

Admission of CIRP Applications on the basis of Form D (Record of Default) issued by NeSL-Information Utility

NCLT Division Bench II, Chennai, in the CIRP Application filed by M/s State Bank of India under Section 7 of IBC, 2016 (CP(IB)/48(CHE)/2023), has admitted the application for initiation of Corporate Insolvency Resolution against the Corporate Debtor M/s Reliable Cashew Company Private Limited, vide Order dated 22-06-2023.

In the above-mentioned Order, the Hon'ble members of NCLT have placed reliance on the contents of the Records of Default issued by NeSL-IU in determining (1) the outstanding default amount and (2) the date of default, in admitting the application filed under Section 7 of IBC, 2016, read with Rule 4 of the Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, for initiating CIRP.

The relevant extracts of the Orders of NCLT are as under:

“ Page 4 - Para 7:

.....The Applicant/ Financial Creditor has paced a record of default issued by NeSL duly authenticated as per which the outstanding and default amount is Rs.77,05,00,000/-. The date of default has been recorded as 09.07.2021.

Page 5 – Para 10 :

On considering the averments made in the pleadings and the documents, we are of the view that the Corporate Debtor has committed the default in respect of the debt which is more than Rupees one crore. It is fit case to initiate CIRP against the Corporate Debtor.”

Page 5 - Para 11:

The Hon'ble Supreme Court in Innoventive Industries Ltd vs ICICI Bank & Anr (2017 SCC Online SC 1025), held as follows:

*“30. On the other hand, as we have seen, in the case of corporate debtor who commits a default on a financial debt, **the adjudicating authority has merely to see the records of the information utility.....to satisfy itself that a default has occurred.**”*

Page 5 - Para 12:

In view of the facts stated supra, it is clear that the ‘financial debt’ is proved by the Financial Creditor and the ‘default’ having been committed by the Corporate Debtor. This Tribunal therefore admits the application.....”