

13 September 2019

IBC 2016 in Motion

**SC Stays Amtek Auto
Liquidation**

Companies in a fix as GST, IBC rules clash, may move court

The GST regime and the IBC are locked in a seemingly intractable impasse, entangling companies undergoing resolution. Some are planning to take the indirect tax department to court over the issue. The GST software doesn't allow companies to pay current or future taxes without clearing dues from earlier years. But under IBC, the tax department has to wait until all creditors get their dues before beginning recovery. "Under the IBC framework, there is a moratorium. The company doesn't have to pay past taxes, including GST, after a defined trigger point," said Abhishek A Rastogi, partner at Khaitan & Co, which represents one of those seeking judicial redress. "Due to the way the GST software functions, companies can't pay taxes till they have cleared dues. This leads to genuine hardship."

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Supreme Court stays Amtek Auto liquidation

Liberty House was selected as the highest bidder by the CoC of Amtek Auto. However, it later backed out citing some reasons, following which lenders requested for another 90 days to find a new buyer. However, the NCLAT had last month declined CoC's request for extension of the insolvency resolution process deadline. Challenging the liquidation order, the lenders led by Corporation Bank told the SC that the appellate tribunal had failed to uphold the tenets of IBC. It said Amtek Auto being a financially viable entity was being pushed into liquidation merely on account of the fact that Liberty House, the successful resolution applicant, had defaulted in implementing the resolution plan.

NCLAT quashes proceedings against Bharat Road Network

The NCLAT has set aside the NCLT, Kolkata bench's August 28 order that admitted ReligareFinvest's insolvency plea against Kolkata-based Bharat Road Network (BRNL). The appellate tribunal directed the adjudicating authority to close the matter. "Taking into consideration the fact that the committee of creditors has not yet been constituted and the parties have settled the matter, we set aside the impugned order dated August 28, 2019, and dismiss the application under Section 7 of the IBC filed by ReligareFinvest. The adjudicating authority will now close the company petition," said the three-member NCLAT bench, headed by chairman Justice SJ Mukhopadhaya.

JSW Steel to seek immunity from Bhushan Power and Steel 'fraud deals'

JSW Steel Chairman Sajjan Jindal said his company will approach a higher court to seek immunity against claims arising from alleged money-laundering frauds at Bhushan Power and Steel (BPSL), a steelmaker in administration that Jindal has offered to buy for Rs 19,700 crore. "We as a resolution applicant had offered this value under certain conditions. The NCLT order has modified the plan in ways that can have an impact on the viability of the plan," Jindal said. "We will go for judicial intervention to make sure our conditions are approved. Jindal said the company will either seek clarifications from the NCLT or challenge the order in the appellate tribunal (NCLAT). The company will file an appeal before the end of next week.

Need ED's satisfaction over dues payments made by Sterling promoters: NCLAT

The NCLAT said the Enforcement Directorate needs to be satisfied that Sterling Biotech promoters' payments to settle dues with the lenders are coming from clean sources. It also said the promoters will have to settle their case with the creditors within a specified period. Promoters of the company include absconding Nitin Jayantilal Sandesara and Chetankumar Jayantilal Sandesara. A three-member NCLAT bench observed that the order is "conditional" as debt-ridden Sterling Biotech may "revert back to liquidation" and judgement would "stand reversed" if clean money is not paid within the period.

NCLT asks SBI not to sell Videocon's overseas oil & gas assets

The NCLT has asked SBI not to go ahead with its plans to sell the overseas oil & gas assets of Videocon Industries in its bid to recover some of their dues from the bankrupt group. Asking for maintaining the status quo, the NCLT said if SBI is allowed to execute the sale as advertised, the Videocon Group may suffer an irreparable loss if this tribunal in future takes a view that the assets in question belong to or owned by the group. These subsidiaries are SPVs specifically incorporated for holding foreign oil and gas assets for and on behalf of the group, the tribunal said in its order. Further, the creditors of these SPVs have lodged their claims with the RP. "SBI is hereby prohibited to go ahead with the advertisement and is directed to maintain the status quo till the decision is pronounced on merits," the NCLT said.

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