



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



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IBC AU-COURANT

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"I have learned not to allow rejection to move me"

Updates on Insolvency and Bankruptcy Code

IndusInd Bank invokes 14.6 million pledged shares of Birla Tyres

Private sector lender IndusInd Bank has invoked around 14.6 million pledged shares of BK Birla group company Birla Tyres, amounting to 10.21% of the total equity share capital of the insolvent tyre maker.

Notably, earlier this month, the Kolkata bench of the National Company Law Tribunal (NCLT) ordered initiation of the insolvency proceedings against Birla Tyres, admitting an insolvency petition of SRF Limited, an operational creditor of the tyre maker, for default of making the payment of over Rs 15 crore.

The application filed by SRF, under Section 9 of the Insolvency and Bankruptcy Code (IBC), for initiating the Corporate Insolvency Resolution Process (CIRP) against Birla Tyres, the corporate debtor, was admitted, said the NCLT Kolkata bench in its order dated May 5.

In a stock exchange filing on Tuesday, Birla Tyres said IndusInd Bank invoked around 14.6 million pledged shares of the company on May 10. And, the reason for encumbrance was collateral for term loans of Rs 71.11 crore availed of by Cygnet Industries, a wholly-owned subsidiary of BK Birla flagship Kesoram Industries.

Promoters held 50.91% stake in Birla Tyres at the end of the third quarter last fiscal. For the last fiscal, the company's total income stood at Rs 22.44 crore, while net loss was at Rs 655.67 crore.

Significantly, Deloitte Haskins & Sells, statutory auditors of the company, tendered resignation on May 11, 2022.

Source: Financial Express

Read Full news at:

<https://www.financialexpress.com/industry/indusind-bank-invokes-14-6-million-pledged-shares-of-birla-tyres/2528672/>

NOIDA not financial creditor but operational creditor under IBC: SC

The Supreme Court on Tuesday held that the New Okhla Industrial Development Authority (NOIDA) is not a financial creditor but an operational creditor under the Insolvency and Bankruptcy Code (IBC).

The apex court delivered its verdict on appeals filed by NOIDA in which a common question arose as to whether the authority is entitled to be treated as a financial creditor within the meaning of the IBC.

"We would think that, having regard to the fact that both the NCLT and NCLAT have proceeded on the basis that the appellant (NOIDA) is an operational creditor, we need not stretch the exploration further and pronounce on the questions, which may otherwise arise," a bench of justices K M Joseph and Hrishikesh Roy said in its 186-page verdict.

"We would proceed on the basis that, while the appellant is not a financial creditor, it would constitute an operational creditor," it said, while dismissing the appeals.

NOIDA had filed appeals, including the one against an order of the National Company Law Appellate Tribunal (NCLAT) which had affirmed the view taken by the NCLT that there was no financial lease in terms of the Indian Accounting Standards and there was no financial debt.

The bench noted that lease in the matter was entered into in July 2010 and the appellant is the lessor described as the Authority under section 3 of the Uttar Pradesh Industrial Area Development Act, 1976 (UPIAD Act).

It further noted that the lease deed recites that the leasehold property forms part of the land acquired under the Land Acquisition Act and developed by the lessor for the purposes of setting up of an 'urban and industrial township'.

In its judgement, the bench dealt with several relevant provisions of the IBC, including section 5(8) which defines 'financial debt'.

It noted that while section 5(7) defines 'financial creditor' as person to whom a financial debt is due besides an assignee or transferee from such person, section 5 (20) defines the word 'operational creditor' which means a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred.

"We are of the view that, in the lease in question, there has been no disbursement of any debt (loan) or any sums by the appellant to the lessee. The appellant would, therefore, not be a financial creditor within the ambit of section 5(8)," the bench noted in its verdict.

It said the IBC, which came into being in 2016, continues to be a "fertile ground to spawn litigation".

The bench said the question raised before it is whether the appellant would be a financial creditor and entitled to be so treated in the Corporate Insolvency Resolution Process (CIRP) commenced against the corporate debtor under the IBC.

It noted that there are undoubtedly certain advantages, which an operational creditor enjoys over the other creditors.

"The upshot of the above discussion is that the appeals must fail. The appeals are, accordingly, dismissed," it said.

Source: Business Standard

Read Full news at:

https://www.business-standard.com/article/current-affairs/noida-not-financial-creditor-but-operational-creditor-under-ibc-sc-122051701510_1.html

Over 15,900 companies incorporated in April: Official data

As many as 15,905 companies were registered in the country in April and a total of 14,51,401 companies were active at the end of last month, according to official data. Latest data from the corporate affairs ministry showed that a total of 23,33,958 companies were registered under the companies law as on April 30, 2022.

Out of them, 8,29,269 companies were closed and 7,021 were under liquidation. Further, 43,851 companies were in the process of being struck off from official records and 2,416 had obtained 'dormant status'.

There were 14,51,401 active companies at the end of April, including 2,53,131 companies incorporated within the preceding 18 months, as per the data provided in the ministry's latest monthly newsletter.

"A total of 15,905 companies, including 851 One Person Companies (OPCs) were registered under the Companies Act, 2013 during April 2022 with the authorised capital of Rs 2,316.52 crore," it noted.

The corporate affairs ministry is implementing the companies law. In his message in the newsletter, Corporate Affairs Secretary Rajesh Verma has delved into various aspects of the Insolvency and Bankruptcy Code (IBC).

He noted that presently there is no standard framework to track outcomes of insolvency and bankruptcy regimes in various jurisdictions, other than the World Bank Doing Business Report, which too was discontinued recently.

"Therefore, it is crucial to study the impact of the insolvency framework created by the IBC and conduct a SWOT analysis, i.e. investigate its strengths, weaknesses, opportunities and threats on a regular basis," he said.

Source: The Economic Times

Read Full news at:

<https://economictimes.indiatimes.com/news/economy/indicators/over-15900-companies-incorporated-in-april-official-data/articleshow/91626130.cms>



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