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Updates on Insolvency and Bankruptcy Code

Article 1 Of Limitation Act,1963 Will Not Apply To Proceedings Under Insolvency And Bankruptcy Code, 2016: NCLAT

National Company Law Appellate Tribunal (NCLAT) Principal Bench comprising of Justice Ashok Bhushan and Dr. Alok Srivastava in the case of S M Ghogbhai versus Schedulers Logistics India Pvt. Ltd. held that the Article 1 of Limitation Act, 1963 is not applicable to the Petition filed by the Operational Creditor under Section 9 of the Insolvency and Bankruptcy Code (IBC/Code).

The Parties are involved in the business of transport services. A total no. of 174 Invoices were raised by Appellant upon Respondent and the last payment was received by Appellant on 26.09.2016. The Appellant sought reconciliation of account for the outstanding dues but the same remained unpaid. The Appellant sent a demand notice for an amount of INR 76.04 Lakhs and subsequently filed the Petition under Section 9 on 24.10.2019 against the Respondent.

NCLT Mumbai, Court-III dismissed the Section 9 petition filed by the Appellant on the ground that the Petition is filed on the basis of invoices which were prior to three years from the date of filing of Section 9 Petition and therefore, held that the Section 9 Petition is barred by limitation.

It was contended by the Appellant that the Parties maintained a running account and the same is reflected in the ledger account of the Respondent. It was also contended that the last invoice was dated 10.10.2016 and since, Article 1 of the Limitation Act states that the limitation period of 3 years begins to run from the close of the year in which the last item admitted or proved is

entered into the account and therefore, the limitation period will start from 31.03.2017. The Petition was filed on 24.10.2019 and therefore the same was within the period of three years.

It was contended on behalf of the Respondent that the claim was raised on the basis of 174 invoices which dated backs to 10.10.2016 and the Petition was filed on 24.10.2019 and thus clearly barred by limitation. It was further contended by the Respondent that the argument concerning applicability of Article 1 of the Limitation Act was not even raised before the NCLT and even otherwise, it is well settled that the only Article 137 of the Limitation Act will be applicable.

NCLAT observed that it is well settled that the provisions of Limitation Act are applicable to proceedings under IBC. Thereafter, the NCLAT framed the question of law which was as follows:

"12. The question to be considered in the present case is as to whether Appellant can take benefit of Article 1 of the Limitation Act, 1963..." While the abovementioned question, NCLAT relied on the case of BK Educational Services Pvt. Ltd. v. Parag Gupta and Babulal Vardharji Gurjar v. Veer Gurjar Aluminium Industries wherein Supreme Court held that the period of limitation for filing an application under Section 7 or 9 of the Code is to be decided as per Article 137 of the Limitation Act. NCLAT further held that Article 1 of Limitation Act deals with "suits relation to accounts" and an application under Section 9 of the Code cannot be said to be a suit relating to accounts. The Bench further ruled that the last payment was received on 26.09.2016 and last invoice was raised on 10.10.2016 and therefore, as per Article 137 application under Section 9 has to be file within a period of three years from the time "when the right to apply accrues" and the same will accrued when the invoices issued by Appellant were not paid by Respondent.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/ibc-cases/nclat-insolvency-and-bankruptcy-code-article-1-of-limitation-act-operational-creditor-200088>

NCLT allows ICICI Prudential to withdraw insolvency proceedings against Anand Divine, a subsidiary of ATS

The National Company Law Tribunal (NCLT) has allowed ICICI Prudential Venture Capital to withdraw the insolvency proceeding against Anand Divine Developers, a wholly-owned subsidiary of ATS Infrastructure, on Wednesday, May 25.

The decision will end the uncertainty for hundreds of homebuyers who were adversely affected due to this legal process.

Last month, National Company Law Appellate Tribunal (NCLAT) had stayed the insolvency proceeding initiated by NCLT in March 2022 against Anand Divine Developers on a petition of ICICI prudential Venture Capital for outstanding due of around Rs 25 crore.

Anand Divine Developers subsidiary houses ATS Triumph project on the Dwarka Expressway, delivered in 2018. The project has 443 total apartments of which 78 are occupied. With the withdrawal of the petition from NCLT existing homebuyers will benefit from removal of any ambiguity around the possession of their apartments.

An ATS group spokesperson said that the company has already settled with ICICI Prudential Venture Capital. "The withdrawal petition filed by the lender is an important legal formality to bring an amicable closure of the issue," he added.

"Our association with ICICI Prudential Venture Capital is very strong and robust. Due to Covid 19, the real estate industry has undergone pain. The situation has improved in the last couple of months as the sale of residential units has witnessed robust demand. We are committed to honouring every commitment to all stakeholders, including homebuyers, financial lenders and others," said the spokesperson.

The ATS Group has drawn up a structured roadmap for delivery of delayed projects on strict redrawn timelines. The loan repayments are proceeding on schedule and the group is receiving support from its lenders with additional support wherever required.

ICICI Prudential Venture Capital gave a loan of Rs 75 crore to Anand Divine Developers in July 2014 . Anand Divine Developers paid Rs 92.50 crore in December 2017, including a principal amount of Rs 65 crore. The balance amount of Rs 9.37 crore was due for payment in March 2018.

The ATS group is expanding to new projects and areas in the national capital region (NCR) and other places with a range of state-of-the-art commercial and residential properties. The group remains committed to its ethos of buyer-first approach, focussed on quality and on time delivery schedules.

Source: The Economic Times

Read Full news at:

<https://economictimes.indiatimes.com/industry/services/property/-/cstruction/nclt-allows-icici-prudential-to-withdraw-insolvency-proceedings-against-anand-divine-a-subsiary-of-ats/articleshow/91785266.cms>



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