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➤ **Resolution pro suspended over 'related-party deals'**

The Insolvency and Bankruptcy Board of India (IBBI) on Monday suspended the registration of Savan Godiawala as a resolution professional for three years for alleged related party transactions. Godiawala, resolution professional (RP) for Lanco allegedly made a "wrongful withdrawal" of fees and hired related parties without proper identification of the scope of work, the order said. Godiawala, who was appointed as liquidator for Lanco Infratech after it was admitted for liquidation, is a partner of Deloitte Touche Tohmatsu India LLP (DTTILLP) and had appointed the firm to assist him in taking control and managing the affairs of the company and other obligations as its liquidator. He was also appointed as resolution professional for Shirpur Power Pvt Ltd.

The disciplinary committee under the Insolvency and Bankruptcy Code (IBC), had in its order of August 18 observed that Godiawala engaged a related entity to help him with liquidation proceedings.

In the case of Shirpur Power, the committee observed that although Godiawala appointed BDO India LLP vide engagement letter dated July 1, 2020, to conduct the transaction review audit, he failed to initiate action as required under the regulatory framework.

"The DC (disciplinary committee) notes that no document is available to detail the objective criteria adopted in the process of the selection of DTTILLP. The minutes of the CoC dated September 12, 2017, indicate that while getting the approval of the CoC for engaging DTTILLP for rendering support services during the CIRP process, selection criteria for identifying DTTILLP to provide professional support were not disclosed," the committee said in its 18-page order.

Beginning this year, IBBI has come down hard on several resolution professionals, even banning a few who were involved in irregularities.

Source: Economic times

Read Full news at: <https://economictimes.indiatimes.com/news/india/resolution-pro-suspended-over-related-party-deals/articleshow/93716818.cms>

➤ **Time Barred Appeal Against Decree Does Not Amount Pre - Existing Dispute Under Insolvency And Bankruptcy Code, 2016: NCLAT**

The National Company Law Appellate Tribunal (NCLAT) bench comprising of Justice Rakesh Kumar and Dr. Alok Srivastava held that a time barred appeal against the decree filed after the issuance of demand notice under Section 8 of the Insolvency & Bankruptcy Code, 2016 (IBC/Code) will not amount to a pre-existing dispute. NCLT, Kolkata dismissed the application filed by the Operational Creditor under Section 9 of the ground that there is a pre-existing dispute between the parties as the appeal against the decree of recovery of amount is pending.

The Operational Creditor sold and supplied fire safety materials to the Respondent and raised a bill of INR 1.25 Crores and on non-payment of the same, the Operational Creditor filed a suit for recovery before the Gurugram District Court in 2014. The Suit was decreed in favor of the Operational Creditor on 07.12.2018. The Operational Creditor issued a demand notice dated 06.02.2019 under Section 8 of the Code the Respondent and the same remained unanswered. Subsequently, the Operational Creditor filed a petition under Section 9 of the Code on 18.04.2019 against the Respondent.

Contentions Of Operational Creditor

It was contended on behalf of the Operational Creditor that there is was pre-existing dispute between the parties on the date of the issuance of the demand notice and even on the date of filing of Section 9 Petition. It was also submitted by the Operational Creditor that the limitation period for filing an appeal against the decree dated 07.12.2018 was expired on 05.02.2019 and no appeal was filed by the Respondent within such period and it is only after four months of the filing of the Section 9 petition, the Respondent informed that it has filed an appeal and did not even disclose the date of filing of appeal.

Contentions Of Respondent

It was contended on behalf of the Respondent that the pendency of an appeal will amount to the continuation of the suit and without adjudication of such appeal by the Appellate Court, it cannot be ruled out that there is no pre-existing dispute between the parties.

Analysis/Decision By NCLAT

NCLAT noted that the even after the issuance of the demand notice dated 06.02.2019, the Respondent did not raise any pre-existing dispute and also the notice was not even replied by the Respondent. It was further held by the bench at the time of issuance of notice dated 15.05.2019 in the Section 9 Petition, no appeal was pending against the decree dated 07.12.2018 and therefore, there was no pre-existing dispute even at the time of filing of the Section 9 petition by the Operational Creditor. The Appellate Tribunal also observed that if there was any dispute in respect of the decree, the Respondent would have immediately filed the appeal against the same which was not by the Respondent. NCLAT allowed the appeal filed by the Operational Creditor and directed the NCLAT to pass appropriate order in accordance of law.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclat-section-8-of-the-insolvency-bankruptcy-code-nclt-kolkata-pre-existing-dispute-operational-creditor-suit-for-recovery-207203>

➤ **Claims Arising Out Of Grant Of Licence/Permission For Use Of Intellectual Property Rights Is An Operational Debt: NCLAT Delhi**

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Anant Bijay Singh (Judicial Member) and Ms. Shreesha Merla (Technical Member), while adjudicating an appeal filed in Somesh Choudhary v Knight Riders Sports Private Limited & Ors., has held that claims arising out of grant of an exclusive right and license to use intellectual property rights falls within the ambit of the definition of 'Operational Debt'.

Knight Riders Sports Private Limited ("Respondent") and M/s. Global Fragrances Private Limited ("Appellant/Corporate Debtor") had entered into a Licensing Agreement whereby the Respondent had permitted the Appellant to (a) use manufacture, sell, distribute and advertise the licensed products namely Deodorants, Hair Gels, and Perfumes; (b) use the Respondent's intellectual property rights i.e., the trademark 'Kolkata Knight Riders'/'(KKR)' brand logo. In return the Appellant was obligated to pay Minimum Guaranteed Royalties ("MGR") to the Respondent as compensation for enjoying the exclusive rights.

The Respondent had raised invoices for an aggregate sum of Rs.40,60,147/- towards MGR payable by the Appellant and only part payment was received. The Respondent filed a petition under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Appellant/Corporate Debtor. The Appellant had opposed the petition on the ground that claims arising out of non payment of MGR were not Operational Debt as it did not pertain to any goods or services.

Proceedings Before NCLT

On 05.07.2021, the NCLT Bench had admitted the Petition and initiated CIRP against the Appellant while observing that incorporeal rights like trademarks, copyrights, patents and rights in personam capable of transfer or transmission are included in the ambit of "goods". Further, for a claim to fall within the definition of 'operational debt', the operational creditor must establish that it has a "right to payment" in respect of the provision of goods or services and also that Corporate Debtor has committed a "default" towards its liability or obligation in respect of such outstanding claim. The NCLT bench had held that MGR was a fixed payment due and payable by the Corporate Debtor to the Operational Creditor under the Agreement and the non-payment by the Corporate Debtor for using the "Trademark" which is the Licensed Product of the Operational Creditor, amounted to an operational debt under the IBC. The NCLT Bench had opined that the Corporate Debtor had admitted the default and no dispute was raised with respect to existence of debt, the quality of goods or service, or the breach of a representation or warranty, either directly or indirectly.

Decision Of The NCLAT

Aggrieved by the order dated 05.07.2021 passed by the NCLT Bench, the Appellant had filed an appeal before the NCLAT. The prime contention of the Appellant was such that the payment of 'Minimum Guaranteed Royalties' under the Licensing Agreement does not arise out of any 'goods or services' and therefore does not fall within the ambit of Operational Debt as defined under Section 5(21) of the IBC.

The NCLAT Bench relied on the Supreme Court judgment in *Vikas Sales Corporation v Commissioner of Sales Tax*, (1996) 4 SCC 433, in which it was held that even incorporeal rights like trademarks, copyrights, are 'Movable Property' and are included in the ambit of definition of 'goods' under the provisions of Sale of Goods Act, 1930. The Bench observed that a Guaranteed Minimum Royalty is a payment made periodically by a licensee to a licensor pursuant to a licence, regardless of sales success for a licensed product over that year. Unlike a royalty which is usually calculated as a percentage of net sales revenue, a minimum royalty is generally an agreed lump-sum payment of reasonably expected revenue from the sale of a licensed product over the agreed time period. "In this case, the 'Corporate Debtor' was permitted to use the trademark of 'KKR' in relation to its licensed products and hence we note that there was temporary transfer/permission to use, constituting 'provision of service' rendered by the first Respondent and therefore falls within the definition of service and any amounts 'due and payable' arising out of such service is an 'Operational Debt'. Further, it is also the case of the first Respondent that they had paid 'Service Tax' to the Government Authorities on the invoices raised against the 'Corporate Debtor'. As the invoices itself contemplate payment of GST for the use of the services rendered by the first Respondent, on which GST is payable, the definition of 'service' under the Central Goods and Services Tax Act, 2017 is applicable to the facts of this case."

The Bench held that the Respondent has established a 'Right to Payment' in respect of the provisions of goods and services provided by it. The grant of an exclusive right and license to the Corporate Debtor, to use manufacture, sell, distribute and advertise the licensed products and to use the associated trademark has a direct nexus with the business operations, sales and the actual product supplied by the Corporate Debtor. Hence, the 'Claim' in respect of such provisions of 'goods and services', under the terms of the License Agreement, falls within the ambit of the definition of 'Operational Debt' under Section 5(21) of the IBC. The Bench upheld the decision of the NCLT.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclat-delhi-operational-debt-intellectual-property-rights-section-9-insolvency-and-bankruptcy-code-nclt-corporate-insolvency-resolution-process-207201>

