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OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



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Latest updates On Insolvency & Bankruptcy

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"The best way out is always through"

➤ **Cumulative recovery rate under insolvency resolution falls to 30.18% in Q3**

The cumulative recovery rate under the insolvency resolution processes of debt-ridden companies declined to 30.18 per cent at the end of the September quarter, indicating that lenders took more haircut on their exposure, shows a study.

The recovery rate has fallen steeply from a peak of 43 per cent in Q1 FY20.

Of the Rs 7,90,626.2 crore claims from the financial creditors admitted by various benches of the National Company Law Tribunal (NCLT), only Rs 2,43,452.5 crore or 30.18 per cent have been recovered till the end of Q2 FY23, as per an analysis of IBBI data done by Care Ratings.

The overall recovery rate implies a haircut of around 70 per cent for the lenders.

The Insolvency and Bankruptcy Board of India (IBBI) is a key institution in implementing the Insolvency and Bankruptcy Code (IBC), which provides for market-linked and time-bound resolution of stressed assets.

The cumulative recovery rate has been on a downtrend, falling from 43 per cent in Q1 FY20 and 32.9 per cent in Q4 FY22 as larger resolutions have already been executed and a significant number of liquidated cases were either Board for Industrial and Financial Reconstruction (BIFR) cases and/or defunct with high resolution time, the report said.

There has also been a fall in the number of cases going to/admitted by the NCLT since H2 FY21.

Since the implementation of the IBC in 2016, close to 5,893 companies have been admitted by various NCLT benches. Out of those cases, operational creditors filed 3,008 cases, a little over 50 per cent, and financial creditors filed 2,531 cases or around 45 per cent. The share of corporate debtors has continued to remain the lowest at around 3 per cent as of September 2022.

The share of the various sectors has largely remained constant compared with the previous period, with the manufacturing sector accounting for the highest at 39 per cent of the overall cases, followed by real estate (21 per cent), construction (11 per cent) and trading (10 per cent).

The status of the cases has largely remained constant compared with the previous period. Of the total 5,893 cases admitted as of September 2022, only 9 per cent ended in resolution. Of the total admitted cases, as much as 1,807 ended in liquidation (31 per cent), according to the study.

Around 14 per cent (846 cases) closed on appeal/review/settled, while 11 per cent were withdrawn. In terms of the cumulative value, total admitted claims of financial creditors stood at Rs 7,90,626.2 crore as of Q2 FY23, up from Rs 6,84,901.3 crore in March 2022. The incremental addition during Q2 of this fiscal was Rs 10,121.5 crore.

The cumulative money recovered by financial creditors stood at Rs 2,43,452.5 crore as of September 2022, up from Rs 2,25,293.8 crore in March 2022. The Q2 addition stood at Rs 3,054.4 crore.

The delay in resolution, which has been plaguing the process from the very beginning, still remains a challenge. Of the 1,944 ongoing cases, as much as 63 per cent were delayed by more than 270 days as of September 2022, down from 73 per cent in September 2021.

Source: Business Standard

Read Full news at: https://www.business-standard.com/article/finance/cumulative-recovery-rate-under-insolvency-resolution-falls-to-30-18-in-q3-122112700406_1.html

➤ **NCLAT order a distinct remedy from arbitration: Legal experts**

A recent National Company Law Appellate Tribunal (NCLAT) order refusing to initiate insolvency proceedings against a corporate debtor in a case where an arbitration order was already issued will reduce a lot of unnecessary insolvency proceedings, legal experts said.

Aegis Forging (a corporate debtor) had borrowed money from some investors on the basis of a personal guarantee by Shaikh Mohammed Tariq (a financial creditor). When Aegis defaulted on the repayment, Tariq filed a section 7 application against Aegis before the company law tribunal, alleging his personal guarantee was fully covered by section 5(8)(i) of IBC and is financial debt. However, Tariq had already won an arbitration award in 11 November 2013, based on his personal guarantee, and the arbitration proceedings were already being executed.

Aegis Forging challenged the IBC move in the NCLAT, where a bench of justices Ashok Bhushan and Alok Srivastava refused to admit the case under section 7. NCLAT said an arbitration award to pay Tariq cash security of ₹3.64 crore with interest was already passed, and since the financial creditor was already executing the award, this was good enough reason to refuse the section 7 application.

Srijan Sinha, an insolvency expert at Edictum Law & Co., said, “The observation and reasoning will bring in a lot of subjectivity to IBC section 7 petitions, which is a distinct

remedy from arbitration." While one is for restructuring a defaulting company, the other is for recovery, and this may have to be tested in an appeal before the Supreme Court, Sinha said.

Sandeep Bajaj, managing partner, PSL Advocates & Solicitors disagrees. "The NCLAT judgement cannot be read as propounding the law on this subject as the law has already been settled by the SC in Dena Bank (now Bank of Baroda) vs. C. Shivakumar Reddy and Anr, wherein it observed that a judgement or a decree for money passed by any court or tribunal in favour of a financial creditor would give rise to a fresh cause of action for maintaining an application under section 7 of IBC seeking initiation of CIRP in the matter of the corporate debtor."

Source: Mint

Read Full news at: <https://www.livemint.com/news/india/nclat-order-a-distinct-remedy-from-arbitration-legal-experts-11669569537453.html>

➤ Homebuyers look to NCLT to revive stalled HDIL projects

Dr Haresh Manglani, an orthopaedic who runs a hospital in Mulund, booked a flat in HDIL's Whispering Towers project in Mulund West, so that his ageing parents could enjoy a good life in a gated community.

They were promised possession in 2016, but the project construction was delayed and finally stalled indefinitely in 2015. His father passed away in 2019 without seeing the new flat.

Malad-based 72-year-old Chandrakishore Kolindewala sold his ancestral land to book an airy flat on the 19th floor in HDIL's Majestic Towers, in Nahur, and was promised possession in 2013. Like Whispering Towers, this project was also delayed and finally construction stopped. Since then, Dr Manglani, Kolindewala and 850 other EMI and taxpaying homebuyers from the two projects have resiliently fought time-consuming and expensive legal battle for their dream homes and justice at multiple fora.

Earlier this month, when the resolution professional Abhay Manudhane informed the stock exchanges that resolution plans (RP) for six of the 10 verticals, including these highrise projects, were approved, their hopes of finally entering their dream homes soon were rekindled. A formal approval by the National Company Law Tribunal (NCLT) for these plans is required to complete the successful resolution of these stalled projects. Once done, this will be the first such successful resolution of a large number of stalled projects in Mumbai through the Insolvency and Bankruptcy Code and NCLT-based resolution process.

"Our fingers are crossed. It's never over till it's over. We hope that NCLT gives the approval soon and developers start completing the buildings," said Dr Manglani, who heads the Whispering Towers Flat Owners Welfare Association. He even began studying for a degree in law during his long fight for justice. When it became clear that HDIL will not resume construction any time soon, the buyers from the projects came together and one group approached the consumer courts, and another filed complaints with Maharashtra Real Estate Regulatory Authority (MahaRERA) hoping for a faster grievance resolution. Majestic Towers buyers had filed 87 cases in consumer courts and over 60 in MahaRERA. Kolindewala, who heads the Majestic Towers Flat Owners Association, and his group of 53 buyers had initiated the process to remove HDIL and appoint a new developer under Section 7 and 8 of RERA. MahaRERA even scheduled the final orders around August 2019, and the insolvency petition moved by Bank of India, one of its multiple lenders, to recover ₹522 crore of dues was admitted by the NCLT on August 20.

In September, 2019, then MahaRERA chairman Gautam Chatterjee cited NCLT proceedings and directed homebuyers to approach it after the corporate insolvency resolution process (CIRP) is over.

This was a frustrating moment for the homebuyers who had to recoup, and start a fresh battle under another 2016 law -- Insolvency and Bankruptcy Code (IBC) -- to intervene in the NCLT process. HDIL had challenged the NCLT decision to admit BOI's petition in NCLT's Appellate Tribunal. "We had no choice, but to go to NCLAT, move the Supreme Court which sent us back to NCLT. Fortunately, on August 9, 2019, SC, in a landmark judgment upheld an IBC amendment and gave homebuyers the status as financial creditors on par with lenders. So, now we had a role in the Committee of Creditors (CoC)," said Kolindewala.

Dr Manglani said NCLAT's landmark order of January 4, 2022, has now set a legal precedent and opened the doors for future homebuyers dragged into the NCLT resolution process to opt for project-wise resolution. Majestic Towers Association went to NCLAT to extend the CIRP beyond 330 days and it became the case law. "Apart from paying EMIs and the mental agony, the legal battle has cost us more than ₹35 lakh. The human cost is greater. Many senior citizens who had hoped to move into new homes passed away. Covid-19 pandemic triggered job losses. Some couldn't afford to continue living on rent in Mumbai and moved to other cities," said Kolindewala, who virtually handed over his travel business to his son Vikas, as he was busy spearheading the legal fight.

"Why can there not be one forum which can give swifter justice to taxpaying homebuyers. Why do we have to run from one forum or another? How can we afford such time-consuming and expensive legal processes? I would like to appeal to the Prime Minister and the Maharashtra Chief Minister to take a serious note of our experience and provide a solution," he said. About 27 different financial creditors in the insolvency process and addressing the concerns of each in relation to the corporate debtor also took time. A claim of ₹14,391 crore made by Budhpur Buildcon Private Limited (BBPL), with alleged links to Adani Group, in August 2021, nearly two years after the moratorium commenced, had to be verified by the RP and was eventually rejected. BBPL went in appeal and the NCLAT eventually rejected it in September 2022.

Interestingly, the final results of the e-voting by the CoC declared on November 4 showed that the Bank of India, whose actions had triggered the insolvency case in the first place, abstained from voting completely for any of the 10 verticals.

"The IBC law mandates 180 days for a resolution which can be extended by 90 days and extended maximum upto 330 days. The process slowed down due to Covid-19 pandemic in 2020 and first half of 2021. We have been waiting for 12 years. My father could never see the new flat. I hope that at least my 82-year-old mother is able to see the new house," said Dr Manglani.

Source: Hindustan Times

Read Full news at: <https://www.hindustantimes.com/cities/mumbai-news/homebuyers-look-to-nclt-to-revive-stalled-hdil-projects-101669400505463.html>

