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Thursday, 21st July, 2022

"Beauty is hidden in everything, just learn how to observe"

➤ **NCLT Not A Debt Collection Forum ; Operational Creditor's Application To Initiate CIRP Must Be Dismissed If The Debt Is Disputed: Supreme Court**

The Supreme Court observed that application of the Operational Creditor for initiation of Corporate Insolvency Resolution Process (CIRP) must be dismissed, if the debt is disputed.

It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor, the bench of Justices Indira Banerjee and V. Ramasubramanian observed.

The bench also remarked that the adjudicating authority under IBC i.e. NCLT is not a 'debt collection forum' and the objective of IBC is not to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor.

In this case, National Company Law Tribunal (NCLT), Kolkata, admitted an application filed by the appellant under Section 9 of the Insolvency and Bankruptcy Code (IBC) as Operational Creditor [M/S S.S. Engineers], for initiation of CIRP against HPCL Biofuels Ltd. (HBL), a wholly owned subsidiary of Hindustan Petroleum Corporation Ltd. The National Company Law Appellate Tribunal (NCLAT) allowed the appeal filed by the HBL and set aside the NCLT order.

In appeal, the Apex Court bench, referring to the communications between the parties and also other records, noted that there were pre-existing disputes between the parties

"In our considered view, the Adjudicating Authority (NCLT) committed a grave error of law by admitting the application of the Operational Creditor, even though there was a pre-existing dispute as noted by the Adjudicating Authority. . When examining an application under Section 9 of the IBC, the Adjudicating Authority would have to examine (i) whether there was an operational debt exceeding Rupees 1,00,000/- (Rupees One Lac); (ii) whether the evidence furnished with the application showed that debt exceeding Rupees one lac was due and payable and had not till then been paid; and (ii) whether there was existence of any dispute between the parties or the

record of pendency of a suit or arbitration proceedings filed before the receipt of demand notice in relation to such dispute. If any one of the aforesaid conditions was not fulfilled, the application of the Operational Creditor would have to be rejected", the bench observed.

While dismissing the appeal, the bench made the following observations:

NCLT Not A Debt Collection Forum The NCLT, exercising powers under Section 7 or Section 9 of IBC, is not a debt collection forum. The IBC tackles and/or deals with insolvency and bankruptcy. It is not the object of the IBC that CIRP should be initiated to penalize solvent companies for non-payment of disputed dues claimed by an operational creditor

If the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed There are noticeable differences in the IBC between the procedure of initiation of CIRP by a financial creditor and initiation of CIRP by an operational creditor. On a reading of Sections 8 and 9 of the IBC, it is patently clear that an Operational Creditor can only trigger the CIRP process, when there is an undisputed debt and a default in payment thereof. If the claim of an operational creditor is undisputed and the operational debt remains unpaid, CIRP must commence, for IBC does not countenance dishonesty or deliberate failure to repay the dues of an Operational Creditor. However, if the debt is disputed, the application of the Operational Creditor for initiation of CIRP must be dismissed.

Source: Live Law

Read Full news at: <https://www.livelaw.in/top-stories/supreme-court-nclt-ibc-disputed-debt-cirp-operational-creditor-ss-engineers-vs-hindustan-petroleum-corporation-ltd-2022-livelaw-sc-617-204347>

➤ **NCLT admits Bank of India's insolvency petition against Future Retail**

The Mumbai Bench of the National Company Law Tribunal (NCLT) on Wednesday admitted Bank of India's petition under Section 7 of the [Insolvency and Bankruptcy Code](#) (IBC) to start proceedings against [Future Retail](#) and appointed an interim resolution professional (IRP) in the matter. It also dismissed the intervention application of e-commerce giant Amazon, which was opposed to Future's deal with Reliance Retail.

In the order, the Bench, presided over by Justice Pradeep Narhari Deshmukh and Shyam Babu Gautam, said, "(The) Bench is of the view that the existence of debt and default has been proved ... we hereby appoint Vijay Kumar V Iyer as an IRP, with a direction to the financial creditor to pay remuneration to the IRP and his expenses until the constitution of the CoC (committee of creditors)." Dismissing Amazon's petition, the Bench said, "...the applicant is not even a stakeholder in respect of the corporate debtor ... and has no locus standi to question initiation of proceedings ..."

[Bank of India](#) had moved the insolvency petition against [Future Retail](#) on April 14 for its dues not being paid.

[Amazon](#) had subsequently moved the tribunal, alleging that the lenders had colluded with [Future Retail](#) to deny it its rights in the case. [Amazon](#) had even written to the Reserve [Bank of India](#) with the same allegation. Future Group owes its 26 lenders over Rs 15,000 crore.

The Group in 2020 had decided to go for a jumble sale of its unlisted and listed [companies](#) to Reliance Retail for about Rs 25,000 crore to repay its ballooning debt. However, Amazon, which had in 2019 acquired 49 per cent in Future Coupons, a company that owns 10 per cent in Future Retail, accused Future Group of breach of contract.

Recently, in a regulatory filing, [Reliance Industries](#) said the deal with Future Retail would not go through because the company's secured creditors had voted against it. Reliance Retail may now look at buying the assets of Future Group, depending on what is up for sale, said industry sources.

In February, the Mukesh Ambani-led retail major had taken over 947 stores belonging to Future Retail, which it had sub-leased to it. Retail shareholders' representative Vijay Kulkarni said: "This decision will give a free hand to the interim resolution professional to assess the nature of transactions and accounts and evaluate the decisions taken by the company's board."

Ashish Pyasi, associate partner, Dhir & Dhir Associates, said: "Amazon can challenge this before the appellate tribunal."

Generally, a petition moved under Section 7 of the IBC should be admitted by the adjudicating authority within 14 days. However, the tribunal took more than three months to do it due to the intervention application by Amazon.

Ashish Kumar Singh, managing partner of law firm Capstone Legal, said: "By virtue of this order, there is a prohibition on the institution of suits or proceedings and all pending proceedings have also been stayed."

Salman Waris, managing partner at technology law firm TechLegis Advocates & Solicitors, said: "It's a strategic victory for Reliance and Future Group and a win for the lenders."

K Narasimhan, advocate, Madras High Court, said: "It is clear the lender will get a haircut and retail investors lose everything. What is surprising is that no one bothered to ask the lenders why they backed out of the Future Retail deal when Reliance had mentioned it would take over 100 per cent debt."

Shivek Sharma, associate, law firm Pioneer Legal, said: "The order will trigger a moratorium under Section 14 of the IBC and Future Retail will be prohibited from transferring or disposing of its assets. Moreover, any institution of suits or continuation of proceedings against Future Retail will be prohibited till the completion of the corporate insolvency resolution plan."

Source: Business Standard

Read Full news at: https://www.business-standard.com/article/companies/nclt-admits-bank-of-india-s-insolvency-petition-against-future-retail-122072000797_1.html

➤ **Fined, resolution professional moves HC**

A resolution professional, Sunil Kumar Agarwal, has approached the Gujarat high court against an order by the Insolvency and Bankruptcy Board of India (IBBI) directing him to pay a penalty and undertake a fresh preregistration education course to qualify for future assignments. Justice A S Supehia on Wednesday stayed the IBBI disciplinary committee's order mandating Agarwal to pursue a fresh course.

He was ordered to pay the amount as penalty and deposit it with the Consolidated Fund of India. The HC granted stay till further hearing on September 9 after Agarwal's advocates submitted that the IBBI's order has practically left him without work.

IBBI passed the punitive order on July 5 based on passing remarks made against him by the National Company Law Tribunal (NCLT), Ahmedabad bench in August 2020. It was hearing a case initiated following an application filed by Nuvoco Vistas Corporation Ltd for corporate insolvency against one Shilpraj Developers Pvt Ltd in 2019. Agarwal was appointed as the resolution professional by the NCLT. The tribunal found Agarwal's work in the insolvency proceedings in contravention of the Insolvency and Bankruptcy Code (IBC).

Agarwal approached the National Company Law Appellate Tribunal (NCLAT) to expunge the remarks against him, but the NCLAT refused to remove them with the observation that it did not cast any stigma on his conduct.

However, on the basis of NCLT's observations, IBBI's disciplinary committee issued a show-cause notice to Agarwal. It later passed an order earlier this month, holding that he has erred on all counts, be it related to filing avoidance application, appointment of valuers or publication announcements.

Agarwal submitted before the HC that he has an experience of 34 years in the corporate world and has held senior positions in India and abroad.

Source: The Times Of India

Read Full news at: <https://timesofindia.indiatimes.com/city/ahmedabad/fined-resolution-professional-moves-hc/articleshow/93014663.cms>

