



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



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"The best way to predict the future is to invent it"

Updates on Insolvency and Bankruptcy Code

UP govt exercise to find why realty firms go bust yields no result yet

A fact-finding exercise initiated by the Uttar Pradesh chief minister Yogi Adityanath in April to "find out the reasons behind realtors leaving Noida and Greater Noida" and turning bankrupt is yet to yield results, officials said.

According to officials, the state's real estate business is facing a financial crisis, with 60 realty companies in Noida and Greater Noida itself undergoing corporate insolvency resolution processes (CIRPs) besides several other realtors going bankrupt. This has left the state government worried, which has failed to recover dues amounting to ₹35,000 crore from developers, officials said. Concerns involving a lot of distressed homebuyers are also mounting, they added.

According to officials, the government is also apprehensive that dragging realty companies to the National Company Law Tribunal (NCLT) will aid defaulters to evade action.

"In April, we directed the chief executive officer of the Greater Noida authority to discover the exact reasons behind the crisis being faced by realtors, homebuyers, and other stakeholders. Multiple realtors are undergoing CIRP, and the government wants to understand the issue leading to this crisis. I can better understand the issue only after reading the fact-finding report," said Arvind Kumar, additional chief secretary, infrastructure, and industrial development commissioner, Uttar Pradesh.

All industrial bodies including the Noida, Greater Noida, and Yamuna Expressway Industrial Development Authority report to Kumar.

According to the Greater Noida authority, there are 34 realty projects in Greater Noida and at least 26 projects in Noida are undergoing CIRP at the NCLT. The tribunal takes over the control of a delayed or stuck realty project via a resolution professional if a realtor cannot run the company or repay the money it borrowed from lenders or investors.

On being asked about the status of the fact-finding report, Narendra Bhooshan, who was the CEO of the Greater Noida authority for the last three years until May 4, refused to comment as he is now serving as the principal secretary, Public Works Department, Uttar Pradesh.

Surendra Singh, who was appointed CEO of Greater Noida authority on May 5, has assured he will investigate the matter.

On Friday, Amandeep Dhuli, additional chief executive officer, Greater Noida authority, met the legal department and reviewed the cases involving the 34 projects undergoing CIRP at the NCLT at the Sector Knowledge Park 4 main administrative building. However, no official was willing to comment on the outcome of the meeting.

Meanwhile, residents alleged that the state government is all bluster and no action when it comes to the concerns of homebuyers who have invested their hard-earned money into housing projects

Anshuman Jain, a homebuyer who has been waiting for his flat at one of Wave Group's housing societies, said, "The government only takes meetings without any solution. It has been happening for many years."

"We invested ₹65 lakh to buy a house almost 13 years ago. Our realtor has been undergoing CIRP at the NCLT for the last five years. There seems to be no solution to our plight. The UP government seems to not be bothered about us at all," said Ashish Mohan Gupta, a Jaypee Infratech Limited buyer.

According to the Confederation of Real Estate Developers' Association of India (CREDAI), the Noida and Greater Noida realty sector has been severely demotivated by uncertainties over several issues, including the imposition of hefty interest on land dues.

On July 10, 2020, the Supreme Court, while hearing a petition regarding the Amrapali Group, asked the Noida authority to only charge an interest rate of 8.5%, based on the marginal cost of funds-based lending rate (MCLR) fixed by the Reserve Bank of India, on land dues of developers. The order came in response to a petition by a Noida-based developer ACE Group which requested that the "unreasonable" interest rate on group housing land be revised. However, this order has still not been implemented.

To be sure, the original interest rate is 7.5%, which is set to increase incrementally in case of default in payment. In most cases, developers owe the Noida authority upto 20% in interest. According to the authority's policy, the initial deposit for a piece of land is 10% of the total cost, and the rest can be paid to the authority in instalments on which it charges interest.

"We raised this issue in April with senior officials of the UP government. If the Supreme Court order had been implemented in time, many realtors would not have faced a financial crisis. We hope the fact-finding report is submitted soon, and the issues resolved at the earliest," said Prashant Kumar Tiwari, president, CREDAI.

Source: Hindustan Times

Read Full news at:

<https://www.hindustantimes.com/cities/noida-news/up-real-estate-business-in-deep-financial-crisis-60-realtors-face-bankruptcy-101652726384686.html>

S. 44 IBC NCLT Doesn't Have The Power To Suo-Moto Classify A Transaction As A 'Preferential Transaction': NCLA

In a recent decision, the National Company Law Appellate Law Tribunal (NCLAT) has held that NCLT does not have the power to suo-moto classify a transaction as a Preferential Transaction in Section 44 of the Insolvency and Bankruptcy Code, 2016. A Division Bench of Justices M. Venugopal [Member Judicial] and Dr. Ashok Kumar Mishra [Member Technical] allowed the appeal challenging the order of the NCLT wherein the Adjudicating Authority had classified a transaction as 'Preferential Transaction.' The Bench remanded the matter back to the NCLT for deciding afresh in the light of the observations made in the order.

The Appellants, represented by Advocate Anando Mukherjee, had entered a Memorandum of Understanding (MoU) with the Corporate Debtor and advanced a sum of Rs. 42,61,33,333/- for the future supply of goods. Due to the nonfulfillment of the terms of the MoU, the Appellant and the Corporate Debtor mutually decided to convert the sum advanced into an unsecured loan. Accordingly, the MoU was replaced with a loan agreement.

Upon learning that CIRP had been initiated against the Corporate Debtor, the appellant submitted its claims to the Resolution Professional (RP) as a Financial Creditor. The RP, however, had classified the Appellants as Operational Creditors because the sum had been advanced for the future supply of goods. The Appellants preferred an application against the decision of the RP before the NCLT. The NCLT observed that by executing the loan agreement, the Corporate Debtor had converted operational debt into financial debt, intending to put the Appellant in a beneficial position and suo-moto classified the transaction as Preferential Transaction in terms of Section 43(2)(a).

The Tribunal observed that on a plain reading of Section 43 of the Insolvency and Bankruptcy Code, 2016, it is made out that an RP or the Liquidator, as the case may be, must be of the opinion that a Corporate Debtor has given preference to a creditor in a transaction and must make an Avoidance Application to the Adjudicating Authority for the avoidance of such preferential transaction.

In the instant case, since neither the RP had formed any opinion that the Corporate Debtor had given preference nor any Avoidance Application had been made to the Adjudicating Authority against the transaction in question, it was not open for the NCLT to classify the transaction as preferential. In Section 44, NCLT does not have the power or authority to classify a transaction as a Preferential Transaction suo-moto.

It noted that the Adjudicating Authority had exceeded its jurisdiction in the impugned order while recording the finding. The appellant herein is a related party beyond the scope of the petition filed in the Tribunal. It added,

"The Resolution Professional has not filed any application for the preferential transaction as required under Section 43(1). Hence, apparently while going through the petition and hearing of Ld. Counsels for both the parties, it is very much clear that the Adjudicating Authority on its own has recorded it a related party which is beyond the provisions contend in the Code either explicitly or implicitly."

It referred to the case of Godrej Industries Limited and Anr. Vs. Commissioner of Central Excise Mumbai and Anr. and Reserve Bank of India Vs. Jindal Steel and Power Limited. It further noted that the Resolution Professional, a statutory functionary, has not applied for initiation of proceedings under Section 43 of the Code regarding preferential transactions and the Adjudicating Authority has passed the order. In such a situation, supplementing it with fresh reason through affidavit or otherwise was held not acceptable within the purview of IBC, 2016.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/news-updates/s-44-ibc-nclt-doesnt-have-the-power-to-suo-moto-classify-a-transaction-as-a-preferential-transaction-nclat-199178>

Ministry of Corporate Affairs seeks research on database integration to predict bankruptcy

The Ministry of Corporate Affairs (MCA) is looking to integrate its MCA21 database with databases from other departments and regulators to predict bankruptcy in companies and issue early warnings about corporate insolvencies. The MCA21 is a centralized database repository of corporate operations in India.

In this regard, the MCA has floated a request for proposal (RFP) for conducting research on this subject. As part of the research, the ministry wants to use the MCA21 database "to study financial statements of bankrupt firms and develop a model for prediction of probability of bankruptcy in firms".

"Designing an early warning system considering factors such as increase in loans given to promoter / promoter group companies' vis-à-vis indebtedness of company, regular write-off of loans, evergreening of these loans, mismatches in asset-liability for financial companies, increased pledging of promoter shares," the request for proposal by MCA read.

It also wants research on using AI tools and machine learning for analysis of "topics such as insolvency forecast, financial stress analysis in different sectors".

Apart from that, the ministry also wants research into the usage of artificial intelligence and machine learning for tracking cases filed under Foreign Exchange Management Act (FEMA), and Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) against companies. "Capturing information from various regulatory bodies such as CBDT, RBI banks, CERSAI may be valuable," the request for proposal for the research said.

Source: Money Control

Read Full news at:

<https://www.moneycontrol.com/news/business/ministry-of-corporate-affairs-seeks-research-on-database-integration-to-predict-bankruptcy-8516911.html>

