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Insolvency Professional Agency of Institute of Cost Accountants of India



"Failure is not the opposite of success: it's part of success"

Updates on Insolvency and Bankruptcy Code

➤ Resolution lessons: Uday Kotak has drawn from his IL&FS experience to hit the nail on the head

Stakeholders in corporate insolvency resolution would do well to heed the advice veteran banker Uday Kotak had to offer as his tenure as the non-executive chairman of IL&FS ended last week. After the collapse of IL&FS in 2018, Kotak assumed charge and oversaw the resolution of over Rs 61,000 crore of the group's overall debt of Rs 94,000 crore. A part of this is either awaiting distribution or is pending recovery as there are ongoing legal challenges. Compared to the average recovery of 33% (as of December 2021) of creditors' claims under the Insolvency and Bankruptcy Code (IBC) regime, the IL&FS recovery record is outstanding, specially because of the complicated task involving various layers and legal entities. Some experts argue the IBC shouldn't be judged by recovery score alone as the law is merely a facilitator of reorganisation that is ultimately determined by market forces. But Kotak's advice should be taken seriously for better recoveries and even prevention of corporate stress.

The IL&FS resolution has taken years; in the case of IBC, nearly three-fourths of the ongoing resolution matters had exceeded the 270-day deadline set under the law. Part of the problem, Kotak has pointed out, is "complex" group structures. Apart from the resolution challenges, this poses a challenge to regulatory control; indeed, it is perhaps designed that way to outfox regulators. To that end, the regulatory framework needs to be revised as needed—responsive in real-time—to ensure loopholes and gaps don't lend themselves to dangerous leveraging getting built without attracting attention.

Kotak also highlighted the challenge from the sovereign itself. Governments, especially those of the states, need to respect contracts and pay legitimate dues. Examples abound of state

governments calling for review of projects after entering into contracts, or simply renegeing on them—from Andhra Pradesh, Gujarat, and others seeking to renegotiate power purchase agreements to a Maharashtra calling for a review of the bullet train project that the Centre had committed to. Policy uncertainty has been a factor behind corporate stress, along with unfavourable business environment and poor credit decisions and promoter malfeasance.

States have been notoriously bad in paying dues; as the Praapti website shows, discoms owed power producers close to Rs 1.09 trillion at the end of March. It is not hard to imagine the domino effect on the generation companies and their creditors. The MSME Samadhaan portal shows pending claims of Rs 6,484 crore against the states (the governments plus their PSUs), of which less than a fifth has been disposed under the MSE Council mechanism. If SMEs, which have bled during the pandemic, have found little succour, it is well understood what is likely owed to bigger businesses, and the effect this has on debt-servicing. To be sure, the NPA situation is improving, but that is because of deleveraging by large corporates who may have the muscle to withstand the states delaying payments and not honouring contracts. Kotak hinted that the relatively better position of the PSU banks as opposed to other lenders in the IL&FS case was also because of the latter's reliance on reports by ratings agencies. Ratings agencies and auditors have certainly not emerged with clean hands in many a insolvency cases. The need to reduce the incentives for raters and auditors to play to the companies' tunes can't be stressed enough.

Also, the government must ensure that infrastructural and personnel constraints are addressed at the earliest if these are not to add to the delays. Filling up vacancies, enabling swifter resolution with pre-packs, etc, can be effective counters against value-erosion of assets.

Source: Financial Express

Read Full news at:

<https://www.financialexpress.com/opinion/resolution-lessons-uday-kotak-has-drawn-from-his-ilfs-experience-to-hit-the-nail-on-the-head/2480036/>

➤ **The 'when' & 'where' of invoking personal guarantees**

The Supreme Court's stay of the National Company Law Appellate Tribunal's decision in the case of SBI Stressed Assets Management Branch v. Mahendra Kumar Jajodia, has received a lot of attention. In this case, the NCLAT had held that irrespective of pendency of any proceedings against the corporate debtor, the National Company Law Tribunal will have jurisdiction to entertain an application against personal guarantor. The personal guarantor has gone on to assail the NCLAT's order before the SC; the SC stayed the operation of the NCLAT order basis sections 60(2) and (3) of the Insolvency and Bankruptcy Code, 2016 ("IBC") and observations made in Lalit Kumar Jain v. Union of India in this regard. However, a conclusive decision is yet to be rendered. Two legal issues that arise in this context are worth examining. The first is whether a personal guarantor can be proceeded against under IBC when a corporate insolvency resolution process ("CIRP") is not pending. Despite some conflicting judgements of the NCLT on the first issue, the matter has been largely settled by the Hon'ble Supreme Court in Lalit Kumar Jain. In this case, the court held that a personal guarantor's liability does not cease even after the approval of a resolution plan, and may be proceeded against. Therefore, this should imply that even if a CIRP is not pending for the principal debtor, either because it has concluded or because it has not been filed, a personal guarantor can be proceeded against under the Code, which is consistent with the NCLAT's conclusion in Mahendra Kumar Jajodia.

Source: The Hindu Business Line

Read Full news at:

<https://www.thehindubusinessline.com/business-laws/the-when-where-of-invoking-personal-guarantees/article65289037.ece>

➤ **IBBI to revamp grievance redressal mechanism**

The bankruptcy rule maker has sought public comments by 21 April on a set of draft rules for revamping its grievance redressal mechanism. it deals with the complaints received against insolvency professionals hired by lenders and agencies such as credit information repositories. The bankruptcy rule maker has sought public comments by 21 April on a set of draft rules for revamping its grievance redressal mechanism.

A discussion paper released by IBBI said that its present mechanism of complaint redressal and enforcement action is resulting in delay of enforcement process. Besides, it puts undue burden on the service providers, as they need to submit responses multiple times on a single issue. It is imperative to redesign the framework to make it effective in terms of grievance redressal and efficient in the time taken, IBBI said. IBBI's wants to revamp the complaint redressal mechanism of information repositories and insolvency resolution professionals to ensure that a transparent process is followed in turning around corporate defaulters under the bankruptcy code. That is vital in the success of the code given that different stake holders have competing interests in the bankruptcy resolution process. IBBI said that its current grievance redressal mechanism allows any person to file complaints against information utilities like credit information repositories, insolvency professionals and their self-regulators set up by professional institutes the Institute of Chartered Accountants of India, the Institute of Company Secretaries of India and the Institute of Cost Accountants of India. These are known as insolvency professional agencies or IPAs.

IBBI said the enforcement mechanism of IPAs is not yielding as envisaged by the framers of IBC. "Accordingly, there is a need to further develop and strengthen the enforcement mechanism in line with anticipated framework, " said IBBI.

Source: Mint

Read Full news at:

<https://www.livemint.com/news/india/ibbi-to-revamp-grievance-redressal-mechanism-11648911462729.html>



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