



INSOLVENCY PROFESSIONAL AGENCY
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"The best way to predict the future is to invent it"

Updates on Insolvency and Bankruptcy Code

Petition for insolvency gets time barred if filed after 3 years: NCLAT

The National Company Law Appellate Tribunal (NCLAT) has set aside an order by the National Company Law Tribunal (NCLT) and held that corporate insolvency proceedings can't be initiated on the payment of salary arrears and other remuneration as they are time-barred.

NCLT said this is in the matter of Omega Laser Products B.V, a Dutch company, and a shareholder of its Indian arm. A former Managing Director (MD) of the company had moved the NCLT seeking payment of salary arrears from the Indian arm of the Company.

The appellate tribunal ruled that the former MD's plea would be time-barred by limitation for initiating insolvency against the Indian arm, on the ground that it had been filed beyond a period of three years.

The NCLAT said there was no acknowledgement of the debt by the Board of Corporate Debtor in terms of Section 18 of the Limitation Act, 1963. It held that the majority of the claims were barred by time.

The appellant had filed a petition under Section 9 of the Insolvency and Bankruptcy Code (IBC) against the NCLT order.

The dispute started when the former MD had claimed he was entitled to Rs.3 lakh p.m. remuneration from January 16, 2010, which was revised on August 1, 2014, to Rs.4 lakh p.m. but the payment fell short of the agreed sum. Meanwhile, the Indian arm of the Company alleged

that such a revision of salary had to be sanctioned by the Board and there was no document to prove this.

The NCLAT, however, after examining the merits of the case, concluded that there was no specific approval either of the payment of arrears of any 'fixation of the MD's remuneration or increase of his salary/perks. The NCLAT also held that there was no crystallized quantum of an amount that could be claimed as salary/remuneration fixed by the Board of the Corporate Debtor as contemplated under Section 196 of the Companies Act, 2013.

Relying on one of the judgments of the Supreme Court, the tribunal held that "It is not within our domain under IBC to 'decide the issue of the fixation of the salary of the MD' but to ascertain if there is any 'dispute' regarding the issue.

"The former Managing Director claimed his salary was more than the stipulated amount. But this claim was not supported by any company documents. The Board never approved this supposed increase in salary. Moreover, the MD filed a petition in 2021 so any arrears are barred by limitation," he added, the Court, noting the merits of the case, allowed the appeal," said Sarojanand Jha, founding partner, Vedanta Legal, who was the lawyer for the appellant.

Commenting on what the future course of action can be for the parties, he added, "The respondent (former MD) can file an appeal in the Supreme Court against the NCLAT order.

Source: Business Standard

Read Full news at:

https://www.business-standard.com/article/economy-policy/petition-for-insolvency-gets-time-barred-if-filed-after-3-years-nclat-122051200908_1.html

NCLT allows Future Retail more time to file reply to insolvency plea

The Mumbai bench of National Company Law Tribunal (NCLT) on Thursday, the 12th May 2022 gave M/s Future Retail more time to file its reply to the insolvency petition moved by Bank of India against the company under Section 7 of the Insolvency and Bankruptcy Code (IBC).

Bank of India has sought admission of its insolvency petition against M/s Future Retail and the appointment of an interim resolution professional (IRP). The matter will be next heard on 06 June 22.

Separately, Amazon has moved an intervention application under Section 65 of IBC in the matter—a move that is opposed by Bank of India on the grounds that the US commerce giant does not have any locus standi on the matter as it is not a creditor of M/s Future Retail. Amazon has also written a letter to the Reserve Bank of India (RBI) alleging collusion by M/s Future Retail and banks to deny its rights. In the letter it has said that M/s Future Retail should not be allowed to go into bankruptcy proceedings as that would impact its rights further.

M/s Future Retail, described as corporate debtor, has sought more time to file a reply to the insolvency petition moved against it, citing constraints that many of its directors' terms have expired. Further, it also alluded to a writ petition filed in the Supreme Court against the default notices sent by the banks to the company.

In the writ petition, M/s Future Retail has alleged that the defaulted notices by the banks were erroneously issued despite the corporate debtor and the lenders being in discussion and negotiations since December 2021, wherein the company had expressed its intention to adhere to the framework that was put in place but informed its inability to do so because of orders and injunctions passed in arbitration and related proceedings filed by Amazon. Further, on January

1, 2022, the company and the lenders agreed to set up an asset sale committee to monetize the small-format stores of the company and recover their dues under the framework put in place.

“The Supreme Court has not passed any interim order but it has taken cognizance of the writ petition and has adjourned the matter”, said Shyam Kapadia, Counsel representing M/s Future Retail.

Hence, there is no urgency in the case to be admitted today and the corporate debtor’s right to reply should not be taken away, Kapadia said. He was responding to Ravi Kadam’s remarks asking for urgent admission of the matter. Kadam was appearing on behalf of Future Retail.

“One reads in the newspapers that the stores of the company have been taken over by Reliance. Therefore, the security of banks is getting imperiled and prejudiced seriously. Therefore, there is an urgent need as public money is involved to appoint an IRP and admission of the petition”, Kadam said.

The insolvency plea against Future Retail was first heard by the NCLT on April 28, where it granted time to M/s Future Retail to file its response.

Commenting on Amazon’s move to file an intervention application, Ashish Pyasi, Associate Partner Dhir and Dhir Associates, said, “In general, only the main parties are heard and intervention is not permitted. The scope of NCLT under insolvency code is limited as same is under summary jurisdiction. In the present case also, Amazon is neither the petitioner nor the corporate debtor. So their intervention will be scrutinized by the NCLT very closely”.

Future owes over Rs 15,000 crore to its 26 lenders. Future Group, in 2020, had decided to engage in a slump sale of its unlisted and listed companies to Reliance Retail for a consideration of around Rs.25,000 crore to address its ballooning debt. However, Amazon, which had acquired 49 per cent in Future Coupons in 2019 that owns 10 per cent in M/s Future Retail, accused M/s Future Retail of breach of contract for its agreement with Reliance Retail. Recently, in a regulatory filing, Reliance Industries had informed that the deal with Future Retail will not fructify as the company’s secured creditors had voted against the scheme.

Source: Business Standard

Read Full news at:

https://www.business-standard.com/article/companies/nclt-allows-future-retail-more-time-to-file-reply-to-insolvency-plea-122051201287_1.html



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