



INSOLVENCY & BANKRUPTCY

Disclosure of proceeding under Negotiable Instrument Act is immaterial while filing Insolvency Proceedings

AUTHOR Arundhati Sukhtankar

PUBLISHED 27 July 2017

The Kolkata bench of the National Company Law Tribunal (“NCLT”) held that while filing an application for insolvency under the Insolvency and Bankruptcy Code 2016 (the “Code”) it was not necessary to disclose the fact of proceedings initiated under s. 138 of the Negotiable Instruments Act.

In this case, the financial creditors of the corporate debtor filed a joint application for initiation of corporate insolvency resolution process due to default in making payment.

The counsel for the corporate debtor raised the objection against the application on the ground that the petitioners had suppressed proceedings initiated by them against the debtor under the Negotiable Instruments Act for dishonoured cheques.

The NCLT held that the fact the cheques is dishonoured supports the petitioner’s case regarding the corporate debtor’s default. As the petitioner had filed a copy of the dishonoured cheque along with the petition, that itself amounts to sufficient documents for admission of application. The NCLT held that there is no need for the petitioner to file a separate affidavit disclosing proceeding under dishonour of cheque. . The NCLT accordingly, allowed the application and declared moratorium.