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INSOLVENCY
INSIGHT

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Demand Notice Alone Not Enough to Trigger Personal Guarantor Insolvency

In a significant ruling, the National Company Law Appellate Tribunal (NCLAT) in New Delhi has clarified that a demand notice issued under the Insolvency and Bankruptcy Code (IBC) does not automatically count as invoking a personal guarantee. This decision came in the case of State Bank of India v. Mr. Deepak Kumar Singhania. The court dismissed the bank's appeal, upholding an earlier order from the NCLT Allahabad that rejected the bank's attempt to start insolvency proceedings against Singhania, a personal guarantor for the now-liquidated company, LML Ltd.

This is a case where SBI extended financial help to LML Ltd., with Singhania signing a guarantee in 2005. After LML Ltd. defaulted and went into liquidation in 2018, SBI issued a demand notice in May 2022, asking Singhania to pay over ₹125 crore. The bank then applied Section 95 of the IBC to initiate insolvency against him. However, the NCLT rejected this, saying the bank hadn't formally invoked the guarantee before issuing the notice—a key step under the rules.

The NCLAT agreed, explaining that for a personal guarantor to face insolvency, two things must happen: they must have guaranteed a corporate debtor's debt, and the creditor must have invoked that guarantee, leaving it unpaid. The court stressed that the demand notice under Rule 7(1) of the Personal Guarantor Insolvency Rules isn't the same as invoking the guarantee. Instead, the guarantee must be activated separately, as per its terms, before any insolvency action can start. Since SBI didn't do this, their case didn't hold up.

Conversion to LLP Doesn't Dodge Insolvency, But False Statements Don't Always Mean Perjury

In another notable decision on February 28, 2025, the NCLAT in New Delhi overturned an NCLT ruling that had accused directors of Solutions Business Centre Pvt. Ltd. of perjury. The case, Ajay Vij and Anr. v. Mr. Abhishek Dutta, revolved around the company's conversion into a Limited Liability Partnership (LLP) while facing insolvency proceedings under the IBC.

This is a case where an insolvency petition was filed against Solutions Business Centre. Later that year, director Ajay Vij filed a form with the Registrar of Companies (ROC) claiming no legal proceedings were pending against the company—a false statement, given the ongoing insolvency case. The NCLT saw this as perjury, fined Vij and another director ₹2 lakh each, and ordered criminal action. It also suggested the conversion to an LLP was a trick to escape creditors.

The NCLAT disagreed. It ruled that converting to an LLP doesn't let a company dodge insolvency proceedings. Under the LLP Act, all liabilities and legal actions transfer to the LLP, so the insolvency case would continue regardless. The court found the false statement in the ROC form wasn't "material" to the conversion process itself, meaning it didn't justify a perjury charge. Plus, since the statement was made to the ROC, not the NCLT, the NCLT overstepped by acting on it. The fines and perjury orders were scrapped.

Record of Default with Information Utility is Evidentiary, Not Mandatory for Section 9 IBC Petitions

The Hon'ble NCLT, Hyderabad Bench, in dismissing a Section 9 petition under IBC 2016, clarified that the submission of a record of default from an Information Utility (IU) is not a strict prerequisite for initiating insolvency proceedings, offering procedural flexibility to operational creditors.

In this case, R.K. Lala (Operational Creditor) sought to initiate the CIRP against Ramky Infrastructure Limited (Corporate Debtor) for an alleged operational debt of Rs. 1,71,51,528, stemming from a 2012 subcontract for electrical work. The OC issued a demand notice in April 2022, but the CD contested the petition, arguing, among other points, that the OC's failure to initially provide a record of default from an IU, as mandated by Section 9(3)(d) and Regulation 20(1A) of the IBBI (Information Utilities) Regulations, 2017, rendered the application defective. The OC later submitted this record in its rejoinder.

The NCLT's analysis focused on the legal weight of this requirement. It observed that Section 9(3)(d) requires an OC to furnish "a copy of any record with an information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available," and Regulation 20(1A) mandates filing such information before a Section 9 application. However, the Tribunal emphasized the word "confirming" in Section 9(3)(d), interpreting it to mean that the IU record is merely evidentiary, serving to substantiate non-payment rather than being a compulsory condition.

The NCLT held that an OC can rely on alternative evidence to prove an unpaid debt, aligning with the IBC's facilitative nature to avoid technical dismissals. Consequently, the initial non-production of the IU record was not fatal, especially since it was later provided and accepted per Dena Bank v. C. Shivakumar Reddy (2021), which permits additional documents in pleadings.

Despite this finding, the petition was dismissed on 25 February 2025 due to other grounds (unproven debt and Section 10A's bar). This ruling highlights that while procedural compliance is expected, the absence of an IU record alone will not derail a Section 9 application if the broader facts support the claim.

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