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Knowledge SBU Initiative

The IBC process should not be derailed by past promoters' sins

The National Company Law Appellate Tribunal (NCLAT) must be commended for taking a stand against the Enforcement Directorate's (ED) attempts to attach properties of Bhushan Power and Steel Ltd as part of investigations into alleged loan fraud and money laundering by the company's former promoter Sanjay Singhal. The tribunal has prevented the investigating agency from derailing the Insolvency and Bankruptcy Code (IBC) and has set a good precedent for other stressed assets under the debt resolution process, where the former promoters are being investigated for alleged financial irregularities.

NCLT admits insolvency plea against Cox & Kings; interim resolution professional appointed

The National Company Law Tribunal (NCLT) has admitted a plea to initiate insolvency proceedings as well as appointed a resolution professional for Cox & Kings for defaulting on a loan. The NCLT admitted the plea by Rattan India Finance to initiate insolvency proceedings against the company for defaulting on a loan of Rs 30 crore. Gurugram-based Alok Kumar Agarwal has been appointed the interim resolution professional by the NCLT to oversee the travel company's affairs, as mentioned in a report in The Economic Times. The written order is yet to be made available. Cox & Kings has defaulted on loan obligations twice this year. The company had informed the stock exchanges in June that it had not paid Rs 150 crore of the Rs 200 crore worth of loans that were extended by two investors. Cox & Kings said in a regulatory filing in September that it defaulted on a loan of Rs 30 crore.

NCLAT can't free assets attached under PMLA: ED

Insolvency Courts do not have the jurisdiction to direct release of company's assets attached under the prevention of money laundering Act (PMLA), the Enforcement Directorate has told the National Company Law Appellate Tribunal (NCLAT). Defending its decision to attach the assets of Bankrupt Steel Mill Bhushan Power and Steel (BPSL), the ED said validity of a provisional attachment order passed under PMLA can only be examined by adjudicating authority under PMLA. The NCLAT had on October 14 directed the ED to immediately release BPSL's assets to resolution professional of the company and file a reply.

Point to Ponder

"GENEROSITY IS A VERTUE, BUT UNLIMITED GENEROSITY IS A FAST ROUTE TO BANKRUPTCY."

-BRET STEPHENS

Essar Steel Case: Creditors committee treated us worse than operational Creditors, says Standard Chartered

Day four of the Essar Steel insolvency hearing saw Standard Chartered continue its argument against the Committee of Creditors' decision to treat it differently from other financial creditors of the company. Calling the manner of distribution of claims from the winning bid of Arcelor Mittal "illegal" and "arbitrary", Senior Advocate Kapil Sibal who was arguing for Standard Chartered said the basis of distribution adopted by Creditors committee was meant to benefit only select financial creditors. The committee of Creditors has defended its treatment of Standard Chartered on the ground that financial creditors are entitled to their claims depending on the nature of securities they hold.

Resolution under IBC: Banks may get pre-NCLT window

Banks will likely have window to scout for prospective buyers of stressed assets for their expeditious resolution even before the bankruptcy process is initiated. This facility is set to be in place as part of a host of amendments being planned for the Insolvency and Bankruptcy Code (IBC), which is being reviewed by the government and the Insolvency and Bankruptcy Board of India (IBBI). The so-called 'pre-packs' or pre-packaged resolutions, which have examples in many regimes including US and UK, will essentially allow a stressed firm to prepare a financial reorganisation plan with approval of its at least two-thirds of its creditors (and shareholders) before the filing of an insolvency plea by any party at the National Company Law Tribunal (NCLT).

No need to escalate uncertainty in one case to reflect everything to do with IBC: Nirmala Sitharaman

Finance Minister Nirmala Sitharaman has said that uncertainty arising out of one case should not be generalised about the efficiency and effectiveness of Insolvency and Bankruptcy Code. Sitharaman was responding to a question on a particular recent case which many allege reflects some major loopholes in the IBC. Her comments came amidst the alleged Rs 4,355 crore fraud at Punjab and Maharashtra Co-operative (PMC) Bank. The alleged loan fraud at the bank came to light after the Reserve Bank of India found irregularities and imposed restrictions on the lender last month. "I don't think we should escalate one case to reflect everything to do with IBC," Sitharaman told reporters at a news conference here.

***Feedback requested at ipa@icai.in**