



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



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Latest updates On Insolvency & Bankruptcy

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"A winner is a dreamer who never gave up."

➤ **Recovery through IBC to get better as macros look up: RBI**

The Reserve Bank of India (RBI) believes that the Insolvency and Bankruptcy Code (IBC) is probably the best mechanism for creditors to recover their dues and said the right way to look at its effectiveness would be to compare the resolution value to the liquidation and not the total loans. RBI, in the latest report on Trends and Progress of Banking, said that the realisation value through IBC was close to 201% of liquidation value.

RBI argued that since significant value destruction may have already happened in stressed assets, a comparison of realised value with admitted claims may not be a reasonable indicator of the effectiveness of the resolution process.

"Rather, the resolution value may be compared with the liquidation value of stressed assets," the central bank said in its report. "Data indicate that at endSeptember 2022, in cases where the corporate insolvency resolution processes were initiated by financial creditors, the realisation through the IBC was close to 201 per cent of the liquidation value."

The regulator also said that while the declining rates of recovery in comparison to their claims admitted through bankruptcy courts has raised concerns, the rate of recovery is contingent on overall macroeconomic environment, perceived growth prospects of the entity and its sector, and the extent of erosion in the intrinsic value of the entity.

The central bank also noted that as broad-based recovery gains traction, several macroeconomic factors will turn favourable for financial resolution.

Though it raised concern over the time taken for admission of resolution application, the final resolution and delay in liquidating assets.

Recently in an interview with ET, billionaire banker Uday Kotak had said while the insolvency code is fine in principle, the signs of meagre recoveries from the insolvencies of conglomerates and non-banking finance companies (NBFCs) such as Reliance Capital and Srei call for a review of the law.

“I am not saying we need to junk the IBC (Insolvency and Bankruptcy Code) option,” said Kotak had said. “There has to be a policy think on this. We have to figure out that for large national assets, we must think about the public interest route. The objective of the public interest board is to optimise value for stakeholders, which we have demonstrated in IL&FS. And IBC may not be the only route. It needs to be relooked at even for NBFC resolutions.”

The Insolvency and Bankruptcy Board of India (IBBI) recently amended the insolvency regulations aimed at improving realised value, reducing delays in the process, enhancing efficiency of available time, and improving information availability.

Through another amendment to the IBC, performance- linked incentives have been introduced for insolvency professionals, with am to maximise the realised value of stressed assets beyond their liquidation value.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/news/economy/policy/recovery-through-ibc-to-get-better-as-macros-look-up-rbi/articleshow/96547684.cms>

➤ **NCLT directs liquidator of Pratibha Industries to conduct fresh auction**

India’s bankruptcy court has directed the liquidator of BSE-listed infrastructure firm Pratibha Industries to conduct a fresh valuation of the company. It has also asked for a fresh auction of the company as a going concern.

The Mumbai bench of the National Company Law Tribunal (NCLT), while cancelling its sale to successful bidder VDB Projects Pvt Ltd, observed that the Bengaluru-based firm had been given opportunities to deposit the agreed amount, but had not complied with the same to complete the sale process.

“The liquidator is directed to get assets valued again and issue fresh auction sale notice in accordance with Liquidation Regulations and complete the auction expeditiously,” the tribunal said in an order dated December 23. The tribunal passed the directive on an application filed by VDB Projects, which had sought more time to pay the first tranche of the money as per agreed terms.

In February 2019, the company was admitted under the Corporate Insolvency Resolution Process (CIRP). In February 2021, the tribunal directed the liquidation of the company after it failed to receive any viable revival plan and sell it as a going concern under the liquidation plan. The company has admitted liabilities of over Rs 8,300 crore towards its financial creditors. Bengaluru-based VDB Projects’ bid of over Rs 150 crore, the highest bid, was approved by the lenders and the same was communicated to it on March 7 this year. According to the Letter of Intent (LoI), the successful bidder had to pay Rs 67.86 crore within 90 days after which credit would be given for the cash and bank balance lying with the Pratibha Industries’ accounting to Rs 82.24 crore.

Subsequently, the successful bidder approached the tribunal seeking more time to pay the Rs 67.86 crore to lenders and waiver from paying 12% default interest. It argued that the attractiveness of a going concern sale is that the purchaser takes over assets without encumbrances and is free from the actions of creditors.

“No person would bid if the total liability of almost Rs 4,000 crore is transferred, which is well above the liquidation value. This is more so when the reserve price was in the present case reduced to Rs 150 crore,” VDB Projects said. Countering this, Anil Mehta, the liquidator of the company said the application was a delaying tactic to not make the balance payment and prevent the forfeiture of the bank guarantee of Rs 18.90 crore which the successful bidder had paid as Earnest Money Deposit at the time of the auction. “The corporate debtor (Pratibha Industries) as a ‘going concern’ basis under Regulation 32A of the Liquidation Rules is being sold with all existing and future encumbrances/claims/dues and demands whether known or unknown to the Respondent,” the liquidator argued through his counsel.

Ashish Pyasi, associate partner at law firm Dhir & Dhir Associates, said though there were precedents on the sale of assets as a going concern and liabilities, more clarity was needed. “If there is no clean slate given to the buyer when they acquire assets under liquidation, or if there is a mismatch between liabilities and assets value, then it would be a losing proposition, where not many buyers would like to acquire such assets,” Pyasi said.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/news/industry/nclt-directs-liquidator-of-pratibha-industries-to-conduct-fresh-auction/articleshow/96577941.cms>

➤ **CBIC asks taxmen to recover lower dues from firms under insolvency**

The Central Board of Indirect Taxes and Customs (CBIC) issued two key circulars on Wednesday, clarifying its stance on the treatment of tax dues from companies undergoing insolvency and the limitation period for issuing showcause notices under the Goods and Services Tax (GST) regime. This is following the approval of the GST Council in its December 17 meeting.

On the issue of recovery of tax dues from firms under insolvency, the apex body of indirect taxation clarified that proceedings under Insolvency and Bankruptcy Code (IBC) would now come under the purview of Section 84 of the CGST Act. The provision deals with the process to be followed when the original tax, interest or penalty (‘Government Dues’) stands reduced under an appeal, revision or other proceedings.

The circular clarified that scope of ‘proceedings’ under Section 84 would cover those under IBC as well. Therefore, where confirmed government dues stand reduced under an IBC order, the GST department shall only recover such reduced dues by following the prescribed procedure.

Under the procedure, an intimation for such reduction of government dues has to be given by the Commissioner to such person and to the appropriate authority with whom the recovery proceedings are pending. Further, recovery proceedings can be continued in relation to such reduced amounts of government dues.

In a separate circular, CBIC clarified that in case a show-cause notice was issued beyond the “limitation period” and the adjudicating authority held that an extended period of limitation cannot be invoked, then the entire proceeding will have to be dropped. It further clarified that in case a show-cause notice was issued for multiple financial years and only a part of the period is subject to limitation, then the demand will sustain only for the period which is under the limitation period.

GST law provides an effective period of two years and nine months from a prescribed date to issue a show-cause notice.

Source: Business Standard

Read Full news at: https://www.business-standard.com/article/economy-policy/cbic-issues-clarifications-on-tax-recovery-from-firms-under-insolvency-122122801189_1.html

