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IBC AU-COURANT

Insolvency Professional Agency of Institute of Cost Accountants of India



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Updates on Insolvency and Bankruptcy Code

➤ Recoveries by financial creditors under IBC shrink to 33%, shows data

Recoveries by financial creditors under the Insolvency and Bankruptcy Code (IBC) have dropped significantly in the past two years owing to the pandemic, resulting in larger haircuts for them.

As of March 2022, financial creditors have recovered 33 per cent of the amount admitted as claims.

It was 39.3 per cent as of March 2021, and as high as 46 per cent till March 2020, according to the Insolvency and Bankruptcy Board of India (IBBI) data. Further, on a quarterly basis, realisation by financial creditors as a percentage of their admitted claims in Q4 FY22 dropped to as low as 10 per cent.

In the preceding quarter (Q3FY22), it stood at 13 per cent. However, in the first two quarters of FY22 (Q1 and Q2), the rate was 25 per cent and 49 per cent, respectively.

In Q4, the amount realised by financial creditors dropped below the liquidation value of assets. "The haircut for cases resolved in Q4FY22 was high at 90 per cent. The overall haircut scenario is not very encouraging. As we are working through some of the weaker assets where there are



RECOVERY RATE FOR LENDERS UNDER IBC

Period	Realisable by FCs as a % of their claims admitted	Realisable by FCs as a % of their liquidation value
Up to March 2020	45.96	183.37
Up to June 2020	44.70	183.59
Up to September 2020	43.56	185.15
Up to December 2020	39.80	181.70
Up to March 2021	39.30	179.90
Up to June 2021	36.00	167.95
Up to September 2021	35.89	166.57
Up to December 2021	33.10	165.79
Up to March 2022	32.90	171.40

Source: IBBI

incomplete projects or sectors which are seeing very poor demand from buyers, the realization values have started to come down,” said Kotak Securities.

The number of new cases admitted under the insolvency process has also gone down in FY22, with only 834 cases admitted as against 2,000 cases in FY20.

Experts reckon the pandemic-induced slowdown in the economy and delays in the resolution process are the root cause behind the drop in realization. Having said that, recovery under the IBC is still far higher than other measures.

“Recovery dipped more on account of the situation arising out of Covid and the general impact it had on a number of sectors, which in turn did not attract enough bids/takers,” said Ajay Shaw, partner, DSK Legal. “Also, some of the corporate debtors in insolvency had seen substantial value erosion, which impacts recovery for financial creditors,” he said.

As of March 2022, the amount of debt resolved through the IBC stands at Rs 6.85 trillion, and the creditors have realised around Rs 2.25 trillion, which is 171 per cent of the liquidation value of such assets.

Abhishek Swaroop, partner, Saraf and Partners Law Offices, said: “Recovery for financial creditors has been primarily affected due to the pandemic and the resultant economic slowdown causing loss of investor appetite for stressed assets.”

Court-led delays — caused by protracted legal battles not only before the various Benches of the National Company Law Tribunal and National Company Law Appellate Tribunal, but also high courts — are adding to the problem. Also, with prime assets being resolved, the assets that are left are not fetching great value for potential investors, Swaroop said.

Source: Business Standard

Read Full news at:

https://www.business-standard.com/article/companies/recoveries-by-financial-creditors-under-ibc-shrink-to-33-shows-data-122050901297_1.html

➤ **Project Wise CIRP of Real Estate Company is Outside the Purview of Insolvency & Bankruptcy Code, 2016: NCLT Chennai**

The National Company Law Tribunal, Chennai Bench comprising of Justice S. Ramathilagam and Mr. Anil Kumar B (Technical Member) in the Case of N Kumar v. Tata Capital Housing Finance Ltd. held that the project wise Corporate Insolvency Resolution Process (CIRP) of a real estate company is outside the purview of Insolvency and Bankruptcy Code, 2016 (IBC/Code).

CIRP of Sheltrex Developers Pvt. Ltd (Sheltrex) was initiated by NCLT Chennai vide its order dated vide its order dated 10.12.2019 and Mr. N Kumar was appointed as the Interim Resolution Professional and later confirmed as Resolution Professional.

Sheltrex had launched two real estate projects namely Appur Village, Oragadam, Chennai consisting of 296 homes and Nammavedu at Coimbatore consisting of 110 homes. The Resolution Professional of Sheltrex filed an application under Section 60(5) of IBC seeking permission to constitute project-based Committee of Creditors and conduct project wise CIRP of Sheltrex.

It was contended by Resolution Professional that the only business of Sheltrex is promoting real estate project and in particular affordable housing. Each project of Sheltrex have different type of creditors which are not related to each other.

The Resolution Professional further relied upon the judgement of NCLAT in the case of Flat Buyers Association versus Umang Realtech Pvt. Ltd. which allowed the project-based insolvency of a real estate company.

Tata Capital Housing Finance Ltd opposed the relief prayed by the Resolution Professional and it was contended by Tata Capital that it holds 17% voting rights in COC and the application filed by the RP is not maintainable as neither the IBC, 2016 nor any regulations stipulate the project wise CIRP. It was further contended by Tata Capital that CIRP regulations mandates a resolution plan for the entire business of the Corporate Debtor and not project wise and therefore, the application of the Resolution Professional is against the provisions of IBC.

NCLT observed that there is no concept of limited CIRP or CIRP for specific projects anywhere in the IBC, 2016 or regulations made thereunder. NCLT further noted that the Supreme Court in the case of Pioneer Urban Land and Infrastructure Ltd. versus Union of India held that IBC is a beneficial legislation which can be triggered to put the whole corporate Debtor back on its feet.

NCLT held that the judgment of Umang Realtech is not applicable to the present case as the mechanism adopted by NCLAT was too peculiar to the facts and circumstances of that case and cannot be used as a precedent in the present scenario.

NCLT dismissed the application filed by Resolution Professional and held that the reliefs sought by Resolution Professional is outside the purview of IBC, 2016 and thus not maintainable.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/news-updates/nclt-chennai-insolvency-and-bankruptcy-code-corporate-insolvency-resolution-process-cirp-resolution-professional-financial-creditor-198670>

➤ **Proceedings against Personal Guarantor of Corporate Debtor can be Continued Independently - Supreme Court Lifts the Stay**

Supreme Court bench comprising of Justice S Abdul Nazeer and Justice Vikram Nath vide its order dated 06.05.2021 in the case of Mahendra Kumar Jajodia versus State Bank of India, Civil Appeal No. 1871/2022) dismissed the civil appeal filed against the Judgement of National Company Law Appellate Tribunal (NCLAT) in the case of SBI versus Mahendra Kumar Jajodia.

NCLAT held that even in the absence of any pending Corporate Insolvency Resolution Process or Liquidation proceedings, the application under Section 95(1) of the Insolvency Bankruptcy Code, 2016 against the personal guarantors of the Corporate Debtor is maintainable by the virtue of Section 60(1) of the Code before the National Company Law Tribunal having territorial jurisdiction over the place where the Registered office of the Corporate Person is located.

There was a confusion concerning as to where the insolvency proceedings will be filed against the Personal Guarantor and the NCLAT vide its order dated 27.01.2022 order cleared the same but the confusion continues as the Supreme Court vide its order dated 21.03.2022 by relying on the observations in the case of Lalit Kumar Jain versus Union of India, 2021 (9) SCC 321 stayed the operation of the judgment of the NCLAT.

NCLAT in its order dated 27.01.2022 allowed the appeal filed by the State Bank of India against the Order dated 05.10.2021 of NCLT Kolkata wherein NCLT Kolkata dismissed the application filed by SBI under Section 95 of the code on the ground that since no CIRP or Liquidation is

pending against the Corporate Debtor, application under Section 95 is not maintainable before the NCLT. The NCLAT set aside the order and held that;

"11. The Adjudicating Authority erred in holding that since no CIRP or Liquidation Proceeding of the Corporate Debtor are pending the application under Section 95(1) filed by the Appellant is not maintainable. The Application having been filed under Section 95(1) and the Adjudicating Authority for application under Section 95(1) as referred in Section 60(1) being the NCLT, the Application filed by the Appellant was fully maintainable and could not have been rejected only on the ground that no CIRP or Liquidation Proceeding of the Corporate Debtor are pending before the NCLT. In result, we set aside the order dated 05th October, 2021 passed by the Adjudicating Authority. The Application filed by the Appellant under Section 95(1) of the Code is revived before the NCLT which may be proceeded in accordance with the law."

The Supreme Court has now vide its order dated 06.05.2022 dismissed the appeal and upheld the NCLAT order dated 27.01.2022 by stating that we find no cogent reason to interfere with the order of NCLAT and therefore, application under Section 95 of the Code can be filed against personal guarantor of Corporate Debtor before NCLT even in the absence of any pending CIRP or Liquidation proceedings against the Corporate Debtor before such NCLT.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/news-updates/supreme-court-justice-s-abdul-nazeer-justice-vikram-nath-national-company-law-appellate-tribunal-nclat-section-951-of-the-insolvency-bankruptcy-code-personal-guarantor-corporate-debtor-198660>



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