



May 9, 2022

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Insolvency Professional Agency of Institute of Cost Accountants of India



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Updates on Insolvency and Bankruptcy Code

➤ **The ARC is likely to move NCLT this month over unpaid dues of nearly ₹1,000 crore**

Edelweiss ARC is set to file an insolvency petition against Marriott Group's Renaissance Bangalore Race Course Hotel over unpaid dues which stand at approximately ₹1,000 crore.

The five-star hotel is still operational. However, according to two people in the know, Edelweiss ARC has decided to drag it to the insolvency court. "Renaissance has been given enough time to repay its dues. However, it has not been able to do so. After the recent default, Edelweiss ARC has decided to take this step," the source said.

Marriott is listed on Nasdaq. In India, Marriott International has approximately 30 brands. According to its annual report for 2021, Marriott has 173 hotels globally under the Renaissance brand.

The ARC is likely to file a petition in the National Company Law Tribunal (NCLT) this month. It will file an application under Section 7 of the Indian Bankruptcy Court. Section 7 petition is for the initiation of corporate insolvency resolution process by a financial creditor(s).

Renaissance, its parent company Marriott and Edelweiss ARC did not offer a comment.

According to one of the people quoted above, "The Covid-19 pandemic has taken a hit on the company just like any other hotel. Not every hospitality firm was able to seek respite from the ECLS scheme." The Renaissance Bangalore Race Course hotel is a luxury property in the heart

of Bengaluru. It has 276 rooms and is spread across 6,900 sq ft. The 21-storey hotel was inaugurated in 2018.

Over the past few years, multiple renowned hotels including Appu Hotel, Hotel Leela, Golden Jubilee Hotels, and Trident Hotels among others have been dragged to the insolvency court. However, not many have seen a suitable resolution. Hospitality industry was among the hardest hit during the pandemic with travel and tourism coming to a halt for nearly two years

Source: The Hindu Business Line

Read Full news at:

<https://www.thehindubusinessline.com/news/edelweiss-arc-to-file-insolvency-plea-against-marriotts-property-in-bengaluru/article65394640.ece>

➤ **Under A Security Trustee Agreement, An Individual Lender Cannot Invoke Personal Guarantee Without Taking Consent Of Other CoLenders: NCLT Delhi**

The National Company Law Tribunal ("NCLT") New Delhi (Special Bench), comprising of Shri Dharminder Singh (Judicial Member) and Shri Avinash Kumar Srivastava (Technical Member), while adjudicating an application filed under Section 95 of the Insolvency and Bankruptcy Code, 2016 ("IBC") in IDBI Bank Ltd. v Manoj Gaur (Personal Guarantor of Corporate Debtor Jaypee Infratech Ltd)., has held that invocation of personal guarantee can be done by a Security Trustee only after obtaining consent of all co-lenders under the concerned Security Trustee Agreement. When there are multiple beneficiaries, the Trustee is bound to execute the Trust for the benefit of all beneficiaries in accordance with Trust Deed and after taking permission from the co-lenders. The order was passed on 05.05.2022.

Jaypee Infratech Ltd. ("Corporate Debtor") had availed four loans from IDBI Bank Ltd. ("Financial Creditor") aggregating to Rs. 4650,00,00,000/- and had executed a Common Loan Agreement and Facility Agreement on 30.04.2015 and a First Amendment Agreement (to Common Loan Agreement) dated 22.05.2015. Thereafter, an amount of Rs. 900,00,00,000/- was down sold by the Financial Creditor to India Infrastructure Finance Company due to which the principal amount of loan granted to the Corporate Debtor came down to Rs. 3750,00,00,000/-.

A Security Trustee Agreement dated 30.04.2015 was executed between the Financial Creditor and the Corporate Debtor. IDBI Trusteeship Service Ltd. was appointed to act as a Trustee on behalf of the Financial Creditor and the other lenders; and also to hold the security to be created pursuant to Financing Documents.

Mr. Manoj Gaur had executed a Deed of Guarantee dated 25.05.2015 in respect of the aforementioned loan facilities, wherein in the capacity of a Personal Guarantor he had irrevocably and unconditionally guaranteed repayment of the said loan facilities.

The Corporate Debtor defaulted in repayment of dues to the Financial Creditor and consequently, the Corporate Debtor's loan account was declared Non Performing Asset (NPA) on 31.03.2016. The Financial Creditor filed a petition under Section 7 of IBC seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against the Corporate Debtor. The NCLT Allahabad (Adjudicating Authority) had initiated CIRP against the Corporate Debtor vide an order dated 09.08.2017.

The Financial Creditor issued a demand notice dated 09.07.2018 to Mr. Manoj Gaur ("Personal Guarantor"), seeking repayment of the amounts in terms of Deed of Personal Guarantee. Thereafter, two demand notices dated 12.11.2021 and 09.12.2021 were issued by the Financial

Creditor in Form-B under Rule 7(1) of the Rules of 2019 to the Corporate Debtor but the latter failed to pay the dues within the statutory period of 14 days from the service of the said Notice.

Following which, the Financial Creditor (through the Resolution Professional) filed an application under Section 95 of IBC against the Personal Guarantor on 14.01.2022. The Financial Creditor had also filed an application bearing IA No.782/2022 under Section 60(5) of IBC, seeking modification of order passed by the Adjudicating Authority on 08.02.2022, and appointment of Resolution Professional (RP) along with direction to RP to submit a report under Section 99 of IBC, 2016.

The Personal Guarantor challenged the application on grounds of maintainability, stating that the Financial Creditor has no locus standi to file the Application under Section 95, as it is a stranger to the contract (Deed of Guarantee). It was further argued that the Financial Creditor had concealed the fact that the Security Trustee had already filed a similar application under Section 95 of IBC bearing (IB)-83(PB)/2022 titled IDBI Trusteeship Services Ltd. Vs. Manoj Gaur in which the Adjudicating Authority had already issued notice. Further, the Personal Guarantor apprised the Bench that in the proceedings before NCLT Allahabad under Section 7 of IBC, the financial institutions that extended loans to the Corporate Debtor were:

1. IDBI Bank Limited
2. Union Bank of India
3. India Infrastructure Finance Company Limited
4. Life Insurance Corporate of India
5. State Bank of India
6. Canara Bank
7. Bank of Maharashtra
8. ICICI Bank Limited
9. IFCI Limited
10. The Jammu & Kashmir Bank Limited.

However, in the demand notice dated 09.07.2018 issued by IDBI Trusteeship Services Ltd., the names of only 4 lenders were included, i.e., IDBI Bank Limited, Union Bank of India, Syndicate Bank of India and Bank of Maharashtra. Further, the version of the Security Trustee Agreement which includes the names of all the Lenders of the Corporate Debtor has not been placed on the record by the Financial Creditor. Instead, the version which contains only the names of from IDBI, State Bank of Hyderabad and India Infrastructure Finance Company Limited has been placed on record.

The Personal Guarantor also relied on certain clauses of the Security Trustee Agreement, which mandated that the enforcement of Security requires unanimous written instructions from all the co-lenders. On this basis, the Personal Guarantor argued that the all the Lenders have to act together through the Security Trustee, but no other bank has filed the application under Section 95. The Security Trustee Agreement states that a single lender cannot act alone. A similar reply was filed in IA No.782/2022.

The Bench observed that a Trustee is appointed to hold the Trust property for the benefit of the beneficiaries of the Trust, who have a beneficial interest in the Trust property. In cases where there are multiple beneficiaries, the Trustee is bound to execute the trust for the benefit of all the beneficiaries, in accordance with the Trust Deed and only after taking consent of other co-lenders. It was further observed that such a clause was apparently incorporated with intent to safeguard the guarantor from being harassed at the hands of unscrupulous individual lender. The Bench upheld that as per the Security Trustee Agreement the consent of all co-lenders was required, in the absence of which an application under Section 95 of IBC cannot suffice.

The Bench held that the application under Section 95 is not maintainable and dismissed the same.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/ibc-cases/nclt-delhi-section-95-of-the-insolvency-and-bankruptcy-code-jaypee-infratech-ltd-idbi-bank-ltd-manoj-gaur-security-trustee-agreement-personal-guarantee-198575>

➤ **Insolvency Proceedings Initiated Against Birla Tyres Ltd., A B.K. Birla Group Company: NCLT, Kolkata**

The National Company Law Tribunal ("NCLT") Kolkata Bench, comprising of Rohit Kapoor (Judicial Member) and Shri Harish Chander Suri (Technical Member) while adjudicating a petition filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") in the matter of SRF Limited v Birla Tyres Ltd., has initiated Corporate Insolvency Resolution Process ("CIRP") against Birla Tyres Ltd. and appointed Mr. Seikh Abdul Salam as the Interim Resolution Professional. The order was passed on 05.05.2022.

Birla Tyres Ltd. is a part of B.K. Birla Group of Companies. In 1991, it was incorporated as a part of Kesoram Industries Ltd. but was later demerged in 2018 as a part of re structuring plan. In Financial Year 2021, Birla Tyres had made losses to the tune of Rs 287.63 Crore, while total revenue stood at Rs 153.11 Crore.

SRF Ltd. ("Operational Creditor") had supplied Tire Cord Fabric to Birla Tyres Ltd. (Corporate Debtor) between 2018-19 in view of Work Order dated 06.04.2018. When payment against the supplies were not received, the Operational Creditor had served a Demand Notice upon the Corporate Debtor for an amount of Rs.15,84,53,695.75/- (inclusive of interest), wherein the principal amount was Rs.10,06,42,246.75/-. The Corporate Debtor had addressed an email to the Operational Creditor on 03.06.2020 admitting the debt of Rs. 10.18 Crores, and had paid Rs. 10,00,000/- as its last payment to the Operational Creditor.

As no subsequent payments were received, on 23.07.2021 the Operational Creditor issued a Demand Notice under Section 8(1) of the IBC to the Corporate Debtor and the latter neither disputed the demand nor tendered any response to the same. Accordingly, the Operational Creditor filed a petition under Section 9 of IBC before NCLT Kolkata ("Adjudicating Authority") seeking initiation of CIRP against the Corporate Debtor. Despite several opportunities, the Corporate Debtor failed to file any response to the petition.

The Adjudicating Authority observed that there was an admitted and undisputed debt and passed an order for initiation of CIRP against the Corporate Debtor.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/ibc-cases/national-company-law-tribunal-nclt-birla-tyres-ltd-section-9-of-the-insolvency-and-bankruptcy-code-corporate-insolvency-resolution-process-cirp-interim-resolution-professional-198589>

➤ **Committee Of Creditors Are Competent To Revise The Approved Fees Of Resolution Professional: NCLAT**

National Company Law Appellate Tribunal (NCLAT) principal bench comprising of Justice Ashok Bhushan and Ms. Shresha Merla in the case of Kushwinder Singhal versus Reena Tiwari held that the Committee of Creditors (COC) is fully competent to revise its earlier approval of the fees of the Resolution Professional (RP).

The erstwhile Resolution Professional of Bestways Transport India Pvt Ltd. (Bestways) Mr. Kushwinder Singhal was aggrieved by the order dated 24.02.2022 of NCLT Chandigarh wherein it has replaced Kushwinder Singhal as the RP of Bestways after resolution passed by the COC of Bestways and directed the reconstituted COC to decide the fees of the erstwhile RP.

After the initiation of the Corporate Insolvency Resolution Process (CIRP) of Bestways, COC decided the fees to be paid to Mr. Kushwinder Singhal to function as the Resolution Professional of Bestways but later on the COC vide its resolution dated 17.05.2021 passed a resolution to

replace Mr. Kushwinder Singhal and appoint Mr. Vijay Kumar Gupta as the Resolution Professional of Bestways. Subsequently, an application was filed and NCLT vide its order dated 24.02.2022 directed the replacement of RP and also directed the reconstituted COC to decide the fees of erstwhile RP.

It was contended by the erstwhile RP that there was no requirement of any direction to decide the fees of RP when earlier the COC has already decided the fees of erstwhile RP. It was further argued that by virtue of Regulation 12(3) of CIRP regulation, addition of any member will not affect the validity of earlier decision and therefore, the earlier decision of COC is valid.

NCLAT observed that the COC passed the resolution to remove the RP on 17.05.2020 and a major portion of the fees claimed by the RP is for the costs which was incurred subsequent to resolution dated 17.05.2020 and therefore, it is appropriate to consider the CIRP cost by COC.

NCLAT further held that COC is fully competent to revise the fees of RP even if it is already approved by the earlier COC.

"...The entitlement of fee depends on several factors including the change of circumstances, the length of CIRP proceeding hence we are of the view that Regulation 12(3) proviso does not fetter the CoC to consider the fee and expenses...." NCLAT accordingly dismissed the appeal filed by the RP.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/ibc-cases/national-company-law-appellate-tribunal-nclat-resolution-professional-rp-committee-of-creditors-198587>



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