INSOLVENCY PROFESSIONAL AGENCY
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LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

"The limit is not the sky. The limit is the mind."

➢ Company Debts Alone Cannot Justify Insolvency Proceedings Against Personal Guarantor: NCLT Delhi

The National Company Law Tribunal (NCLT) at Delhi has held that outstanding debts owed by companies cannot, by themselves, justify personal insolvency proceedings against an alleged guarantor. Creditors must first establish the contractual basis of the personal guarantee and the individual's liability under it.

"The existence of outstanding debts against the Corporate Debtors, without material establishing the corresponding personal liability of the Applicant, cannot by itself support an insolvency application against him as a Personal Guarantor. Although a guarantor's liability may be coextensive with that of the principal debtor under Section 128 of the Indian Contract Act, 1872, the contractual foundation of the guarantee must first be shown." the tribunal observed.

A Bench of Judicial Member Manni Sankariah Shanmuga Sundaram and Technical Member Reena Sinha Puri held that although a guarantor's liability may be co-extensive with that of the principal debtor under Section 128 of the Indian Contract Act, 1872, the contractual foundation of the guarantee must first be established.

The Tribunal rejected a personal insolvency application filed by Arun Kumar Mishra under Section 94 of the Insolvency and Bankruptcy Code, 2016. The application concerned alleged personal guarantees for loans advanced by Hindustan Buildcon Pvt. Ltd. and Singh Finlease Pvt. Ltd. to Chanakya Academy for Education and Training Pvt. Ltd. and Sampoorn Academy Pvt. Ltd. for ₹2.03 crore and ₹3.26 crore, respectively.

Resolution Professional Amarpal had recommended acceptance of the application in his report under Section 99. Six creditors objected, questioning the existence and invocation of the guarantees, Mishra's financial disclosures and his ability to meet the costs of the Insolvency process.

Source: Live Law Biz
Read Full News: *https://www.livelawbiz.com/nclt/outstanding-debt-of-borrower-companies-not-enough-to-initiate-insolvency-against-personal-guarantor-nclt-new-delhi-559850*

➢ Payments For One Project Cannot Extend Limitation For Dues From Other Projects: NCLT Mumbai

The National Company Law Tribunal (NCLT) at Mumbai has held that payments made towards one project cannot extend the limitation period for claims relating to other projects when a creditor maintains separate project-wise accounts.

The Bench comprising Judicial Member K.R. Saji Kumar and Technical Member Anil Raj Chellan while dismssing an Insolvency plea by an Operational Creditor, observed, "*When the creditor maintains separate project-wise ledgers and makes payments accordingly, any payment credited to one project can extend limitation only in respect of that project, not for all projects of the Corporate Debtor undertaken by the Operational Creditor.*"

Source: Live Law Biz
***Read Full News*:** *https://www.livelawbiz.com/nclt/payments-for-one-project-cannot-extend-limitation-for-dues-from-other-projects-nclt-mumbai-559819*

➢ Homebuyers Must Route CIRP Objections Through Authorised Representative: NCLT Delhi

The National Company Law Tribunal (NCLT), New Delhi Bench, has held that an individual homebuyer, who is part of a class of Financial Creditors, cannot directly approach the Adjudicating Authority to raise objections in a Corporate Insolvency Resolution Process (CIRP), bypassing the Authorised Representative appointed for the creditor class.

The NCLT dismissed a plea filed by 28 homebuyers of Unnati Fortune Holding Limited (UFHL) to defer the consideration of the Resolution Plan of Sloan Solutions Private Limited in the CIRP of IVR Prime IT SEZ Private Limited.

Source: Live Law Biz
Read Full News: *https://www.livelawbiz.com/nclt/homebuyers-must-route-cirp-objections-through-authorised-representative-nclt-delhi-559706*