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NCLT Extends Reliance Capital Resolution Process Deadline to January 31, 2023

NCLT for the third time extended the deadline for debt-ridden Reliance Capital's resolution process to January 31, 2023.

Earlier, the lenders of Reliance Capital had given an extension of 30 days to the bidders for submission of binding bids, along with an EMD of Rs 75 crore, by October 31, 2022.

Reliance Capital is the third large non-banking financial company (NBFC) against which the central bank has initiated bankruptcy proceedings under the IBC.

For More Details, Please Visit:

<https://economictimes.indiatimes.com/news/company/corporate-trends/nclt-extends-reliance-capital-resolution-process-deadline-to-january-31/articleshow/94942024.cms>



News Update

**For Internal Circulation Only*

**Knowledge SBU Initiative*

Can't Interfere with CoC'S Decision Not To Pay Suspended Directors for Their Services During CIRP: NCLT Ahmedabad

While adjudicating Indian Overseas Bank vs AMW Autocomponent Ltd., the Ahmedabad Bench of NCLT held that promoters and persons associated with the management of the Corporate Debtor ("CD") are statutorily obligated to extend all assistance to the Resolution Professional ("RP"). The Bench declined to interfere with the CoC's decision to not pay remuneration to the Suspended Directors, for the services rendered by them on the request of RP during insolvency process.

The RP contended that the directors are the related party of the CD and any payment to them would fall under related party transactions as per Section 28(f) of IBC and therefore is bound under Section 28 of IBC to take approval of CoC. However, the CoC did not approve the said related party transaction on the ground of it being exorbitant as the CD was under severe financial distress.

The Bench referred Section 188 of the Companies Act, 2013 as the term 'related party transaction' is not defined under IBC. It was further observed that IBC empowers the CoC to take commercial decision as to whether related party transactions should be undertaken or not during the CIRP. Reliance was placed on the Supreme Court judgment in Vallal RCK Vs. M/s Siva Industries and Holdings Ltd. & Ors wherein it was held that "*the commercial wisdom of the CoC has been given paramount status without any judicial intervention for ensuring completion of the stated processes within the timelines prescribed by the IBC*".

For More Details, Please Visit: <https://www.livelaw.in/news-updates/nclt-ahmedabad-suspended-directors-corporate-debtor-section-7-of-the-insolvency-and-bankruptcy-code-cocs-decision-cirp-212729>

Hope you find this update helpful. Suggestions if any, may be mailed to iiipi.pub@icai.in

News Roundup

Adjudicating Authority Can Invoke Inherent Powers to Replace Liquidator: NCLAT

The NCLAT while adjudicating an appeal filed in *Subrata Maity v Mr. Amit C. Poddar & Ors.*, has held that the Adjudicating Authority can invoke its inherent powers to replace the Liquidator and to do substantial justice.

The NCLAT held that the Liquidator does not have any personal right to continue in the Liquidation Process. The Adjudicating Authority did not err in replacing the Appellant especially when the days were lost due the Appellant's incapability to act as a Liquidator.

For More Details, Please Visit: <https://www.livelaw.in/news-updates/nclat-adjudicating-authority-can-invoke-inherent-powers-to-replace-the-liquidator-212209>.

Hindusthan National Glass Lenders Vote in Favour of AGI Greenpac's Plan

Lenders of Hindusthan National Glass (HNG), India's largest glass bottle maker undergoing corporate insolvency, voted for AGI Greenpac's Rs 2213 crore offer to acquire the company. AGI Greenpac offered Rs 1851 crore upfront and Rs 356 crore as deferred payment to lenders; and Rs 6 crore payment to employees and trade creditors. Girish Juneja, the resolution professional backed by EY, had admitted Rs 3338 crore claims from financial creditors and AGI Greenpac's offer to financial creditors equates to a recovery of 66%.

For More Details, Please Visit: <https://economictimes.indiatimes.com/industry/banking/finance/hindusthan-national-glass-lenders-vote-in-favour-of-agi-greenpac-resolution-plan/articleshow/95151647.cms>

UK Supreme Court Confirms Existence of Directors' Duties to Creditors

The UK's Supreme Court in *BTI 2014 LLC v Sequana SA and others* [2022] UKSC 25 case has considered for the first time the circumstances in which directors are required to act in the interests of creditors when a company faces insolvency, but is not yet in an insolvency process. The Court stated that Directors must consider the interests of creditors when i) the company is insolvent on a balance sheet basis or is unable to pay debts as and when they fall due and therefore insolvent on a cashflow basis. ii) the company is bordering on insolvency iii) insolvent liquidation or administration is probable, or, iv) the particular transaction would create one of the above situations

Creditors' duty is a modification of the statutory duty to act in good faith and promote the success of the company under section 172 of the Companies Act 2006. It exists at common law and is distinct from directors' liabilities in relation to wrongful trading and unlawful preferences under the Insolvency Act 1986.

For More Details, Please Visit: <https://www.mondaq.com/uk/insolvencybankruptcy/1243524/uk-supreme-court-delivers-landmark-judgment-on-directors-39-duties-when-a-company-faces-insolvency>



No Notice Required for Personal Guarantor at the Stage of Appointment of IRP: NCLT Amravati

The NCLT Amravati Bench, while adjudicating a petition filed in *Central Bank of India v Mr. Kothapatti Raju*, has held that in terms of Section 97 and Section 100 of IBC, no notice or right of audience can be given to the Personal Guarantor at a stage before appointing the Interim Resolution Professional.

The Bench observed that Notice was issued to the Personal Guarantor but none appeared. It was observed that even if the Personal Guarantor had appeared, no right of audience is available to him under Section 95 or Section 97 of IBC.

Accordingly, the Bench admitted the application under Section 95 of IBC and initiated insolvency resolution process against the Personal Guarantor.

For More Details, Please Visit: <https://www.livelaw.in/news-updates/nclt-amravati-insolvency-and-bankruptcy-code-personal-guarantor-appointment-of-irp-212873>