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Latest updates On Insolvency & Bankruptcy

Tuesday, 19th July, 2022

"We have had more trouble with ourselves than with any other man"

➤ **NCLAT upholds late filing of homebuyer claims**

Timely resolution of the corporate debtor has been one of the main pillars of the Insolvency and Bankruptcy Code, 2016 (IBC).

The rules and the IBC itself stipulate various timelines so that the value of the assets of the corporate debtor does not depreciate and has minimum impact on the economy. It has been the endeavour of the tribunals that the timelines under the IBC and the allied regulations and rules are followed to the maximum possible extent.

The Interim Resolution Professional (IRP) has to decide a cut-off date for submission of the claims by the creditors after the announcement. It has also been held that any claim that is brought after the resolution plan is approved by the NCLT stands extinguished as held by the Supreme Court in the case of Ghanashyam Mishra and Sons Private Limited vs. Edelweiss Asset Reconstruction Company Limited and numerous other cases. This is because it is not feasible to disturb the decided share of the creditors, and the time and resources that have already been invested in arriving at the resolution plan.

Interestingly, in the case of Puneet Kaur vs. K V Developers Private Limited, the National Company Law Appellate Tribunal (NCLAT) held that even when the claim is belatedly filed by a home buyer under Form-A and such record appears in the book of the corporate debtor, it should still be accepted by the Resolution Professional. In this case, the home buyers had filed their claim eight months after the cut-off date decided by the resolution professional.

The NCLAT considered that all the homebuyers may not necessarily reside in the area where the corporate debtor has a registered office and since the advertisement inviting claims is usually done in such an area, the 14-day time limit under Form-A was not adequate for the homebuyers to file the claim.

This claim was not even filed within the maximum period (90 days) as prescribed by Section 12 of the IBC. The Tribunal also noted the hardship that the homebuyers

have to go through if they don't get the allotment in time but held that the claim cannot be included as the law is tightly worded and claims cannot be accepted after the cut-off date especially when the resolution plan has been approved by the Committee of Creditors (CoC).

However, the NCLAT held that even though the resolution professional is not obliged to include the name of the home buyers who did not file the claim in time, such claims can still be collated as derived from the records of the corporate debtor.

Regulation 36(2) obliges the resolution professional to include the assets and liabilities of the corporate debtor in the information memorandum.

When the payment is received by the corporate debtor from an allottee, it becomes obliged to hand over the possession of the house and the allied liabilities. The NCLAT held that "unless all liabilities of the Corporate Debtor are not known or included in the Information Memorandum, the occasion to complete the CIRP shall not arise." This information has to be included in the information memorandum.

Another factor taken into consideration was that 251 allottees could not file the claim and so, ignoring such a fact cannot lead to a fair resolution plan. The details were to be filed by the resolution professional before the Successful Resolution Applicant (SRA) who would file the addendum with the resolution plan for consideration before the CoC.

NCLAT also emphatically held that aggrieved homebuyers were not abusing the process by filing the said appeal.

It can be seen from the judgement that NCLAT does not usually interfere in the resolution plan which has been made with the approval of CoC exercising their commercial wisdom.

However, it was influenced by the principles of justness and fairness of the same toward the homebuyers. This begs the conclusion that the NCLAT gives special treatment to the home buyers because this exception is not made for any other class of creditors.

The judgement yet again tries to strengthen the position of the home buyers as financial creditors. This is important because home buyers have not been able to enforce their claims historically and are often involuntary creditors. The resolution plan of course has to be approved by the CoC and then the NCLT.

Source: *The New Indian Express*

Read Full news at: <https://www.newindianexpress.com/opinions/columns/2022/jul/19/nclat-upholds-late-filing-of-homebuyer-claims-2477991.html>

➤ **Govt, RBI Measures Help Banks Recover Bad Loans Worth Over Rs 8.6 Lakh Crore In Last 8 Fiscal**

Concrete steps taken by the government and RBI helped banks recover bad loans worth over Rs 8.6 lakh crore in the last eight financial years, the government informed Parliament on Monday.

Minister of State for Finance Bhagwat Karad in a written reply to the Lok Sabha said the occurrence of non-performing assets (NPAs) is normal, although an undesirable, corollary to the business of banking.

Several factors -- including prevailing macroeconomic conditions, sectoral issues, global business environment, delayed recognition of stress by banks, aggressive lending during upturns, improper risk pricing and poor credit underwriting -- are attributed to NPA build-up, he said.

"Government and RBI (Reserve Bank of India) regularly issue guidelines and have taken several initiatives aimed at resolution of long-standing stressed assets on the books of banks as well as timely identification and recognition of stress immediately upon default and take corrective action for mitigation of the same," Karad said.

These measures complement the statutory provisions already available to lenders for recovery and resolution, including, the Recovery of Debts and Bankruptcy Act, 1993, Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 and Insolvency & Bankruptcy Code, 2016 (IBC), the minister said.

"As a result of comprehensive steps taken by the government and RBI to check the cases of NPAs and bring them down, scheduled commercial banks (SCBs) recovered Rs 8,60,369 crore over the last eight financial years (provisional data) from NPAs," Karad said.

He said a change in credit culture has been effected with the IBC and under it, resolution plans have been approved in 480 cases up to March 2022, with Rs 2.34 lakh crore amount realisable by financial creditors.

Besides, the Central Repository of Information on Large Credits (CRILC) has been set up by the RBI to collect, store and disseminate credit data to lenders, and banks are required to submit reports on a weekly basis to CRILC in case of any default by borrowing entities with exposure of Rs 5 crore and above, he added.

Among others, willful defaulters and companies with wilful defaulters as promoters /directors have been debarred from accessing capital markets to raise funds and the jurisdiction of the Debt Recovery Tribunal (DRTs) has been increased from Rs 10 lakh to Rs 20 lakh to enable the DRTs to focus on high-value cases, resulting in higher recovery for the banks and financial institutions.

Six new DRTs have also been established to expedite recovery.

Karad said all credit institutions have been mandated by the RBI to become members of all credit information companies (CICs) and submit credit information, including

historical data, pertaining to borrowers to CICs, and the data to be updated regularly and to be shared with other credit institutions.

Source: Outlook

Read Full news at: <https://www.outlookindia.com/business/govt-rbi-measures-help-banks-recover-bad-loans-worth-over-rs-8-6-lakh-crore-in-last-8-fiscal-news-210043>



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