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Insolvency Professional Agency of Institute of Cost Accountants of India



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Updates on Insolvency and Bankruptcy Code

➤ 'Uncertainty over Reliance Industries deal drove FRL lenders to IBC'

While lenders were preparing for taking Future Retail (FRL) to the bankruptcy court, the protracted litigation and uncertainty on a deal with Reliance Industries nudged them into immediate action under the Insolvency and Bankruptcy Code (IBC).

There was some expectation of Reliance taking initiative for a way out but there was hardly any movement forward. Banks have charge on assets and this was a step (NCLT application) to protect their rights and an effort at a resolution, bankers said. A middle-level bank executive said a resolution, which is approved by a judicial forum like NCLT, is safe for bankers, especially those in public sector banks. It protects them from litigation in the future that they have to fight on their own after retirement.

After a part of the IBC process, Bank of India (BoI), which moved NCLT on behalf of lenders, suggested that the insolvency tribunal appoint Vijay Kumar V. Iyer as interim professional of the company. Besides admission at the tribunal, lenders' work will involve steps like preparing a resolution plan, getting it vetted from rating agencies and inviting interest from resolution applicants, bankers added. The total exposure of banks is estimated around Rs 17,000 crore. Besides BoI, others in the lenders' consortium include Axis Bank, Andhra Bank, State Bank of India (SBI), Corporation Bank, IDBI Bank, Union Bank of India, Bank of Baroda, Central Bank of India and Punjab National Bank.

As for making provisions for FRL, they have been setting aside money as provision since Q1 of FY22 as this is being restructured under Covid regulatory package. Lenders have been treating it as a non-performing asset (NPA) since Q4 of FY22. Provisions are more than regulatory norms and would continue over a period. A senior SBI executive said efforts will be made for a resolution and the prospects of recovery are low. The company, being a retail venture, has hardly any hard assets. Future Group companies will conduct meetings of their respective shareholders and creditors from April 20-23 to seek their nod for the deal.

Source: Business Standard

Read Full news at:

https://www.business-standard.com/article/companies/uncertainty-over-reliance-industries-deal-drove-fri-lenders-to-ibc-122041700931_1.html

➤ Debt recovery through insolvency cases at 31%, while 47% of cases liquidated

The latest data from the Insolvency & Bankruptcy Board of India shows that nearly half of 3,247 insolvency cases have been resolved through liquidation. ICRA Ratings in its analysis stated that this data "reflects a very slow pace of the process. "

Further, ICRA analyzed that of the ₹7.52 lakh crore claims made by the creditors on their borrowers, the lenders could realize only ₹2.5 lakh crore, reflecting the pains of liquidation that lenders were forced to suffer. Although, various NCLTs (National Company Law Tribunals) have admitted 4,946 bankruptcy cases by December 2021 end, yet, more than 10,000 applications are still pending for admission or rejection. So far, the tribunals have closed 3,247 applications while 1,699 are still ongoing.

As per ICRA, about 47% or 1,514 cases of the total 3,247 cases were resolved through liquidations, only 14% or 457 applications were settled through proper resolution plans approved by lenders. Meanwhile, as much as 22% of the total resolutions are still pending review/appeals and 17% of the total admitted cases have been withdrawn so far.

ICRA highlighted in the report that one of the main reasons for the relatively lower realization, the analysis noted, is that as much as 77% of the cases are either under the Board for Industrial and Financial Reconstruction (BIFR) or nonoperational when admitted, indicating that even after five years of implementation, the IBC is still handicapped as the government has not scrapped the BIFRs and DRTs.

Highlighting the delay in the resolution process, ICRA stated that as against the mandated 90 days to close a case after admission, 73% of the cases were completed well after 270 days. While 16% of cases took 90-270 days, only a paltry 11% of cases were closed within the stipulated 90-day period.

Meanwhile, a total of 69 cases took 90-180 days to complete, 75 cases took 180-270 days, 154 applications took 270 days to one year, and 278 were completed between one and two years. The rating agency further highlighted that as many as 569 cases have taken more than two years to complete the process.

Citing the reasons for delayed resolutions, ICRA stated that were largely due to legal entanglements and the highly understaffed/overburdened NCLT benches.

Source: Mint

Read Full news at:

<https://www.livemint.com/news/india/debt-recovery-through-insolvency-cases-at-31-while-47-of-cases-liquidated-details-here-11650042866335.html>

➤ **HDFC moved NCLT against SITI Networks claiming default of Rs 296 crores**

Housing Development Finance Corporation Ltd (HDFC) has moved insolvency tribunal NCLT against the country's leading multi-system operator SITI Networks Ltd for an alleged default of Rs 296 crore. SITI Networks has received a notice issued by the Mumbai bench of the National Company Law Tribunal over the petition filed by HDFCL, the Essel group firm said in a regulatory filing on Thursday.

"The company has received the notice of the said case on April 13, 2022," the Essel group firm said adding it "is compiling information to verify the facts claimed in the said petition filed by HDFC.

HDFC, in the petition filed under Section 7 of the Insolvency and Bankruptcy Code (IBC), has claimed a total default of Rs 296.06 crore, with respect to the financial facility provided by it.

"In the said petition filed under Section 7 of the Insolvency and Bankruptcy Code, 2016 read with Rule 4 of the Insolvency and Bankruptcy Rules, 2016, HDFC has allegedly claimed that the total amount in default with respect to the financial facility is Rs 296,06,48,008/- as on January 31, 2022," it said.

Earlier on March 30, 2022, SITI Networks had informed the exchanges that it had been made aware about a petition filed before the NCLT by HDFC.

SITI Networks, formerly known as SITI Cable Network, is a part of the Essel Group. It provides its cable services in at 580 locations and adjoining areas, reaching out to over 11.3 million digital customers.

Source: *The Economic Times*

Read Full news at:

<https://economictimes.indiatimes.com/industry/banking/finance/banking/hdfc-moved-nclt-against-siti-networks-claiming-default-of-rs-296-cr/articleshow/90865868.cms>

➤ **Resolution Professional Cannot Prosecute Preferential Transactions After Approval of Resolution Plan: NCLT Kolkata**

The National Company Law Tribunal (NCLT) Kolkata bench comprising of Mr. V K Rajasekhar (Member, Judicial) and Balraj Joshi (Member Technical) held that an application for preferential transactions cannot be pursued either by the erstwhile Resolution Professional (RP) or the new Management of the Corporate Debtor after the approval of the Resolution Plan by NCLT. NCLT was hearing the application filed under Section 43 of the Insolvency and Bankruptcy Code by the Resolution Professional of Amrit Fresh Pvt. Ltd (Corporate Debtor/Amrit Fresh).

The Corporate Insolvency Resolution Process (CIRP) of the corporate debtor was initiated by NCLT Kolkata vide its order dated 10.07.2019 and the interim resolution professional was confirmed as Resolution Professional by the Committee of Creditors (COC) on 08.08.2019.

Resolution Professional received the transaction audit report on 26.06.2020 wherein certain preferential transactions were reported by the auditor and accordingly, on 01.08.2020, the Resolution Professional filed the application under Section 43 of the code. An application for approval of resolution plan was also filed by the Resolution Profession on 03.08.2020.

It was submitted by the Resolution Professional that due to non-cooperation of the suspended directors of Amrit Fresh and non-availability of books of accounts of Corporate Debtor, the RP was unable to form an opinion and determination on preferential transactions within 75 days of CIRP.

It was further submitted by RP that he was of firm opinion that Corporate Debtor has given preference in some financial transactions however, he only received the transactional audit report on 26.06.2020 due to Covid 19 lockdown and therefore was unable to file the application within the stipulated timeframe.

It was contended on behalf of the respondents that the present application is an abuse of process of law as the resolution plan of the corporate debtor has already been approved by NCLT on 24.12.2020 and the applicant ceased to be a Resolution Professional and therefore, the present application is not maintainable. It was further contended that the purpose of avoidance application is to see that the orders passed if any would endure to the Corporate Debtor prior to the approval of the resolution plan by COC and NCLT.

NCLT held that it is incumbent upon the Resolution Professional to adhere to Section 43 read with Regulation 35A of the IBBI (Insolvency Resolution Process for the Corporate Debtor Persons) Regulations, 2016 which mandates that the RP has to form an opinion whether the Corporate Debtor has been subjected to preferential transaction within or on seventy fifth (75th) day of the CIRP commencement date. Thereafter, the RP has to make a determination and file an application before one hundred and thirty fifth (135th) day.

NCLT observed that the RP did not comply with the stipulated timeframe, but that delay can be condoned in view of the COVID-19 lockdown.

NCLT further relied on the case of Anuj Jain versus Axis Bank, (2020) 8 SCC 401 wherein Supreme Court laid down the detailed approach that a RP is expected to take in matter of avoidance transactions.

However, NCLT further noted that the resolution plan of the Amrit Fresh was approved on 24.12.2020 and the company has been handed over to new management and the office of RP become *functus officio*. NCLT further relied on the case of Venus Recruiters Private Limited versus Union of India, 2020 SCC OnLine Del 1479 wherein Delhi High Court held that RP cannot wear the hat of a former RP.

In the light of the above, NCLT dismissed the application filed by the Resolution Professional and held that

"35...Hence, the application for preferential transactions cannot be pursued by the erstwhile Resolution Professional nor can the new Management of the Corporate Debtor pursue the application,"

Source: Live Law

Read Full news at:

<https://www.livelaw.in/ibc-cases/nclt-kolkata-corporate-insolvency-resolution-process-cirp-resolution-professional-196556>

➤ Individual Insolvency For The Poor On The Back Burner, Focus Now On Toxic Asset Resolution

The government has put its plan to implement the so-called “fresh-start process” for indebted poor people under the Insolvency and Bankruptcy Code (IBC) on the back burner, given the complexity of operationalizing such a framework at this juncture, sources told FE.

Instead, the government will first focus on further bolstering the IBC architecture to yield quick resolution of toxic assets while preventing unscrupulous elements from gaming the system, and launching the cross border corporate insolvency framework, said the sources.

The IBC already has provisions for the “fresh-start process” for individual insolvency. It provides for debt waiver up to Rs 35,000 to the poor who don’t own houses, earn up to Rs 60,000 a year and have assets up to Rs 20,000 each. However, since it marks a drastic change in the way insolvency resolution typically takes place (through adjudicating process), the IBC needs to be amended first to enable the operationalization of the “fresh-start” scheme.

“The idea is to further strengthen the extant insolvency ecosystem first, plug any loopholes and steady the corporate insolvency resolution process (CIRP). The ‘fresh-start process’ will come after that,” said one of the sources.

Moreover, the government apprehends that implementing the “fresh-start” scheme is fraught with risks of inviting a litany of legal tussles, as it could prompt lenders — especially micro-finance institutions and those from the informal sector — to challenge the law, given that the government has no plan to compensate them for write-offs. As such, even the constitutional validity of the IBC itself was challenged earlier and the CIRP in large cases has been inordinately delayed due to litigations. “So, it makes sense to steady the IBC ship first and launch a new chapter after that,” said another source.

As many as 73% of companies, that were undergoing resolution until December 2021, had exceeded the 270- day limit, resulting in an erosion of stressed asset value. In fact, the recovery by financial creditors crashed to a record quarterly low of 13.4% of the admitted claims between October and December 2021.

The IBC’s individual insolvency framework recognizes two broad categories of debtors — the poor (who meet the stipulated criteria of income, asset and debt size); and those who have offered personal guarantee to stressed companies, proprietary/partnership firms (not registered under the Companies Act) and everybody else who is not covered under the first category. So far, only individual insolvency proceedings for personal guarantors to corporate debtors have been operationalized.

The “fresh-start” process was envisaged by a panel set up by the Insolvency and Bankruptcy Board of India (IBBI) under Justice Srikrishna. It was later endorsed by the Insolvency Law Committee (ILC), headed by then corporate affairs secretary Injeti Srinivas, which submitted its report with the government in February 2020. Sources said even a draft Ordinance to operationalize the scheme was prepared but it was never adopted in the wake of the Covid outbreak.

Interestingly, under the “fresh-start process”, only the debtors can apply for the discharge of their debt. Unlike in corporate insolvency, the adjudicator in individual insolvency process is the debt recovery tribunal (DRT), and not the National Company Law Tribunal (NCLT). The minimum default amount to trigger individual insolvency is set at just Rs 1,000 (In case of corporate insolvency, it’s Rs 1 crore).

However, given the tiny size of loans and limited ability of the poor to go through a rigorous insolvency process overseen by the DRT, the government was considering a proposal to facilitate such a waiver via out of-court settlements. Also, the DRTs — already burdened with corporate cases under the SARFAESI Act, etc. — don't have adequate capacity to adjudicate on a potentially large number of such cases. So, the government was weighing the option of facilitating such a scheme through an administrative process, with the involvement of low-cost professionals (instead of insolvency resolution professionals) and institutions at the panchayat level, under the overall supervision of the IBBI.

Source: Newsazi

Read Full news at:

<https://newsazi.com/individual-insolvency-for-the-poor-on-the-back-burner-focus-now-on-toxic-asset-resolution/>



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