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IBC AU-COURANT

Insolvency Professional Agency of Institute of Cost Accountants of India



"If there is no struggle, there is no progress"

Updates on Insolvency and Bankruptcy Code

➤ **Supertech-Union Bank case: NCLAT gives Supertech another opportunity to settle dispute**

The National Company Law Appellate Tribunal (NCLAT) on Tuesday gave Supertech one more opportunity to settle its dispute with the Union Bank of India that dragged the company to the insolvency court even as the lender rejected the realty firm's latest one-time settlement (OTS) offer.

Union Bank of India took Supertech to the insolvency court after the real estate developer failed to pay its debt since July 2019. The amount of default, as of January 2021, stood at Rs 432 crore.

The National Company Law Tribunal (NCLT) had on March 25 approved Union Bank's application for initiation of the corporate insolvency resolution process (CIRP) against Supertech. Challenging the order, one of the promoters of Supertech moved the NCLAT.

On April 12, paying heed to Supertech's request, the NCLAT gave the real estate firm a week to "enable the company to approach the bank again". When the case came up for hearing on Tuesday, Supertech's advocate said the bank has yet again turned down its one-time settlement (OTS) offer that promised to pay up the entire bad loan (NPA).

Alok Kumar, advocate on behalf of the Union Bank of India, said the offer has been rejected on various grounds as it did not mention paying any upfront amount and the tenure of repayment

was also rather lengthy at 24 months. Also, the company did not mention any “concrete source of funds” for its promised repayment as per the latest OTS, the fifth in all so far.

On top of it, he said, the developer had failed to keep a similar OTS promise made in 2019. Senior advocate Arun Kathpalia, appearing on behalf of Supertech, said the company would offer some upfront payment to the bank in its next OTS offer. The company, he said, wants to “sit with the bank again with the idea of settling the matter.” He said while Union Bank of India is a lender to one among 28 ongoing projects by the company, however, the insolvency process against that one company will have a bearing on all other projects.

Kathpalia requested the NCLAT bench not to tinker with the interim order of April 12, under which the appellate tribunal stayed the formation of the committee of creditors (CoC) till further hearing, which the appellate tribunal obliged. The matter has been scheduled for further hearing on May 2.

Between 2013 and 2016, Supertech availed two credit facilities, totalling Rs 250 crore, from Union Bank to part-finance a group housing project, Eco Village -II, in Greater Noida. Supertech failed to make timely repayment and subsequently, the Union Bank of India declared it a non-performing asset (NPA). Notice was also sent under the SARFAESI Act in April 2019.

Source: Financial Express

Read Full news at:

<https://www.financialexpress.com/industry/supertech-union-bank-case-nclat-gives-supertech-another-opportunity-to-settle-dispute/2496993/>

➤ **RERA Act has improved India's real estate sector, but challenges persist**

Delays in residential real estate projects have historically been one of the key challenges faced by the sector. Such delays result in erosion of customer confidence and financial losses for customers and investors, while also impacting the perception of the industry in the eyes of various stakeholders.

The delays can be on account of varying reasons such as lack of timely approvals, inability to mobilize required funds (debt or equity), poor sales response resulting in inadequate customer advances, or, in some cases, mismanagement and diversion of funds.

While such issues continue to impact the sector, particularly in the wake of the COVID-19 pandemic which has disrupted construction activities to some extent in FY2021, there is also a marked improvement in the execution track record since the introduction of the Real Estate Regulation and Development Act (RERA) in 2016. The consequent curtailment of supply from smaller and less reputed developers has also played a role in streamlining the execution cycles.

As per the data available from Prop Equity (<https://www.propequity.in/>), residential real estate projects launched after the introduction of RERA are witnessing an average delay ranging from 10 to 18 months across the top cities. While such delays are significant, they represent an improvement over the delays seen in projects launched prior to the RERA implementation, which ranges from 20 to 48 months across the various cities.

The RERA Act requires projects to be registered with the state authority before any sales activity. Apart from penalties which can be imposed for delays in meeting the committed completion date, the Act has also introduced checks and balances on utilisation of the customer

advances and mandated construction-linked payment schedule in sale agreements. Such oversight has had a favorable impact on the developers' adherence to committed timelines.

In addition, the realignment of market structure post RERA Act and other regulatory developments have resulted in significant curtailment of supply from smaller developers who were not able to meet with the increased compliances. With the consumer preference gravitating towards larger and organized developers, there has been improvement in the average execution cycles.

Notwithstanding the improvement seen after the implementation of the RERA Act, challenges persist in the sector. There are significant number of legacy projects which remain stuck on the execution front due to the financial stress faced by the developers. Despite various changes to the Insolvency and Bankruptcy Code (IBC) framework to specifically address the concerns of the real estate sector, the progress on the resolution of some of these projects has been slow.

The SWAMIH Investment Fund, which was specifically created for last-mile funding support for completion of construction of affordable and mid-income housing projects, targets the completion of at least 10,000 homes per year for the next 3-4 years. In comparison, the total amount of home inventory installed projects is estimated to be over 450,000 units. Moreover, the fund is intended for projects which have positive net worth. Hence, the stuck projects which are not financially viable are not eligible under this resolution, and may involve significant losses for various stakeholders.

There are also concerns regarding the lax implementation of the RERA rules in certain states. This is evident from various media reports on consumer groups that are asking for stricter implementation of the RERA rules by the state authorities and enforcement of the penalties and consumer rights available under the Act. Appropriate monitoring and enforcement of the rules by the state authorities will be critical to ensure that the gains made by the sector after the implementation of the Act are sustained and further improved.

Source: Money Control

Read Full news at:

<https://www.moneycontrol.com/news/opinion/rera-act-has-improved-india-real-estate-sector-but-challenges-persist-8379721.html>

➤ [Salary-wages during CIRP are costs for asset distribution under Section 53](#)

[IBC: Supreme Court](#)

The Supreme Court on Tuesday held that salary wages of employees during the Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code (IBC) are to be treated as costs for asset distribution purposes under the IBC [Sunil Kumar Jain & Ors vs Sundaresh Bhatt & ors].

A Bench of Justices MR Shah and Aniruddha Bose stated that under Sections 53 and 5 of the IBC, such pay is to be given precedence over other debts provided the employees have actually worked and the corporate debtor was being run as a going concern by the Resolution Professional. The matter involved 273 employees of ABG Shipyard Ltd while the respondent was the liquidator of the firm. The question of law as framed by the Supreme Court in this case, at the stage of issuing notice, was whether:

Dues payable to employees even for the period when they were working under the CIRP are to be treated as costs of running the business by the Interim Resolution Professional as payable

in terms of Section 5(13) of the IBC, or They are to be treated as wages and any unpaid dues owed to employees are payable under Section 53 of the IBC.

The top court held as per Section 5(13) of the IB Code, 'insolvency resolution process costs' will include any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern.

For the claims of workmen/employees towards the wages/salaries payable during CIRP, first of all it has to be established and proved that during CIRP, the corporate debtor was a going concern and that the concerned workmen/employees actually worked while the corporate debtor was a going concern during the CIRP. The bench clarified that wages/ salaries of only those workmen/employees who actually worked during CIRP when the corporate debtor can be included in the CIRP costs and they shall have the first priority over all other dues as per Section 53(1)(a) of IBC.

"The wages and salaries of all other workmen/employees of the corporate debtor during the CIRP who actually have not worked and/or performed their duties when the Corporate Debtor was a going concern, shall not be included automatically in the CIRP costs,"the Court made it clear.

The bench further noted that Section 20 of the IBC mandates that the interim resolution professional/resolution professional is to manage the operations of the corporate debtor as a going concern and in case during the CIRP the corporate debtor was a going concern, the wages/salaries of such workmen/employees who actually worked, shall be included in the CIRP costs.

The Court also stated that if it is found that the corporate debtor was not a going concern during the CIRP despite best efforts by the resolution professional, it cannot be presumed that the corporate debtor was a going concern during the CIRP period.

Advocates Shobha Ramamoorthy and Shikhil Suri appeared for the appellants while Senior Advocate Nakul Dewan appeared for the liquidator of corporate debtor.

Source: Bar and Bench

Read Full news at:

<https://www.barandbench.com/news/salary-wages-during-cirp-are-costs-for-asset-distribution-under-section-53-ibc-supreme-court>

