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LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

"The happiness of your life depends on the quality of your thoughts."

➢ Co-Borrower's Liability Cannot Be Treated As Personal Guarantee Under IBC: NCLT Mumbai

The National Company Law Tribunal (NCLT), Mumbai Bench, has held that liability arising from an individual's status as a co-borrower cannot, by itself, be treated as a personal guarantee under the Insolvency and Bankruptcy Code, 2016 (IBC).

A Bench of Technical Member Prabhat Kumar and Judicial Member Sushil Mahadeorao Kochey observed, "An individual may incur financial liabilities in different capacities, including as a borrower, co-borrower or personal guarantor. The mere fact that an individual has furnished a personal guarantee in respect of the debt of one Corporate Debtor does not result in all other financial liabilities undertaken by such individual in his personal capacity being treated as liabilities arising under a contract of guarantee. Each such liability must be examined independently with reference to the contractual arrangement under which it arose."

Referring to Section 5(22) of the IBC and Section 126 of the Contract Act, the NCLT observed that co-obligations, though related, may be structurally different and need to be analyzed independently.

The present application was filed by Arvind Mithailal Agarwal, under Section 94 IBC, who had furnished a personal guarantee for credit facilities extended by Bank of India to Rajrani Steel Casting Private Limited.

Axis Finance Limited opposed the application, contending that the applicant was also a co-borrower under a separate loan agreement and that his liability under that arrangement was independent of any guarantee. The Bank also submitted that the applicant has filed the petition with the intention of obstructing and frustrating the recovery proceedings initiated by the Bank of India under the SARFAESI Act, 2000.

Source: Live Law Biz
Read Full News: *https://www.livelawbiz.com/nclt/co-borrowers-independent-repayment-liability-cannot-be-treated-as-personal-guarantee-nclt-mumbai-559928*

➢ NCLT Can't Order Fresh Valuation After CoC Approves Resolution Plan Merely Due To Delay: NCLAT Delhi

The New Delhi Bench of the National Company Law Appellate Tribunal (NCLAT), on 19 November held that the Adjudicating Authority cannot direct a fresh valuation of a Corporate Debtor's assets after the Committee of Creditors (CoC) has approved a resolution plan, merely because of a delay in judicial approval, in the absence of any statutory or procedural irregularity.

A Bench comprising Judicial Member Justice Yogesh Khanna and Technical Member Barun Mitra allowed an appeal filed by Shri Jitendra Nagwani, proprietor of Shree Varun Infratech and the Successful Resolution Applicant (SRA) for Hotline Glass Ltd., against the National Company Law Tribunal (NCLT), Indore Bench's direction to obtain a fresh valuation of the Corporate Debtor's assets.

Source: Live Law Biz
***Read Full News*:** *https://www.livelawbiz.com/ibc/delay-in-plan-approval-alone-cannot-justify-fresh-valuation-of-corporate-debtors-assets-nclat-559923*

➢ Contractor Cannot Claim Royalty Separately If Included In Quoted Rates: NCLT Delhi

The National Company Law Tribunal (NCLT), New Delhi Bench, has ruled that a contractor cannot separately claim royalty charges when they are already included in the quoted rates under the applicable work order.

The Bench of Judicial Member Manni Sankariah Shanmuga Sundaram and Technical Member Reena Sinha Puri while disallowing such a claim, observed: "Firstly, no amount towards royalty can be claimed by the Operational Creditor in terms of Clause 8 of the Work Order dated 15.03.2021, which provides that royalty shall be deemed to be included in the quoted rates of the contractor and no claim in relation to it shall be entertained subsequently."

Source: Live Law Biz
Read Full News: *https://www.livelawbiz.com/nclt/contractor-cannot-claim-royalty-separately-if-included-in-quoted-rates-nclt-delhi-559889*