



INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA



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"Everything you've ever wanted is sitting on the other side of fear."

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➤ Debt Deconstructed: Analysis Of Supreme Court's Judgment On Determining The Nature Of Debt

The resolution professionals (RPs) are more often than not saddled with the decision of categorizing the claims submitted before them either as financial or operational debt. The Insolvency and Bankruptcy Code 2016 (IBC) has broadly defined the terms, financial and operational debt. However, given the diversity in the nature of claims, interpretational challenge over what amounts to financial and operational debt, particularly whether a deposit amounts to financial or operational debt, has led to multiple precedents[1].

This conundrum has been settled by the Supreme Court in *Global Credit Capital Limited & Anr. v Sach marketing Pvt. Ltd.* [2], (Judgment) where it has provided with the yardstick for determining whether a debt is financial or operational debt under Sections 5(8) and 5(21) of IBC, respectively.

The dispute arises out of two agreements (Agreements) executed between Mount Shivalik Industries Limited (Corporate Debtor) and Sach Marketing Pvt. Ltd (Sach Marketing). Under the Agreements, Sach Marketing was appointed as a sales manager and was required to deposit a minimum security over which the Corporate Debtor was to pay 21% interest per annum to Sach Marketing. Subsequently, corporate insolvency resolution process was initiated against the Corporate Debtor. Sach Marketing filed a claim with the resolution professional (RP) as a financial creditor.

The RP rejected the claim and categorized Sach Marketing as an operational creditor. Sach Marketing filed an application before the National Company Law Tribunal challenging the decision of the RP. The application was rejected on the ground that the security deposit was given as part of the Agreements by Sach Marketing to provide its services to Corporate Debtor.

Source: *Live Law*

Read Full news: <https://www.livelaw.in/articles/debt-deconstructed-analysis-of-supreme-courts-judgment-on-determining-the-nature-of-debt-259783>

➤ **Official Liquidator Must Adhere To Ethical Principles And Fairness To Discharge Their Duties Under IBC: Delhi High Court**

The Delhi High Court bench of Justice Subramonium Prasad held that official liquidators must adhere to ethical principles and demonstrate an unwavering commitment to fairness to discharge their duties under the Insolvency and Bankruptcy Code.

The bench held that the role of the liquidator in insolvency proceedings is paramount to the entire process. The liquidation proceedings revolve around the official liquidator, and he has to discharge his functions keeping in mind the benefit of the company which is under liquidation. They must adhere to the highest standards of ethical conduct, diligence, and impartiality to uphold the integrity of the process.

Source: Live Law

Read Full news : <https://www.livelaw.in/high-court/delhi-high-court/delhi-high-court-official-liquidators-ethical-principles-fairness-ibc-259608>

➤ **No Provision In IBC Mandates Treatment Of Unrelated Party At Par With Related Party: NCLAT Principal Bench, New Delhi**

The National Company Law Appellate Tribunal, Principal Bench, New Delhi, comprising Justice Rakesh Kumar Jain (Judicial Member), Shri Naresh Salecha and Shri Indevan Pandey (Technical Members), while adjudicating an application under Section 61 of Insolvency and Bankruptcy Code, 2016 ("IBC, 2016") in West Coast Paper Mills Ltd. vs Bijay Murmuria & Ors. has held that there is no provision of IBC, which mandates that the related party should be paid in parity with unrelated party. It was held that the Committee of Creditors and Adjudicating Authority were well within their rights not to treat a related party unsecured creditor on par with secured financial creditors.

Source: Live Law

Read Full news : <https://www.livelaw.in/ibc-cases/nclat-delhi-related-party-parity-unrelated-provision-ibc-259607>

