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

NCLT, Bengaluru Bench, in the CIRP Application filed by Union Bank of India under Section 7 of IBC, 2016 (C.P(IB) No. 71/BB/2023), has admitted the application for initiation of Corporate Insolvency Resolution against the Corporate Debtor M/s Sindhu Cargo Services Private Limited vide Order dated 28.05.2024.

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 **date of default & Sec 10A exclusion period**, for 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 10 - Para 12:

"Further, in connection with the R.O.D issued by the information utility i.e NESL in the judgement of the ***Milind Kashiram Jadhav v. State Bank of India and Anr****. ..it was stated as under:*

"NESL Certificates stand as concrete manifestations of default, providing a clear and indisputable record of the debtor's failure to meet its financial obligations. Section 7(3)(a) states that ***"the Financial Creditor shall, along with the application furnish – (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified; ….."*** *and in this case record of default with the information utility was filed and is on record. In such a case there is no relevance of other documents as claimed by the Appellant and Admission cannot be disallowed on this ground".*

Therefore, the date of Default as stated & Authenticated in the R.O.D in Form D issued by the NESL being 31/12/2019, which does not fall within the ambit of 10A period is the actual and original date of Default.."

Page 11 – Para 17:

" . In view of the above discussion, we are of the considered opinion that there is a debt and default in this case; and the Petition is filed within the limitation period. The threshold requirement is also fulfilled. Hence the present petition ***CP (IB) No. 71 of 2023 is admitted …."***