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"You are never too old to set another goal or to dream a new dream"

➤ **Banks to weigh NARCL's offer against promoter bid**

Banks are planning to consider the resolution offer of National Asset Reconstruction Company (NARCL) for Chennai-based engineering firm Consolidated Construction Consortium (CCCL) against a settlement offer being brought in by the promoters of the stressed company, according to three people in the know.

Meanwhile, the resolution professional for CCCL, which has already been admitted for insolvency resolution, on Monday sought expressions of interest (EoIs) for the account. Financial creditors to CCCL have filed claims worth Rs 2,693 crore, of which claims worth Rs 2,428 crore have been admitted as of March 21, 2022.

State Bank of India, ICICI Bank, IDBI Bank, Bank of Baroda and Tata Capital Financial Services are secured creditors to CCCL, while Edelweiss Asset Reconstruction Company (ARC) is an unsecured creditor, among others.

Emails sent to lead lender SBI and NARCL chief executive Natarajan Sundar remained unanswered till the time of going to press.

"The offer from NARCL has come, but banks want to take a call after receiving the promoter's offer. The promoter had made an initial offer, but they may now revise it," said a senior banker aware of the developments.

CCCL's website names R Sarabeswar, S Sivaramakrishnan and VG Janarthanam as promoters. The promoter offer will be in the form of an application under Section 12A of the Insolvency and Bankruptcy Code (IBC).

The Section 12A says that the adjudicating authority may allow withdrawal of an application admitted under Section 7 of the Code on an application made by the applicant with the approval of 90% voting share of the Committee of Creditors (CoC).

In an order dated July 14, the Chennai bench of the National Company Law Tribunal (NCLT) granted a petition to extend the corporate insolvency resolution process (CIRP) of CCCL by 60 days to July 28.

“Meanwhile, the suspended board of directors has offered settlement under Section 12A which is pending with the CoC for consideration and the CoC needs some more time to come to a conclusion,” the court order said.

CCCL offers services in construction, engineering, procurement and project management with offices in Chennai, Bengaluru, Hyderabad and Delhi. In FY21, the company posted a net loss of Rs 106.4 crore on net revenues of Rs 201.22 crore. The annual report for the year attributed the loss to high input costs, irregular supply of raw materials, unfavourable market conditions and high finance costs.

Source: Financial Express

Read Full news at: <https://www.financialexpress.com/industry/banking-finance/banks-to-weigh-narcls-offer-against-promoter-bid/2605705/>

➤ **Payment Of Earnest Money Towards Purchase Of Land Is Not A Financial Debt: NCLAT Delhi**

The National Company Law Appellate Tribunal ("NCLAT") Principal Bench comprising of Justice Ashok Bhushan (Chairperson) and Mr. Naresh Salecha (Technical Member), while adjudicating an appeal filed in S. Chandriah v Sunil Kumar Agarwal & Ors., has held that payment of Earnest Money towards purchase of land is a financial liability but not a 'financial debt' as per the Insolvency and Bankruptcy Code, 2016 ("IBC"), as it has not been disbursed for consideration of time value of money.

S. Chandriah ("Appellant") had sent a letter dated 14.09.2018 to M/s. Digjam Ltd., offering to purchase surplus land available at the Mills premises of the said company at Jamnagar, Gujarat. Subsequently, the Appellant had paid Earnest Money to Digjam Ltd. between 26.09.2018 to 08.04.2019 amounting to Rs. 7 Crores. In the meantime, M/s. Oman Inc. had filed an Application under Section 9 of the IBC seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against M/s. Digjam Ltd. ("Corporate Debtor"). On 26.04.2019, the NCLT Ahmedabad Bench admitted the application and initiated CIRP against the Corporate Debtor. Mr. Sunil Kumar Agarwal was appointed as the Resolution Professional.

The Appellant filed its claim as a Financial Creditor before the Resolution Professional, the latter informed the Appellant that remittance of funds as interest free advance, to be adjusted against sale consideration for proposed sale of land, does not fall under "Financial Debt". Thereafter, the Appellant filed an application before the NCLT seeking its inclusion as a Member of Committee of Creditors and the application was dismissed vide an order dated 07.02.2020. The Appellant filed an appeal before the NCLAT challenging the Order dated 07.02.2020.

Further, on 11.02.2020 the Resolution Plan submitted by M/s. Finquest Financial Solutions Pvt. Ltd. was approved by the CoC and subsequently by the NCLT. The said Resolution Plan had proposed payment of NIL amount to 'other creditors'.

The Appellant contended that Corporate Debtor had issued receipt for the payment of Rs. 7 Crores and had not disputed the receipt of amount. The Resolution

Professional had wrongly classified the Appellant as 'Other Creditor', while the Annual Reports of the Corporate Debtor for 2018-19 and 2019-20 had classified the amount of Rs. 7 Crores as "other Financial Liability" hence the Appellant's claim deserved to be admitted as a "Financial Debt".

Moreover, the Resolution Plan was approved without earmarking any amount to for the class of 'other creditors'. The decision of the CoC must reflect that it has taken into account in maximizing the value of the assets of the Corporate Debtor and the fact that it has adequately balanced the interest of all the stakeholders.

The Respondent contended that there was no contract between the Parties for sale of any land. The Appellant of his own had made payment of the Earnest Money to the Corporate Debtor, without there being any acceptance of the offer of the Appellant. Therefore, the amount advanced cannot be regarded as a Financial Debt.

Whether the payment of earnest money of Rs. 7 Crores by the Appellant to the Corporate Debtor is a financial debt within the meaning of Section 5(8) of the IBC?

The NCLAT observed that a contract between the parties can be oral as well as in writing however, the Appellant had failed to prove that there was even an oral agreement between the Parties.

For a debt to be financial debt, essential condition is that the debt is disbursed against the consideration for the time value of money. Time value of money means the price received for the length of time for the money for which the money has been disbursed. It was opined that the disbursement made by the Appellant to the Corporate Debtor was only a payment of Earnest Money, to be adjusted in sale of the land and was not a disbursement in consideration for the time value of money.

"Acknowledging the Liability of earnest money as a Financial Liability is not akin to admitting as a "Financial Debt". A debt of "other Creditors" is also a Financial Liability. Thus on the strength of Annul return of Financial Year 2018-19 and 2019-20, it cannot be held that payment of earnest money by the Appellant was "Financial Debt"."

Source: Live Law

Read Full news at: <https://www.livelaw.in/news-updates/national-company-law-appellate-tribunal-nclat-insolvency-and-bankruptcy-code-corporate-insolvency-resolution-process-cirp-nclt-ahmedabad-204690>

