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"There is nothing impossible to them who will try"

➤ **NCLT Ahmedabad Rejects Resolution Plan Selectively Favoured Creditors**

The National Company Law Tribunal ("NCLT"), Ahmedabad Bench, comprising of Shri Madan B Gosavi (Judicial Member) and Shri Kaushalendra Kumar Singh (Technical Member), while adjudicating a petition filed in M/s. Sansar Texturisers Pvt. Ltd. v M/s. Polycoat India Pvt. Ltd., has declined to approve the Resolution Plan of the Successful Resolution Applicant that breached the waterfall mechanism of payments as given under Section 53 of IBC and selectively favoured certain creditors without according any reason for the same. The Bench held that the Plan ineffectively dealt with the interests of all stakeholders of the Corporate Debtor and was non-compliant of Section 30(2)(e) and Section 30(2)(f) of IBC.

M/s. Sansar Texturisers Pvt. Ltd. ("Applicant/Financial Creditor") had filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s. Polycoat India Pvt. Ltd. ("Corporate Debtor"). The petition was admitted and CIRP was initiated on 02.12.2020. The Interim Resolution Professional ("IRP") had received claims from six Financial Creditors and four Operational Creditors. The Financial Creditors were Punjab National Bank, M/s. Sansar Texturisers Pvt. Ltd., Sunil Textile, Anamika Syntex Pvt. Ltd., Gupta Tex Prints Pvt. Ltd., Sharp Synthetics Pvt. Ltd. While the Operational Creditors were State Tax (Government of Gujarat), Central Excise (Government of India), Gujarat Industrial Development Corporation and Surat Municipal Corporation.

The IRP constituted the Committee of Creditors ("CoC") which comprised of Punjab National Bank having 99.84% voting shares and the Applicant having 0.16% voting shares. Other four Financial Creditors were excluded for being related party of the Corporate Debtor. CoC in its meeting dated 06.08.2021 had approved the resolution plan submitted by M/s. Akashganga Processor Pvt. Ltd. ("Successful Resolution Applicant/SRA") with 99.84% voting share and the Applicant had dissented from the Plan. Subsequently, the Resolution Professional had filed an application before the NCLT under Section 30(6) of IBC for approval of the Plan. Simultaneously, the Applicant filed an application before NCLT opposing the approved Resolution Plan.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclt-ahmedabad-successful-resolution-applicant-resolution-plan-section-7-of-the-insolvency-and-bankruptcy-code-207837>

➤ **Jalan-Kalrock to transfer Rs 130 crore rental earnings to Jet Airways' lenders**

Jet Airways, led by the new management, has for the time being averted liquidation proceedings by agreeing to transfer to banks about ₹130 crore received from the lease rentals of Air Serbia planes, said people aware of the development.

However, the Jalan-Kalrock Consortium, which has won the bid to acquire the company under the Insolvency and Bankruptcy Code (IBC), cannot place an order to buy aircraft until it obtains a no-objection certificate from its lenders, the people said. According to them, the lenders said they would give a NOC only after the consortium commits to a timeline for implementing the debt resolution plan, which involves staggered payment to gain ownership of the airlines.

The consortium has offered payments of ₹380 crore in instalments and a 9.5% stake in the airline company to the lenders. The National Company Law Tribunal (NCLT) had approved its plan in June last year, but the consortium has not yet paid the lenders, the people said.

"Liabilities and timelines for the payment of liabilities of past lenders are fixed and have no relation to the new business which Jet Airways does, including placing an aircraft order. The intent of the IBC is to revive businesses and not restrict or liquidate them. A successful resolution applicant, that is Jalan-Kalrock Consortium, is free to make operational decisions or acquire new assets for the company's revival, as per its business plan/needs and requirements," he added.

The consortium includes Murari Lal Jalan, an NRI based in the UAE, who will hold shares of Jet in his personal capacity, and Florian Fritsch, who would hold shares through his investment holding company - Kalrock Capital Partners, Cayman.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/industry/transportation/airlines/-aviation/jalan-kalrock-to-transfer-rs-130-crore-rental-earnings-to-jet-airways-lenders/articleshow/93863672.cms?from=mdr>

➤ **Resolution Plan Can't Be Remanded Back To COC Over Hyper-Technical Grounds: NCLAT Delhi**

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson), Justice M. Satyanarayana Murthy (Judicial Member) and Mr. Barun Mitra (Technical Member), while adjudicating an appeal filed in Piya Puri & Ors. v Mr. Dehashish Nanda & Ors., has held that remanding a resolution plan back to Committee of Creditors on the grounds of the procedural deviations raised by a dissenting minority in class of creditors, would render the CIRP a never ending process and is against the time bound resolution objective of the IBC. The Bench declined to remand back the revise

Resolution Plan to CoC over hyper-technical grounds raised by minority dissenting creditors.

Oriental Bank of Commerce ("Financial Creditor") had filed a petition under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("IBC"), seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s Venta Realtech Pvt. Ltd. ("Corporate Debtor"). The petition was admitted and CIRP was initiated by the Adjudicating Authority on 20.05.2019. Mr. Debashis Nanda ("Respondent No. 1") was appointed as the Interim Resolution Professional and later confirmed as the Resolution Professional.

The IRP constituted a Committee of Creditors which included Homebuyers as Class of Creditors represented by Respondent No. 3. The 330 day time period for completion of CIRP expired on 14.02.2020, beyond which Adani Infrastructure and Developers Pvt. Ltd. ("Respondent No. 2") submitted the sole Resolution Plan which was approved by the CoC on 29.07.2020 with 98.58% votes and an application was filed before Adjudicating Authority under Section 30(6) of IBC for approval of Plan. The Adjudicating Authority directed the Respondent No. 2 to revise the Plan. Consequently, the Resolution Professional issued a notice for holding a CoC meeting on 14.01.2022 for approval of the revised Resolution Plan. In turn, the Authorised Representative of Homebuyers issued a notice to all the Homebuyers for a meeting on 12.01.2022 to seek their preliminary views on the revised Resolution Plan for voting and approval. Out of a total of 26 Homebuyers, 19 Homebuyers voted in favour of the revised Resolution Plan. Accordingly, the Authorised Representative of homebuyers casted his vote in favour of the revised Resolution Plan on behalf of the Creditors in class, representing 50.93% share of voting rights in the CoC.

The Adjudicating Authority approved the revised Resolution Plan on 30.05.2022 in the interest of justice, after considering the exceptional circumstances since the matter was related to Homebuyers. The homebuyers filed an appeal before NCLAT challenging the order dated 30.05.2022 whereby the Resolution Plan was approved.

The homebuyers ("Appellants") submitted that while submitting the revised Resolution Plan, the Resolution Professional and the Authroized Representative of homebuyers committed material irregularities by not following the due process of law given under IBC and its Regulations. Financial Creditors in class were not called by the Authorised Representative to submit their preliminary views on the Resolution Plan though mandated under Regulation 16-A(9) of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. The first proviso to the said Regulation 16-A(9) mandates that creditors shall have a time window of at least 12 hours to submit the preliminary views and the said window opens at least 24 hours after the Authorised Representative seeks preliminary views, which was not followed and thus amounted to be an irregularity.

The Bench observed that while it is important to maintain the sanctity and credibility of CIRP proceedings, it is equally important to ensure that hyper-technicality is not allowed to occupy centre-stage and defeat the very object and purpose of IBC. It was observed that Regulation 16-A(9) states that the Authroized Representative "may"

seek preliminary views of creditors on any item in the agenda to enable him to effectively participate in the meeting of the committee. The requirement to seek preliminary views was not mandatory.

The Bench held that the procedural compliance by the Resolution Professional and Authorized Representative were reasonably substantial and there was no wilful casualty or miscarriage of justice. Further, it was opined that the CoC's decision on the amended Resolution Plan would not have been materially any different, had the procedural deviations not taken place. The amended Resolution Plan has been approved by 98.58% voting share of the CoC members which is much above the statutory requirement of 66% vote share and this has not been challenged by the Appellants. Also, it has neither been disputed by the Appellants that they constitute a minority in the Creditor of class as Homebuyers had voted in favour of the amended Resolution Plan with 89.80% vote share.

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/nclat-delhi-section-7-of-the-insolvency-and-bankruptcy-code-resolution-plan-financial-creditor-corporate-insolvency-resolution-process-207835>



