering, an engineering firm of Williamson Magor group, is currently under final stages of the CIRP.

This is the second instance of the tea maker being admitted for insolvency proceedings. In August 2021, NCLT, New Delhi, had admitted an insolvency application filed by Techno Electric & Engineering under IBC for default on repayments of term loans of around `100 crore. The tribunal later gave its approval for withdrawal of the CIRP against McLeod after the promoters had reached a settlement with Techno Electric.

The admission of Williamson Magor group company McLeod for a CIRP by the Kolkata bench of the NCLT has wrecked Khaitans' efforts to execute an "exclusivity agreement" with Carbon Resources to negotiate a mutually-agreeable mechanism to offer a proposed "one-time settlement" of the company's debt to lenders.

Last month, the board of the tea maker had approved the execution of an "exclusivity agreement" with Carbon Resources, which had earlier made a non-binding offer to its lenders to acquire a controlling stake, to negotiate and evaluate a mutually-agreeable mechanism for the company to offer a proposed "one-time settlement" of its debt to the lenders. The board had approved execution of the agreement with Carbon for a period of 60 days to exclusively discuss, negotiate and evaluate a mutually agreeable mechanism to offer a proposed one-time settlement of the debt.

Khaitans have around 6.25% stake in McLeod Russel. Notably, Kolkata-based Carbon Resources, which manufactures carbon products, earlier picked up a 5.03% stake in the tea company from the open market.

Source: Financial Express

Read Full news at: <https://www.financialexpress.com/industry/khaitans-move-nclat-against-mcleod-russel-insolvency/2986105/>

