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Latest updates On Insolvency & Bankruptcy

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"You don't have to be great to start, but you have to start to be great"

➤ Explained | The Insolvency and Bankruptcy Code (IBC)- where does it stand today?

The story so far: Speaking at the sixth anniversary of the Insolvency and Bankruptcy Board of India (IBBI) on October 1, Union Finance Minister Nirmala Sitharaman said that the country could not afford to lose the “sheen” of its insolvency law, the Insolvency and Bankruptcy Code (IBC).

“We must be conscious that we can’t afford IBC to lose its sheen, especially when the Prime Minister is looking at the next 25 years of India (to emerge as a developed country by 2047). We must do whatever it takes to keep IBC as sparkling as it was when it was introduced in 2016,” the Minister said, at a time when IBC numbers have shown long delays in cases and banks having taken deep haircuts on their outstanding claims.

Addressing the issue of haircuts— the debt that banks forgo— she said it was unacceptable that banks should take a hefty haircut on loans that go through the resolution process, adding that a 95% haircut could not possibly be the “best resolution” the IBC had to offer, even if some companies came in such a bad state that only ‘junk value’ could be derived.

What is the Insolvency and Bankruptcy Code (IBC)?

In a growing economy like India, a healthy credit flow and generation of new capital are essential, and when a company or business turns insolvent or “sick”, it begins to default on its loans. In order for credit to not get stuck in the system or turn into bad loans, it is important that banks or creditors are able to recover as much as possible from the defaulter and as quickly as they can.

The business can either get a chance, if still viable, to start afresh with new owners, or its assets can be liquidated or sold off in a timely manner. This way fresh credit can be pumped into the system and the value degeneration of assets can be minimised.

In 2016, at a time when India's Non-Performing Assets and debt defaults were piling up, and older loan recovery mechanisms such as the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (SARFAESI), Lok Adalats, and Debt Recovery Tribunals were seen to be performing badly, the Insolvency and Bankruptcy Code (IBC) code was introduced to overhaul the corporate distress resolution regime in India and consolidate previously available laws to create a time-bound mechanism with a creditor-in-control model as opposed to the debtor-in-possession system.

When insolvency is triggered under the IBC, there can be two outcomes: resolution or liquidation; all attempts are made to resolve the insolvency by either coming up with a restructuring or new ownership plan and if resolution attempts fail, the company's assets are liquidated.

What is the process followed under the IBC?

When a corporate debtor (CD), or a company which has taken loans to run its business, defaults on its loan repayment, either the creditor (a bank or an entity that has lent money for operational purposes) or the debtor can apply for the initiation of a Corporate Insolvency Resolution Process (CIRP) under Section 6 of the IBC. Earlier, the minimum amount of default after which the creditor or debtor could apply for insolvency was ₹1 lakh, but considering the stress on companies amid the pandemic, the government increase the minimum amount to ₹1 crore.

To apply for insolvency, one has to approach a stipulated adjudicating authority (AA) under the IBC— the various benches of the National Company Law Tribunal (NCLT) across India are the designated AAs.

The Tribunal has 14 days to admit or reject the application or has to provide a reason if the admission is delayed. The CIRP or resolution process begins once an application is admitted by the AA. The amended mandatory deadline for the completion of the resolution process is 330 days.

Once the application is admitted, the AA appoints an interim resolution professional (IRP), registered with an insolvency professional agency (IPA). IRPs could be experienced and registered chartered accountants, company secretaries, lawyers and so on. Once appointed by the Tribunal, the IRP takes control of the defaulter's assets and operations, collects information about the state of the company from Information Utilities (repositories keeping track of the debtor's credit history), and finally coordinates the constitution of a Committee of Creditors or a CoC.

A CoC, comprising all (unrelated) financial creditors of a defaulting company, is the most important business decision-making body in every CIRP, as it decides whether the defaulting company is viable enough to be restructured and given a fresh start, or liquidated. It also appoints an insolvency professional (IP), who can either be the same as the IRP or a new professional, who looks after the operations of the company during the CIRP.

The IP invites and examines proposals for a resolution plan for a company, which could include restructuring of debt, merger or demerger of the company. It submits eligible plans to the CoC, which can approve a plan if it receives 66% of the voting share of committee members. If the CoC fails to approve any resolution plan, the company goes for liquidation.

If a plan is approved, the CoC submits it to the Tribunal (before the maximum 330-day deadline), which then approves the plan which the debtor is bound to implement. The AA can also reject a plan.

In July this year, the IBC was amended to introduce pre-packs or pre-pack insolvency resolution process (PIRP) for Micro, Small, and Medium Enterprises (MSMEs).. Under a pre-pack resolution, creditors and owners of a business agree out-of-court to sell the business to an interested buyer. The buyer may be a third party or someone related to the business. The current law limits the pre-pack resolution mechanism to defaults not exceeding Rs. 1 crore

What are the challenges for the IBC?

According to its regulator, the Insolvency and Bankruptcy Board of India (IBBI), the first objective of the IBC is resolution— a way to save a business as a going concern, through restructuring, change in ownership, mergers and other methods. The second objective is to maximize the value of assets of the corporate debtor and the third objective is to promote entrepreneurship, availability of credit, and balancing the interests. The Code says that the order of these objectives is “sacrosanct”.

Keeping this order in mind, when one looks at the IBBI data for the 3,400 cases admitted under the IBC in the last six years, half or more than 50% of the cases ended in liquidation, and only 14% could find a proper resolution, which is the first objective. While the situation was better in 2016 and 2017, since 2018, a majority of the cases ended in liquidation in most of the quarters while cases for which resolution plans were approved ranged between 15% and 25%.

Time taken

The IBC was touted as a time-bound mechanism in the face of the often laggard states of older mechanisms. Timeliness is key here so that the viability of the business or the value of its assets does not deteriorate further. The IBC initially stipulated a 180-day deadline to complete the resolution process, with a permitted 90-day extension.

The IBC was subsequently amended to further make the total timeline for completion 330 days— almost a year. While in 2018, when the timeline was 180+90 days, most cases (from companies that owed less than ₹50 crore to those which owed more than ₹1000 crore) were completed in under 300 days. However, in FY22, it took 772 days to resolve cases involving companies that owed more than ₹1,000 crore. The average number of days it takes to resolve such cases increased rapidly over the past five years, experts said.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/industry/services/property/-/construction/nclt-dismisses-homebuyers-petition-to-reject-lavasa-insolvency-resolution-plan/articleshow/94651549.cms>

➤ **Future Retail insolvency: EoI invited from prospective buyers by Oct 20**

The resolution professional of Future Retail Ltd (FRL) has invited 'expression of interest' from prospective buyers under the ongoing Corporate Insolvency Resolution Process (CIRP). All interested and eligible prospective resolution applicants (PRA) for FRL are required to submit an expression of interest for the resolution plan by October 20, 2022.

The resolution professional (RP) will issue the final list of PRAs on November 6, 2022, and a deadline of December 6, 2022, has been fixed for the submission of resolution plans, according to the 'Invitation to submit 'expression of interest' issued by RP of Future Retail.

However, it added that the timelines "remain subject to modification by the CoC and any extension/exclusion to the timelines" for completion of CIRP of FRL under the Insolvency & Bankruptcy Code (IBC) 2016. PRAs should have a minimum tangible net worth of Rs 100 crore along with minimum assets under management (AUM)/committed funds available for investment of Rs 250 crore.

As per the invitation, FRL currently has access to 302 leased retail stores spread across 23 states and Union territories, consisting of 30 large format stores such as Big Bazaar and FBB stores and 272 small format stores. FRL's employee strength has also gone down substantially.

According to the FY21 annual Report, FRL had 21,839 employees at head office, zonal offices, retail stores, design houses and data centre's across the country.

"However, basis details received from the Corporate Debtor, we have been informed that the Corporate Debtor had 2,242 employees during August 2022," the invitation said.

The Mumbai bench of the National Company Law Tribunal had on July 20 directed to initiate CIRP against FRL admitting a plea filed by Bank of India. Section 12 (1) of IBC mandates a CIRP to be completed within a time frame of 180 days from the date of admission of the application.

However, under the request of the RP, the NCLT can extend the duration for another 90 days. It should be mandatorily completed within 330 days, including any extension and the time taken in legal proceedings. As of September 2, 2022, the RP has received claims of Rs 21,432.82 crore from financial creditors, which mainly include banks and financial institutions.

Of this, Rs 18,007.48 crore worth of claims are verified and the rest of Rs 3,425.34 crore are unverified. Operational creditors of the Future group firm have filed claims worth Rs 2,464.41 crore, according to the documents uploaded on the FRL website. Besides, it has also received claims worth Rs 55.13 crore from workmen/ employees for their dues.

The RP has also received claims from statutory operational creditors, such as ESIC, VAT and GST departments of Rs 58.36 crore. FRL was part of the 19 group companies operating in retail, wholesale, logistics and warehousing segments, which were supposed to be transferred to Reliance Retail as part of a Rs 24,713-crore deal announced in August 2020.

The deal was called off by the billionaire Mukesh Ambani-led Reliance Industries Ltd in April. After that FRL committed several defaults on payments.

Source: Business Standard

Read Full news at: https://www.business-standard.com/article/companies/future-retail-insolvency-eoi-invited-from-prospective-buyers-by-oct-20-122100600811_1.html

➤ **NCLT allows RP to resume V Hotels insolvency process**

A bankruptcy court has allowed the resolution professional of V Hotels to resume the Corporate Insolvency Resolution Process (CIRP) initiated against the company and undertake a review of all transactions undertaken the past three years.

This review will be conducted from the perspective of their being preferential, undervalued, fraudulent or extortionate, and they will file appropriate applications with the court against any such transaction.

The company owes about Rs 2,391 crore to its financial creditors, including Rs 1,068 crore to secured financial creditors. The Mumbai bench of the National Company Law Tribunal (NCLT) has also permitted the resolution professional to recalculate the fair value and liquidation value of the company as of August 1, 2022, and use that value for all purposes of the Insolvency and Bankruptcy Code (IBC).

The company was admitted into the insolvency process in May 2019. This admission order was set aside by the National Company Law Appellate Tribunal (NCLAT) on December 11, 2019. However, the Supreme Court set aside the NCLAT order and as a consequence, the company has been remitted back to the CIRP.

"We are of the opinion that the applicant (resolution professional) is dutybound to perform his obligations as the resolution professional and is allowed to take appropriate steps to proceed with the CIRP.

The corporate debtor (the company) is liable to be readmitted into the rigours of CIRP and released from the control of its directors and management who are at present at the helm of affairs," Justice PN Deshmukh and technical member Shyam Babu Gautam said in the ruling.

The account of Tulip Star Hotels, which along with affiliate firm Tulip Hotels owns V Hotels in the Juhu area of Mumbai, was declared non-performing on December 1, 2008.

Bank of India, which had led a consortium of lenders to the company, assigned its receivables to the asset reconstruction company on December 31st of the same year. The Supreme Court has set aside the ruling of the National Company Law Appellate Tribunal (NCLAT) rejecting Asset Reconstruction Company (India) Ltd's claim in Tulip Star Hotels' insolvency case.

In this matter, the appellate tribunal accepted the hotel operator's claim that the ARC filed its case against the company under the IBC after the limitation period of three years from the date of declaring the asset as non-performing.

But in its order from August 1, the Supreme Court noted that Tulip Star Hotels had asked for more time to pay the arrears. It also said that the entries of debt in a company's books of account and balance sheets could be seen as an acknowledgement of the liability and taken into account when setting the limitation period.

The NCLT Mumbai bench in its latest order has also allowed all stakeholders who had already filed their claims as of May 31, 2019 to update their claims as of August 1, 2022. It has also permitted all persons dealing with the company during the period from December 11, 2019 to August 1, 2022 and having any claims to file their claims with the resolution professional.

Source: The Economic Times

Read Full news at: <https://economictimes.indiatimes.com/industry/services/hotels/-/restaurants/nclt-allows-rp-to-resume-v-hotels-insolvency-process/articleshow/94667862.cms>

