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LATEST UPDATES ON INSOLVENCY AND BANKRUPTCY

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➤ Decree Obtained By Operational Creditors From Civil Court Does Not Mean They Cease To Be Operational Creditors: NCLAT

The National Company Law Appellate Tribunal (NCLAT) New Delhi bench of Justice Ashok Bhushan (Judicial Member) and Mr. Barun Mitra (Technical Member) has held that an application under Section 9 of the **Insolvency and Bankruptcy Code, 2016 (Code)**, cannot be rejected solely on the ground that the Operational Creditor, having obtained a decree for the debt, ceases to be an Operational Creditor.

It further held that just because a decree has been obtained by the Operational Creditor does not mean they cease to be Operational Creditors. **Senbo Engineering Ltd. (Respondent)** was awarded a contract by Delhi Metro Rail Corporation (DMRC) which was subcontracted by it to **Venus Buildtech India Pvt. Ltd. (Appellant)**. The Appellant completed the work and demanded payment. Due to non-payment, the Appellant was compelled to file a suit before the Civil Court and the court passed a decree in favor of the Appellant.

Consequently, executing proceedings were also initiated but no payment was made. The Appellant then filed an application under section 9 of the Code which was dismissed on the ground that a decree holder is distinct from an Operational Creditor.

The Appellant submitted that the operational debt which was owned to the Respondent shall not be transformed merely because a decree is obtained by the Appellant from Civil Court. The Appellant was Operational Creditor and the Adjudicating Authority committed error in rejecting the Application under section 9 of the code.

Source: Live Law

Read Full news: <https://www.livelaw.in/ibc-cases/decree-obtained-by-operational-creditors-from-civil-court-does-not-mean-they-cease-to-be-operational-creditors-nclat-288274>

➤ **Threshold Limit For Initiating Insolvency Process Against Personal Guarantors Shall be same of Corporate Debtor: NCLT**

The National Company Law Tribunal (NCLT) Chennai has held that the threshold limit for initiating the Personal Insolvency Resolution Process (PIRP) under Sections 94 or 95 of the Insolvency and Bankruptcy Code, 2016 (Code), shall be the same as that for a Corporate Debtor under Section 4 of the Code, i.e., ₹1 crore.

In order to initiate the Insolvency Resolution Process against himself as the Personal Guarantor for SKV United Hospitals Limited Corporate Debtor, the applicant, Mr. Keerthan Kumar Upadhya, filed this application under section 94 of the code. Shreem Hreem Shreem Holdings had provided credit facilities to SKV United Hospitals Limited. The aforementioned loans were personally guaranteed by the applicant. The current application was filed because the corporate debtor was unable to pay back the debts.

The Tribunal noted that the applicant gave a personal guarantee for a loan of Rs. 75,000,000 that the corporate debtor had taken out. The creditor used the guarantee to seek the sum, which is obviously less than the one crore criterion for starting the insolvency procedure.

The IBC classifies individuals into three categories- personal guarantors to corporate debtors, partnership firms and proprietorship firms and other individuals to enable implementation of individual insolvency in a phased manner. The provisions for personal guarantors to the corporate debtor came into effect on December 1 2019.

Source: Taxscan

Read Full news: <https://www.taxscan.in/threshold-limit-for-initiating-insolvency-process-against-personal-guarantors-shall-be-same-of-corporate-debtor-nclt/503653/>

