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Latest updates On Insolvency & Bankruptcy

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"Quality is not an act, it is a habit"

➢ IPEs can now act as insolvency professionals

The Insolvency and Bankruptcy Board of India (IBBI) has tweaked norms to allow insolvency professional entities (IPEs), usually set up by a number of insolvency professionals (IPs), to also register as IPs and perform associated duties. Prior to the move, an IPE was only permitted to offer support services to an IP during the resolution of bad assets.

The latest decision will encourage many partnership firms, including legal ones, to get themselves registered as IPEs and participate in the resolution of large toxic assets — something that can potentially be a lucrative business opportunity for them, according to some analysts.

At the same time, it will help expedite the resolution of large stressed firms, enable better management of such companies during the resolution period and help prevent assets from witnessing value erosion.

Currently, 142 IPEs and thousands of insolvency professionals are registered with the IBBI. The changes are part of the IBBI (Insolvency Professionals) (Fourth Amendment) Regulations, 2022.

Hailing the IBBI move, Pritika Kumar, founder of Cornellia Chambers, said, “Since an IP takes on the tasks of an entire board of directors of a company undergoing insolvency proceedings, it is not possible for an individual to complete every task necessary to resuscitate a company optimally due to lack of time and specific expertise.”

The object of the Insolvency and Bankruptcy Code (IBC) is to revive a business and individuals serving as IPs might have limitations while dealing with the multifarious issues that pop up in a company’s operations due to lack of time and, in certain cases, expertise, Kumar said.

However, IPEs usually have corporate governance and risk management structures in place and may not face such limitations due to their institutionalised nature, she added. Anoop Rawat, partner (Insolvency & Bankruptcy) at Shardul Amarchand Mangaldas & Co, said, the regulation introduced a much-awaited mechanism for

institutional engagement for the corporate insolvency resolution process (CIRP) under the IBC. "Institutional appointment as IPE is a robust and reliable structure and instils credibility and confidence amongst the stakeholders. It would surely bring in more efficiency and professional approach in solving the CIRP," he said.

This is the latest in a series of changes in regulations undertaken by the IBBI in recent weeks to cut delays in the resolution of stressed firms and maximise the valuation of such assets.

Recently, the IBBI tweaked its regulation to allow part-sale of toxic assets in select cases. It also allowed the marketing of toxic assets to generate greater investor interest.

Source: Financial Express
Read Full news at: *https://www.financialexpress.com/industry/ipes-can-now-act-as-insolvency-professionals/2695716/*

➢ ArcelorMittal Nippon Steel India joins race to buy Srei group firms

ArcelorMittal Nippon Steel India (AM/NS India), a joint venture between global steel majors ArcelorMittal and Nippon Steel, has submitted an expression of interest (EOI) for Srei group companies undergoing insolvency proceedings.

AM/NS India did not comment. ArcelorMittal said it had no comment to offer.

Sources close to the development said whether new participants who were not part of the original list of EOI would be allowed will have to be evaluated.

It will be decided based on commercial wisdom, legal provisions and past court precedence, the sources added.

Srei group companies — Srei Infrastructure Finance and Srei Equipment Finance — had received two resolution plans. Arena Investors LP and Varde Partners had made a joint bid. The other bid was from Shon Randhawa and Rajesh Viren Shah combine.

However, issues emerged with the earnest money deposit (EMD) and the CoC ultimately decided in favour of issuing a fresh RFRP. Sources indicated that issuing a fresh request for resolution plan (RFRP) meant that the process was being opened to EOI participants.

The list of prospective resolution applicants that were finalised after EOI comprised 13 entities.

It included Vedanta, Assets Care & Reconstruction Enterprise, Asset Reconstruction Company (India), Diameter Trading, International Asset Reconstruction Company,

JM Financial Asset Reconstruction Company, Jindal Power, Prudent ARC, Edelweiss Alternative Asset Advisors, Riddi Siddhi Gluco Biols (lead partner) & Sherisha Technologies, Shon Randhawa (lead partner) & Rajesh Viren Shah, Arena and VFSI.Whether AM/NS fits in the current process legally will be decided, said sources.

Srei Infrastructure moved Supreme Court against a National Company Law Appellate Tribunal order earlier this year approving ArcelorMittal's resolution plan for Odisha Slurry Pipeline Infrastructure, dismissing a raft of appeals, including those filed by Srei entities. Srei Infrastructure was a creditor.

OSPIL owns and operates a 253-km slurry pipeline — a critical ancillary unit of Essar Steel and now AM/NS India.

Sources indicated that as per the RFRP, resolution plans would have to be submitted by October 15.

Total admitted claims of financial creditors in Srei stands at Rs 32,749.71 crore. Some of the lenders to the companies are Canara Bank, Union Bank of India, Punjab National Bank, State Bank of India, Bank of Baroda, and Indian Bank.

In October 2021, the Reserve Bank of India superseded the board of directors of Srei Infrastructure Finance and Srei Equipment Finance and appointed an administrator and started the resolution process under bankruptcy law.

The Srei group companies were admitted to the NCLT for bankruptcy proceedings thereafter.

Source: Business Standard
Read Full news at: *https://www.business-standard.com/article/companies/arcelormittal-nippon-steel-india-joins-race-to-buy-srei-group-firms-122092901262_1.html*

➢ SBI Files 'insolvency petition' against Jaiprakash Associates in NCLT

The State Bank of India (SBI) filed a corporate insolvency petition against construction firm Jaiprakash Associates Limited (JAL) for a debt default of Rs 6,892.48 crore the Business Line reported.

JAL (incorporated in 1995) was formed in 2004 through the amalgamation of Jaiprakash Industries with Jaypee Cement.

JAL is involved in cement manufacturing, engineering and construction, expressways, real estate, hospitalities, and wind/thermal power plants all over India.

The lender filed the petition before the Allahabad Bench of the National Company Law Tribunal (NCLT) on September 20.

December 10, 2015, is notified as the date of debt default by the National E-Governance Services Limited (NeSL).

Under the Insolvency and Bankruptcy Code, Jaiprakash Associates, a flagship firm of the debt-ridden Jaypee Group, was included in the Reserve Bank of India's second list of 26 big loan defaulters. The bankruptcy proceedings were initiated against them in August 2017.

In September 2018, the ICICI Bank filed an insolvency petition in September 2018. According to the report, the said matter has not been admitted and adjourned for the last four years.

Currently, JAL has a huge outstanding debt estimated to be around Rs 26,000 crore. It has tried to convince its lenders of a restructuring proposal outside the IBC, but without any success.

Notably, Jaypee Infratech, also a Jaypee group company is already under the IBC process.

The SBI has also proposed to the court to appoint Bhuvan Madan as the interim insolvency professional for the case.

In total, 32 banks have exposure to JAL which include ICICI Bank, Axis Bank, Bank of Baroda, IDBI Bank and Canara Bank

Source: Business Standard
Read Full news at: *https://www.business-standard.com/article/companies/sbi-files-insolvency-petition-against-jaiprakash-associates-in-nclt-122092900290_1.html*

➢ SC decision clouds insolvency process

The Supreme Court's judgment in the case of Vidarbha Industries Power v Axis Bank opened a Pandora's box earlier this year when it unsettled a long established practice of the adjudicating authority admitting insolvency applications.

Prior to the decision, the adjudicating authority – the National Company Law Tribunal (NCLT) – could admit applications from financial creditors on the basis of the existence of a debt and a default in its repayment.

This meant it did not have to get into the nitty-gritty of why the company had defaulted. However, the July 2022 judgment has effectively overturned the jurisprudence set by Supreme Court Judge RF Nariman for the NCLT to decide on applications filed by financial creditors under the Insolvency and Bankruptcy Code, 2016 (IBC).

Now the judgment gives corporate debtors an enticing defence against the initiation of the corporate insolvency resolution process (CIRP) under the IBC.

"The whole purpose of the IBC is to resolve the insolvency of a corporate debtor in a time-bound manner because any delay could impact the company's ability to revive,

and could result in possible liquidation," PSL Advocates & Solicitors' managing partner, Sandeep Bajaj in New Delhi, tells India Business Law Journal.

Rishi Thakur, a Mumbai-based principal associate at ZBA Advocates & Solicitors, says that the intention of the legislature was to empower banks/financial investors to resolve stressed assets, with minimum judicial intervention.

"It was left to the wisdom of financial creditors or banks, which are better suited to understand the economy," says Thakur. But the Supreme Court bench of Judge Indira Banerjee and Judge JK Maheshwari seems to have felt otherwise.

Their judgment read: "It is certainly not the object of the IBC to penalise solvent companies, temporarily defaulting in repayment of their financial debts, by the initiation of the CIRP."

But, as Bajaj points out, the adjudicating authority is vested only with a summary jurisdiction, leaving no scope for a long trial that would involve the recording of evidence and testimonies. Bajaj says that the Vidarbha verdict has started causing delays in other IBC proceedings, citing the Ahmedabad bench of the NCLT exploring the possibility of settlement.

Similarly, the Indore bench of the NCLT decided to keep in abeyance for six months a section 7 petition filed by the State Bank of India against Krishidhan Seeds, although the application filed by the financial creditor ticked all the necessary boxes.

In its order dated 25 August, the Indore NCLT bench said that while facts proved that the corporate debtor had to be admitted in the CIRP, "we have to examine other facts to decide whether this case falls in exception as indicated by the Supreme Court".

The NCLT bench said that it would not be "proper for us to admit the corporate debtor in the CIRP at once"; not when the management of Krishidhan Seeds was trying to get out of the debt trap.

The bench has adjourned the case for six months. Sakate Khaitan, a founder and senior partner at Khaitan Legal Associates, says: "The Supreme Court ruling seems to imply that while litigation is ongoing in respect of a claim made by the corporate debtor, the corporate debtor could be considered solvent even though it had defaulted in payment of debt when due.

"This may create adverse incentives as the fear of IBC proceedings will no longer remain," fears Khaitan, who divides his time between London and Mumbai. Niloufer Lam, a Mumbai-based partner at ZBA, says: "With the Supreme Court having overly relied on the literal interpretation of the word 'may' in section 7 of the IBC, it has lost sight of the economic rationale of the IBC."

Thakur agrees, adding that the judgment failed to discuss or explain why it overturned the settled jurisprudence. Corporate debtors could refuse to pay

financial creditors without the fear of an insolvency petition being admitted, says Khaitan, adding that it could increase the cost of capital.

“The intent behind certain provisions of the Reserve Bank of India’s prudential guidelines for nonperforming assets will also likely get diluted if there is no pressure on solvent defaulting corporate debtors,” he says.

As of 31 March 2022, 66% of the ongoing CIRPs had crossed the 270-day timeframe, according to data shared by ZBA. From April 2021 to March 2022, 121 of the CIRPs took an average of 711 days for completion, which is more than twice the stipulated 333 days, notes Lam.

She says the delays in the insolvency process are mostly attributed to protracted litigation by promoters or debtors, the heavy backlog on NCLTs and the lack of commercial acumen of NCLT members. “The Vidarbha judgment will further add to the existing uncertainty in a process that is already struggling on multiple fronts.” When the Supreme Court had initially agreed to Axis Bank petitioning for a review of the Vidarbha ruling, Khaitan did not expect a change in the decision, but had hoped for clarity that the observations made were specific to the case and should not set a precedent.

However, the Supreme Court bench on 22 September dismissed Axis Bank’s review petition – a day before Judge Banerjee retired – and upheld its July ruling that afforded discretion to the NCLT to admit or reject petitions initiating the insolvency process by financial creditors.

Khaitan says that the dismissal of the review petition means that the “Vidarbha judgment is now the law of the country”.

Thakur is still optimistic, anticipating that the matter will be “reviewed by a larger bench”, although not necessarily in the near future. “The question remains whether the government needs to step in and set some guidelines on when the adjudicating authority should exercise its discretion under section 7 of the IBC.”

Meanwhile, the Supreme Court ruling in the case of State Tax Officer v Rainbow Papers Limited has opened another can of worms. Bajaj says this warrants an amendment to the IBC because the court has equated governmental authorities as secured creditors.

“Along with secured financial creditors, statutory bodies have been given the first charge over the company’s assets,” he says. Since they cannot be discriminated against, and have to be given the minimum against their dues in equal proportion to the secured financial creditors, banks may not be able to recover their dues and thereby push the company into liquidation instead of a resolution, he adds.

Khaitan agrees, saying that more litigation may follow if there is no clarity on the priority of charges under the IBC.

"Even today, cases that deal with similar questions, including priority of charges, are pending before the Supreme Court," he says. Bajaj sums up: "An amendment to the law may be required stating that statutory bodies are not secured creditors."

Source: Indian Business Law Journal
Read Full news at: *https://law.asia/sc-decision-insolvency-process/*