



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



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IBC AU-COURANT

Insolvency Professional Agency of Institute of Cost Accountants of India



"I have learned not to allow rejection to move me"

Updates on Insolvency and Bankruptcy Code

Nearly half of insolvency proceedings led to liquidation rather than rescue

Nearly half of all corporate insolvency proceedings led to liquidation rather than rescue of companies owing to better valuation. Experts attributed the trend to inordinate delays in resolution process and lesser appetite to acquire stressed assets.

Only 14 per cent of corporate insolvency resolution processes (CIRPs) yielded a resolution plan between December 1, 2016, and March 31, 2022, according to the latest data from Insolvency and Bankruptcy Board of India (IBBI).

47 per cent of CIRPs ended in liquidation during the period. Out of a total of 5,258 corporate insolvency proceedings initiated, 3,406 have been closed.

Out of the closed ones, 1,609 have ordered liquidation, and 480 have ended in approval of resolution plans, data showed.

Diwakar Maheshwari, Dispute Resolution Partner at Khaitan and Co, said this is because at times better value is realised for the stressed asset in liquidation rather than in resolution as there are huge haircuts (total claims minus the amount of realisation/amount of the claims) to be agreed by the Committee of Creditors (CoC). "Also, untimely delays have some attribution to the increase in liquidation cases," he said.

Of 480 companies rescued through resolution plans, 159 were either with the Board of Industrial and Financial Reconstruction (BIFR) or defunct. Besides, 731 CIRPs have been closed on appeal, review, or have been settled and 586 have been withdrawn.

Since the launch of IBC in 2016 up to March 31, 2022, the cumulative recovery for lenders where resolution took place dropped to 32.9 per cent against 36 per cent around September last year. In absolute terms, the realisation for financial creditors till end March 2022 stood at Rs 2.25 trillion, much higher than liquidation value of Rs 1.31 trillion. The cumulative admitted claims of financial creditors till end March 2022 were Rs 6.84 trillion.

“The buying capacity of companies participating in the resolution process has gone down during the pandemic. “The bid amount of companies during the resolution process is less than the liquidation value so lenders opt for the latter,” said Abhishek Swaroop, partner at Saraf and Partners.

However, delay in the entire resolution process may also be a reason for lenders opting for other legislation, he said.

Lenders see more value realisation and a quicker resolution through other existing routes such as Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).

The SARFAESI Act cannot be invoked when CIRP is in the process, but it can be invoked after the liquidation process,” Swaroop explained.

Liquidation was never the intent, object, and preamble of the Code, said Maheshwari. “The time gap of 330 days for wrapping up the CIRP has also put pressure on NCLTs to order for liquidation of assets,” he added.

Besides, the lack of inherent value of the stressed assets itself may be one of the reasons behind the absence of bidders.

“Most of the assets going into default, particularly gas-based power plants, do not fetch good value as the cost of running such a plant may be high in the light of soaring natural gas prices. A conventional power plant may be cheaper to run. On the other hand, assets of companies such as Essar Steel and Bhushan Steel, though debt-ridden, fetched a handsome bid during the resolution process because the bidders saw value in the assets,” Swaroop said.

Source: Business Standard

Read Full news at:

https://www.business-standard.com/article/companies/nearly-half-of-insolvency-proceedings-led-to-liquidation-rather-than-rescue-122053100717_1.html

NCLAT To Hear Appeals On Resolution Plan Of Jet Airways On 5th July, 2022

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson) and Ms. Shreeshha Merla (Technical Member), while hearing a batch of appeals filed against the resolution plan of Jet Airways (India) Ltd. by aggrieved employees and workmen of Jet Airways; Punjab National Bank; TLD MEAI FZE; Jet Aircraft Maintenance Engineers Welfare Association; Bhartiya Kamgar Sena; and Concor Air, has fixed the next date of hearing as 05.07.2022, with a direction that the implementation of

the resolution plan shall abide by the outcome of these appeals. The order was passed on 30.05.2022.

In the matter of State Bank of India v Jet Airways (India) Ltd., C.P.(IB)-2205(MB)/2019, the NCLT Mumbai Bench had admitted the petition filed by State Bank of India for initiating Corporate Insolvency Resolution Process ("CIRP") against Jet Airways (India) Ltd. Subsequently, a resolution plan was submitted by Jalan Kalrock consortium for Jet Airways, which was approved by NCLT Mumbai on 22.06.2021. The effective date of the resolution plan was fixed to 28.05.2022 and implementation had begun.

Several appeals were filed before the NCLAT challenging the order dated 22.06.2021. The Association of Aggrieved Workmen of Jet Airways (India) Ltd. had also filed an appeal challenging the time period of implementation of the resolution plan; non-consideration of the workmen and employees' dues including statutory dues such as gratuity, provident fund, leave encampment et al. Further, the challenge was also made with respect to the amount of workmen dues mentioned in the resolution plan (Rs. 100 Crores approx.)

The NCLAT Bench has fixed the next date of hearing to 05.07.2022 and has directed that the implementation of resolution plan shall abide by the result of these Appeals.

"We fix these Appeals on 05th July, 2022 at 02:00 pm and make it clear that implementation resolution plan shall abide by the result of these Appeals. Mr. Krishnendu Datta, Sr. Advocate submits that Successful Resolution Applicant shall withhold the 'BKC' Property which is valuable property and till the next date, shall not take any steps for alienation of the said property".

The Successful Resolution Applicant has submitted before the NCLAT that it shall not take any steps to alienate the 'Bandra Kurla Complex' Property of Jet Airways, which is valuable property, till the next date of hearing.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/news-updates/nclat-jet-airways-corporate-insolvency-resolution-process-cirp-nclt-successful-resolution-applicant-200561>

NCLAT Stays The CIRP Of National Textile Corporation Ltd., A Public Sector Enterprise

The National Company Law Appellate Tribunal ("NCLAT"), Principal Bench, comprising of Justice Ashok Bhushan (Chairperson), Ms. Shreesha Merla (Technical Member) and Shri Naresh Salecha (Technical Member), while adjudicating a petition filed in National Textile Corporation Ltd. v Hero Solar Energy Pvt. Ltd., has stayed the Corporate Insolvency Resolution Process ("CIRP") against National Textile Corporation Ltd. ("Appellant"), which was initiated by NCLT Delhi vide an order dated 27.05.2022. The order has been passed on 31.05.2022.

The Appellant, National Textile Corporation Ltd., is a Public Sector Enterprise under the Ministry of Textiles, Government of India. It was incorporated in 1968 and has textile mills pan India for the production of yarn and fabric. In 2015, the Solar Energy Corporation of India (SECI) had granted a Letter of Allocation to Hero Solar Energy Pvt. Ltd. ("Operational Creditor/Respondent"), for 'Designing, Engineering, Manufacturing, Supplying, Testing & Commissioning' of rooftop solar panels in cities of India. The Operational Creditor had entered into an Agreement with National Textile Corporation Ltd. ("Corporate Debtor/Appellant") on

07.06.2016, for installation of rooftop Solar PV power System for power generation. The Agreement did not contain any clause with respect to imposition of penalty.

In 2016-17 the Operational Creditor had completed the work in view of the Agreement and the due amount was paid by the Appellant. However, an amount of Rs.13,84,254/- was retained by the Appellant from the total payment.

The Operational Creditor had issued a demand notice dated 23.10.2019 under Section 8 of Insolvency and Bankruptcy Code, 2016 ("IBC") to the Appellant, for the remaining payment of Rs.13,84,254/-. Following which, the Operational Creditor had filed a petition under Section 9 of the IBC before NCLT, New Delhi ("Adjudicating Authority"), seeking initiation of CIRP against the Appellant.

The NCLT New Delhi Bench had admitted the petition under Section 9 of IBC and CIRP was initiated against the Appellant vide an order dated 27.05.2022, by observing that there was a claim due and payable and the Appellant had failed to prove existence of any 'pre-existing dispute' in respect of the default.

The Appellant filed an appeal against the NCLT order dated 27.05.2022 before the NCLAT, submitting that it has settled the matter with the Operational Creditor, and sought liberty to place on record the Settlement Agreement entered between the parties. The Operational Creditor/Respondent also confirmed that the settlement had taken place. The NCLAT Bench has stayed the CIRP of the Appellant and has listed the matter on 01.06.2022 for taking on record the Settlement Agreement and passing orders accordingly.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/news-updates/nclat-insolvency-and-bankruptcy-code-insolvency-resolution-process-cirp-national-textile-corporation-ltd-nclt-200560>



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