



# IBC AU-COURANT

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**"Opportunities don't happen, you create them."**

## ➤ **Cosmea pulls out of race to acquire Reliance Capital**

Mumbai-based NBFC Cosmea Financial Holdings has pulled out of the race to acquire debt-ridden Reliance Capital Ltd (RCL) under an insolvency run bid process, sources said. Cosmea combined with Piramal Group had put in a bid to acquire Anil Ambani Group's erstwhile company but sources said Piramal still continues to be interested in the auction process.

According to sources, the consortium had submitted the highest binding bid for Reliance Capital assets.

The planned e-auction for RCL, as approved by the committee of creditors (CoC), is scheduled to be held on December 21, and the exit of the highest bidder on the eve of the auction has come as a big jolt to the lenders.

The reason for the pull out, as per sources, is attributed to the contours of the bidding process being significantly altered, whereby the base bid in the auction itself requires a significant increase of approx Rs 1,500 crore over and above the highest bid, to start participating in the process.

The CoC has fixed a floor value of Rs 6,500 crore for the auction, which is Rs 1,500 crore more than the Net Present Value (NPV) of the Cosmea-Piramal resolution plan.

Further, sources said, the increments in the auction process for the second and third rounds have also been set at a very steep level of Rs 1,000 crore each. With the exit, there are now only three players left in the race--Hinduja, Torrent, and Oaktree.

Hinduja's bid of Rs 5,060 crore, including an upfront payment of Rs 4,100 crore, was the second-highest bid. The NPV of Hinduja's offer was Rs 4,800 crores. Torrent and Oaktree have quoted Rs 4,500 crore and Rs 4,200 crore respectively.

They have offered an upfront payment of Rs 1,100 crore and 1,000 crore respectively. The NPV of Torrent's resolution plan was Rs 4200 crore and Oaktree's plan was Rs 2600 crore.

The Reserve Bank of India (RBI) had on November 29 last year superseded the board of RCL in view of payment defaults and serious governance issues. The RBI appointed Nageswara Rao Y as the administrator in relation to the Corporate Insolvency Resolution Process (CIRP) of the firm.

Reliance Capital is the third large non-banking financial company (NBFC) against which the central bank has initiated bankruptcy proceedings under the Insolvency and Bankruptcy Code (IBC).

The other two were Srei Group NBFC and Dewan Housing Finance Corporation (DHFL). The RBI subsequently filed an application for initiation of CIRP against the company at the Mumbai bench of the National Company Law Tribunal (NCLT). In February this year, the RBI-appointed administrator invited expressions of interest for the sale of Reliance Capital.

*Source: The Economic Times*

*Read Full news at: <https://economictimes.indiatimes.com/industry/banking/finance/cosmea-pulls-out-of-race-to-acquire-reliance-capital/articleshow/96379142.cms>*

### ➤ **Object of S.60(2) IBC Is To Group Together CIRP/ Liquidation Proceedings Before Single Forum: Calcutta High Court**

The Calcutta High Court on Monday ruled that the object of Section 60(2) of the Insolvency and Bankruptcy Code, 2016 is to group together Corporate Insolvency Resolution process (CIRP) or liquidation proceedings of a corporate debtor and insolvency resolution/ liquidation/ bankruptcy proceedings of the corporate or personal guarantor of the same corporate debtor before a single forum i.e., the National Company Law Tribunal.

The Single Judge Bench of Justice Krishna Rao reasoned that the provision intended to ensure both of the said proceedings did not proceed before different fora which may lead to multiplicity of proceedings and conflict of interest.

#### **The Court held:**

"In Sub-Sections (4) and (5) of Section 60 of the IBC, 2016 give an indication respectively about the powers and jurisdiction of the NCLT. Sub-Section 4 of Section 60 of IBC, 2016 states that the NCLT will have the powers of DRT as contemplated under part III of the Code for the purpose of sub Section (2). Sub Section (2) deals with situation where the Insolvency Resolution or Liquidation of Bankruptcy of the corporate guarantor or personal guarantor of a Corporate Debtor is already pending before the NCLT.

The object of sub section (2) is to group together (A), the CIRP or liquidation proceedings of a Corporate Debtor, and (B) the Insolvency Resolution or Liquidation or bankruptcy of a corporate guarantor or personal guarantor of a very same Corporate Debtor so that a single forum may deal with both. This is to ensure that

the CIRP of the Corporate Debtor and the Insolvency Resolution of the individual guarantors of the very same Corporate Debtor do not proceed on different tracks, before different forum, leading to conflict of interest, situations or decisions."

The proceedings arose out of an application filed by the petitioner seeking grant of ad interim relief restraining the respondent company (in liquidation) from taking possession or control of the the petitioner's pledged shares or to interfere with the possession of the physical share certificates in respect thereof. The said application had been filed in connection with a suit against the respondent company (in liquidation) for a decretal sum of Rs. 11,06,15,68/- and for declaration that 77,500 equity shares of in the plaintiff company were held in the name of the respondent company and other reliefs.

Within the factual matrix of the case, while the respondent company was undergoing CIRP, one of the suspended Directors thereof had offered to pay to the petitioners the entire claim amount in return for the petitioner company to provide security interest against such loan. The petitioner company gave security interest in the form of 77,500 pledged equity shares and original title deeds of Tajpur land mortgage against the loan. Thereafter, upon initiation of liquidation proceedings against the respondent company, the petitioner filed a claim for recovery of said securities before the liquidator in satisfaction of the claim amount and for realisation of security interest, contending that the pledged shares and the original title deeds could not be part of liquidation estate of the respondent company. However, the liquidator denied the said security interests of the petitioner company. The liquidator was subsequently successful impleaded as a party respondent.

Counsels for the petitioner company contended the pledged shares and the original title deeds could not have been made part of the liquidation estate of the respondent and the Liquidator had wrongfully tried to take the properties from the petitioner company.

Counsels for the respondent liquidator argued that the communication relied upon by the petitioner was issued by a suspended Director of the respondent company and not the Liquidator thereof, and consequently could not be treated as admission on the part of the respondent liquidator. Respondent liquidator further argued that in terms of Section 52(5) of the Code, the application ought to lie before the adjudicating authority under the Code and the petitioner company was therefore not entitled to seek injunction before the High Court during pendency of liquidation proceedings. It was also submitted that the respondent liquidator was not in position to verify the security interest claimed by the petitioner company and accordingly had not permitted the petitioner company to realise any such security interest in the assets of the corporate debtor as per the Code.

On the statutory scheme of the Sections 408 and 410 of the Companies Act as being without any specific defining of the powers and functions of NCLT, the Court held:

"NCLT and NCLAT are constituted under Section 408 and 410 of the Companies Act, 2013 but without specifically defining the power and functions of NCLT. Section 408 of the Companies Act states that the Central Government shall constitute a National Company Law Tribunal to exercise and discharge such powers and functions as are

or may be conferred on it by or under the Companies Act or any other law for the time being in force. The matters fall within the jurisdiction of the NCLT, under the Companies Act, 2013 lie scattered all over the Companies Act, therefore, Section 420 and 424 of the Companies Act, 2013 indicates in [broad] terms, merely the procedure to be followed by the NCLT before passing any order. There is no separate provision in the Companies Act exclusively dealing with the jurisdiction and powers of NCLT."

Relying on the abovementioned reasoning arrived upon by interpreting the textual tenor of Section 60(2) of the Code as also the statutory scheme contemplated within S. 60(5) of the Code, the Court ruled that the application apprehending that the liquidator would take control and possession of security interest of the petitioner would lie before the NCLT and not the High Court.

Conjointly applying the statutory bars contemplated in Sections 238 of the Code read with Section 430 of the Companies Act, 2013 for applying before the High Court, the Court held:

"As per Section 238 of the IBC, 2016 is having override effect in any other law for the time being in force. In view of my prima facie findings that this Court cannot pass any interim order at this stage. This Court is of the view that the matter in issue in the suit can be more appropriately and effectively decided and adjudicated by the NCLT. In the present case, Section 430 of the Companies Act, 2013 itself provides an additional bar by stating that no injunction shall be granted by any civil court in respect of any action taken or to be taken in pursuance of any power conferred on the NCLT by the Companies Act, 2013."

Accordingly the application was dismissed.

**Case:** Alliance Broadband Services Pvt. Ltd. V. Manthan Broadband Services Pvt. Ltd. (In Liquidation), CS 54 of 2019

**Source:** Live Law

**Read Full news at:** <https://www.livelaw.in/news-updates/calcuttahighcourt-section-60-ibc-group-cirp-liquidation-proceedings-nclt-217208?infinitescroll=1>

