



Ayana Legal

THE BUZZ

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Monthly Newsletter By Team Ayana Legal

Landmark Judgements

P. Mohanraj & Ors. v. Shah Brothers Ispat Pvt. Ltd., Supreme Court of India, 2021

It was held that moratorium extends to proceedings under the Section 138 of the Negotiable Instruments Act as it is quasi-criminal in nature which would result in the assets of the corporate debtor being depleted.

Canara Bank v. Deccan Chronicle Holdings Limited., NCLAT, 2017

It was held that the imposition of the moratorium will not restrict any proceedings pending under Article 32 before the Supreme Court or restrict the power of any High Court under Article 226 of the Constitution of India.

CORPORATE INSOLVENCY RESOLUTION PROCESS

When a company defaults in paying its debts to the creditors, the company's creditors can initiate insolvency proceedings on default committed by it for securing payment. Insolvency resolution process can be best described as the process or mechanism by which the company's creditors recover their money from a company that is insolvent.

The creditors can approach the National Company Law Tribunal (NCLT) and file an application to initiate Corporate Insolvency Resolution Process (CIRP).

Moratorium

On accepting the application the Adjudicating Authority must complete the entire proceedings within 180 days from the date of admission of the application. During pendency of the insolvency proceedings the adjudicating authority shall declare a moratorium. The moratorium shall prohibit the institution of suits or continuation of pending suits or proceedings against the corporate debtor; including the transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein.

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State Tax Officer v. Rainbow Papers Ltd., Supreme Court of India, 2022

It was held that if a company is unable to pay its debts, which should include its statutory dues to the Government and/or other authorities and there is no plan which contemplates dissipation of those debts in a phased manner, the company would necessarily have to be liquidated and its assets sold and distributed.

Thank You

We at Ayana Legal thank you for your continued support and patronage to our newsletter and capsules. We look forward to being back with our next edition soon.

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Interim Resolution Professional

The application must propose the name of a resolution professional to act as an Interim Resolution Professional. The management of the affairs of such corporate debtor shall vest with the appointed Interim Resolution Professional, allowing them to act on behalf of the corporate debtor. This includes the power to enter into contracts on behalf of the corporate debtor.

Resolution Plan

Insolvency proceedings involves the creation of a resolution plan which is essentially a proposal of solution to the insolvency of the corporate debtor. The resolution professional, who is appointed by the committee of creditors invites applicants to submit resolution plans. Prior to creation of the resolution plan, an information memorandum disclosing all relevant details including assets and valuation of such assets that the debtor may possess is prepared. If the Adjudicating Authority approves the resolution plan it shall be binding on the corporate debtor and other stakeholders involved. Corporate Resolution Process is an attempt to revive the company rather than go into winding up or liquidation.

Liquidation

The Adjudicating Authority can pass an order for liquidation of the corporate debtor under Section 33 of the Insolvency and Bankruptcy Code. The Resolution Professional shall take on the role of a liquidator and shall form an estate of the assets of the corporate debtor. Further, the liquidator shall collect the claims of creditors and determine the value of these claims. On sale of the assets of the corporate debtor, the proceeds shall be distributed following an order of priority as provided for under Section 53 of the Insolvency and Bankruptcy Code.