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Insolvency Professional Agency of Institute of Cost Accountants of India



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Updates on Insolvency and Bankruptcy Code

➤ **Resolution Professional can Submit an Additional Report Under Section 99 of Insolvency and Bankruptcy Code, 2016: NCLAT**

NCLAT principal bench comprising of Justice Ashok Bhushan, Dr. Alok Srivastava & Ms. Shreesha Merla in the case of Ramesh Chander Agarwala versus State Bank of India held that the Resolution Professional can submit an additional report under Section 99 of the Insolvency & Bankruptcy Code, 2016.

Personal Guarantors of a corporate debtor filed an appeal under Section 61 of the Code before NCLAT against the order dated 08.12.2021 of NCLT wherein NCLT appointed a Resolution Professional without furnishing any limited notice to the Personal Guarantors in terms of Para 44 of the judgment of NCLAT in the case of 'Ravi Ajit Kulkarni Vs. State Bank of India'.

In substance, once the application is "filed" (as per Section 95, 96 read with Rule 10) the Adjudicating Authority has to act on it, and following principles of natural justice, give limited notice to Personal Guarantor to appear referring to the Interim Moratorium that has commenced as per terms of Section 96. Then the next stage is of appointing Resolution Professional as per Section 97 read with Rules and Regulations. Third stage will be Resolution Professional acting in terms of Section 99 and submitting Report. At the fourth stage comes in adjudication of the application under Section 100 which ought to be decided by giving hearing to parties keeping in view Application, evidence collected and report under Section 99."

It was also the grievance of the personal guarantors that the Resolution Professional has already submitted a report under Section 99 of the IBC and because of the absence of limited notice they were unable to submit any objections before the Resolution Professional.

NCLAT observed that though it limited notice in terms of Ravi Ajit Kulkarni was not issued to Personal Guarantors but subsequently personal guarantors have appeared before Adjudicating Authority. Therefore, in the interest of justice, NCLAT permitted the Personal Guarantors to submit a representation to the Resolution Professional and subsequently, the Resolution Professional can submit an additional report in continuation of his first report and the Adjudicating Authority will consider both the report before taking any decision under Section 100 of the Code.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/news-updates/nclat-section-99-of-the-insolvency-bankruptcy-code-resolution-professional-personal-guarantors-corporate-debtor-additional-report-197815>

➤ **NCLT initiates insolvency proceedings against Andhra Cement**

The National Company Law Tribunal has directed to initiate insolvency proceedings against Andhra Cement, a company owned by the debt-ridden Jaypee Group. The Hyderabad Bench of the NCLT (National Company Law Tribunal) has also appointed Nirav K. Pujara as the Interim Resolution Professional (IRP) of the company and declared a moratorium in respect of the company as per the provision of the Insolvency & Bankruptcy Code (IBC).

"The company is now under CIRP (Corporate Insolvency Resolution Process) as per the provisions of the code. As per Section 17 of the code, the powers of the board of directors of the company stand suspended and as such the powers shall be vested with and exercised by the IRP," Andhra Cement said in a regulatory filing.

Meanwhile, in a separate filing, Andhra Cement has invited its creditors to submit their claims by May 10, 2022, before the IRP.

NCLT's direction came after a petition filed by Pridhvi Asset Reconstruction and Securitisation Company Ltd, claiming a default.

Andhra Cement had taken loans from several banks, including IDFC First Bank, HDFC and Karur Vysya Bank, and amounts were disbursed during the period from 2012 to 2016.

Subsequently, Edelweiss Asset Reconstruction Company Limited acquired the loans and underlying security interest, including all rights, title and interest therein, held by the original lenders.

Later, the petitioner acquired loans to an extent of Rs 804.72 crore and underlying security interest, including all rights, title and interest held by Edelweiss Asset Reconstruction and Karur Vysya Bank.

Andhra Cement failed to abide by its repayment obligations, following which Pridhvi Asset Reconstruction and Securitisation Company moved the NCLT.

Source: The Economic Times

Read Full news at:

<https://economictimes.indiatimes.com/news/india/nclt-initiates-insolvency-proceedings-against-andhra-cement/articleshow/91152575.cms>

➤ **Karaikal Port admitted for insolvency, Adani Ports & SEZ frontrunner**

The Chennai bankruptcy court on Thursday admitted Karaikal Port for insolvency proceedings after it defaulted on payment of about Rs 2,400 crore dues to a lender. Adani Ports and Special Economic Zone (APSEZ) is the frontrunner to acquire the bankruptcy court, two people aware of the matter told ET`.

In a rare instance, the National Company Law Tribunal heard and admitted a case for insolvency same day the lender, Omkara Asset Reconstruction Company applied.

The order was passed by a division bench of Justices Sameer Kakar and R Sucharitha.

Omkara ARC had acquired Rs 2,059 crore loan to Karaikal Port from Edelweiss ARC in November last year at an uncontested Swiss auction, said the people cited above. This acquisition was backed by Adani group company APSEZ, they said.

Adani group did not respond to ET's request for comment. APSEZ is the largest operator in the port infrastructure business in India. Edelweiss ARC had sold the loan to Karaikal Port under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Sarfaesi) Act.

According to sources, Omkara ARC had acquired the loan for Rs 1,500 crore, implying a recovery of 73 paise on a rupee for Edelweiss ARC.

Marg Ltd, promoter of Karaikal Port, had filed a petition at Madras High Court objecting to the loan sale from one ARC to another under Sarfaesi where only banks, financial institutions, and ARC can bid, thus limiting corporates' scope of participation. The court dismissed the case.

Subsequently, the Supreme Court permitted promoter of Marg G R K Reddy to file a review petition at Madras High Court, which again dismissed the matter in November last year.

APSEZ has maintained an aggressive acquisitive policy and has acquired ports like Krishnapatnam Port Company and Gangavaram Port Ltd and a few logistics businesses over the last few years. Taking note of this, ICRA Ratings had in November 2021 said, "Any further significant debt-funded acquisitions that will impact the deleveraging plans will be a rating sensitivity."

Source: The Economic Times

Read Full news at:

<https://economictimes.indiatimes.com/industry/transportation/shipping/-transport/karaikal-port-admitted-for-insolvency-adani-ports-sez-frontrunner/articleshow/91161327.cms>

➤ **Haryana Police files chargesheet against RP in Educomp insolvency case**

The Haryana Police filed chargesheet against Resolution Professional (RP) Ashwani Mehra, Aviral Jain - MD, Duff & Phelps India and Tarun Bhatia - MD, Kroll Associates citing legal irregularities in the insolvency proceedings of Educomp Infrastructure & Schools Management (EISML), according to the Forum of Companies under Resolution Process.

The incident set a precedent against corruption in insolvency resolutions, which aimed at recovering soured bank loans.

The accused were allegedly involved in multiple fraud and illegalities like siphoning off funds for personal benefits, defrauding bankers, and creditors of the company.

“A whistle-blower exposed how Mehra was already in a consulting agreement with company Duff & Phelps and its undertaking Kroll and Associates whom he appointed for forensic audits in a blatant misuse of powers for personal gains,” it said in a note circulated among its stakeholders.

He got two forensic audits done by Kroll at a “high fee” of more than Rs 50.74 lakh and legal fees of Rs 73.87 lakh, according to the chargesheet. Earlier in June last year, the Central Bureau of Investigation registered a case against EISML based on an FIR by State Bank of India on May 27, 2021.

EISML files for Corporate Insolvency Resolution Process (CIRP) with the National Company Law Tribunal’s Chandigarh chapter with full approval from bankers. The court had admitted it under Insolvency Bankruptcy Code in April, 2018.

A few months later Ashwini Mehra was appointed RP, a key role in any debt resolution process. Mehra was a retired deputy managing director at State Bank of India and then a partner at Duff and Phelps India. He was also a member of DPS (Delhi Public School) Ghaziabad, a fact not disclosed at the time of appointment, which raised a “conflict of interest”.

RP received total claims of Rs 805 crore during the process. A forensic assignment for EISML was given to Kroll, a fully owned subsidiary of Duff & Phelps allegedly establishing a relationship with RP Ashwini Mehra. In June 2019 the Kroll’s report was declared a fraud.

Later V.K. Dandona, former director of EISML had filed a complaint against Mehra based on a whistle-blower’s report exposing the RP’s alleged links with competitor/s, corruption and leaking of sensitive information on insolvency process to DPS Ghaziabad promoters.

A resolution plan was approved by NCLT in December 2020.

Two years ago, Insolvency Bankruptcy Board of India (IBBI) passed an order debarring Ashwini Mehra from conducting further assignments.

Source: The Economic Times

Read Full news at:

<https://economictimes.indiatimes.com/news/india/haryana-police-files-chargesheet-against-rp-in-insolvency-case/articleshow/91156335.cms>



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