HSA ADVOCATES
HEMANT SAHAI ASSOCIATES

INSOLVENCY & RESTRUCTURING

Monthly update | June 2020

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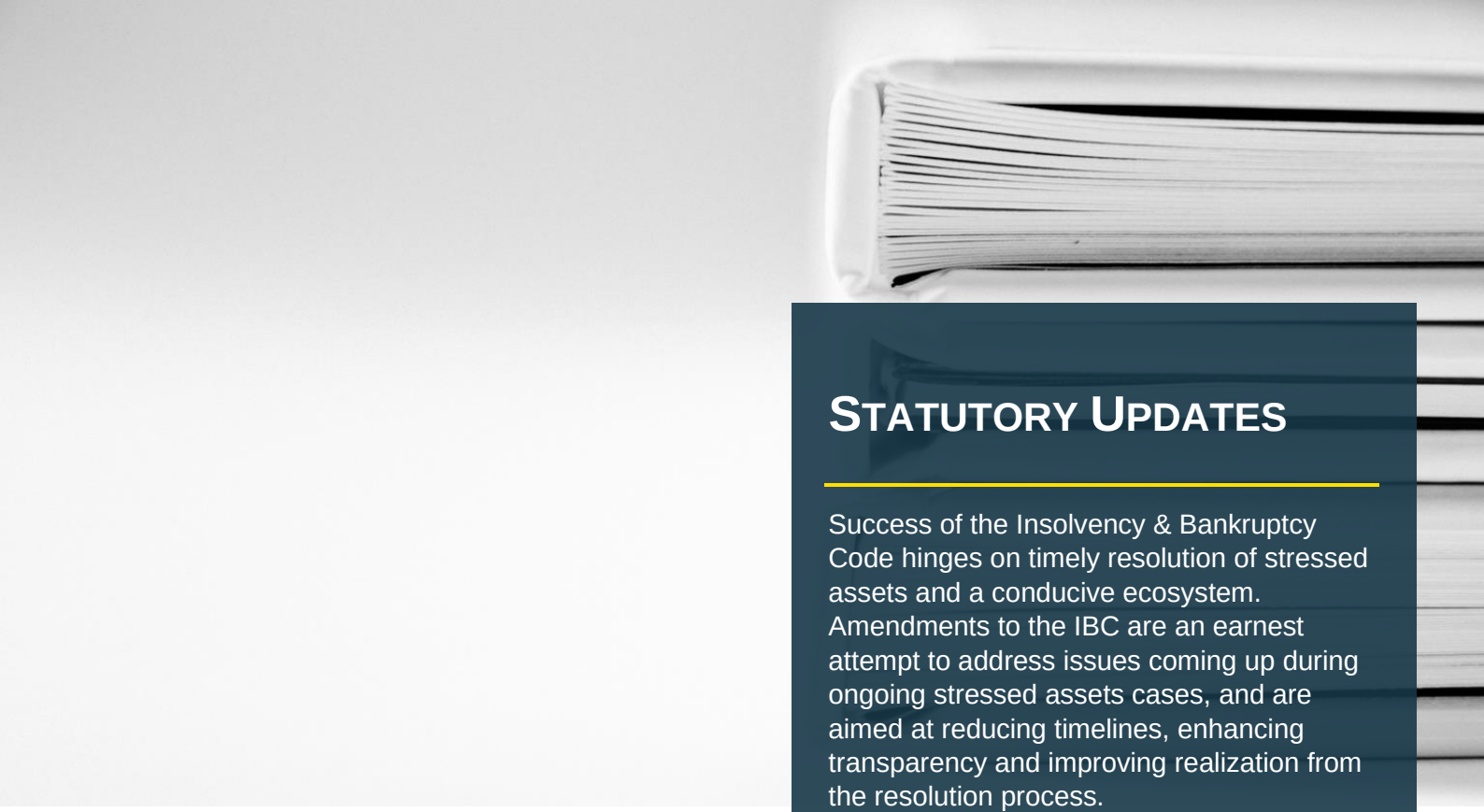


STATUTORY UPDATES

Success of the Insolvency & Bankruptcy Code hinges on timely resolution of stressed assets and a conducive ecosystem. Amendments to the IBC are an earnest attempt to address issues coming up during ongoing stressed assets cases, and are aimed at reducing timelines, enhancing transparency and improving realization from the resolution process.

Union Cabinet clears proposal for suspension of Sections 7, 9 and 10 of the IBC

- As part of the Atmanirbhar Bharat Package announced in May 2020, the Finance Minister declared an exemption of all Covid-19 related debts from ambit of 'default' under IBC and suspension of initiation of any fresh insolvency proceedings under Sections 7, 9 and 10 of IBC for a period of up to one year. However, Government did not announce relevant dates for aforesaid initiatives.
- On June 05, 2020, President of India promulgated Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 (**Ordinance**). The salient features of the Ordinance are as under:
  - It provides for insertion of Section 10A to IBC which states that no application for initiation of CIRP shall be filed for any default arising on or after March 25, 2020 for a period of six months or for a further period, up to one year, as may be notified.
  - Proviso to Section 10A provides that no application for initiation of CIRP can ever be filed for a default occurring during above-mentioned period. Therefore, such defaults have been excluded from ambit of 'default' under Section 3(12) of IBC. Consequently, any default arising on or after March 25, 2020 would be exempted from rigors of IBC for period of six months i.e. up to September 25, 2020. This period can be further extended up to one year if the Government decides to do so.
  - To clarify, this does not mean that insolvency proceedings cannot be filed during this period, but rather means that any default that takes place during this period will continue to be exempted from the rigors of the IBC. As such, defaults, committed during this period will continue to be immune to insolvency proceedings.
  - Further the Ordinance would not apply to any default arising before March 25, 2020. Therefore, application for initiation of CIRP can still be filed where default occurs before March 25, 2020.
  - Section 66(3) has been inserted which provides for an absolute restraint on Resolution Professionals for filing applications pertaining to fraudulent trading or wrongful trading transactions in respect of such defaults against which initiation of CIRP is suspended as per Section 10A of IBC.
- IBC has been a successful initiative for resolution of stressed assets and has brought an end to endless recovery proceedings and instead, ushered an era of time bound resolution, which not only balances interests of all stakeholders, but also ensures maximization of value of Corporate Debtor. The suspension of initiation of new proceedings under the IBC for defaults arising during a specific period might not be the best way forward unless it is also coupled with other initiatives by government to revive stressed companies. Moreover, suspension of Section 10 of IBC is especially unwarranted since it would refrain companies which voluntarily opt for resolution, to approach the NCLTs for desired outcome.

Notification No. 39 / 2020 – Central Tax dated May 05, 2020 issued by the Ministry of Finance (Department of Revenue), Government of India

- Central Government under Section 148 of Central Goods and Services Tax Act, 2017 (**CGST Act**) made amendments in Notification No. 11/2020 – Central Tax dated March 21,2020 issued by Ministry of Finance, Department of Revenue (**Notification**). The Notification provides for a special procedure pertaining to CGST and the amendment has been brought into effect to clarify various issues faced by entities which come under ambit of IBC. The salient features of the amendment are as under:
  - Provisions of the Notification (which provides a special procedure pertaining to Central Goods and Services Tax) would not be applicable to Corporate Debtors which have already furnished statements under Section 37 and returns under Section 39 of CGST Act for all tax periods prior to appointment of Interim Resolution Professional/Resolution Professional.
  - From March 21, 2020, Corporate Debtors who would be subject to provisions of Notification shall, from date of appointment of Interim Resolution Professional/Resolution Professional (**IRP/RP**), be treated as a distinct person and would be liable to take new registration in each and every state or Union territory where Corporate Debtor was registered earlier. The process has to be completed within thirty days of appointment of IRP/RP or by June 30, 2020, whichever is later.

NCLT Delhi Bench Office Order dated May 12, 2020

- Registrar, NCLT Delhi Bench issued Office Order dated May 12, 2020 directing that all new Applications under Section 7 of IBC have to be accompanied with a record of default obtained from information utility services. The order further provides that no new Application filed under Section 7 of IBC would be entertained without record of default.
- In addition to the above, Order also provides that record of default obtained from information utility services would also have to be filed for Applications under Section 7 of IBC which are pending for admission. In such cases, record of default has to be filed before the next date of hearing.
- An information utility is a professional organization (which is registered with IBBI under Section 210 of the IBC) that collects financial information, gets the same authenticated by other parties connected to the debt and, thereafter, stores the same. It also provides access to the Resolution Professionals, creditors and other stakeholders in the Insolvency Resolution Process, so that all stakeholders can make decisions based on the same information. In simple terms, a record of default is a statement issued by the information utility pertaining to a default on a particular loan and facility.
- While the Office Order dated May 12, 2020 mentions that such default records are to be filed in fresh as well as existing applications under Section 7 of the IBC, this was provided under Section 7(3)(a) of the IBC but was not being strictly followed by the NCLTs since the information utilities – particularly National E-Governance Services Limited (NeSL) – was not fully function and widely used. The Office Order has done away with the relaxation which was being provided by the NCLTs for applications under Section 7 of the IBC. This directive will pave the way for a quicker disposal rate as a pre-verified record of default will be available with the NCLTs for placing reliance upon.

RECENT JUDGEMENTS

By interpreting, clarifying and sometimes even modifying the Insolvency & Bankruptcy Code, judgements and orders by courts and other fora have played an important role in the evolution of the Insolvency & Bankruptcy framework in India.

Foseco India Ltd v. Om Boseco Rails Products Ltd

ORDER DATED MAY 20, 2020 IN CP (IB) NO. 1735/KB/2019

- Foseco India Ltd (**Foseco**) filed an Application under Section 9 against Corporate Debtor before NCLT, Kolkata Bench for an alleged default of INR 90,00,919.10
- Corporate Debtor contended that amendment to IBC introducing a proviso to Section 4 which provides that Central Government may, by notification, specify minimum amount of default of higher value which shall not be more than INR 1 crore is retrospective in operation and therefore the Application is not maintainable after amendment for want of pecuniary jurisdiction as amount involved in matter is less than INR 1 crore.
- NCLT observed that it is well settled law that a statute is presumed to be prospective unless it is held to be retrospective, either expressly or by necessary implication. Therefore, amendment in question would be considered as prospective and not retrospective.
- In view of above, since Foseco was able to make a case for admission of Application under Section 9, NCLT admitted the Application and ordered for commencement of CIRP against Corporate Debtor.

Our viewpoint: The judgment brings much needed clarity regarding prospective application of increased threshold of INR 1 crore, for purpose of initiating CIRP under IBC.

Union of India v. Oriental Bank of Commerce

JUDGMENT DATED MAY 22, 2020 IN COMPANY APPEAL (AT) (INSOLVENCY) NO. 1417 OF 2019

- An Appeal was filed by Union of India against Order dated November 22, 2019 passed by NCLT, Principal Bench in CP (IB)-939(PB)/2018 wherein NCLT held that "*in all cases of Insolvency & Bankruptcy Code and Company Petition, Union of India, Ministry of Corporate Affairs (**MCA**) through Secretary be impleaded as a party respondent so that authentic record is made available by officers of MCA for proper appreciation of matters. This shall be applicable throughout country to all benches of NCLT. Registrar shall send a copy of this order to all NCLT benches so that respective Deputy Registrar may ensure that proper parties are impleaded.*"
- Appellant contended that NCLT does not possess powers to pass an order which was in nature of a rule under guise of an order. They further contended that rule making is the exclusive domain of Central Government and same is required to be placed after notification before House of Parliament. Appellant

also submitted that NCLT ought to have issued notice to Union of India, since subject matter in issue concerns about imposition of new rule.

- NCLAT observed that Union of India was not provided with adequate opportunity of being heard, except directions being issued regarding filing of affidavit on issues. Further, NCLAT observed that there is no necessity to array Union of India, MCA, New Delhi as party in respect of Applications filed under Section 7, 9 or 10 of IBC for purpose of reliable record or for appreciation of matter.
- NCLAT came to conclusion that directions issued in respect of impleading the 'Secretary of Ministry of Corporate Affairs' as party Respondent in all cases of IBC is beyond power of NCLT and it is tantamount to imposition of new rule in compelling fashion. Therefore, NCLAT allowed the Appeal and set aside impugned order dated November 22, 2019.

Our viewpoint: As a result of this judgment, it is not mandatory to implead the Secretary of Ministry of Corporate Affairs as a Respondent in all cases under the IBC. Though the same might not have considerable impact on the adjudication of cases under the IBC, however, it does go to a great extent to reduce the procedural and technical requirements for filing applications under the IBC before the NCLTs.

State Bank of India v. M/s Metenere Ltd.

JUDGMENT DATED MAY 22, 2020 IN COMPANY APPEAL (AT) (INSOLVENCY) NO. 76 OF 2020

- State Bank of India (**SBI**), a financial creditor, sought initiation of CIRP against M/s Metenere Ltd by filing an application under Section 7 before NCLT, Principal Bench. NCLT, Principal Bench took note of objection raised by Corporate Debtor regarding name of proposed Interim Resolution Professional (**IRP**) (Mr. Shailesh Verma) and passed impugned order dated January 04, 2020 directing SBI to substitute Mr. Shailesh Verma as it was of view that he has worked with SBI for 39 years before his retirement in 2016 and, therefore, there was an apprehension of bias and he could not be expected to act as an 'Independent Umpire'. Aggrieved thereof, SBI approached NCLAT by way of present Appeal.
- SBI contended that IBC does not lay down any disqualification to an ex-employee of a financial creditor from being appointed as an IRP. It was further submitted that Resolution Professional has no adjudicatory powers and only acts as facilitator in CIRP. Lastly, it was contended that proposed IRP is not on any panel of SBI or handling any portfolios and has no role in decision making committee of bank.
- Respondent submitted that Mr. Verma was still taking pension from SBI, which falls within definition of salary under Income Tax Act, 1961. In view of same, he is an interested person being an ex-employee and on payroll of SBI, thus rendered ineligible under IBC to act as an IRP.
- NCLAT was of the opinion that apprehension of bias expressed by Corporate Debtor qua appointment of Mr. Verma as proposed IRP could not be dismissed offhand and NCLT was justified in seeking substitution for him to ensure that CIRP was conducted in a fair and unbiased manner. In view of same, NCLAT dismissed the Appeal.

Our viewpoint: This judgment is set to have far reaching ramifications as it may lead to a fresh boom in cases wherein the Corporate Debtor (erstwhile promoters, directors, etc.) may challenge the appointment of the present Resolution Professionals on the ground of bias. In our view, this judgment may only be restricted to cases where such challenge has been expressly made to the impartiality of the Resolution Professional.

Allahabad Bank v. Poonam Resorts Ltd and Allahabad Bank v. Link House Industries Ltd

Judgment dated May 22, 2020 in Company Appeal (AT) (Insolvency) No. 1303 of 2019 and Company Appeal (AT) (Insolvency) No. 1304 of 2019

- Allahabad Bank had filed applications before NCLT, Mumbai Bench under Section 7 against abovementioned Corporate Debtors. Corporate Debtors alleged before NCLT that false information had been provided by financial creditor in said applications. Thereafter, NCLT, being of view that during entire loan process due diligence was not carried out, appointed Mr. Gaganpreet Singh Puri, Pricewater House Coopers Services LLP as Forensic Auditor to examine allegations raised by Corporate Debtors and

submit an Independent Report delineating some factual aspects bearing upon utilization of credit facility extended by financial creditor. Aggrieved by the same, Allahabad Bank approached NCLAT.

- The question for consideration before NCLAT was whether NCLT was justified in ignoring time frame prescribed under Section 7 of IBC and embarking upon an enquiry to determine whether applications filed under Section 7 contained false information, when matters were at the very threshold stage.
- NCLAT observed that a mere glance at legal framework governing CIRP brings to the fore that speed is paramount and all authorities under IBC have to adhere to prescribed timelines. It was further observed that satisfaction in regard to occurrence of default has to be drawn by NCLT either from records of information utility or other evidence provided by financial creditor. NCLT cannot direct a forensic audit and engage in a long-drawn pre-admission exercise which will have effect of defeating object of IBC. In view of the same, NCLAT allowed the Appeals and set aside impugned order.

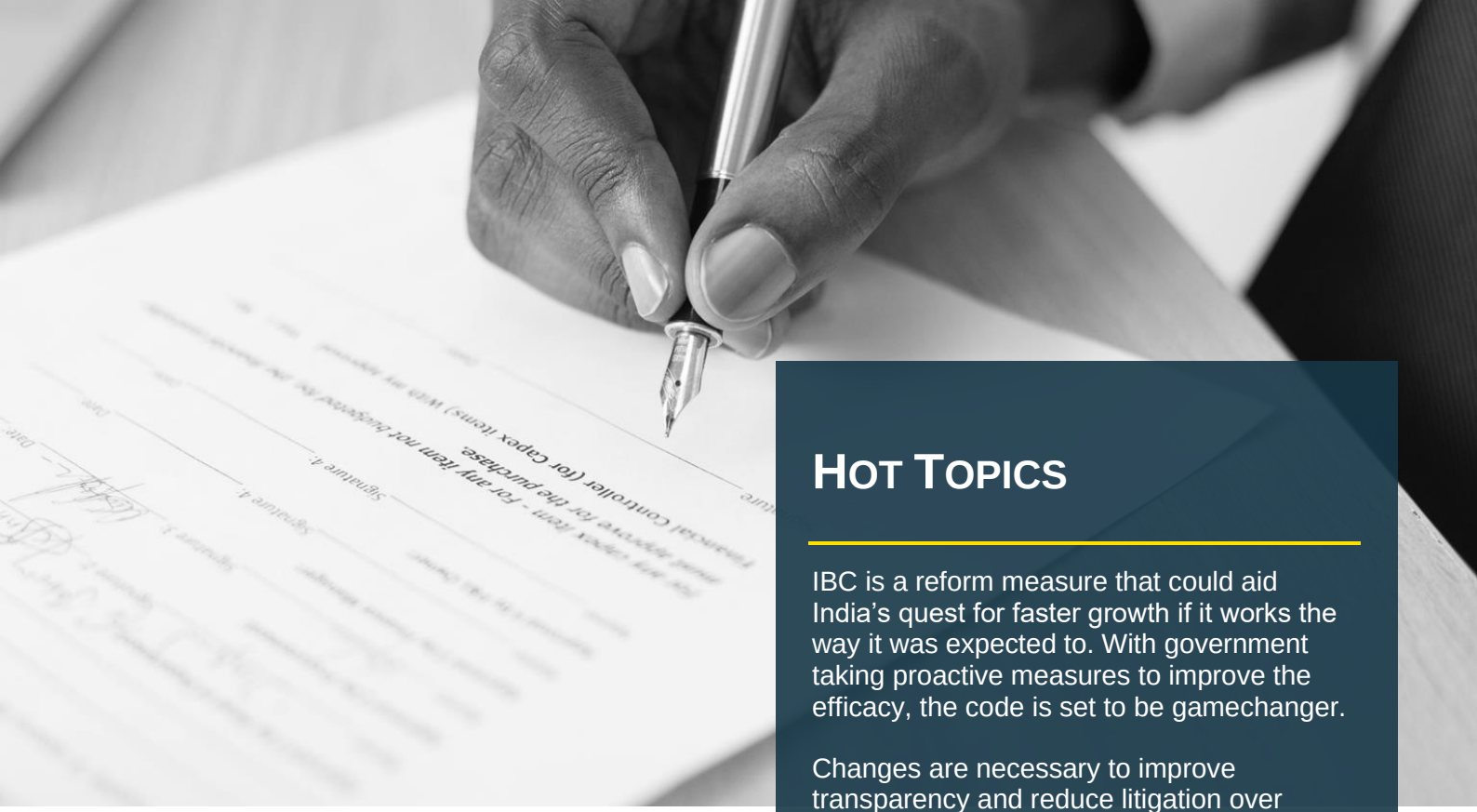
Our viewpoint: This judgment emphasises the importance as well as the need for timely adjudication of the Applications under the IBC and for adhering to the timelines prescribed under the IBC. It attempts to rightly cripple the Corporate Debtors to the extent that they cannot use dilatory tactics in such Applications before the NCLTs. Further, it is in line with the *Innoventive* judgment in as much as it attempts to guide the NCLTs in adjudicating Applications under Section 7 of the IBC.

Amitabh Kumar Jha v. Bank of India & Anr.

Judgment dated May 22, 2020 in Company Appeal (AT) (Insolvency) No. 1392 of 2019

- Appellant in capacity of director of TD Toll Road Pvt Ltd impugned the order dated November 25, 2019 passed by NCLT, Mumbai Bench for admitting an Application under Section 7 of IBC filed by Bank of India for initiating insolvency proceedings against Corporate Debtor, TD Toll Road Pvt Ltd.
- Corporate Debtor approached Bank of India besides other lenders for financial assistance. A Common Rupee Loan Agreement was executed by Corporate Debtor and lenders. Bank of India advanced loan of INR 25 crore to Corporate Debtor with other lenders as members of consortium advancing different amounts. According to Bank of India, Corporate Debtor failed to clear outstanding liability of INR 21,68,44,477.
- Corporate Debtor raised contention before NCLT that it had proposed a Resolution Plan to lenders who appointed 'Ernst and Young Merchant Banking Service' to evaluate the same, but before Resolution Plan could be discussed, Bank of India filed Application. It was contended that consortium members have entered into an Inter-Creditor Agreement (**ICA**) in pursuance whereof no member of consortium can take any action in respect of default individually and only a collective action is envisaged.
- NCLT while brushing aside the argument that an ICA had an overriding effect and without its compliance no individual creditor could approach NCLT for triggering CIRP, admitted Application in terms of impugned order. Consequently, issue for consideration before NCLAT was whether ICA devising a mechanism for enforcement of rights qua Corporate Debtor would bar an individual creditor from triggering CIRP in event of default in respect of outstanding liability of its financial debt without consent of other lenders forming consortium of same Corporate Debtor.
- Bank of India contended that IBC empowers a single financial creditor to initiate CIRP, for which consent of other financial creditors is not required. It was submitted that since factum of debt and default has not been disputed, independent right of Bank of India as individual lender to enforce its rights and seek triggering of CIRP is not affected by terms of said Common Rupee Loan Agreement.
- NCLAT observed that it would be a travesty of justice to raise a plea that since creditors have an inter se agreement in regard to enforcement of liability of debtor qua creditors, an individual creditor should not be permitted to enforce its right arising under a contract in regard to discharge of liability for loan advanced by creditor which is otherwise payable in law and not barred by any legal framework, including law of limitation. It was also observed that statutory right across ambit of Section 7 of IBC cannot be curtailed or made subservient to any ICA. Contractual rights, unless recognized by statute as a permissible mode, would not override statutory mechanism and right created and enforceable under statute. In view of same, NCLAT dismissed the Appeal.

Our viewpoint: This is a significant judgment in so far as it throws light on the ambit of Section 7 of the IBC vis a vis Inter Creditor Agreements, which are bound to gain more importance in the coming times, especially with the suspension of Sections 7, 9 and 10 of the IBC.



HOT TOPICS

IBC is a reform measure that could aid India's quest for faster growth if it works the way it was expected to. With government taking proactive measures to improve the efficacy, the code is set to be gamechanger.

Changes are necessary to improve transparency and reduce litigation over business failures – an efficient way to deal with which is crucial for an economy to optimize its allocation of resources.

Decoding the suspension of Insolvency and Bankruptcy code

- The much-awaited ordinance suspending operation of the Insolvency and Bankruptcy Code, 2016 (**Code**) was promulgated on June 5, 2020. The Ordinance which comes into effect forthwith has introduced section 10A which suspends the operation of Sections 7, 9 and 10 of the Code for any default arising on and after March 25, 2020 for a period of six months and up to a maximum of one year. The amendment is expected to benefit corporate India which has been reeling under stress due to the lockdown as they can now focus on coming out of the red without the fear of bankruptcy proceedings looming large.

Impact of suspension of the Code

- **Introduction of Section 10A**: Provisions of Section 10A will be applicable only with respect to defaults that have occurred after the commencement of the lock down. Therefore, CIRP can be initiated by a creditor for defaults which may have occurred prior to March 25, 2020.
- **Suspension of Sections 7 and 9**: This means that neither a financial creditor nor an operational creditor shall be entitled to initiate any action against any borrower under the Code for a year. The proposed amendment provides an opportunity to companies badly hit by the pandemic to focus on coming out of the red without the fear of initiation of bankruptcy proceedings. It is noteworthy that pursuant to section 29A of the Code, promoters of a corporate debtor are not eligible to qualify as a resolution applicant. However, in so far as MSMEs are concerned, disqualification of promoters as resolution applicants is not applicable. Thus, proposed suspension of operation of sections 7 and 9 helps in addressing the concerns regarding initiation of insolvency proceedings against companies where the lockdown has resulted in the financial stress and the promoter may end up losing control over the company even though the financial stress was due to reasons beyond his control.
- **Suspension of Section 10**: While there appears to be a case in favour of suspension of operation of sections 7 and 9, the reason behind suspension of operation of section 10 is not clear as such suspension cripples the ability of the corporate debtor to exit an unsustainable business, especially considering the remedy of winding up under the Act and the voluntary insolvency proceedings under the Code being available only to solvent companies.
- **Impact on payment moratoriums**: Pursuant to the Covid 19 regulatory package, financial creditors have been granting moratorium on payment due during the lockdown period. In the circumstances, a question that may arise is whether the protection of section 10A would be available when the instalment relating to the lockdown period becomes payable subsequently. It appears that the section intends to suspend the operation of CIRP only for defaults arising during the lockdown period. Where the default occurs after the suspension period, even if such instalment relates to the lockdown period, defaults in payment thereof should not come under the purview of section 10A.

- **Impact on MSMEs**: With most of the operational creditors being MSMEs, suspension of the operation of the Code puts them in a tight financial spot without the remedy of Section 9 proceedings available to them. The Government of India has also announced that a special resolution framework will be implemented for MSMEs under section 240A of the Code. It is expected that such framework may provide for pre-pack resolution mechanism where the debtor and creditor agree on the package before-hand.
- **Impact on personal guarantors of corporate debtors**: Suspension of the provisions of only sections 7, 9 and 10 will not prevent the creditors from initiation of insolvency proceedings against personal guarantors of corporate debtors as the same is instituted under section 95 of the Code, the provisions whereof do not intend to have been suspended. Considering the liability of a guarantor is co-extensive with that of a principal debtor, directors and promoters can continue to be subject to the Code notwithstanding the suspension of proceedings against the corporate debtors.

Conclusion

- While the main objective of the Code is maximization of value, if the operation of the Code is not suspended, it would result in the tribunals being inundated with insolvency proceedings and with the existing infrastructure it would be impossible to achieve timely resolution, thus resulting in huge value destruction.
- Creditors will continue to have recourse to alternate remedies such as the Securitisation of Assets and Enforcement of Security Interest Act, 2002, institution of recovery proceedings before the debt recovery tribunals and recovery cases under the Commercial Courts Act/Code of Civil Procedure and compromise and restructuring under the Companies Act, 2013. However, one of the key downsides of these alternative courses of action apart from the lack of timeliness is the unavailability of 'creditor in possession' benefit which is available under the Code. Further the focus under these proceedings is recovery rather than resolution of distress which is the objective of the Code.
- Section 10A not only suspends operation of the Code for the period specified therein, it also provides that no application shall ever be filed for initiation of CIRP of a corporate debtor for any default which has occurred during the said period. That such defaults cannot be proceeded against even after the effects of lockdown have been negated is an over stretch and essentially entitles the debtor to default with impunity, especially considering the traditional modes of recovery have been far from effective. Therefore, the possibility of misuse of the provisions by a delinquent debtor cannot be ruled out.
- The primary concern in allowing IBC proceedings in times of Covid is that pursuant to the Code, the creditor assumes possession of the asset despite the default being for reasons beyond the control of the debtor. In view thereof, perhaps an amendment to section 29A by allowing promoters (other than wilful defaulters) to also participate as resolution applicant may have been a better solution as it would allow addressal of the stress while simultaneously providing promoters a fair opportunity to resolve the stress.
- While the amendment tries to balance the concerns of both lenders and debtors by restricting the operation of suspension only to defaults arising post lockdown as opposed to a blanket suspension, a temporary suspension rather than a permanent bar on action against Covid defaults and exclusion of section 10 from the purview of suspension would have better served the interests of the stakeholders.

Section 32A of the IBC

Introduction

- Insolvency and Bankruptcy Code (**IBC**) was enacted on May 28, 2016 to effectively deal with insolvency and bankruptcy of corporate persons, partnership firms and individuals, in a time bound manner. It has brought about a paradigm shift in laws relating to insolvency resolution to promote entrepreneurship, maximize value of assets, providing a robust insolvency resolution framework and differentiating between impropriety and business debacle. The predominant object of the Code is resolution of the Corporate Debtor.
- IBC is a transformational piece of legislation and has been amended four times to resolve problems hindering objectives of the Code.
- Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019, introduced Section 32A IBC to provide Resolution Applicant, a fair chance to revive Corporate Debtor without imposing additional liabilities on Resolution Applicant arising from malafide acts of previous promoter/management.

Section 32A

- Prior to insertion of section 32A, a successful Resolution Applicant faced the hassle of prosecution and liabilities before courts and tribunals for prior acts of Corporate Debtor. Thus, there was a clamant need to protect Corporate Debtor from its prior offences and to revive the Corporate Debtor by removing obstacles faced by successful Resolution Applicant.
- Section 32A provides that Corporate Debtor shall not be prosecuted for an offence committed prior to commencement of Corporate Insolvency Resolution Process (**CIRP**) once Resolution Plan has been approved by Adjudicating Authority (**AA**).
- The section further provides that no action shall be taken against property of Corporate Debtor covered under such a Resolution Plan. However, 32A continues to hold liable every person who was a 'designated partner' or an 'officer who is in default' or was in any manner in-charge of, or responsible to Corporate Debtor for conduct of its business or associated in any manner and who was directly or indirectly involved in commission of such offence.

Judicial pronouncements revolving around section 32A

- NCLAT in *Shah Brothers Ispat Pvt. Ltd. v. P. Mohanraj & Ors.*[1] held that section 14 of IBC does not bar criminal proceeding.
- Delhi High Court in *Deputy Director Directorate of Enforcement Delhi & Ors. v. Axis Bank & Ors*.[2] has held that PMLA and Insolvency Code must co-exist and enforced in harmony.
- NCLAT *in JSW Steel Ltd. v. Mahender Kumar Khandelwal & Ors*.[3] has held that that once Resolution Plan is approved, criminal investigations against Corporate Debtor will stand abated. Further, Section 32A has a retrospective effect and does not make a distinction between a Resolution Applicant whose plan has been approved post or prior to promulgation of Ordinance. In instant case Enforcement Directorate while conducting investigation under PMLA was free to deal with or attach personal assets of erstwhile promoters and other accused persons.

Conclusion

- IBC has evolved to strengthen insolvency framework for India and to provide successful Resolution Applicant a clean slate to attain a positive economic outcome for the Corporate Debtor, without fear of prosecution for past misdeeds of the erstwhile promoters/directors. Section 32A envisages that once Resolution Plan is approved by the Adjudicating Authority after completion of CIRP, there cannot be attachment or confiscation of assets of Corporate Debtor, as otherwise same will defeat objects of the Code. It is to be noted that 'investigating authority' has not been defined under Code but from purview of Section 32A it may be any authority carrying out investigation under prevailing statutes, in relation to an action against property of Corporate Debtor for an offence or an action against property of a promoter or a person in management or control of Corporate Debtor or a related party of such a person who had abetted or conspired for commission of offence.

[1] Company Appeal (AT) (Insolvency) No. 306 of 2018

[2] 2019 VAD (Delhi) 345

[3] Company Appeal (AT) (Insolvency) No. 957 of 2019

SECTOR FOCUS: PORTS AND SHIPBUILDING

IBC regime has had significant ramifications on infrastructure sector. The sector is majorly debt ridden and a lot of these debts have not been serviced and have ended up as NPAs in recent past.

- Dharani Sugar Judgment passed by Supreme Court (**SC**) on April 02, 2019, struck down February 12, 2018 Circular issued by Reserve Bank of India (**RBI**) which provided for a revised framework for resolution of stressed assets. The circular provided for early identification and reporting of stressed assets, thereby implementing a resolution plan for timely resolution of such assets. Various parties, including stakeholders in infrastructure sector had raised pertinent sector specific issues while challenging constitutional validity of Circular. However, SC struck down the circular on technical grounds without giving any findings on sector specific issues. Within two months of the judgment, on June 07, 2019, RBI issued Reserve Bank of India (Prudential Framework for Resolution of Stressed Assets) Directions, 2019.
- Ports and ship building companies, owing to their very nature of being capital intensive, are prone to being subjected to insolvency proceedings. Various such companies have undergone or are currently, undergoing the insolvency route.
- Dighi Port Ltd was one of the first ports to undergo insolvency in March, 2018 when DBM Geotechnics and Construction Pvt. Ltd. initiated an Application under Section 9 of IBC. Resolution Plan by Adani Ports & Special Economic Zone Ltd (**APSEZL**) was highest evaluated compliant Resolution Plan and same was put to vote and rejected by 99.38% of votes by Committee of Creditors. Subsequently, Resolution Plan pitched by Jawaharlal Nehru Port Trust (**JNPT**) being second highest as per scoring, was put to vote and subsequently approved by requisite majority of Committee of Creditors. NCLT approved Resolution Plan of JNPT subject to certain conditions. Thereafter, JNPT sought time to evaluate conditions and later decided to not proceed with modified Resolution Plan as was approved by NCLT. Hence, Committee of Creditors decided that Resolution Professional will invite existing Resolution Applicants to submit revised Resolution Plans. In the meantime, promoters made a proposal for settlement under Section 12A of IBC, seeking withdrawal of CIRP but said proposal for settlement was rejected by members of Committee of Creditors by 99.68% voting share. Thereafter, APSEZ tendered a Resolution Plan which was approved by members of the Committee of Creditors with 99.68% votes. The said Resolution Plan was placed before NCLT, Mumbai Bench and was approved by an order dated March 05,2020. Resolution Plan saw lenders take a haircut to the tune of approximately 79.2%.
- Recently, by way of Order dated January 15, 2020, NCLT Ahmedabad Bench admitted an Application under Section 7 filed by IDBI Bank Ltd for a claim of INR 1159.43 crore and directed for commencement of CIRP of Reliance Naval and Engineering Ltd (**RNEL**) (formerly Reliance Defence and Engineering Ltd/Pipavav Defence and Offshore Engineering Company Ltd), a company involved in business of manufacturing of vessels and repairing of rigs. Corporate Debtor is currently undergoing CIRP and on May 28, 2020, Resolution Professional of RNEL has invited Expression of Interest from Prospective Resolution Applicants, last date for submission of which is June 27, 2020.
- In light of the government's push towards 'Atmanirbhar India', it is of utmost importance that this sector is given an added impetus because of its relevance in trade and commerce. Ports and shipyards are one of the key driving forces of economy and in absence of a robust shipping sector, becoming self-reliant might prove to be a distant dream.

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