



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



IBC AU-COURANT

Latest updates On Insolvency & Bankruptcy

23rd December 2022

"Your life is as good as your mindset."

➤ **NCLT Delhi Imposes Cost Of Rs. 1 Lakh On Suspended Director**

The National Company Law Tribunal ("NCLT"), New Delhi Bench, comprising of Shri Bachu Venkat Balaram Das (Judicial Member) and Shri L.N. Gupta (Technical Member), while adjudicating an application filed in Indian Bank (Erstwhile Allahabad Bank) v Nimitaya Hotel & Resorts Pvt. Ltd., has imposed a cost of Rs. 1 Lakh upon the Suspended Director of Corporate Debtor (Applicant) for instituting multiple proceedings seeking same reliefs and wasting precious judicial time.

Indian Bank (Erstwhile Allahabad Bank) ("Financial Creditor") had filed a petition under Section 7 of the Insolvency and Bankruptcy Act, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against Nimitaya Hotel & Resorts Pvt. Ltd. ("Corporate Debtor"). The Adjudicating Authority had initiated CIRP against the Corporate Debtor on 24.12.2021.

Mr. Sanjeev Mahajan ("Applicant/Suspended Director") who is a Suspended Director of Corporate Debtor, had submitted Settlement Proposal and was permitted to participate in the Committee of Creditors ("CoC") meetings. Further, the Suspended Director had alleged that the Petition has been filed by the Financial Creditor over malicious intent.

The Suspended Director filed an application bearing I.A. No. 2611 of 2022 before the Adjudicating Authority under Section 65 of IBC, seeking (i) Imposition of cost on the Financial Creditor for an amount of Rs. 1 Crore; (ii) Direction to the CoC to re-consider the settlement proposal of the Applicant; and (iii) Direction to the CoC and the Resolution Professional of Corporate Debtor to keep the CIRP and finalization of Resolution Plan in abeyance till disposal of the Application.

During the pendency of I.A. No. 2611 of 2022, the Suspended Director filed a similar application bearing I.A. No. 3204/ND/2019 with verbatim prayers as mentioned in I.A. No. 2611 of 2022.

The Adjudicating Authority dismissed the application (I.A. No. 2611 of 2022) while observing that the Tribunal would not intervene in the decision making of the CoC.

Decision Of NCLT

Decision Of NCLT When the I.A. No. 3204/ND/2019 came for hearing before the Bench, the Bench observed that the Applicant had preferred the said application during the pendency of I.A. No. 2611 of 2022, seeking verbatim reliefs. The Bench held that same reliefs cannot be sought in two parallel Applications against the same party.

"The Application is barred by the doctrine of Res Sub-Judice. Since, the applications have resulted in multiplicity of proceedings and in wastage of precious judicial time, we discourage such practice. The Application is accordingly dismissed with a cost of Rs. 1,00,000/- (one lakh) only to be deposited by the Applicant herein in the Prime Minister's Relief Fund within 15 days, the receipt of which shall be filed with the NCLT Registry."

The Bench imposed a cost of Rs. 1 Lakh upon the Applicant for instituting multiple proceedings seeking same relief and wasting precious judicial time. The Application was dismissed.

Case Title: Indian Bank (Erstwhile Allahabad Bank) v Nimitaya Hotel & Resorts Pvt. Ltd.

Case No.: C.P. (IB) 1913 (ND)/2019

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclt-delhi-imposes-cost-of-rs-1-lakh-on-suspended-director-corporate-debtor-217339?infinitescroll=1>

➤ **Moratorium Under Companies Act, 2013, Parties Cannot Be Referred To Arbitration: Delhi High Court**

The Delhi High Court has ruled that the moratorium granted by the National Company Law Appellate Tribunal (NCLAT), staying the institution of suits and proceedings against the Corporate Debtor, after the resolution process is initiated against it under Sections 241 and 242 of the Companies Act, 2013, is akin to an order of moratorium passed under Section 14 of the Insolvency and Bankruptcy Code, 2016 (IBC). Thus, in view of the moratorium issued by the NCLAT, the Corporate Debtor cannot be referred to arbitration.

The bench of Justice V. Kameswar Rao was dealing with an application filed under Section 11 of the Arbitration and Conciliation Act, 1996 (A&C Act), seeking reference of the dispute to arbitration. The High Court dismissed the contentions raised by the applicant that since the resolution of IL&FS was initiated under Sections 241 and 242 of the Companies Act, 2013 and not under IBC, the rigours of Section 14 of the IBC were not attracted.

Further, while holding that the order passed by the NCLAT has certain consequence, the bench rejected the averments made by the applicant that since NCLAT is

subordinate to the High Court, the High Court is not bound by the moratorium granted by the NCLAT. The petitioner DLF Ltd. and the respondent- IL&FS Engineering and Construction Company, executed a Construction Contract. After certain disputes arose between the parties, the petitioner invoked the arbitration clause and issued a notice under Section 21 of the A&C Act.

The respondent, in its reply to the notice invoking arbitration, contended that in view of the order passed by the NCLAT, staying the institution of suits and proceedings against IL&FS, i.e., the parent company of the respondent, and its 348 Group Companies, the parties cannot be referred to arbitration.

Thereafter, the petitioner filed an application under Section 11 of the A&C Act seeking appointment of an Arbitrator before the Delhi High Court.

The respondent- IL&FS Engineering and Construction Company, submitted before the High Court that it is a part of the IL&FS Group, which is subject to a moratorium by virtue of an order passed by the NCLAT under Sections 241 and 242 of the Companies Act, 2013. Thus, it argued that the respondent cannot be referred to arbitration. The respondent added that in furtherance of the resolution process, a public advertisement was issued in the Economic Times.

In the said advertisement, the creditors of the IL&FS Group Companies, including the petitioner, were directed to submit their claims regarding undischarged liabilities, that were due up to October 15, 2018. The respondent averred that the claims submitted by the petitioner, which were due up to October 15, 2018, were dismissed by the Claims Management Advisor, adding that the said fact was suppressed by the petitioner.

To this, the petitioner DLF argued that the claims which accrued post October 15, 2018 were outside the resolution framework of IL&FS and thus, they must be referred to arbitration, failing which the petitioner would be rendered remediless.

The respondent- IL&FS Engineering and Construction Company, submitted that since it is subject to a resolution process, the claims raised by the petitioner that accrue after October 15, 2018, cannot be referred to arbitration. It contended that a successful resolution applicant cannot suddenly be faced with undecided claims after the resolution plan submitted by him has been accepted.

The petitioner DLF contended before the High Court that the moratorium granted by the NCLAT was not a statutory moratorium under Section 14 of the IBC. It argued that since the resolution of IL&FS was initiated under Sections 241 and 242 of the Companies Act, 2013 and not under IBC, the rigours of Section 14 of the IBC were not attracted.

It added that NCLAT is a statutory Tribunal over which the High Court has supervisory jurisdiction, therefore, the order passed by the NCLAT cannot curtail the jurisdiction of the High Court under Section 11 of the A&C Act. Thus, the petitioner argued that the NCLAT could not have passed the orders restraining institution and continuation of proceedings before the High Court.

While observing that the order passed by the NCLAT was challenged before the Supreme Court, the High Court noted that no stay order has been granted by the Apex Court. The bench referred to the decision of the Coordinate Bench of the Delhi High Court in M/s. Apco-Titan (JV) versus National Highways & Infrastructure Development Corporation Ltd. (2019), where the High Court had concluded that in view of the NCLAT order, no suit was maintainable against the Group Companies of IL&FS.

Dismissing the contention of the petitioner that the moratorium granted by the NCLAT was not a statutory moratorium, the High Court ruled that the order passed by the NCLAT is akin to an order of moratorium passed under Section 14 of the IBC. While holding that the purpose and rationale behind granting a moratorium is to ensure that the assets of the corporate debtor are protected, the bench ruled that moratorium is granted with an intention to keep the company a going concern and for using the said period to strengthen its financial position.

Thus, it concluded that the intent of the order passed by the NCLAT is to protect the assets of IL&FS and its group companies, in order to make the resolution process effective and purposeful.

"Further, the order does not make any distinction between the claims before October 15, 2018 and after October 15, 2018. It restrains not just continuance of suits or proceedings already instituted, but also filing of fresh suits or proceedings. In other words, the order of stay/moratorium prohibits the initiation of any proceedings, regardless of the period to which the claims in the proceedings pertain", the Court observed.

Therefore, the bench held that it cannot be the intent of the NCLAT order to allow proceedings with respect to claims arising after the cut-off date, i.e., October 15, 2018.

"Mr. Nayar has submitted that NCLAT being subordinate to this Court, this Court is not bound by the order dated October 15, 2018. The plea is unmerited for the reason that the order passed by the NCLAT has certain consequences. The said order is not under challenge in this petition. It is pending consideration before the Supreme Court. The relief as sought for by Mr. Nayar, if granted, shall make the order of the NCLAT otiose, defeating the very purpose for which such an order was passed", the Court said.

The Court thus dismissed the petition.

Case Title: DLF Ltd. versus IL&FS Engineering and Construction Company

Dated: 21.12.2022 (Delhi High Court)

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/moratorium-under-companies-act-2013-parties-cannot-be-referred-to-arbitration-delhi-high-court-217353>

➤ India mulls rules for quicker resolution of builders' insolvency

India plans to introduce new rules for handling real estate bankruptcies, which would help homebuyers even as their builders wind down, people familiar with the matter said.

The proposed change to the nation's Insolvency and Bankruptcy Code will permit resolution of the cases on a project-wise basis, the people said, asking not to be named, as the information is not public. That will allow handing over completed apartments to the home buyers even when the developer's insolvency process is underway, they said. A spokesperson for the corporate affairs ministry declined to comment.

Indian realty sector has seen many builders going bust over the years, leaving home buyers in a fix due to the uncertainty of completion and delivery of houses that their life savings were tied up in. Under the current norms, admission into insolvency procedure halts the completion of all projects of the developer in default. As of June this year, 436 out of the pending 1,999 cases of corporate insolvency were in the real estate sector, junior minister for corporate affairs Inderjit Singh Rao had informed the lawmakers in August. The IBC had little success in the timely resolution of such cases, making the need for a special framework to address the nuances of the real estate sector more pronounced.

To speed up the resolutions, the government also plans to introduce a centralized platform for registration of cases, simplify pre-packaged resolution plans, and provide flexible plans for handling operational and nonviable assets separately, they said.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/industry/services/property/-/construction/india-mulls-rules-for-quicker-resolution-of-builders-insolvency/articleshow/96415931.cms>

