



May 30, 2022

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Updates on Insolvency and Bankruptcy Code

NCLT allows insolvency proceedings against National Textiles Corp

The National Company Law Tribunal (NCLT) has ordered to initiate insolvency proceedings against state-run National Textile Corporation (NTC) after admitting a plea by one of its operational creditors claiming default of around Rs 14 lakh.

The New Delhi bench of the NCLT has also appointed Amit Talwar as an interim resolution professional (IRP), suspending the board of NTC and has also declared a moratorium against the PSU as per the provisions of the Insolvency & Bankruptcy Code (IBC).

A two-member NCLT bench also rejected the claims of NTC and said the dispute it raised over the due amount claimed by its operational creditor is merely a "moonshine dispute and said default has occurred for the payment.

This is probably for the first time since the code has come into effect that insolvency proceedings against a central government owned public sector unit (PSU) has been initiated.

NTC is under the jurisdiction of the Ministry of Textile, Government of India. It is engaged in the production of yarn and fabric through its 23 mills in operation, located all over India.

The NCLT direction came over a petition filed by Hero Solar Energy Private Ltd. (HSEPL) through its counsel Pallav Mongia, claiming a default of Rs 13.84 lakh for two contracts for installing solar rooftop power projects.

The matter relates to an almost six-year-old contract. NTC had awarded a work order in May 2016 in Tamil Nadu for a total 780 kWp grid-connected rooftop solar power PV system.

As per the contract of both the projects, the amount of Rs 2.21 crore towards Project 1 and Rs 1.86 crore towards Project 2 become due upon the completion of work on December, 2016 and April, 2017, respectively.

However, NTC failed to release the complete payment due to HSEPL and retained an amount of Rs 13.84 lakh against the terms of the agreement.

It was informed by the operational creditor that as per the clauses of the agreement, there was no provision for levying any penalty and sent a demand notice to NTC under section 8 of the IBC.

However, NTC in its reply had said HSEPL has committed a delay of 117 days in the execution of the work order and it has suffered losses and hence it has deducted penalties from the amount due.

This was denied by HSEPL and said no notice of dispute was ever given by NTC to HSEPL and in fact in its several letters written to the PSU, demanding the pending dues, no dispute over delay in execution was raised.

The insolvency tribunal also agreed with the submissions of the operational creditor and said: "Considering the documents on record admittedly the respondent has never raised any dispute over the quantum of claim or delay of the applicant. The corporate debtor has failed to place any document on record to show that said imposition of penalty was ever communicated to the applicant before issuance of demand notice."

No debit note in this regard was ever issued by the respondent, NCLT observed adding "No penalty or liquidated damages were levied by corporate debtor".

"Admittedly, in terms of the agreement, the corporate debtor is not entitled to impose any penalty to the applicant. The respondent even reconciled the accounts of the applicant and failed to raise any dispute over the claim of the applicant during reconciliation, said NCLT in its 10-page long order passed on May 27.

The tribunal further said even the Indian Contract Act provided that in case of the promisor failed to perform the contract at the time agreed and the promisee still accepts the performance of such promise any time other than agreed, the promisee cannot claim compensation for any loss.

"It is not the case of the respondent (NTC) that work order was never completed by the applicant. The respondent has already made payments to the applicant which shows that there is no defect in the performance of contract, it said.

This leaves no doubt that the default has occurred for the payment of the operational debt to the applicant and the so-called dispute raised by NTC is merely a "moonshine dispute.

"Therefore, in the given facts and circumstances, it can be concluded that the applicant has established its claim which is due and payable by the corporate debtor and the corporate debtor has failed to prove the existence of any pre-existing dispute in respect of amount claimed by the applicant. The present application is admitted, said NCLT.

Source: Business Standard

Read Full news at:

https://www.business-standard.com/article/companies/nclt-allows-insolvency-proceedings-against-national-textiles-corp-122052900196_1.html

NCLT Delhi Dismisses Insolvency Petition Against NBCC India Ltd., A Navratna Enterprise

The National Company Law Tribunal ("NCLT"), New Delhi Bench, comprising of Mr. Dharminder Singh (Judicial Member) and Ms. Sumita Purkaysatha (Technical Member), while adjudicating the matter of Biosafe Lab India Pvt. Ltd. v NBCC India Ltd., has dismissed an application filed under Section 9 of the Insolvency and Bankruptcy Code, 2016 ("IBC") seeking initiation of Corporate Insolvency Resolution Process ("CIRP") against NBCC India Pvt. Ltd. The order was passed on 27.05.2022.

NBCC India Pvt. Ltd. is a Navratna Enterprise of the Government of India, founded in 1960, and engaged in the business of project management consultancy; engineering, procurement and construction; and real estate.

In 2014, NBCC India Pvt. Ltd. had awarded a work contract to Era Infra Engineering Ltd. ("Era Infra") for construction and upgradation of National Centre for Disease Control (NCDC), for an amount of 199.02 Crores. Era Infra had appointed Biosafe Lab India Pvt. Ltd. ("Applicant") as a sub-contractor on 07.08.2014 and had issued several purchase orders to the Applicant amounting to Rs. 49.08 Crores. The Applicant in turn had raised invoices in favour of Era Infra, which the latter failed to pay within time and the work was stalled.

NBCC India Pvt. Ltd. ("Respondent") issued a Letter of Comfort/Surety to the Applicant on 03.11.2017, stating that it would stand as a surety on behalf of the ERA Infra to the Applicant. Thereafter, Era Infra went into CIRP and the Applicant had submitted its claim of Rs. 7.87 Crores to the Resolution Professional of ERA Infra on 25.05.2018.

However, the Resolution Professional verified the claims only to the extent of Rs. 51.79 Lakhs and rejected the rest. On 28.10.2021, the Applicant filed a Writ Petition bearing No. 12427/2021 before the Delhi High Court against the Respondent, seeking directions in view of the unpaid amount of Rs. 7.87 crores; termination of work contract with Era Infra; release of Performance Bank Guarantee of Rs. 1.80 crores; and payment of remaining amount to the Applicant under a separate claim. The writ petition was pending adjudication.

Subsequently, on 26.11.2021 the Applicant served a Demand Notice to the Respondent under Section 8 of the IBC, claiming an amount of Rs. 10.86 crore. This claim was inclusive of an additional amount of Rs. 3.76 crores, in view of a Letter of Award dated 26.07.2018 which was granted to the Applicant under a separate transaction. Since no amount was received from the Respondent, the Applicant filed an application under Section 9 of IBC before the NCLT Delhi ("Adjudicating Authority"), seeking initiation of CIRP against the Respondent.

The Applicant contended that once the Respondent had given undertaking vide letter dated 03.11.2017, the responsibility was shifted to the Respondent to make the entire payment to the Applicant.

The Respondent argued that the petition was not maintainable as there was no privity of contract between the Applicant and the Respondent. It was submitted that the Applicant is involved in forum shopping as it had already filed a claim before the Resolution Professional of ERA Infra.

The Adjudicating Authority observed that no privity of contract existed between the Applicant and the Respondent and the dues under Letter of Award were a separate transaction. As Era Infra was under CIRP, any amount lying with Respondent qua the contract with Era Infra cannot be paid to the Applicant due to Moratorium. It was observed that there was a serious dispute qua the due amount, as the balance sheets of Era Infra Engineering reflected a sum of Rs. 51,79,028/- as due, whereas the Applicant had claimed a sum of Rs. 7,10,07,021/-. Moreover, the Applicant has already availed the remedy before the Delhi High Court in Writ Petition No. 12427/2021, which was filed on 28.10.2021 against the Respondent, whereas the Demand Notice was issued on 26.11.2021. Further, the Applicant had also filed its claim before the Resolution Professional of Era Infra which was also rejected. The Bench opined that there is a preexisting dispute and the Applicant is indulged in forum shopping.

The Adjudicating Authority dismissed the Section 9 application by observing that a serious dispute existed in relation to the due payment, which cannot be decided in a summary manner.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/ibc-cases/national-company-law-tribunal-nbcc-india-ltd-insolvency-and-bankruptcy-code-corporate-insolvency-resolution-process-cirp-nbcc-india-pvt-ltd-200372>

NCLT Delhi Initiates Insolvency Process Against National Textile Corporation Ltd., A Public Sector Enterprise

The National Company Law Tribunal ("NCLT"), New Delhi Bench, comprising of Mr. Dharminder Singh (Judicial Member) and Ms. Sumita Purkaysatha (Technical Member), while adjudicating a petition filed in Hero Solar Energy Pvt. Ltd. v National Textile Corporation Ltd., has initiated Corporate Insolvency Resolution Process ("CIRP") against National Textile Corporation Ltd. and has appointed Mr. Amit Talwar as the Interim Resolution Professional. The order was passed on 27.05.2022.

National Textile Corporation Ltd. is a Public Sector Enterprise under the Ministry of Textiles, Government of India. It was incorporated in 1968 and has textile mills pan India for the production of yarn and fabric.

In 2015, the Solar Energy Corporation of India (SECI) had granted a Letter of Allocation to Hero Solar Energy Pvt. Ltd. ("Operational Creditor"), for 'Designing, Engineering, Manufacturing, Supplying, Testing & Commissioning' of rooftop solar panels in cities of India. The Operational Creditor had entered into an Agreement with National Textile Corporation Ltd. ("Corporate Debtor") on 07.06.2016, for installation of rooftop Solar PV power System for power generation. The Agreement did not contain any clause with respect to imposition of penalty.

In 2016-17 the Operational Creditor had completed the work in view of the Agreement and the due amount was paid by the Corporate Debtor. However, an amount of Rs.13,84,254/- was retained by the Corporate Debtor from the total payment.

The Operational Creditor issued a demand notice dated 23.10.2019 under Section 8 of Insolvency and Bankruptcy Code, 2016 ("IBC") to the Corporate Debtor, for the remaining payment of Rs.13,84,254/-. Following which, the Operational Creditor had filed a petition under Section 9 of the IBC before NCLT, New Delhi ("Adjudicating Authority"), seeking initiation of CIRP against the Corporate Debtor.

The Operational Creditor contended that the Corporate Debtor had never raised any dispute over delay in execution of the work contract, not even in response to the Demand Notice dated 23.10.2019. Further, reconciliation statements were signed between the parties on 07.01.2019

and no dispute was raised therein. The claim of dispute was an afterthought. Also, the Agreement did not have any provision of penalty and SECI had already charged Rs. 14 Lakhs as penalty from the Operational Creditor. Hence, double penalty could not be charged.

The Corporate Debtor submitted that there is a dispute between parties over the pending amount of debt, as the Operational Creditor had delayed the execution of work by 117 days and Corporate Debtor had deducted penalty amounting to Rs.13,84,254/- from the final payment in view of such delay.

The Adjudicating Authority affirmed that no dispute was ever raised by the Corporate Debtor with respect to quantum of claim or delay on the part of the Operational Creditor. There was nothing on record to show that imposition of penalty was ever communicated to the Operational Creditor before the issuance of the Demand Notice.

It was observed that default had occurred in payment of operational debt and the plea of dispute is merely a 'moonshine dispute' as laid down by the Supreme Court in Mobilox Innovative Pvt. Ltd. v Kirusa Software Pvt. Ltd. The Adjudicating Authority held that there is a claim which is due and payable and the Corporate Debtor had failed to prove existence of any 'pre-existing dispute' in respect of the default. The petition was admitted under Section 9 of IBC and CIRP was initiated against the Corporate Debtor. Mr. Amit Talwar has been appointed as the Interim Resolution Professional and moratorium has been declared.

Source: Live Law

Read Full news at:

<https://www.livelaw.in/ibc-cases/nclt-national-textile-corporation-ltd-corporate-insolvency-resolution-process-cirp-insolvency-and-bankruptcy-code-hero-solar-energy-pvt-ltd-200349>

Split Verdict Of NCLT, Hyderabad Bench On The Question Of Related Party, Issue Referred To President Of The Principal Bench

In a split verdict, a 2-judge Bench of NCLT, Hyderabad in the matter of Trimex Industries Pvt. Ltd. v. M/s. Sathavahana Ispat Ltd. has referred to the President of the Principal Bench the question of – whether in an application filed by an Operational Creditor u/s 60(5) of the Code, the CoC can be barred from considering the resolution plan of a Prospective Resolution Applicant (PRA), when the same has not received approval of the CoC on the ground that the PRA and sole member of CoC are related parties.

The application was filed by Trimex Industries Pvt. Ltd., which is an Operational Creditor (OC) of the Corporate Debtor, Sathavahana Ispat Ltd. alleging that due to the sole member constituted CoC/JC Flowers Asset Reconstruction Company to whom the CD owed the entire financial debt after its assignment and the Jindal Saws, which is one of the PRAs, being related parties, the CoC must be restrained from considering any resolution plan which was proposed by Jindal Saws. Allowing the CoC to consider the resolution plan proposed by its related party will have an effect on the fairness of the CIRP and will be detrimental to the interest of the Applicant/ OC. Thus, the CoC must be directed to consider the resolution plan proposed by PRAs other than Jindal Saws.

In its application, the OC sought the following reliefs-

- Disclosure of information from the FC regarding the sources of funding it received towards and for the purpose of receiving the assignment of the Financial Debt of the Corporate Debtor,

- It sought to be appointed as an observer of the Committee of Creditors of SIL, to ensure that the CoC functions in a transparent and fair manner,
- To restrain Jindal Saw/ R3, who is a related party to the sole member of CoC from submitting any resolution plan, and
- To restrain the CoC from considering any resolution plan of the CD, which is submitted by Jindal Saw/R3.

The Judicial Member, Venkata Ramakrishna Badarinath Nandula rejected plea no. (iv) and held that the NCLT does not have the jurisdiction to exercise power u/s 60(5) of the Code to pass an order when a Resolution Plan has not been approved by the Committee of Creditors, as the same will amount to enlargement of the limited scope of jurisdiction that the Tribunal has u/s 30(2) and that such an application is pre-mature, as the resolution plan has not yet been approved.

The Technical Member, Shri Veera Brahma Rao Arekapudi, while concurring on some issues, differed on the question of related party. He allowed the application u/s 60(5) and directed the CoC not to consider the resolution plan of the PRA as the entire process of CIRP is vitiated and collusion between the parties is writ large on the face of CIRP of the CD, as the PRA was a related party to the sole member of the CoC, JC Flower Asset Reconstruction Company, to whom, after assignment of debts, the Corporate Debtor owed all financial debts. Thus, at this stage, the application to pass an order is not premature.

The Corporate Debtor, Sathavahana Ispat Ltd. (SIL) defaulted in payments of its loans to its financial creditors- SBI, UBI and Canara Bank along with one NBFC along with its operational debts to various Operational Creditors, one of whom was the Applicant.

JC Flowers Asset Reconstruction Company/FC was assigned all debts of the CD under a Swiss challenge auction, prior to the filing of the Section 9 application for initiation of CIRP. For the purpose of assignment of these loans, it utilized two sources for funding- one was 15% of the total value, which was issued by pledge of security receipts to Siddheshwari Tradex Pvt. Ltd. and second, of 85%, from alleged private investors, whose details are unknown.

Thereafter, it assumed the position of the sole financial creditor of SIL/ Corporate Debtor, by assignment by 3 financial lenders- SBI, UBI and Canara Bank along with one NBFC.

The primary contention of the Applicant/ OC was that since all the debts were acquired by the sole Asset Reconstruction Company, JC Flowers Asset Reconstruction Company Pvt./ R2, it became the sole member of the CoC, the CoC could not function in a manner to maintain complete fairness in the process.

Due to the sole-member constituted CoC and PRA being related parties, it could result in a potential conflict of interest which would be detrimental to the interest of SIL as well as other Operational Creditors and thus the Applicant has prayed that the CoC be barred from considering any resolution plan put forth by Jindal Saw on the ground that JC Flowers and Jindal Saw are related parties. The resolution plan of Jindal Saw, which is a PRA, when placed before the CoC, will be accepted and this will have an effect on the fairness of the process. The relationship between the parties as alleged by the Applicant is that Siddheshwari Tradex Pvt. Ltd., (the entity which funded the purchase of the financial debt by JC Flowers) and JC Flowers are part of the same group of companies having common directors. All entities including Jindal Saw, which is one of the PRAs are having inter-corporate investments and they share common email addresses. The registered offices and Books of Accounts and papers of the companies, including Jindal Saw are all maintained by Jindal Centre. Moreover, the spouse of the owner of Siddheshwari is one of the Directors of Jindal Saw/ R3.

It was also contended that the contract for carrying out maintenance works of the CD was granted to Jindal Saw for Rs. 266 Crores, which is also related party to the Sole member of CoC.

The two-member bench of the NCLT delivered a split verdict on whether the parties are related parties within the ambit of the IBC and whether the Tribunal has the power to pass directions u/s 60(5) when the resolution plan has not yet been approved by the CoC.

The Tribunal framed 3 issues for consideration

1. Whether JC Flowers/ R2 can be directed to disclose all information as to the funding it had received for acquiring Financial Debt of the CD/ SIL by way of assignment under the SARFAESI Act?
2. Whether the Applicant has locus standi to be appointed as an observer in the meetings of the CoC of the Corporate Debtor?
3. Whether CoC be restrained from considering the resolution plan of the 3rd Respondent, prospective resolution applicant, which has already been submitted by the RP to the CoC?

Source: Live Law

Read Full news at:

<https://www.livelaw.in/ibc-cases/insolvency-and-bankruptcy-code-nclt-operational-creditor-coc-sarfaesi-act-prospective-resolution-applicant-200379>



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