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DECODING THE INSOLVENCY LAWS IN INDIA

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ABSTRACT
The Insolvency & Bankruptcy Code, 2016 which was passed by the Parliament on 11th May 2016 and received Presidential assent on 28thMay 2016 brought a major push to the existing insolvency regime in India for individuals, corporations, partnership firms, and other entities. Majorly, the insolvency proceedings in India are the ones initiated by the creditors on the ground of non-payment of debts. The basic aim of the Code is to provide common umbrella legislation relating to insolvency resolution in India both for the Indian creditors and the foreign creditors. The erstwhile legislative framework relating to insolvency was incorporated inCompanies Act, 2013; SARFAESI Act, 2002; SICA Act, 1985; Presidency Towns Insolvency Act, 1909; Provincial Insolvency Act, 1920, and Limited Liability Partnership Act, 2008 subjected to amendment from time to time. The presence of several mechanisms to deal with insolvency under diverse legislations presented a dire need of single, unified umbrella legislation to cater to the needs of various entities.

This paper aims to analyze the practical and legal implications of theInsolvency & Bankruptcy Code, 2016 (IBC) and its effectiveness in the consolidation of laws relating to insolvency, bankruptcy, and reorganization. The notable changes in the Code have been identified and examined. Suggestions for better implementation of the Code have been incorporated in this paper.

Keywords: Insolvency, Bankruptcy, Companies Act, 2013, Insolvency & Bankruptcy Code, 2016

INTRODUCTION

Insolvency and bankruptcy are often used interchangeably, but in the legal context, insolvency is considered as a state whereby an entity is unable to pay off its debts when it becomes due, whereas, bankruptcy is a legal declaration by a court of competent jurisdiction of an entity's inability to pay off its debts.[1]A company is said to be insolvent when the cash flow along with its assets, is less as compared to its liabilities. It could be rightly concluded that *insolvency of an entity is a state of affairs that triggers the legal process of bankruptcy.*[2]

The erstwhile regime regulating insolvency and bankruptcy in India was highly fragmented and lacked clarity in its functioning and implementation. *The Presidency Towns Insolvency Act, 1909* and the *Provincial Insolvency Act, 1920*governed the insolvency resolution of the individuals which was quite outdated and not suited to the current scenario. Further, the insolvency of a partnership firm was governed under the *Partnership Act, 1932*and the insolvency proceedings of companies were regulated by the *Companies Act, 2013*. Further, legislations like *Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002* (SARFAESI) & *Sick Industrial Companies (Special Provisions) Act, 1985* (SICA) provided for the rehabilitation of the Sick Companies andmechanisms for recovery of debt from the debtors. Presence of several forums such as Board for Industrial and Financial Reconstruction (BIFR), Debt Recovery Tribunal (DRT), National Company Law Tribunal (NCLT), and their respective Appellate Tribunals led to further delay in the insolvency procedure. The insolvency framework in the previous regime

[1] CA Rajkumar S.Adukia, *A Study on Insolvency Laws in India Including Corporate Insolvency*, available at: http://www.mbcindia.com/Image/18%20.pdf (last visited on August 13, 2019).

[2]Mr Ran Chakrabarti&Nandita Bose, *Insolvencyand Bankruptcy Code, 2016: A Critical Analysis*, available at: https://vlex.in/vid/insolvency-and-bankruptcy-code-653895625 (last visited on August 13, 2019).

ISSN:0971-1260

Vol-22-Issue-22-December-2019

did not provide for an effective and efficient mechanism for timely completion of the insolvency resolution and led to uncertainty in meeting the final claim of the stakeholders. Even the presence of overlapping adjudicating forums rendered the overall process of winding up of an entity futile.[1]

To deal with the prevailing situation, the Indian Government recognized the importance of reforms in the insolvency and bankruptcy regime in India. The Ministry of Finance introduced the Insolvency & Bankruptcy Bill in November 2015 which was drafted by the Bankruptcy Law Reforms Committee under the chairmanship of Mr. T.K. Viswanathan.The Code was passed by the Parliament on 11th May 2016 and received Presidential Assent on 28th May 2016. The main purpose of the Code is to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a fixed time for the maximization of value of assets of such entities and the promotion of entrepreneurship. The Code proposed for the establishment of an Insolvency & Bankruptcy Board of India that would maintain the balance of interest of all stakeholders. In an insolvency proceeding, either the business continues as a going concern by selling all or any part of the existing business or the business is wound up by selling its assets, settling its liabilities and distributing the proceeds out of such sale to creditors and other stakeholders. When survival becomes a question and the corporate entities are unable to pay its debts to the creditors, the entity in question is forced to be liquidated by a resolution of the creditors. In the previous insolvency regime, the principle of maintaining a balance between payment of debts to the creditors and revival and reorganization of the entity was not given due importance. The prime focus in the earlier regime was on the payment of debts to creditors or other stakeholders. Multiplicity of insolvency proceedings under several forums resulted in a delay in the proceeding and added to the cost borne by the stakeholders during the pendency of proceedings.

The Code is thus a positive initiative to bring certainty in recovery and enforcement under insolvency proceedings. It is a unified regime that would administer insolvency resolution along with the liquidation proceedings.It would undoubtedly be a beneficial mechanism for both the investors and the creditors. Even the international investors and the creditors interested in the Indian opportunities would be benefited from the application of this Code.

Complication in Insolvency Proceedings of Companies underthe Erstwhile Regime

In the earlier regime, insolvency proceedings could be initiated under several adjudicating forums inthe absence of single codified legislation dealing with all the aspects of a company in financial distress. SICA would only provide for *rescue and rehabilitation of industrial companies* and the Companies Act, 2013 provided for *liquidation and winding up of the corporate entities*. For recovery of debts by security enforcement and debt recovery, laws such as *Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002* and the *Recovery of Debt Due to Banks & Financial Institutions Act, 1993* were in existence. The secured creditors could take resort for recovery of their debt under *Section 13(4)* of the Securitization & Reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002[2]. Any reference made under SICA before the reference made to the Tribunal would also abate.

Reference could even be made under Chapter XIXof Companies Act, 2013 for revival and rehabilitation of sick companies and the protection of interest of workers and other interested parties. Under Section 253 of Companies Act, a creditor or the company itself can file an application to the Tribunal for declaring a company sick. Alternatively, if the scheme of revival andrehabilitation is not workable, the Tribunal may order for a winding-up proceeding under the Companies Act.[3]

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[1]Aparna Ravi, *The Indian Insolvency Regime in Practice-An Analysis of Insolvency and Debt Recovery Proceedings*, available at: http://www.igidr.ac.in/pdf/publication/WP-2015-027.pdf (last visited on July 15, 2019).

[2]SARFAESI Act, 2002, Section 13(4) deals with *Enforcement of Security Interest.*

[3]Dr. G.K. Kapoor & Sanjay Dhamija, Company Law & Practice 897-925(20th Ed. 2015).

ISSN:0971-1260

Vol-22-Issue-22-December-2019

There were two modes of winding up as prescribed in Companies Act, 2013[1]; namely *compulsory winding up by the Tribunal on the grounds of inability to pay debts or when the company in a special resolution has decided to be wound up by the Tribunal or when the company has acted against the interest of the nation or when the winding-up order is passed under Chapter XIX[2] of the Companies Act, 2013 or when the company was formed for fraudulent and unlawful purposes or when the company has defaulted in filing with the Registrar its financial statements or annual returns for the preceding five financial years or when the Tribunal thinks that winding up of the company is just and equitable.[3]* Even a company could be wound up voluntarily by passing an appropriate resolution at the general meeting of members.[4]

With the help of few case laws, the erstwhile regime regulating insolvency proceedings of companies will be analyzed to understand the overlapping nature of legislations which posed an urgent need to have a uniform insolvency code. Since, SICA contained provisions for declaring a company sick, the questions before the court was whether the Companies Act and SICA are concurrent legislation or the provisions contained in either of the Acts have an over-riding effect. In a leading judgment, it was held that even when winding-up proceedings has commenced under the Companies Act, a subsequent reference can be made to BIFR under Section 15 of SICA.[5] When a scheme of revival and rehabilitation is prepared under SICA, a subsequent winding-up proceeding under the Companies Act cannot be administered.[6]A subsequent application for winding up proceeding can be filed under Companies Act, 2013even when an application for recovery of debt is pending before the DRT.[7]A petition under Article 226 of the Constitution can be filed even whenDRT's orderis subject to appeal.[8]If BIFR expresses an opinion to wind up the sick company on just and equitable grounds and expresses its opinion to the High Court, the High Court will order winding up of the company unless an appeal has been made against the winding up by the Appellate Authority of BIFR. But a contrasting opinion was expressed by the Karnataka High Court whereby it was held that while the opinion of the BIFR holds importance, it is not a conclusive and binding order on the company court which isreferred to as the Tribunal under Companies Act, 2013.[9] Companies were not permitted to file a reference to BIFR under SICA after winding-up order has been passed as it was considered to be a deliberate attempt to hamper the winding-up process.[10] SICA being a special law vis-à-vis the Companies Act, the provisions of the special law would prevail in a situation of conflict with the general law.[11]Another very interesting situation arose when during the winding-up proceeding of the company based on recommendations of BIFR, few of the unproductive assets of the company were sold to pay off the debts owed to secured creditors which resulted in the net worth of the company becoming positive. The court held that winding up of the company would not be a feasible initiative in the interest of creditors and shareholders.[12]The court (*now tribunal*) had

[1]Companies Act, 2013, Section 270.

[2] Companies Act, 2013, Section 253-269.

[3]Companies Act, 2013, Section 271-303.

[4]*Id.* at Section 304-323.

[5]RishabAgro Industries Ltd. v. PNB Capital Services Ltd., (2000) 4 SCC 632.

[6] SICA,1985, Section22(1).

[7]Global Trust Bank Ltd., *In re*(2004) 55 SCL 295 (Bom.).

[8] O.L. of Spark Plugs (I) Ltd. v. Bank of India, (2007) 77 SCL 28 (Raj.).

[9]Loharu Steel Industries Ltd. v. DCM Ltd., (2002) 39 SCL 114.

[10] Dena Bank v. Official Liquidator, H.C., (2015) 55 taxmann.com 207 (Cal.).

[11]Debabrata Mukherjee v. Dunbar Mills Ltd., (2002) 39 SCL 207 (Cal.).

[12] Cawnpore Chemicals Works (P) Ltd. v. AAIFR, (2002) 39 SCL 510 (All.).

ISSN:0971-1260

Vol-22-Issue-22-December-2019

the discretion to accept or reject the recommendation of BIFR in favor of winding up.[1] Section 279 of Companies Act, 2013 even provides power to grant leave to proceed or continue proceeding against the company on application against a party seeking the leave, though, the power of the Tribunal is discretionary in such cases.

The judgement discussed above gives a clear picture of the insolvency regime under the Companies Act, 2013. The presence of overlapping legislation and their conflicting opinions and recommendations of the adjudicating authority presented a dire need of a consolidated regime to regulate reorganization and insolvency resolution of various entities.

ANALYSIS OF THE CHANGES INTRODUCED IN THE CODE

A. Adjudicating Authority

The Code has introduced the concept of Adjudicating Authority whereby matters of Limited Liability Partnership and corporate insolvency would be adjudicated by the National Company Law Tribunal (NCLT). The Debt Recovery Tribunal (DRT) would be solely entrusted with the insolvency proceedings of individuals and partnership firms as constituted under the Recovery of Debts Due to Banks and Financial Institutions Act, 1993. Enforcement of personal guarantee of Corporate Debtors would also fall under the purview of the National Company Law Tribunal. The jurisdiction of insolvency matters would now exclusively remain with NCLT and DRT. Any court, tribunal or authority cannot grant an injunction to actions taken or proposed to be taken by DRT/ NCLT.Appeals from DRT and NCLT would lie to the Debt Recovery Appellate Tribunal (DRAT) and National Company Law Appellate Tribunal (NCLAT) respectively. Appeals arising out of any orders passed by the Regulator concerning information utilities or insolvency professionalswould be adjudicated by NCLAT.

The major function of DRT was to aid the summary proceedings for the recovery of debts due to banks and financial institutions. At present, there is a huge pendency of cases in DRT due to inadequate infrastructure and human resources. To date, DRT has not been able to effectively carry out the tasks entrusted to it under the previous insolvency regime. In such a state, over-burdening DRT with an additional role as envisaged under the Code may lead to complete infrastructural failure.

In such a situation, district courts would have been in a better position to act as an adjudicating forum to deal with the insolvency of individuals and partnerships firms. Moreover, it should be noted that DRTs are usually established in state capitals and it would be cumbersome to individuals and partnership firms to approach DRT. It is more convenient for individuals to approach a judicial forum such as district court closer to their place of residence. Even it would be easy and efficient for a partnership firm to approach a judicial forum in the place where the firm is constituted. A Judicial Impact Assessment[2] is also required to estimate the cost incurred in transferring the pending cases under Presidential Towns Insolvency Act, 1909 and the Provincial Insolvency Act, 1920. *Multiple benches of NCLTs should be established and adequate staffing should be arranged before making the Insolvency & Bankruptcy Code fully functional*.

B. Financial & Operational Debt

Any financial debt held by the creditors refers to the debt against working capital loans, term loans, bank guarantees, notes, bonds, debentures, loan stock, hire purchase agreement, lease, derivative instruments, counter-indemnity obligations or any other kind of transaction that would have the effect of borrowing. On the contrary, operational debt due to creditors pertains to the exchange for goods or services or arising under the law and payable to any regulator or the Government. The Code makes no demarcation between the Indian creditors and the foreign creditors and this would attract more foreign investors in India.A Committee

[1]Bharath Gold Mines Ltd. v. ICICI, (2010) 101 SCL 379.

[2] Judicial impact assessment is the calculation of the indicative costs of change in workload that Judiciary will bear due to procedural or substantive change in law, available on *Judicial Impact Assessment- An Approach Paper*, IDF, available at: http://doj.gov.in/sites/default/files/judicialimpactassessmentreportvol2_0.pdf (last visited on August 15, 2019).

ISSN:0971-1260

Vol-22-Issue-22-December-2019

of Creditors comprising of financial creditors of the corporate debtor will be constituted by the Interim Resolution Professional[1]. The Committee would exclude the operational creditor as well as the related parties of the corporate debtors while constituting the Committee of Creditors. Any financial creditor who owns operational debt will be represented on the committee of creditors only to the extent of their financial debts owed. Operational creditors have been excluded from the Committee due to their inability to decide on matters concerning the commercial viability of the corporate debtor. Moreover, the operational debtors are even reluctant to take risk of restructuring their debts. A resolution plan is even prepared for the operational creditors that would ensure an amount not less than the liquidation value of their debt if the corporate debtor is liquidated. Proof of default or any other evidence as determined under the Code for the financial creditors will be recorded by the Information Utility. For the operational creditors, the proof of default would be the expiry of the period of 10 days from the date of delivery of notice regarding payment to the creditors. The operational creditor within the prescribedperiod of 10 days should either receive payment or notice of a dispute from the corporate debtor. The corporate insolvency resolution can be either filed by the financial creditor, the operational creditor as well as the corporate debtor.

The Code has given additional powers to the creditors to demand financial information concerning corporate debtor from the liquidator. The liquidator has to provide information within 3 days from the date of such a request. The liquidator can even refuse to provide information stating the reasonable grounds for such a refusal.[2] This is a positive step in the insolvency regime under the Code as the creditors can essentially oversee and monitor the functioning of the liquidators.

But the interplay between Debt Recovery Laws such as SARFAESI and RDDBFI that enables individual creditors to enforce their security and Corporate Debt Restructuring Process has been left unanswered in the Code.

C. Board& Other Professionals

Insolvency & Bankruptcy Board of India[3] which will be referred to as the Board will be the regulator under the Insolvency & Bankruptcy Code, 2016. The Bill contains provisions for the *regulation of Insolvency Professionals, both interim and final resolution professionals along with Liquidator and Insolvency Professional Agencies. They will be regulated by the Board for the development of codes of ethics, professional standards and would even be entrusted with a disciplinary role*.

The Code prohibits persons carrying on the business as an Insolvency Professional Agency without registering with the Board.[4] The Board while registering Insolvency Professionals should pay regard to the *promotion of professional development and regulation of insolvency professionals, catering to the needs of debtors and creditors, promotion of good professional and ethical conduct amongst Insolvency Professional and promotion of the growth of Insolvency Professional Agencies for the effective resolution of insolvency and bankruptcy processes under the Code*.[5] A prohibition is even imposed under the Code on any person from rendering his services without being enrolled as a member under the Insolvency Professional Agency.[6] An Insolvency Professional's chief functions as given under of the Code are as follows:

- *Initiation of a fresh start process,*
- *Initiation of an individual insolvency resolution process,*

[1]Insolvency and Bankruptcy Code, 2016, Section 18(c).

[2]*Id.* atSection 37.

[3]Insolvency and Bankruptcy Code, 2016, Section 1(3).

[4]*Id.* atSection 3(20).

[5]*Id.* at Section 199.

[6]*Id.* at Section 3(19).

ISSN:0971-1260

Vol-22-Issue-22-December-2019

- *Starting a corporate insolvency resolution process,*
- *Initiation of an individual bankruptcy process,*
- *Initiation of liquidation of a corporate debtor firm.*[1]

To ensure smooth functioning of the insolvency proceeding under the Code, the persons interested in establishing insolvency professional agency or in becoming such professionals must be encouraged and must be suitable incentivized.

D. Information Utilities[2]

Another key introduction in the Code is the establishment of Insolvency Information Utilities for *collection, collation, authentication, and dissemination of financial information from the listed companies as well as the financial and the operational creditors of the companies.* For the collection of insolvency status of individuals, it is proposed to create an individual insolvency database. The Board has the power to reject the application for registration as an Information Utility after giving an appropriate opportunity to the party to be heard and such rejection must be communicated to the applicant within 15 days.

Under Companies Act, 2013, Registrar of the Companies[3]is the chief repository for maintaining all the vital records, starting from the incorporation of the company to the winding up of the company. In the case of a Limited Liability Partnership, a separate Registrar of LLPs is maintained. Depositories established under the Depositories Act, 1996 is responsible for maintaining information on the pledge of shares. Credit Information Bureaus registered under the Credit Information Companies Act, 2005 is a Central Registry for maintaining a record of the security interest under the SARFAESI Act, 2002. We even have a Central Repository of Information on Large Credits (CRILC) constituted by the Reserve Bank of India to maintain information of credit and security facilities.

Under the Information Utility, the financial creditors and operational creditors are under an obligation to file financial information concerning assets to which security has been created against payment of fees. The Utility is not under a compulsion to maintain information relating to unencumbered assets or assets under hire purchase agreement in the possession of debtor or the details of leases and the unpaid taxes on the property. This is a serious drawback of Information Utility under the Act. It's doubtful if the establishment of Insolvency Information Utilities would work in consonance with the Central Registry of Securitization Asset Reconstruction & Security Interest of India and Central Repository of Information on Large Credits or would simply add on to the existing registries in India.

E. Cross-Border Application

In the Code, it is proposed that the Central Government can enter into reciprocal arrangements with other countries for the application of the provision of Bankruptcy Code where the personal guarantor or the property of the debtor is situated. NCLT can also seek information by issuing a letter of request to such countries with which the Central Government has entered into a reciprocal agreement to ensure that the property or personal guarantor of the debtor is situated in the said country.

Cross-border insolvency has not been discussed with adequate clarity in the Code and does not provide a remedy when the debtor in India has assets or creditors situated outside India. No discrimination has been prescribed between domestic and foreign creditors. As per the Code, any creditor situated outside India is permitted to initiate an insolvency proceeding in India. The Code is silent on the assessment of the debtor's asset located outside India by insolvency resolution professional or liquidator. The situation would become

[1]*Id.* at Section 208.

[2] Insolvency and Bankruptcy Code, 2016, Section 3(21).

[3]Companies Act, 2013, Section 2(74).

ISSN:0971-1260

Vol-22-Issue-22-December-2019

cumbersome when the countries in question have not even entered into bilateral treaties. The Code is even silent on the insolvency proceedings initiated in more than one jurisdiction.

F. Time-Bound Procedure

An application for insolvency resolution under the Code can be filed either by the Creditor or the Corporate debtor itself and the minimum default amount should be INR 1,00,000. The minimum default amount for filing of an insolvency resolution in the case of individuals and partnership firms would be INR 1,000. An application for insolvency resolution can be filed immediately when a financial default occurs based on information available with the information utility or any other evidence that shows non-payment. For operational debt, a notice must be served to the debtor and if the debtor does not make the payment or is unable to prove the existence of a dispute on the debt payment within 10 days of serving the demand notice, application for insolvency resolution can be filed by the operational creditor. Thus, the Code has prescribed an early trigger for insolvency proceedings. Within 180 days from the admission of the application, a revival plan is agreed between the parties, thus making the process time-bound. In case of disagreement, the application automatically moves to the next stage of Insolvency Process. After the application for insolvency resolution is filed and accepted by NCLT, a moratorium period of 180 days starts whereby all the pending actions against the debtor is put on stay and new actions cannot be initiated.75% in value of the financial creditors must approve the resolution plan, failing which the company goes into liquidation.An extension of 90 days after the expiry of 180 days moratorium period is given in exceptional cases. The fixed time frame for Insolvency Resolution Process is an attractive venture for the creditors.[1]

Implementation of the Code & Way Ahead

The Insolvency & Bankruptcy Code which is based on the model of equality, transparency, resolution, pace has undoubtedly streamlined the corporate insolvency resolution. The Code was framed with the objective of speedy resolution and maximization of value in the cases of insolvency of companies, thereby,maintaining a balance between reorganization and liquidation. The judicial pronouncementsgiven by National Company Law Tribunal are available in the public domain to ensure compliance and transparency, giving an opportunity to the law makers and researchers to analyze the success ofthe Code.

The Insolvency & Bankruptcy Code specifically focusses on minimizing the time in rescue or in liquidation process of the entity and in maximizing the returns of the stakeholder by balancing the interest of the debtor as well as the creditor. It was the judicial intervention and the inefficacy of the Debt Recovery Tribunals that prevented lenders from expediting recoveries under the earlier regimes. But surprisingly even under the IBC Code, endless litigations and judicial interventions have led to excessive delays and the basic premise of resolution in 270 days has been breached due to procedural inefficiencies, and other frivolous matters. Moreover, as the Code is in the state of infancy, the primary focus of the adjudicating authorities is on settling the various points of law and in removing the ambiguity in the Code.In a leading case of *Surendra Trading Company v. JuggilalKamlapat Jute Mills*,[2]the Supreme Court ruled that the timelines provided in Sections 7, 9 and 10 of the Insolvency & Bankruptcy Codefor deciding a matter within 14 days and the time to remove a defect within 7 days are *directory* and *not mandatory*. Another issue regardingadmissibility of application under section 7 of the Code in the event of claim being barred by limitation was brought up in the case of *Neelkanth Township & Construction Pvt. Ltd. v. Urban Infrastructure Trustees Limited.*[3]The Hon'ble NCLAT held that the provisions of Limitation Act, 2013 is not applicable to Insolvency & Bankruptcy Code and the Code is not an enactment for the recovery of money claim, but is an Act for initiation of Corporate Insolvency Resolution Process.

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[1]*Insolvency & Bankruptcy Code*, available at: http://www.samvadpartners.com/wp-content/uploads/2016/08/Samvad-Partners-Insolvency-and-Bankruptcy-Code_July-04-2016.pdf (last visited on September 13, 2019).

[2]Supreme Court of India, Civil Appeal No. 8400 of 2017.

[3] Company Appeal (AT) (Insolvency) No. 44 of 2017.

ISSN:0971-1260

Vol-22-Issue-22-December-2019

Further, there has been several instances where the extent of contingent liabilities in a company has delayed the resolution process. In such case, it becomes difficult to analyze and compute the value of a company due to pending litigation against the company in the form of government dues, tax dues, labor litigation or any other statutory non-compliance.

With respect to debt restructuring process, NCLT, Ahmedabad held that the ongoing debt restructuring process will not come in the path of insolvency resolution process. Debt Restructuring plan can be considered as a resolution plan in the corporate insolvency resolution process, if it is submitted by any of the resolution applicants.[1]

Another matter that came up before NCLAT was regarding joint application filed under Section 9 of the Code. In the case of *International Road Dynamics South Asia Pvt. Ltd. v. Reliance Infrastructure Ltd.*[2]the Hon'ble NCLAT held that under section 9 of the Code, different claim arising out of different agreements or work order, having different amount and different dates of default, cannot be clubbed together for alleged default of debt as the cause of action is being separate. Thus, joint application preferred by appellant under Section 9 is defective and is not maintainable.

There have been several litigations questioning the eligibility of competing bids, stalling the resolution process even after the insertion of Section 29A in the Code dealing with *related-party provisioning which aims to prevent defaulting promoters from taking back their companies*. The said provision has been considered to be stretched too far and needs clarification.

In the case of *Canara Bank vs. Deccan Chronicle Holdings Limited*,[3] it was held that any suit or case pending before the Supreme Court under Article 32 dealing with Right to constitutional remedy or an order passed under Article 136 dealing with Special leave petition or the power of the High Court under Article 226 will not be affected by moratorium asgiven in the Code.

According to the data released by the Insolvency & Bankruptcy Board of India, it is surprising to witness that in over three years of the IBC Code, the number of bankrupt companies liquidated under the regime has far exceeded the number of corporate resolutions, by nearly four times, somewhat defying the actual purpose of the Code. While 156 of the cases admitted under the Corporate Insolvency Resolution Process have been resolved until September 2019, the liquidation process has been initiated in as many as 587 cases. Thus, IBC has liquidated many more companies than it has resolved, against its primary purpose of resolving insolvency and bankruptcy cases to bring sick companies back to revival. Despite the increased instances of liquidation of companies under the Code, the fact that cannot be ignored is the paradigm shift in the balance of bargaining power from the debtors to the creditors.

There has been a series of amendments in the provisions of the Code since its inception which has stalled the practical implementation of the Code. Further, the question is whether the current benches of National Company Law Tribunal & National Company Law Appellate Tribunal will be able to deal with the increasing caseloads and in adhering to the timelines. The case of Essar Steel has been a classic example where the long-drawn litigations to settle the matter over the eligibility of bidders has dragged the insolvency process. The case was originally admitted by the NCLT on August 2, 2017. Despite of few lacunae, if Insolvency & Bankruptcy Code is well implemented, adhering to the guidelines and the prescribed timelines, it can bring positive and radical change in the future of reorganization and liquidation process in India. The current legal framework does not facilitate insolvency resolution and liquidation of corporate debtors across a group and it has been proposed to introduce the concept of "group insolvency" which would be an appreciated move by a majority of stakeholders. The idea behind 'group insolvency' is to have a framework that allows multiple entities of a group facing insolvency to club them at a single court for resolution.

[1] State Bank of India Vs. Essar Steel India Limited (CP No.40/7/NCLT/AHM/2017).

[2](Company Appeal (AT) (Insolvency) No. 72 of 2017).

[3] (2017) 141 CLA 0093.

ISSN:0971-1260

Vol-22-Issue-22-December-2019

There are several legal and procedural hurdles in the actual implementation of the Code and the real benefit of the Code can only be accrued in an environment where all the stakeholders would jointly contribute to the creation of an ecosystem conducive to an effective, fair and expedient implementation of the Code. Avoiding consistent delays and limiting judicial overreach will be imperative if IBC has to serve its intended purpose.