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IBBI PROPOSES RECENT AMENDMENTS TO INSOLVENCY AND BANKRUPTCY BOARD OF INDIA

One such amendment proposes that a resolution plan shall not prevent the creditors from enforcing their rights against the guarantors of the corporate debtor.

The Insolvency and Bankruptcy Board of India (“IBBI”), i.e. the insolvency regulator has proposed by way of a discussion paper dated **June 19, 2024**, certain amendments to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Process) Regulations, 2016 (“CIRP Regulations”). One of such amendments proposes that the resolution plan submitted by a resolution applicant shall not prevent the creditors from enforcing their rights against the guarantors of the corporate debtor.

The IBBI took note of multiple orders passed by the Hon’ble National Company Law Tribunal (“NCLT”) and National Company Law Appellate Tribunal (“NCLAT”), delving upon the issue regarding the treatment given to the guarantees under a resolution plan submitted by a resolution applicant. It was also noticed by IBBI that contrary stands have been taken by NCLT, NCLAT and other courts in such matters involving guarantees.

In this respect, the NCLAT in the matter between *SVA Family Welfare Trust & Anr. vs. Ujaas Energy Ltd & Ors. CA(AT)(Ins) No. 266 of 2023*, set aside an order passed by the NCLT, Indore Bench, wherein a resolution plan was rejected, since it provided for the extinguishment of guarantee of the guarantors. The order passed by the NCLAT was upheld by the Hon’ble Supreme Court of India in the case between *Bank of Baroda vs. Ujaas Energy Limited & Ors, CA No.6602 of 2023*. In effect, the resolution plan providing for extinguishment of the guarantees of the guarantors was held to be valid. On the other hand, the Hon’ble Supreme Court of India in the matter of *Lalit Kumar Jain vs. Union of India, (2021) 9 SCC 321*, observed that the approval of a resolution plan of a corporate debtor does not automatically release its guarantors from their liability.

The contrary stand taken by the courts as mentioned above regarding the extinguishment of guarantee of the guarantors in the resolution plan and/or the rights of creditors to proceed against the guarantors, required a much-needed clarification which is what the IBBI is now attempting to do by way of an amendment to the CIRP Regulations.

The IBBI has now proposed that the resolution plan submitted by a resolution applicant should not prevent the creditors from enforcing their rights against the guarantors of the corporate debtor. By way of a discussion paper, IBBI has called for comments on the proposed amendment to the CIRP Regulations in Regulation 37 (Resolution Plan),

wherein, the IBBI proposes to add a proviso to Regulation 37 (f) of the CIRP Regulations, which is reproduced hereunder:-

“Provided that a resolution plan shall not prevent the creditors from enforcing their rights against the guarantors of the corporate debtor.”

Introduction of the said proviso in the CIRP Regulation will provide clarity on the rights of the creditor to enforce their rights against the guarantors of the corporate debtor and will also prohibit the resolution applicant from extinguishing any guarantees, in the resolution plan. The proposed proviso seems to be aimed at protecting the rights of creditors as it gives them an independent right to move against guarantors for resolution. In addition, by ensuring that creditors’ rights against guarantors remain intact, the proposed amendment aims to strike a balance between the interests of all parties involved. Lastly, it provides much needed clarity and consistency in the resolution process, benefiting both the creditors and resolution applicants.

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