



IBC AU-COURANT

Latest updates On Insolvency & Bankruptcy

Wednesday, 29th June, 2022

“Don't wish it were easier. Wish you were better.”

➤ **Future Retail: NCLT reserves order on Amazon petition against BoI's plea**

The National Company Law Tribunal (NCLT) on Monday reserved its order on the petition filed by Amazon opposing Bank of India's plea to initiate insolvency resolution proceedings against debt-ridden Future Retail Ltd (FRL).

After hearing the arguments of Amazon and Bank of India (BoI) on Monday, the tribunal directed the e-retailer to submit its written response to the lender's submission by Thursday.

The Mumbai bench of the NCLT, headed by Pradeep Narhari Deshmukh and Shyam Babu Gautam, reserved the order on the matter.

In April this year, BoI had moved the tribunal seeking to initiate insolvency resolution proceedings against FRL, which has defaulted on loan repayments.

Amazon had argued that FRL did not honour the Singapore Emergency Arbitrator's award of October 2020 and that the lenders could not have entered into a framework agreement with FRL in breach of the award.

The e-retailer had moved the Emergency Arbitrator in Singapore for alleged breach of contract by FRL.

BoI had submitted that the lender's plea against FRL has no connection with Amazon as the proceedings are in line with the Reserve Bank of India (RBI) guidelines and the provisions of the Insolvency and Bankruptcy Code (IBC).

Opposing BoI's plea, Amazon, on May 12, filed an intervention application under Section 65 of the IBC that deals with provisions relating to penalty for fraudulent or malicious initiation of proceedings.

FRL has defaulted on payment of Rs 5,322.32 crore to its lenders amid the ongoing litigations with Amazon and other related issues. Future Group's proposed deal with Reliance, which was opposed by Amazon, also fell through.

In March, BoI through a public notice claimed its charge over the assets of FRL and warned the public against dealing with assets of the Kishore Biyani-led Future group firm.

BoI is the lead lender for FRL.

About the case, Dhir and Dhir Associates' Associate Partner Ashish Pyasi opined that if the tribunal is satisfied that there is a debt and default and the proceedings are not filed for any purpose other than the resolution of the corporate debtor, then the petition against the debtor will be admitted.

"Generally, the third parties have no right or say in the insolvency proceedings and the intervention in most of the cases is rejected as the main parties to the proceedings are the petitioner and respondent. Therefore, the intervention of Amazon for rejection of the BoI petition will be tested on the above criteria," he added.

Source: Business Standard

Full news at: https://www.business-standard.com/article/companies/future-retail-nclt-reserves-order-on-amazon-petition-against-boi-s-plea-122062701018_1.html

➤ **Government may introduce Bill on cross-border insolvency in monsoon session**

The government has finalised amendments to the Insolvency and Bankruptcy Code (IBC) to bring in a cross-border resolution framework and may introduce a Bill in this regard as early as in the monsoon session of the Parliament starting next month, sources told FE.

The cross-border insolvency law aims to ensure lenders have easier access to overseas assets of stressed companies. It will enable India to seek cooperation from foreign countries to bring defaulters' assets there under consideration for insolvency proceedings.

Such an insolvency framework would be tailored around a model law of the United Nations (United Nations Commission on International Trade Law or UNCITRAL) but the government will likely retain the power to intervene in cases, albeit only under exceptional circumstances. Several countries that follow the UNCITRAL have also built such provisions in their local laws.

The monsoon session is expected to be held from July 18 through August 12, although a formal announcement is yet to be made.

The Bill to amend the IBC is also likely to focus on changes to further bolster the IBC architecture to yield a quick resolution of toxic assets while preventing unscrupulous elements from gaming the system.

“It (the Bill) is ready. But it needs to be cleared by the Cabinet first. Once that is done, it will be introduced in Parliament. It can happen any time,” said one of the sources.

Analysts have been highlighting the need for a cross-border insolvency law during the bankruptcy proceedings against Amtek Auto, Videocon Industries, Essar Steel and even Jet Airways, citing the many obstructions these cases witnessed due to issues that traverse borders – in the form of the location of assets, complex procedures, etc.

Cross-border insolvency framework was expected to be a part of the Insolvency and Bankruptcy (Second Amendment) Bill, 2021, that the government wanted to introduce in the winter session of Parliament to further strengthen the Code, cut delay in the resolution of toxic assets to prevent value erosion. However, it didn't introduce the Bill, as it wanted wider consultations on a raft of issues.

The cross-border insolvency law recognises that one country has to proceed with the main insolvency case and others with the supplementary case, depending on the location of defaulters' assets. Similarly, if a foreign country has already initiated insolvency proceedings against a particular defaulter to recover stressed assets some of which are located here, India, too, will also have to cooperate with that nation.

In November 2021, the ministry of corporate affairs (MCA) put out a draft proposing that such a framework be applied to not just corporate debtors but even personal guarantors to them, in sync with the extant corporate insolvency resolution norms for stressed assets located within the country.

The MCA also recommended that financial service providers such as banks and insurance firms be excluded from the purview of cross-border insolvency.

Source: Financial Express

Full news at: <https://www.financialexpress.com/industry/government-may-introduce-bill-on-cross-border-insolvency-in-monsoon-session/2575955/>

