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Updates on Insolvency and Bankruptcy Code

GAIL India moves NCLT to recover Rs 9,942 crore Uttam Galva dues

A legal battle is brewing between Uttam Galva, the bankrupt steel firm, and GAIL India (GAIL), with the gas distribution company moving the National Company Law Tribunal for rejection of its dues worth Rs 9,942 crore by the company's debt resolution professional.

GAIL moved the NCLT Mumbai Bench after the resolution professional accepted claims of only Rs 167 crore of its entire dues. According to court filings, GAIL submitted a claim as an operational creditor for Rs 9,942 crore under various gas sale agreements for Uttam Galva's plants located in Raigad.

Source: Business Standard

Read Full news at:

https://www.business-standard.com/article/companies/gail-india-moves-nclt-to-recover-rs-9-942-crore-uttam-galva-dues-122052400059_1.html

Non-payment of TDS not a ground for initiation of insolvency process: NCLAT

The National Company Law Appellate Tribunal (NCLAT) has held that dues on account of non-payment of TDS can not be a ground to initiate insolvency proceedings against any company.

Setting aside an order of the Kolkata bench of NCLT, the appellate tribunal said "the process of Insolvency & Bankruptcy Code (IBC) cannot be utilised" for recovery of TDS dues by an operational creditor of the company.

"The consequences of non-payment of TDS are provided under Income Tax Act, 1961, and income tax authorities have ample powers to take appropriate action," said the NCLAT bench headed by Chairperson Justice Ashok Bhushan.

The bench said the National Company Law Tribunal (NCLT) has committed a "serious error" while directing to initiate insolvency proceedings over a section 9 application filed by an operational creditor under the IBC after admitting that non-payment of the TDS (Tax Deducted at Source) amounts as default "Regarding non-payment of TDS, we are of the view that it is not for us to consider whether TDS amount has been paid or not ... We, thus, are of the view that the Adjudicating Authority (NCLT) has committed a serious error in admitting the Section 9 Application on the ground of non-payment of two TDS amounts," the NCLAT said.

The NCLT order is "unsustainable" and deserves to be set aside, the appellate tribunal said.

The NCLT had directed to initiate insolvency proceedings against Team Taurus Realty & Infrastructure over non-payment of two TDS amounts of Rs 66,884 and Rs 1.10 lakh.

The NCLAT also put a fine of Rs one lakh on the operational creditor for misuse of the process of the IBC, directing it to pay to the company against which the insolvency was directed to initiate.

"We are satisfied that operational creditor has misused the process of I&B Code. We, thus, allow this appeal with a cost of Rs one lakh only on the operational creditor, which shall be paid within a period of one month to the Corporate Debtor," the NCLAT said.

Its order came over a plea filed by Amitabh Roy, suspended director of the corporate debtor, Team Taurus Realty & Infrastructure.

He had challenged the order passed by the NCLT on February 25, 2022, admitting a section 9 plea by its operational creditor Master Development Management (India).

Section 9 of IBC gives power to the operational creditors of a company to initiate a corporate insolvency resolution process in case of a default.

Master Development Management had filed a plea at the NCLT in December 2018, claiming a due of Rs 9.48 lakh. Later, the parties entered into a settlement in October 2019.

The aforesaid settlement amounts were paid by the corporate debtor, however, the operational creditor had again approached the NCLT in January 2022, seeking revival of the petition.

A TDS amount of Rs 66,884 and Rs 1,10,820 were not paid to the Income-tax authorities.

After this, the NCLT proceeded to hear the matter and admitted the application under Section 9 on February 25, 2022.

Source: Business Standard

Read Full news at:

https://www.business-standard.com/article/companies/non-payment-of-tds-not-a-ground-for-initiation-of-insolvency-process-nclat-122052300892_1.html

Struggling with debt? Here is how individual insolvency works in India

The Reserve Bank of India (RBI) in the part of its report on 'Sectoral Deployment of Bank Credit' says the personal loans segment grew 12.4% in March 2022 as against 10.7% in March 2021. RBI's 'Bank Lending Survey' for the fourth quarter of 2021-2022 also indicates a general improvement in the loan demand from all major sectors and individuals.

But the pandemic has made several people prone to debt traps with revolving credit card bills and easy personal loans taken from fintech companies against high interests. This has been due to high levels of unemployment during the subsisting pandemic as well as people availing easy but expensive credit to finance unforeseen circumstances like layoffs and medical procedures. In such a scenario, a statutory mechanism to discharge debt may be the only avenue for cornered debtors.

The Insolvency and Bankruptcy Code, 2016 ("the Code") contains the provisions for insolvency, bankruptcy and also provides for a fresh start regime. Herein we discuss the process of initiating insolvency proceedings by or against an individual debtor.

Process for applying for insolvency Creditors can recover debt due from debtors either by filing recovery suits or filing an application under two colonial-era laws, namely, Presidency Towns Insolvency Act, 1909 which applies to presidency towns of Kolkata, Mumbai and Chennai and the Provincial Insolvency Act, 1920 ("old enactments") for individual insolvency. These can be initiated before the District Court of the debtor's residence or where he has conducted business for a year.

Currently, both creditors and debtors can file for individual insolvency under the old enactments wherein the debt to be paid amounts to Rs. 500. The Court has been bestowed with the discretionary power to appoint an interim receiver, who takes over the possession of all the assets of the debtor. The old enactments provide a scheme of repayment of debts among the creditors.

The flip side:

One of the primary problems with the old enactments is the absence of any provision for interim moratorium at the commencement of the insolvency proceedings. This exposes a person willing to restructure his debt to vexatious litigation during the process. Although there is a provision of an Adjudication Order under the old enactments which has a similar effect, it converts the status of the debtor to that of an insolvent even though the debtor may be in a position to offer a scheme of arrangement and return the money to the creditors.

How the Insolvency and Bankruptcy Code paves a new path for individual insolvency.

The Code was brought in to revolutionise insolvency processes in the country and establish consolidated procedures for corporate and individual insolvency. Under the Code, a Corporate Insolvency Resolution Proceedings ("CIRP") in case of individual insolvency can be initiated by either a debtor or the creditor including a financial, operational, secured and unsecured creditor as well as a decree holder. The application can be filed by a debtor in case of a default and by a creditor either by himself or jointly with other creditors.

The application for the individual insolvency can be filed before the Debt Recovery Tribunal ("DRT") under the Code wherein the threshold of debt, i.e., Rs. 1000/- is met. Applicants can also approach the Debt Recovery Appellate Tribunal to seek a recourse against orders of the DRT. The Code also contains a provision for an interim moratorium that kicks in the moment an application for insolvency is filed, during which time any legal action towards recovery of

debt is deemed to be stayed and the creditors are forbidden from initiating any legal action against the debtor.

The individual insolvency process under the Code will provide a time-bound framework to honest debtors to restructure their debts and resolve their credit woes. It will also insulate them from getting involved in cumbersome legal proceedings due to the voluntary nature of the insolvency process wherein the debtor is actively involved in the preparation of the plan to be presented to the creditors.

Moreover, the imposition of interim moratorium on filing of an application will allow debtors to come to the negotiating table with their creditors giving way to a possibility of amicable settlements, including haircuts on the total liability. Additionally, the individual insolvency proceedings can be a blessing for banks to partake in a more effective and time bound alternative to filing recovery suits which can go on for punishing periods of time without any assurance of any recovery.

It must be borne in mind that any relief granted as a part of the insolvency proceedings will be a part of a person's credit history. Therefore, debtors must be careful against recklessly invoking the insolvency process as it may dry out the possibility of availing credit in the future. Moreover, the threshold for initiating individual insolvency can result in opening the floodgates of individual insolvency applications which will further raking up the pendency in the courts.

The sections of the Code pertaining to insolvency of individuals have not been notified yet. The Code has provisions for a "fresh start" scheme for individuals for debts up to Rs. 35,000 and gross annual income under Rs. 60,000 and total assets under Rs. 20,000 with no ownership of a home. On notification, it will allow persons who are unable to pay off their debts to be discharged of their liabilities.

Filing for insolvency by a creditor is one of the most intuitive and effective ways to recover debts due to him. One of the biggest advantages of filing for insolvency by a debtor is that it puts the debtor in control of the resolution process and lends a structured and statutory means to deal with a debt crisis.

Under the old enactments, the debtor can submit a proposal for a scheme of arrangement of his financial affairs to the official assignee of the creditors. Where the scheme resolves the debt of 3/4th of the value of debt and is acceptable to the majority of the creditors, it is deemed to be duly accepted by the creditors. This allows the insolvent to be an active part of the debt resolution process increasing the chances of recovery by the creditors. Moreover, a successful insolvency process allows the debtor to seek discharge from the pending debt and start financial planning afresh.

Source: *The Economic Times*

Read Full news at:

<https://economictimes.indiatimes.com/news/how-to/struggling-with-debt-here-is-how-individual-insolvency-works-in-india/articleshow/91745660.cms>



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