INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

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# IBC AU-COURANT

*Insolvency Professional Agency of Institute of Cost Accountants of India*


***"The mouth obeys poorly when the heart murmurs"***

**Updates on Insolvency and Bankruptcy Code**

## ➢ Reliance Capital's bankruptcy process to be delayed over bidding structure of clusters

The bankruptcy process of Reliance Capital is likely to be delayed further over a confusion of finalising resolution plans for its subsidiaries, which are profit-making entities. Apart from being profitable, these subsidiaries are "well-capitalised" and have proper management teams running their operations. As per the Insolvency and Bankruptcy Code (IBC), resolution plans cannot be submitted for companies that are not under financial stress, a source close to the development said.

Under Reliance Capital's bankruptcy process, the bidders had two options — either to bid for the entire assets of the company or one or more of its clusters (subsidiaries). The subsidiaries are Reliance General Insurance, Reliance Nippon Life Insurance, Reliance Asset Reconstruction Company, Reliance Securities, Reliance Commercial Finance and Reliance Home Finance. Last week, the RBI-appointed administrator received 55 bids as part of the ongoing insolvency proceedings, of which about 33 Expressions of Interest (EoIs) were for the clusters. The applicants included a consortium led by Piramal Group, Yes Bank, Zurich Insurance Company, IndusInd International Holdings, Jindal Power and Darwin Platform Group of Companies chairman Ajay Harinath Singh, among others. The administrator, Committee of Creditors (CoC) and their legal advisors have different opinions on inviting bids for these profit-making entities, even though it is legally tenable to accept financial bids for the entire assets of Reliance Capital.

A suggestion by the lenders was that the bidders should form a consortium and bid for Reliance Capital's entire assets, rather than subsidiaries. On his part, the administrator raised concerns on the methodology for setting up a consortium and which company will be responsible for implementing the scheme. This confusion is leading to a delay in the finalisation of the Request for Resolution Plan (RFRP) document, the source said, adding, the CoC and administrator are yet to finalise the RFRP document. As per the original timeline, the RFRP was to be issued by April 5. The administrator and CoC will now have to find a solution to let companies place bids, which are compliant with IBC rules, for individual clusters. Reliance Capital's resolution plan is already delayed with the CoC planning to seek a 90-day extension to the June 3 deadline. The lenders were planning to seek an extension as the remaining nearly two months' time is not enough to complete the entire insolvency process, that includes checking the books, conducting due diligence, inviting financial bids and shortlisting candidates, among others. If approved, the lenders will get time till September 3 to close the process. On November 29, 2021, the Reserve Bank of India superseded Reliance Capital's board following payment defaults and governance issues, and appointed Nageswara Rao Y as the administrator for the bankruptcy process. The regulator also filed an application for initiation of Corporate Insolvency Resolution Process (CIRP) against the company before the National Company Law Tribunal's (NCLT) Mumbai bench. In February this year, RBI appointed administrator invited EoIs for sale of Reliance Capital assets and subsidiaries.

***Source: Financial Express***
***Read Full news at:***
*https://www.financialexpress.com/industry/rcaps-bankruptcy-process-to-be-delayed-over-bidding-structure-of-clusters/2487160/*

- **DHFL resolution: Supreme Court stays NCLAT January order, to hear appeal on May 5**

The Supreme Court on April 11 stayed an order passed by the National Company Law Appellate Tribunal (NCLAT) in the DHFL insolvency case, asking the insolvency court to reconsider the right given to Piramal Capital and Housing Finance to appropriate proceeds from DHFL's avoidance transactions. A Supreme Court bench headed by Chief Justice of India NV Ramana issued a notice on appeals filed by the Piramal group firm as well as some banks that formed part of the lenders' panel. The appeals will be heard by the court on May 5, the bench said.

In the meantime, the order passed in January will be stayed, the court added. The approved resolution plan for DHFL stipulated that the proceeds from all avoidance transactions would go towards the successful resolution applicant – Piramal Capital and Housing Finance. This aspect was termed as "illegal" by the NCLAT in an order passed in January. The appellate forum set aside the National Company Law Tribunal's (NCLT) approval for the plan to the extent of question on avoidance transactions and directed the Committee of Creditors (CoC) of DHFL to reconsider the question.

NCLAT's order was passed after one of DHFL's creditors – 63 Moons Technologies Ltd – challenged the successful resolution plan. As a a holder of non-convertible debentures to the tune of Rs 200 crore in now bankrupt DHFL, 63 Moons, had claimed that the recoveries from avoidance transactions ought to go towards repaying the creditors rather than enriching the successful resolution applicant.

NCLAT, agreeing with the position of 63 Moons and ruled in favour of the company. The Piramal group firm had approached the Supreme Court in appeal against the NCLAT order shortly thereafter.

A large number of loans of DHFL were listed under avoidance application as per the provisions of the Insolvency and Bankruptcy Code (IBC). The code provides for transactions that may be fraudulent at the behest of promoters as avoidance transactions.

In its resolution plan for DHFL, Piramal group ascribed a value of Re 1 to the bulk of avoidance applications that range between the value of Rs 30,000 and Rs 40,000. This was so done because Piramal group did not anticipate any recoveries from these transactions.

The value of Re 1 against avoidance transactions was accepted by the CoC and the plan not only got an approval from NCLT but also successfully executed the takeover in September 2021.

DHFL is the first financial institution to have gone through the insolvency proceedings for a successful resolution under the IBC.

***Source: Money Control***
***Read Full news at:***
*https://www.moneycontrol.com/news/trends/legal-trends/dhfl-resolution-supreme-court-stays-nclat-january-order-to-hear-appeal-on-may-5-8343931.html*

## ➢ Supreme Court upholds HC order on distinction between decree holders and financial creditors

The Supreme Court has upheld a Tripura High Court order which said the distinction of decree holders as creditors from "financial creditors" and "operational creditors" is an intelligible purpose of the Insolvency and Bankruptcy Code, 2016, and the same cannot be stated to be "discriminatory" or "arbitrary".

The bench of Justices Sanjay Kishan Kaul and M.M. Sundresh dismissed the plea challenging the judgment of the Tripura High Court, which in turn had dismissed a public interest litigation filed by Shubhankar Bhowmik.

Bhowmik had filed the PIL against Section 3(10) of the Insolvency and Bankruptcy Code 2016, read with regulation 9A, inasmuch as it fails to define the term "other creditors" and the impugned provisions may be interpreted harmoniously to include words "decree holders" as existing in Section 3(10) to be at par with "financial creditors" under Regulation 9A. He had also sought directions to issue an appropriate Writ, Order or Direction more particularly in the nature of WRIT OF CERTIORARI or any other appropriate writ declaring that claims filed under a CIRP by "decree holder" under Regulation 9(a) of the CIRP Regulations, be considered at par with claims filed by the "financial creditors" and be amenable to all consequential rights available to financial creditors; and/or.."

The High Court had noted, "Principally, the issues raised in the present petition deal with the treatment of "decree holders" who hold decrees against a Corporate Debtor under the insolvency resolution process. As such, the issue is one of classification. The petitioner states that the IBC and / or the Regulations framed thereunder, do not prescribe the class of creditors to which the term "decree holder" belongs, and therefore there exists a need to iron out the issue. It is suggested that without such prescription in the IBC, the class of "decree holders" falls into the residual class of "other creditors", which it is stated manifestly arbitrary and therefore violates Article 14."

The word "creditor" is defined in Section 3(10) of the IBC which reads as under: "3(10) "creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder;"

A reading of the aforesaid section suggests that the Parliament in its wisdom recognized five types of creditors being "financial creditor" or "operational creditor", "secured creditor", "unsecured creditor" and a "decree-holder". A further examination of the provisions reveals that the phrases "financial creditor", "operational creditor" and "secured creditor" are defined in Sections 5(7), 5(20), and 3(30) respectively. It would also be trite to note that a creditor who does not qualify as a "secured creditor" under Section 3(30), would by necessary implication mean an "unsecured creditor". However, the definitions contained in the IBC do not provide any definition for a "decree holder".

"IBC rightly recognizes decree-holders as a class of creditors whose claims need to be acknowledged in a corporate insolvency resolution process, the IBC by express provision of Section 14 (l)(a) bars execution of a decree by the same decree holder against the corporate debtor," -said the high court.

It further noted, An unexecuted decree, in the hands of a decree holder under the IBC regime, cannot be executed. At best, a decree signifies a claim that has been judicially determined and in that sense is an "admitted claim" against the corporate debtor. Therefore, the IBC rightly categorises a decree-holder, as a creditor in terms of the definition contained in Section 3(10). Execution of such a decree, is however subject to the fetters expressly imposed by the IBC (in addition to and over and above the requirements and limitations of the execution process under the CPC), which cannot be wished away."

Furthermore it stated that, "Looked at from another angle, the decree-holder gets a statutory status as a creditor under Section 3(10) of the IBC, by virtue of the decree. Since the decree cannot be executed by operation of the moratorium under Section 14, the IBC makes a provision to protect the interests of a decree holder by recognizing it as a creditor. The interest recognized is that in the decree and not in the dispute that leads to the passing of the decree. This is apparent from the fact that decree holders as a class of creditors are kept separate from "financial creditors" and "operational creditors". No divisions or classification is made by the statute within this class of decree holders. The inescapable conclusion from the aforesaid discussion is, that the IBC treats decree holders as a separate class, recognized by virtue of the decree held. The IBC does not provide for any malleability or overlap of classes of creditors to enable decree holders to be classified as financial or operational creditors."

As a consequence, once a decree holder is recognized as a creditor, all provisions of the IBC that apply to creditors, including the waterfall provisions are applicable in all their force. The rights like each and every other creditor are subject to the overall objective of maximization of assets of the corporate debtor for the benefit of all stake holders in line with the commercial wisdom of the Committee of Creditors" -held by the high court.

***Source: India Legal***
***Read Full news at:***
*https://www.indialegallive.com/constitutional-law-news/supreme-court-news/tripura-distinction-between-decree-holders-financial-creditors/*