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Latest updates On Insolvency & Bankruptcy

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"Life has got all those twists and turns"

➢ Entries In Book Of Accounts/Balance Sheet Of Corporate Debtor Can Be Treated As Acknowledgment Of Liability Of Debt Payable To Financial Creditor: Supreme Court

The Supreme Court observed the entries in Books of Account/Balance sheet of a company can be treated as acknowledgement of liability in respect of debt payable to a financial creditor.

An application under Section 7 of the IBC would not be barred by limitation, on the ground that it had been filed beyond a period of three years from the date of declaration of the loan account of the Corporate Debtor as NPA, if there were an acknowledgement of the debt by the Corporate Debtor before expiry of the period of limitation of three years. the bench comprising Justices Indira Banerjee and JK Maheshwari observed. In such a case the period of limitation would get extended by a further period of three years.

The bench observed thus while allowing an appeal filed against NCLAT holding that the Corporate Insolvency Resolution Process (CIRP) initiated by the Asset Reconstruction Company (India) Limited against the Corporate Debtor, V. Hotels Ltd. was barred by limitation. The NCLAT held that Books of Account cannot be treated as an acknowledgement of liability in respect of debt payable. The corporate debtor's contention was that the Application under Section 7 of the IBC is hopelessly barred by limitation as the same was filed about eight/nine years after the account of the Corporate Debtor was declared NPA on 01.12.2008.

In appeal, the Apex Court noted that the amount of the Corporate Debtor was declared NPA on 1st December 2008. By a letter dated 7th February, 2011, written well within three years, the Corporate Debtor acknowledged its liability and proposed a settlement. This was followed by several requests of extension of time to make payment and revised settlements. On 6th April, 2013, the Corporate Debtor sought extension of time to pay Rs.239,88,27,673 outstanding as on 31st March 2013. On 19th April, 2013, the Corporate Debtor made payment of Rs.17,50,00,000/-. On 1st July, 2013, the Corporate Debtor acknowledged its liability – this was after the Financial Creditor revoked the settlement invoking the default clause.

The Corporate Debtor acknowledged its liabilities in its financial statements from 2008-09 till 2016- 17. The application under Section 7(2) of the IBC was filed on 3rd April 2018.

Source: Live Law
Read Full news at: https://www.livelaw.in/ibc-cases/supreme-court-book-of-accounts-corporate-debtor-acknowledgment-liability-asset-reconstruction-company-india-limited-vs-tulip-star-hotels-limited-2022-livelaw-sc-648-205384

➢ Default need not lead up to IBC trial

In a recent judgment, the apex court overturned orders of the subordinate Insolvency Courts which had refused to stay the insolvency proceedings (known as Corporate Insolvency Resolution Process or 'CIRP') initiated by a financial creditor ('FC') owing to the occurrence of a default.

To many, this may come as a surprise, given the judiciary's consistent stance to keep off "extraneous considerations" surrounding a default and its commitment to uphold the due process enunciated by the Insolvency and Bankruptcy Code 2016 ('the Code') as was espoused in the celebrated Swiss Ribbons Pvt. Ltd. vs. UOI [4 SCC 17] case.

Here are the facts of the Vidharbha Power Industries vs. Axis Bank Ltd (CA No. 4633 of 2021) case. The Appellant was an electricity generating company, which had set up two units of a coal-fired thermal power plant. The Maharashtra Electricity Regulatory Commission (MERC) had approved the Power Purchase Agreement permitting the Appellant to commercially sell the electricity it generated.

Later, the Appellant claimed enhanced tariff owing to, among other things, increased fuel and operational costs.

However, the MERC declined to approve the enhanced tariff. So, the Appellant appealed before the Appellate Tribunal for Electricity (APTEL), which approved the enhanced tariff calculations which resulted in about ₹1,730 crore gain to the Appellant. But, MERC carried the matter into appeal before the apex court, where it was pending.

Meanwhile, Axis Bank, as FC, claimed that the Appellant had defaulted on dues amounting to ₹553 crore. As the default had occurred, it filed a petition under the Code before the National Company Law Tribunal (NCLT) for initiation of CIRP against the Appellant.

As a counter, the Appellant filed a Miscellaneous Application before the NCLT seeking a stay of the proceedings under the Code, until its matter in the MERC appeal was decided by the apex court.

The NCLT declined to stay the CIRP stating that under the Code, it had no discretion but to only see whether there has been a debt and the corporate borrower had defaulted in making the repayments. Even the National Company Law Appellate Tribunal concurred with the NCLT's stand, which made the Appellant carry the matter to the apex court.

The apex court considered the language of Section 7(5)(a) of the Code, which provides that where the NCLT was satisfied that a default has occurred, it may by order, admit such application.

Concurring with the Appellant's contentions, the apex court observed that a bare perusal of the aforesaid provision showed that the use of the word 'may' must be interpreted to say that it was not mandatory for the NCLT to admit an application in each and every case, where there was existence of a default.

Ruling in favour of the Appellant, the apex court seems to have been persuaded by the fact that there was a favourable order by the APTEL, which would have netted the Appellant ₹1,730 crore — an amount which was far in excess of the dues (₹553 crore) to the FC.

This has upturned the oft-held myth that the existence of a financial default would necessitate the unimpeded admission to CIRP (which involves displacement of the existing management).

The apex court in this ruling has categorically held that whilst the existence of a financial default only gave the FC a right to apply for initiation of CIRP, yet, the NCLT was required to apply its mind to relevant factors including, as in this case, the feasibility of initiation of CIRP against an electricity generating company that operated under statutory control.

Source: The Hindu Business Line
Read Full news at: *https://www.thehindubusinessline.com/opinion/default-need-not-lead-up-to-ibc-trial/article65712514.ece*

➢ Threshold Limit Under Insolvency And Bankruptcy Code Will Also Include Interest: NCLAT

The National Company Law Appellate Tribunal, Principal Bench, New Delhi comprising of Justice Ashok Bhushan, Justice M Satyanarayana Murthy and Mr. Naresh Salecha held that minimum threshold mentioned under Section 4 of the Insolvency & Bankruptcy Code, 2016 (IBC/Code) can include both the principal amount and the interest.

The Operational Creditor supplied various yarns to the Corporate Debtor namely Bombay Rayons Fashions Ltd. (Bombay Rayons) and raised nine invoices from March, 2017 to January, 2020 for an amount of INR 2.02 Crores. Bombay Rayons paid some invoices and five invoices were remained unpaid to the Operational Creditor by the Bombay Rayons.

Thereafter, the Operational Creditor filed an application under Section 9 of the Code against Bombay Rayons which was admitted by the NCLT, Mumbai and Corporate Insolvency Resolution Process (CIRP) of Bombay Rayons was initiated by NCLT.

It was contended by Bombay Rayons that after the amendment by the Central Government, the minimum threshold under Section 4 of the Code is INR 1 Crore but the principal debt owed to the Operational Creditor is 97.87 Lakhs which is below the

threshold limit and therefore, the petition filed by the Operational Creditor is not maintainable.

The NCLAT noted that originally Section 4 of the Code prescribes a threshold limit of INR One Lakhs however vide notification No. S.O 1205 (E) dated 24.03.2020 issued by the Ministry of Corporate Affairs, the threshold limit under Section 4 of IBC had been increased to INR One Crore.

The Bench further observed that the invoices raised by the Operational creditor clearly mentioned that the interest will be charged @18% after the due date of the bill.

Thereafter, Appellate Tribunal referred to the definition of Debt as defined under Section 3(11) of the Code and definition of Claim as defined under Section 3(6) of the Code and concluded that since the interest on delayed payment was clearly stipulated in invoices and therefore, The operational creditor will entitle for right to payment which will clearly part of debt under Section 3(11) of the IBC.

Therefore, the bench concluded that the total amount for maintainability of a debt as per Section 4 of the Code will include both the principal debt amount as well as the interest on the delayed payment as it was clearly stipulated in the invoice itself.

Source: Live Law
Read Full news at: *https://www.livelaw.in/news-updates/national-company-law-appellate-tribunal-section-4-insolvency-bankruptcy-code-bombay-rayons-fashions-ltd-operational-creditor-205352?code=LtmkKTbGRe5rzlEREKqulhA6EbcEdf*