IBC News

Interveners do not have the Right to Seek Relief for themselves before the Adjudicating Authority: NCLAT

The Appellate Tribunal observed that the individuals who submit their claims to the Resolution Professional and whose claims are documented have the complete right to approach the Successful Resolution Applicant (SRA) or the Monitoring and Implementation Committee. "They are entitled to pursue their entitlements according to the provisions outlined in the Resolution Plan," said NCLAT while dismissing petitions filed by Jaiprakash Associates Limited (JAL) and Manoj Gaur (Appellants), erstwhile MD and personal guarantor of Corporate Debtor's loan. The appeal was filed against NCLT's order approving the Resolution Plan in the CIRP of the Corporate Debtor. NCLAT observed that interveners are expected to either support the challenged order or the appellant.

Source: Livelaw.in, April 01, 2024

https://www.livelaw.in/ibc-cases/nclat-delhi-interveners-relief-adjudicating-authority-253948

IBBI Governing Board gets Two Part-Time Members

The Ministry of Corporate Affairs (MCA) has appointed M. P. Ram Mohan, a Professor at the Indian Institute of Management (IIM) Ahmedabad, and Dinabandhu Mohapatra, a Non-Executive Independent Director at Indiabulls Housing Ltd., as part time members in the Governing Board of the Insolvency and Bankruptcy Board of India (IBBI). With these appointments, IBBI Governing Board is now in full strength as per the IBC requirement.

These appointments are effective from February 19 for a period of five years or until they attain the age of sixty-five or until further orders, whichever is earlier. Mohapatra, who has over three and half decades of experience in the banking and insurance sector, was former Managing Director & CEO at Bank of India. Presently, the IBBI Governing Board has 10 members including the Chairperson of IBBI.

Source: The Hindu Businessline, April 02, 2024.

https://www.thehindubusiness line.com/economy/policy/mca-appoints-two-part-time-members-to-ibbi-governing-board/article 68018676.ece

Successful Resolution Applicant is bound by the approved Resolution Plan, rules the Supreme Court

The Supreme Court has rejected the appeal of Deccan Value Investors, the Successful Resolution Applicant (SRA) to withdraw its Resolution Plan amounting ₹1,500



crore for resolution of Metalyst Forgings under the IBC. In its appeal, the SRA alleged that the Resolution Professional had failed to provide information which were critical to decision making regarding the Resolution Plan.

"Inadequacies and paltriness of data are accounted for and chronicled for valuations and the risk involved. It is strange to argue that the super-specialists and financial experts were gullible and misunderstood the details, figures, or data. The assumption is that the resolution applicant would submit the revival/ resolution plan specifying the monetary amount and other obligations after an in-depth analysis of the fiscal and commercial viability of the corporate debtor," said the Supreme Court. It further added, "Pointing out the ambiguities or lack of specific details or data, post acceptance of the resolution plan by the CoC, should be rejected, except in an egregious case where data and facts are fudged or concealed. Absence or ambiguity of details and particulars should put the parties to caution, and it's for them to ascertain details and exercise discretion to submit or not submit a resolution plan." Rejecting appeal of the SRA, the Supreme Court said, "This is not a case where misinformation or wrong information was given to the resolution applicants."

Source: The Economic Times, March 26, 2024.

https://economictimes.indiatimes.com/news/india/resolution-winner-is-bound-by-plan-sc-rules-in-metalyst-forgings-case/articleshow/108771720.cms?from=mdr

NCLT approved Repayment Plan by Personal Guarantors

As per the Repayment Plan approved by NCLT for Pradip Overseas, the creditors are required to release the personal guarantees provided by all the personal guarantors. Besides, creditors shall withdraw all the legal proceedings before various for against the debtor within one month of the fulfilment of repayment obligations.

In this repayment plan, five personal guarantors, albeit from the same family, have come together for resolution of the Corporate Debtor. The personal guarantors had proposed to pay ₹11.51 crore against the total admitted liabilities of ₹ 3,017 crore.

Source: The Economic Times, March 26, 2024.

https://www.msn.com/en-in/money/news/pradip-overseas-plan-receives-nclt-approval/ar-BB1kwCxQ

IL&FS seeks NCLAT's approval to sell its insolvent companies with haircuts

IL&FS Group has sought NCLAT's nod to sell its stake with a "haircut" and without shareholders' approval in its companies, which are insolvent with unsustainable debts and placed under the Category II list of the resolution framework.

In the application, IL&FS has alleged that the shareholders of Category II are either blocking such resolution by voting in the CoC or filing an application before the NCLT. It further claimed that permitting for writing down the entire share capital of such Category II companies upon payment of the bid value/proceeds without the requirement of obtaining any further approvals from the shareholders, will result in the final resolution of these entities.

NCLAT approved resolution framework for IL&FS Group, which has a debt burden of ₹94,000 crore, divides its companies under two categories based on their potential bidding amount.

Source: Business Standard, March 24, 2024.

https://www.business-standard.com/companies/news/il-fs-seeks-nod-to-sell-insolvent-companies-without-shareholders-approval-124032400221_1.html

Whether Input Tax has been taken in excess by Corporate Debtor or not, cannot be decided in proceedings under Section 9 of IBC: NCLAT

NCLAT, New Delhi Bench has upheld that the issue whether the Corporate Debtor (CD) has claimed input tax in excess on a GST invoice raised by the Operational Creditor cannot be decided in proceedings under Section 9 of the IBC.

"As per the submission of the Appellant that CD has taken input on the tax invoice sent by the Appellant. It is on record that advance payments were made by the CD and issues whether input tax taken is in excess is the issue which could not be gone into in proceeding under Section 9 of the IBC. However, we observe that it shall be open for the Appellant to take such remedy as available under the contract if there are any dues," said the Court in the case of Zaara Enterprises Venture Pvt. Ltd. (Appellant) vs. Dhanraaj Agencies Pvt. Ltd. (Respondent/CD).

The CD had engaged the Appellant for some interior work in one of its showrooms for which some advance payments were made. In an email dated July 11, 2022, to the Appellant, the CD sought refund of the excess amount alleging the work done by Appellant was not satisfactory and incomplete. Thereafter, the Appellant served a "demand notice" to the CD and after payments were not received, it filed an insolvency petition under Section 9 of the IBC. In the court, Appellant submitted that it completed the work as per the contract and email was just a moonshine defense by the CD. Further, the CD had also claimed Input Tax Credit on the GST invoice raised by the Appellant.

Source: Livelaw.in, March 17, 2024.

https://www.livelaw.in/ibc-cases/issue-of-whether-input-tax-has-been-taken-in-excess-cant-be-dealt-with-in-section-9-proceedings-under-ibc-nclat-delhi-252570

NCLT has power to order release of property attached by ED after approval of Resolution Plan: Bombay High Court

The Bombay High Court has ruled that once a Resolution Plan is approved by the NCLT, it has the power to order the release of properties of the Corporate Debtor attached by the Enforcement Directorate (ED). The Court further clarified that protection afforded by Section 32A would become available only when the Resolution Plan is so approved, and such a Resolution Plan meets the other necessary ingredients to qualify for the immunity, namely, that there is a clean break with a change in ownership of, and control over, the Corporate Debtor.

The judgement was pronounced on a petition filed by resolution applicants in the case of DSK Southern Projects Pvt. Ltd., which was undergoing insolvency process. In this matter, ED had filed a case against Corporate Debtor for cheating, which was part of the scheduled offence in the ED's case under the Money Laundering Act.

Subsequently, the agency attached the company's properties. These properties, worth ₹32 crores, continued to be attached even after the commencement of CIRP. In the petition before the High Court, the resolution applicants contended that despite the NCLT order, the ED did not release the properties. Bombay High Court, while allowing the petition, stated that Section 32A of the IBC 2016 states that no action can be taken against the properties of a corporate entity concerning the offence committed before the initiation of CIRP.

Source: Lawbeat.in, March 05, 2024.

https://lawbeat.in/news-updates/nclt-can-order-release-property-attached-ed-after-resolution-plan-approved-bombay-high-court

Greater Noida builder revived under 'Reverse Insolvency Order' from NCLT

RG Luxury Homes, in Greater Noida West, was launched in 2010 with a deadline to complete the project in 2014. However, the construction work was stalled due to a fund crisis and a group of homebuyers filed CIRP petition in NCLAT in 2019. In February 2020, NCLT issued a "reverse insolvency order" regarding 1,900 units of the Phase-1 which was affected due to the insolvency proceedings and directed the promoters to complete the construction under the supervision of the Resolution Professional. The builder has not secured occupancy certificates (OCs) from the Greater Noida Industrial Development Authority (GNIDA) for 854 flats in four towers and has rolled out possession to homebuyers.

Source: The Economic Times, March 10, 2024.

https://economictimes.indiatimes.com/industry/services/property-/-cstruction/noida-housing-project-pulled-back-from-insolvency-now-offers-possession-to-buyers/articleshow/108369448.cms?from=mdr

Rene Benko, an Austrian property tycoon and one of the country's richest men, filed for insolvency

Austrian investor Rene Benko, founder of the Signa property and retail group and one of Austria's richest men, has reportedly filed for insolvency. According to media reports, the insolvency petition has been filed for his inability to pay fees linked to the insolvency of Signa Group's holding company. However, this is not a private insolvency but rather insolvency as a business owner. As per a media report, Benko is personally liable with his own private wealth, estimated in 2023 to be around \$6 billion.

Source: Dw.com, March 07, 2024

https://www.dw.com/en/austrian-property-tycoon-rene-benko-files-for-insolvency/a-68464903

Formulate a Code of Conduct for CoC: Delhi High Court to IBBI

The Delhi High Court has directed the Insolvency Bankruptcy Board of India (IBBI) to formulate a Code of Conduct for taking recourse against the Committee of Creditors (CoC) by other stakeholders during the Corporate Insolvency Resolution Process (CIRP) in instances of negligence by the CoC. However, the Code of Conduct should not dilute the sanctity of the "commercial wisdom" of the CoC and the legislative intent of the IBC, asserted the Court.

"IBBI is directed to frame/finalize a Code of Conduct/guidelines in accordance with its stand set out in the

instant case, principles mentioned hereinabove and as per other relevant considerations, within a reasonable period of time, preferably, within three months from the date of the passing of this judgment, for the effective functioning of the CoC, without diluting the sanctity of the commercial wisdom of the CoC and the legislative intent of the IBC," said the Court. This judgement has come in a case wherein the CoC, without giving any reason, rejected the proposal of Resolution Professional to raise interim finance and maintain the Corporate Debtor (CD) as a going concern. In the petition the Director of the CD alleged that it was due to this decision of the CoC, the CD which was valued about ₹300 crore at the starting of CIRP was disposed in just ₹10 crores. Besides, the petitioner was not allowed to bring in investors to settle the outstanding dues. The high court emphasized that once a decision is made by the CoC, aggrieved parties are deprived of legal remedies.

Source: Lawbeat.in, March 01, 2024.

https://lawbeat.in/news-updates/delhi-high-court-directs-ibbiform-code-conduct-coc-enabling-legal-recourse-stakeholderscases-negligence-coc

Spicejet Airline strikes settlement on ₹250 crore insolvency Dispute

SpiceJet and Celestial Aviation have successfully resolved \$29.9 million (₹250 crore) insolvency dispute through out of court mutual agreement.

"This settlement marks a significant step forward for both parties and underscores our commitment to finding amicable solutions to complex challenges" said Ajay Singh, CMD, SpiceJet. After this settlement, SpiceJet is reportedly expecting to save ₹235 crore.

Celestial Aviation, in August 2022, had filed a plea under Section 9 of the IBC, 2016 to initiate the insolvency process against SpiceJet due to non-payment of dues amounting \$29.9 million for nine aircrafts.

Source: Cnbctv18.com, February 28, 2024.

https://www.cnbctv18.com/aviation/spicejet-settles-29-million-dollar-insolvency-dispute-with-celestial-aviation-19157771.

NCLT approves Resolution Plan for Reliance Capital

The NCLT, Mumbai Bench has approved IndusInd International Holdings' Resolution Plan for the acquisition of Reliance Capital under the IBC.

As per the Resolution Plan, IndusInd International will provide upfront cash payment of ₹9,650 crore, accounting for 37.03 per cent of the initial amount

claimed. The company has also proposed an amount net of ₹50 crore for the benefit of the CoC, which will be part of the upfront cash and an additional ₹11 crore over and above the proposed amount.

"The Resolution Plan provides for the implementation of the terms thereof within a period of 90 days from the approval of the Resolution Plan," said NCLT, adding that the 90-day timeline may be extended if required. According to media reports, the RBI and SEBI approvals are expected to come by next week or so, but the IRDAI application is in the process of being filed and might take some time.

Source: The Hindu Businessline.com, February 27, 2024. https://www.thehindubusinessline.com/money-and-banking/nclt-approves-hinduja-groups-resolution-plan-for-reliance-capital-takeover/article67892431.ece

CIRP cases increase 18% in Oct-Dec Quarter: IBBI Newsletter

As per the data of the Newsletter, cases admitted under the corporate insolvency resolution process (CIRP) rose to 7,325 in the October-December quarter (Q3) of the Financial Year (FY) 2023-24 from 6,199 in the corresponding Q3 of FY 2022-23, which is 18 percent higher on a year-on-year basis. Since the commencement of IBC, 2016, resolution plans of 891 CIRP cases have been approved till December 2023 and 2,376 cases went for liquidation, whereas 1,899 cases are pending in various courts. The number of cases closed under the process jumped to 5,426 in Q3 of FY2023-24 from 4,199 of Q3 in FY 2022-23. The manufacturing sector topped with 38 percent of the total cases followed by Real estate's 21 percent and construction's 12 percent. Till December 2023, creditors have realised ₹3.21 lakh crore.

Source: Moneycontrol.com, February 26, 2024.

https://www.moneycontrol.com/news/business/insolvency-cases-rise-18-in-oct-dec-shows-ibbi-data-12349201.html

Canada's budget airline Lynx Air filed for bankruptcy protection

According to media reports, Lynx Air is facing financial crisis due to rising operating costs, high fuel prices and increasing airport charges. The company is reportedly planning to shut operations from February 26, 2024. In a media statement, the company has reportedly informed that despite substantial growth in the business, cost reductions and efforts to explore a sale or merger, the challenges facing the business have become 'too significant to overcome'. Lynx will reportedly seek protection under the Companies' Creditors Arrangement

Act, a Canadian Federal Act that allows large corporations to restructure their finances and avoid bankruptcy, while allowing creditors to receive some form of payment for amounts owed to them.

Source: Reuters.com, February 21, 2024.

https://www.reuters.com/business/aerospace-defense/canadas-lynx-air-files-bankruptcy-protection-cease-operations-feb-26-2024-02-23/

Credible threat of the IBC that a Company may change hands has changed the behaviour of debtors: IBBI

"Thousands of debtors are resolving distress in early stages of distress. They are resolving when default is imminent...making best efforts to avoid consequences of the resolution process," said IBBI in its Quarterly Newsletter for Oct.-Dec. 2023. As per the data in the IBBI Newsletter, over one-third of the CIRP cases that were withdrawn after admission resulted in full settlement with the creditor who filed the insolvency application. Furthermore, a total of 1,035 applications have been withdrawn under the Insolvency and Bankruptcy Code (IBC) process after admission till December 2023. The data also reveal that more than three-fourths of the CIRP cases withdrawn after admission had claims of less than ₹10 crore.

Source: Business Standard, February 20, 2024.

https://www.business-standard.com/companies/news/ibc-threat-has-changed-creditor-behaviour-says-ibbi-124022000817_1.html

Large Number of Innovations can be done in preparing Resolution Plans for Real Estate Projects: Ravi Mital, Chairperson, IBBI

Homebuyers are important creditors in real estate projects and there is scope for a number of innovations by resolution professionals (RPs) in preparing resolution plans to serve their interests. These views were expressed by Shri Ravi Mital, Chairperson, Insolvency and Bankruptcy Board of India (IBBI) while addressing a Conference "Balancing Rights of Stakeholders Under IBC" jointly organized by IIIPI, IBBI and PHD Chamber of Commerce & Industry (PHDCCI) in New Delhi on Feb. 23, 2024.

"Proper communication with homebuyers is very crucial during insolvency process. If communication improves half of the problem is solved," said Shri Mital. He also suggested some measures for speedy and effective resolution of real estate projects such as allowing the homebuyers to bid for the projects, improving coordination between AR and RP, creating online channels for sharing relevant information with

homebuyers, and working in close coordination with the homebuyers.

Speaking on this occasion, Dr. Ashok Haldia, Chairperson-IIIPI Board said, "Insolvency Professionals (IPs) handling the cases of homebuyers, besides contributing to the economy, are doing public service as well". He suggested that the RERA should have a dedicated cell to address the issues related to the stressed real estate projects. Shri G. P. Madaan, Chair, NCLT & IBC Committee, PHDCCI highlighted that the recoveries under the IBC should be evaluated in terms of liquidation value of the corporate assets not the claims by the creditors.

Source: IIIPI Press Release, February 23, 2024.

https://www.iiipicai.in/wp-content/uploads/2024/02/IIIPI-Press-Release-Conference-on-Feb-23-2024.pdf

Genesis gets US court's approval to sell \$1.6 billion in crypto trust shares

U.S. Bankruptcy Judge Sean Lane has approved Genesis's request at court hearing in White Plains, New York, allowing the company to monetize its shares of Grayscale Bitcoin Trust, Grayscale Ethereum Trust, and Grayscale Ethereum Classic Trust. Genesis holds about 35 million shares in the bitcoin trust, worth about \$1.38 billion, and Ethereum trust shares worth about \$207 million, according to court filings. It told the judge it needs to sell those shares to repay customers and avoid paying \$1.9 million in monthly fees on its trust agreements.

Source: The Economic Times, February 15, 2024.

https://economictimes.indiatimes.com/tech/technology/genesis-gets-court-approval-to-sell-1-6-billion-in-crypto-trust-shares/articleshow/107719339.cms

NCLT Mumbai ordered CIRP of Vadraj Cement, a subsidiary of ABG Shipyard

The CIRP against Vadraj Cement, a group company of the bankrupt ABG Shipyard, has been admitted at NCLT Mumbai after it defaulted on dues of more than ₹87 crore to the Punjab National Bank (PNB). However, company's total debt reportedly stands around ₹7,000 crore and the lenders include, PNB, Union Bank of India, Central Bank of India, Indian Overseas Bank, Bank of India, Bank of Baroda etc. According to the PNB, despite repeated requests, the company failed to repay its dues. Following the default, the bank filed an insolvency application in September 2018, almost a year after its loan to the company was classified as a nonperforming asset (NPA) in December 2017.

Source: LiveMint.com, February 04, 2024.

https://www.livemint.com/news/india/nclt-orders-insolvency-proceedings-against-vadraj-cement-1707040904781.html

IBBI removed restriction preventing the same IP from participating in both the CIRP of CD and for its Individual Guarantor

With objectives to reduce the risk of misrepresentation and concealment of information, as the same RP would be involved in both processes, the Insolvency and Bankruptcy Board of India (IBBI) has reportedly removed the restriction preventing the same IP from participating in both the insolvency process of a company and for its individual guarantor.

According to experts, this move will expedite the resolution process as the RP, who has been working on the corporate, which is undergoing CIRP, would already be aware of the affairs of the personal guarantor. Besides, it will be helpful for the RPs in obtaining information from promoters. According to media reports, this comes after a crucial development last November, when the Supreme Court confirmed the legality of crucial parts of the IBC, including the initiation of insolvency proceedings against personal guarantors.

Source: NDTVProfit.com, February 06, 2024.

https://www.ndtvprofit.com/law-and-policy/ibbi-removes-restriction-on-insolvency-professionals

Parliamentary Committee calls to revisit the IBC for Quicker Insolvency Resolution Process

The Standing Committee of Parliament on Finance headed by Member of Parliament Jayant Sinha has proposed the revisit of the Insolvency and Bankruptcy Code, 2016 (IBC) due to inordinate delays and poor infrastructural capacity of NCLTs, among other reasons. It has reportedly suggested a relook at the design of the IBC so that the very purpose behind its enactment is not defeated.

According to the Committee, the authorized strength of NCLTs needs to be increased in order to deal with the huge backlog of more than 20,000 cases at the end of each year. It observed that its recommendations regarding the analysis of capacity requirements visàvis projected cases in the NCLTs have not been heeded, said the Committee. It further added that NCLTs have been functioning with poor infrastructural set-up and the Ministry should prioritize addressing the requirements of the tribunals urgently by filling the infrastructural and human capacity gaps without further delay. "Actual recoveries on the ground are roughly between 25% and 30% of the admitted claims, and some cases take as long as two years for resolution, which is far beyond the time limit envisaged in the IBC," said the Committee. Regarding undue delays, the Committee noted that it is disconcerting that even admission of cases in NCLT has been taking an unduly long time, which thus defeats the very purpose of the Code. There have also been instances of frivolous appeals, which further drag on the resolution and recovery process, leading to severe erosion of asset value.

Source: NDTVProfit.com, February 07, 2024.

https://www.ndtvprofit.com/law-and-policy/ibc-revisit-proposed-for-quicker-insolvency-resolution-process

Canada braces for possible wave of business bankruptcies

"There are tens of thousands, if not hundreds of thousands, of businesses that remain viable, but will not be able to outrun their debt," Dan Kelly, President, Canadian Federation of Independent Businesses said to media persons. He further added that many debts could only be repaid by borrowing at a higher interest rate from banks. Small firms that employ fewer than 100 people are critical to the Canadian economy as they give jobs to almost two-thirds of the country's 12 million private workers. The lobby groups and economists have warned that a spike in bankruptcies, would weigh on economic growth of Canada.

Source: Reuters, February 01, 2024.

https://www.reuters.com/world/americas/canada-braces-possible-wave-business-bankruptcies-2024-02-01/

Supreme Court: Insolvency Set-Off Inapplicable in CIRP, Emphasizes Smooth Resolution Process under IBC

The Supreme Court has unequivocally declared that statutory set-off or insolvency setoff does not find application in the CIRP under the Insolvency and Bankruptcy Code. In a landmark ruling, the court, presided over by Justices Sanjiv Khanna and SVN Bhatti, underscored the imperative to disallow or restrict set-off obligations arising after the initiation of CIRP. The decision was prompted by an appeal from Airtel entities, which the court dismissed. Emphasizing the holistic nature of the Insolvency and Bankruptcy Code (IBC), the court rejected arguments anchored in Sections 30(2)(b)(ii) and 53, clarifying that insolvency set-off is neither automatic nor self-executing under the IBC. The court drew upon the UNCITRAL Legislative Guide to differentiate between set-off obligations maturing pre and post the commencement of insolvency proceedings.

The ruling also addressed critical aspects concerning the corporate debtor's assets and the relevance of Section

14 of the IBC. In providing comprehensive guidance on the interpretation and application of insolvency laws, the Supreme Court's decision solidifies the framework for insolvency resolution, emphasizing the need for a streamlined and efficient process. This verdict assumes significance in shaping the landscape of corporate insolvency proceedings, offering clarity on the treatment of setoff obligations and reinforcing the IBC as an exhaustive legal code governing insolvency matter.

Source: Lawbeat.in, January 19, 2024.

https://lawbeat.in/supreme-court-judgments/ibc-cirp-not-recognize-insolvency-set-off-supreme-court

German retail giant Galeria faces insolvency due to Signa Collapse

German department store giant 'Galeria Karstadt Kaufhof' has reportedly filed for insolvency following the collapse of its partner Signa amid a real estate crisis in the region. In a media statement, the company said it was seeking a new owner after being hit by the problems at Signa, the insolvency Australian-based property empire that has become the biggest casualty so far in Europe's real estate crisis. According to media reports, it is the third time that Galeria, with 15,000 employees, filed for insolvency in recent years.

Source: ET Reality.com, January 09, 2024.

https://realty.economictimes.indiatimes.com/news/international/german-retail-giant-galeria-insolvent-in-wake-of-signa-collapse/106675268

NCLAT approves 'Settlement Plan' for Asian hotels even as the majority of lenders rejected the Same

The promoters, who operate the Hyatt Regency hotel near Mumbai airport, offered to pay the entire claims of lenders, trade creditors, employees, and government dues, but the plan was rejected by the largest lender - UV Asset Reconstruction Company (ARC). Approving the 'Settlement Plan', the NCLAT said that the lenders' decision to reject it was 'arbitrary and unsustainable'. As per the Settlement Plan, the promoters − Sandeep Gupta, Sudhir Gupta, and Robust Hotels, who jointly own 88% equity will pay upfront the entire claims amounting to ₹361.6 crore to the creditors.

Source: The Economic Times, January 14, 2024.

https://economictimes.indiatimes.com/industry/services/hotels/-restaurants/nclat-approves-settlement-plan-for-asian-hotels/articleshow/106819864.cms