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Latest updates On Insolvency & Bankruptcy

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"Play by the rules but be ferocious."

➤ **NCLT Cannot Exercise Power To Initiate Insolvency Proceedings Arbitrarily: SC**

The Supreme Court Tuesday held the National Company Law Tribunals (NCLTs) cannot exercise the discretionary power to order initiation of insolvency proceedings "arbitrarily or capriciously" and are required to consider grounds made by the corporate debtor against it.

The top court said if a corporate debtor opposes the initiation of insolvency proceedings on the ground that it has a money award in its favour and the awarded amount exceeds the debt, then NCLT "would have to exercise its discretion under Section 7(5)(a) of the IBC (Insolvency and Bankruptcy Code) to keep the admission of the application of the Financial Creditor in abeyance".

"Even though Section 7 (5)(a) of the IBC may confer discretionary power on the Adjudicating Authority (NCLT/NCLAT), such discretionary power cannot be exercised arbitrarily or capriciously. If the facts and circumstances warrant an exercise of discretion in a particular manner, discretion would have to be exercised in that manner," a bench comprising justices Indira Banerjee and J K Maheswari said. Also mandates RPs to disclose relationship with corporate debtor, financial creditors and resolution applicants.

The bench, in its 34-page judgement, set aside the verdicts of NCLT and the National Company Law Appellate Tribunal (NCLAT) refusing to stay the insolvency proceedings sought to be initiated by corporate creditor Axis Bank Limited against defaulting firm, Vidarbha Industries Power Limited (VIPL), of Maharashtra.

The top court said that the VIPL, a power-producing firm, had opposed the insolvency proceedings on grounds including that it had won a case in the Appellate Tribunal for Electricity (APTEL) challenging the disallowance of the actual fuel cost for the financial years 2014-2015 and 2015-2016.

The APTEL, on November 3, 2016, had allowed the appeal of VIPL and had directed MERC to allow the firm the actual cost of coal purchased and the amount of Rs.1,730 crore is due to it in terms of the order.

The appeal against the APTEL order is still pending in the apex court.

The NCLT disregarded the contention of the defaulting firm and allowed the plea of Axis Bank to initiate the insolvency proceedings to recover its dues to the tune of approximately Rs 553 crores.

“In this case, the Adjudicating Authority (NCLT) has simply brushed aside the case of the Appellant that an amount of Rs 1,730 Crores was realizable by the Appellant in terms of the order passed by APTEL in favour of the Appellant, with the cursory observation that disputes if any between the Appellant and the recipient of electricity or between the Appellant and the Electricity Regulatory Commission were inconsequential.

“We are clearly of the view that the Adjudicating Authority (NCLT) as also the Appellate Tribunal (NCLAT) fell in error in holding that once it was found that a debt existed and a Corporate Debtor was in default in payment of the debt there would be no option to the Adjudicating Authority (NCLT) but to admit the petition under Section 7 of the IBC,” Justice Banerjee, writing the verdict, said.

The NCLT has to consider the grounds made out by the corporate debtor against admission, on its own merits.

“For example when admission is opposed on the ground of existence of an award or a decree in favour of the Corporate Debtor, and the Awarded/decretal amount exceeds the amount of the debt, the Adjudicating Authority would have to exercise its discretion under Section 7(5)(a) of the IBC to keep the admission of the application of the Financial Creditor in abeyance, unless there is a good reason not to do so,” it said.

It agreed with the contention of VIPL that it had applied for a stay of the proceedings before the NCLT, Mumbai under extraordinary circumstances in which it had not been able to pay the dues to Axis Bank only because of an appeal of the MERC against the order of the APTEL in its favour was pending in the apex court.

"Since the aforesaid appeal is pending in this Court, the Appellant is unable to realize a sum of Rs 1,730 Crores, which is due and payable to the Appellant, in terms of the order of APTEL," the firm had argued.

Source: Outlook

Read Full news at: <https://www.outlookindia.com/business/nclt-cannot-exercise-power-to-initiate-insolvency-proceedings-arbitrarily-sc-news-208752>

➤ **IBBI gets tougher on professionals for not complying with insolvency code**

The Insolvency and Bankruptcy Board of India (IBBI) has started taking a sterner view of insolvency professionals violating the code, handing out harsher punishments that

include extended periods of suspension and stiffer monetary penalties in an effort to bring more discipline and compliance with the law and set examples.

The regulator's disciplinary committees suspended a couple of insolvency professionals for as long as three years through orders passed from the beginning of May. The registration of two professionals was cancelled in May.

While some professionals escaped without suspension or cancellation of their registration, they were censured and their activities brought under continuous vigil. Some were told that repetition of violations would be treated as wilful negligence.

The recent decisions – especially after the pandemic set in – mark a significant shift from the lenient view adopted earlier, when suspensions and debarments from accepting assignments rarely exceeded one year. Often in the past, the disciplinary committee cited lack of experience on the part of the professional and take a benign view of the breaches. Just one registration was cancelled in each of the past two years and four in 2018-19.

The recent orders suggest that the stance might be changing as the Insolvency and Bankruptcy Code (IBC) has entered the sixth year of implementation and some insolvency professionals were found to be repeating violations. Rules and regulations have also been tightened and the disciplinary committees were reconstituted in April, with one committee under chairman Ravi Mital and the other under whole-time member Sudhaker Shukla.

The harsher orders are being handed out because the violations were large in magnitude, an official at one of the insolvency professional agencies reckoned.

Of 19 cases decided by the reconstituted disciplinary committees between May 6 and July 5, eight professionals were suspended for one to three years and four were ordered to pay 25-50 percent of their fees as penalty. Two had their registration cancelled.

In one instance, the insolvency professional was not only suspended for two years but also directed to pay a monetary penalty equivalent to the fee received as a resolution professional and liquidator.

Orders about the suspension of the professionals are becoming more forthright now. The disciplinary committee made some scathing observations, too.

In a recent order, where an insolvency professional was fined 50 percent of the fees received for various violations, the committee observed that though the resolution process had been scrapped, the professional could not be let off.

“Getting away with such a set of blatant contraventions will send a wrong signal and serve as a bad precedent,” the order stated.

The violations

In one case, the disciplinary committee cancelled a professional's registration, saying he had rushed to liquidate the company without giving an opportunity for resolving or restructuring the ailing business.

“The decision of liquidation was taken without following the true spirit of resolving the corporate debtor as a going concern, which is the heart and soul of the code,” the order

read. The professional was also guilty of violations such as including related parties of the company in the committee of creditors (CoC).

In another case of cancellation, the insolvency professional was found to have constituted the CoC with a related party while excluding the legitimate claims of a public sector bank (PSB) in the first meeting.

The IBC requires the CoC to be formed with financial creditors that are not related to the corporate debtor or the stressed company.

In one instance, the insolvency professional was handed a three-year suspension after being found guilty of removing some creditors from the CoC and revising the voting share for failing to pay up their share towards the cost of the insolvency resolution process. Such exclusions amount to depriving the financial creditors of the rights under the code and are not allowed.

One insolvency professional was held guilty of various charges including failure to follow due process such as appointing registered valuers, wilful contravention of procedures in the code, violating the timeline for the insolvency resolution process and maintaining an incomplete register of creditors.

Source: Money Control

Read Full news at: <https://www.moneycontrol.com/news/business/ibbi-gets-tougher-on-professionals-for-not-complying-with-insolvency-code-8813751.html>

➤ **Jet Airways Appoints Former Go First Executives As Heads Of Network Planning, Revenue Management**

Jet Airways on Wednesday said it has appointed former Go First executives Srihari Venugopal and Tanay Palshetkar as heads of the network planning department and revenue management department, respectively.

Venugopal will hold the designation of vice president-network planning and Palshetkar will be assistant vice president-pricing and revenue management, the airline's statement noted.

Both the executives will report to Chief Executive Officer Sanjiv Kapoor, it said.

"Before joining Jet Airways, Srihari Vennugopal served Go First as VP – Network Planning...His previous employers include Bengaluru International Airport, SpiceJet, Saudi Arabian carrier Flynas, Air Pegasus, and AirAsia," it mentioned.

Palshetkar also joins Jet Airways from Go First, where he was general manager – of revenue management.

"He (Palshetkar) started his career with Jet Airways over 22 years ago in the carrier's reservations team, and then transitioned to take on roles in revenue management, pricing, and similar domains within the commercial functions of various airlines," the airline's statement said.

The airline intends to recommence commercial operations in the current quarter ending September 2022.

Financial distress forced Jet Airways, which flew for more than two decades, to suspend operations on April 17, 2019, and a consortium of lenders, led by the State Bank of India (SBI), filed an insolvency petition in June 2019 to recover outstanding dues worth over Rs 8,000 crore.

In October 2020, the airline's Committee of Creditors (CoC) approved the resolution plan submitted by the consortium of the UK's Kalrock Capital and the UAE-based entrepreneur Murari Lal Jalan.

In June 2021, the resolution plan was approved by the National Company Law Tribunal (NCLT).

Source: Outlook

Read Full news at: <https://www.outlookindia.com/business/jet-airways-appoints-former-go-first-executives-as-heads-of-network-planning-revenue-management-news-208945>

