DECEMBER, 2019

THE INSOLVENCY PROFESSIONAL

YOUR INSIGHT JOURNAL

INSOLVENCY PROFESSIONAL AGENCY
OF INSTITUTE OF COST ACCOUNTANTS OF INDIA

OVERVIEW

Insolvency Professional Agency of Institute of Cost Accountants of India (IPA ICAI) is a Section 8 company incorporated under the Companies Act 2013 promoted by the Institute of Cost Accountants of India. We are the frontline regulator registered with Insolvency and Bankruptcy Board of India (IBBI). With the responsibility to enroll and regulate Insolvency Professionals (IPs) as its members in accordance with provisions of the Insolvency and Bankruptcy Code 2016, Rules, Regulations and Guidelines issued thereunder and grant membership to persons who fulfill all requirements set out in its byelaws on payment of membership fee. We are established with a vision of providing quality services and adhere to fair, just and ethical practices, in performing its functions of enrolling, monitoring, training and professional development of the professionals registered with us. We constantly endeavor to disseminate information in aspect of Insolvency and Bankruptcy code to Insolvency professionals by conducting Round tables, webinars and sending daily newsletter namely "IBC Au courant" which keeps the insolvency professionals updated with the news relating to Insolvency and bankruptcy domain.

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From the MD & CEO's desk
CMA (DR.) S.K. GUPTA

The IBC shifts away from a debtor-in-possession approach to a model where creditors decide on the resolution and a linear process is followed to preserve economic value under the guidance of the NCLT. IBC has been a well-intentioned legislation backed by strong intent from the government to tackle 'bad credit'. The biggest change IBC has brought about is cultural. Irrespective of how big the corporate is, the law is being enforced. IBC has been able to do the unthinkable—put Indian corporates on tenterhooks. IBC has indeed set alarm bells ringing with almost every debt-stricken company trying its hand at debt restructuring or putting up distressed assets on sale. The biggest change IBC has brought about is cultural. Irrespective of how big the corporate is, the law is being enforced and the result is that while recovering 43% of their claims through resolution plans, the creditors have recovered 210% of the liquidation value of the companies. They effectively got a bonus of 110% because of the Code. The creditors have realised about Rs.1.6 lakh crore through resolution plan of 160 companies. They are realising through settlements after applications are filed and before they are admitted, on account of the Code. They are also realizing through settlement even before application is filed, in the shadow of the Code.

The Centre has taken the next big step in insolvency reforms by bringing personal guarantors to corporates (corporate debtors) within the fold of the Insolvency and Bankruptcy Code from December 1. The Ministry of Corporate Affairs (MCA) has come up with a set of rules extending the scope of the IBC to personal guarantors of corporate debtors.

The Code was a remarkable step towards resolution of stressed assets, however certain critical inconsistencies and gaps became evident given various legal proceedings initiated in respect of corporate insolvency resolution processes Additionally, there have been certain judicial pronouncements recently which are being viewed as contrary to the

Code's envisioned priority of distribution to financial creditors vis-à-vis operational creditors. To address some of these issues, the Parliament passed the Insolvency and Bankruptcy Code (Amendment) Act, 2019 which received Presidential assent on 5 August 2019 and will become effective from such date that the Central Government may appoint by notification. The Insolvency and Bankruptcy Code (Amendment) Act, 2019 seeks to address critical gaps and inconsistencies in insolvency resolution timelines, payments received by operational creditors under a resolution plan and manner of voting by an authorised representative on behalf of the class of financial creditors.

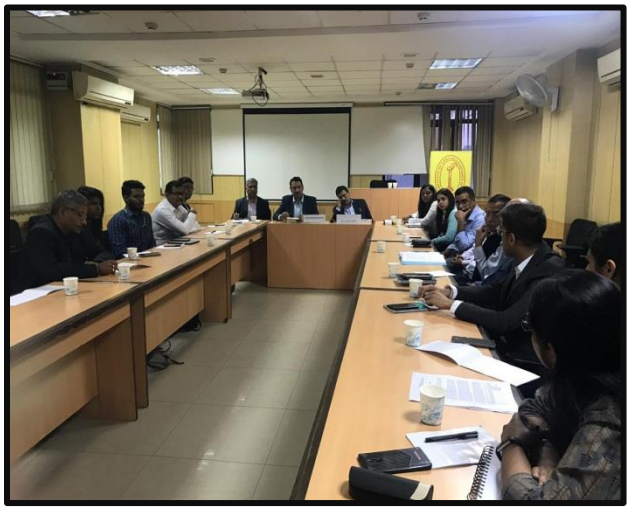
The government is keen to introduce a globally accepted and well-recognised cross-border insolvency framework, which will make India an attractive investment destination, given the increased predictability and certainty of the insolvency process. work is on to amend the Insolvency and Bankruptcy Code 2016 that will address cross-border insolvency.

PROFESSIONAL DEVELOPMENT INTIATIVES

Insolvency Professional Agency Of Institute Of Cost Accountants Of India

Orientation Program held at Ludhiana on 2nd November, 2019

Colloquium with IPs on CIRP on 26th November, 2019



Pre-Registration Training at Jaipur from 4th -11th November, 2019

NeSL Workshop on Insolvency Case Management systems on 10th December, 2019

Certification Course on IBC on 15th - 17th November, 2019

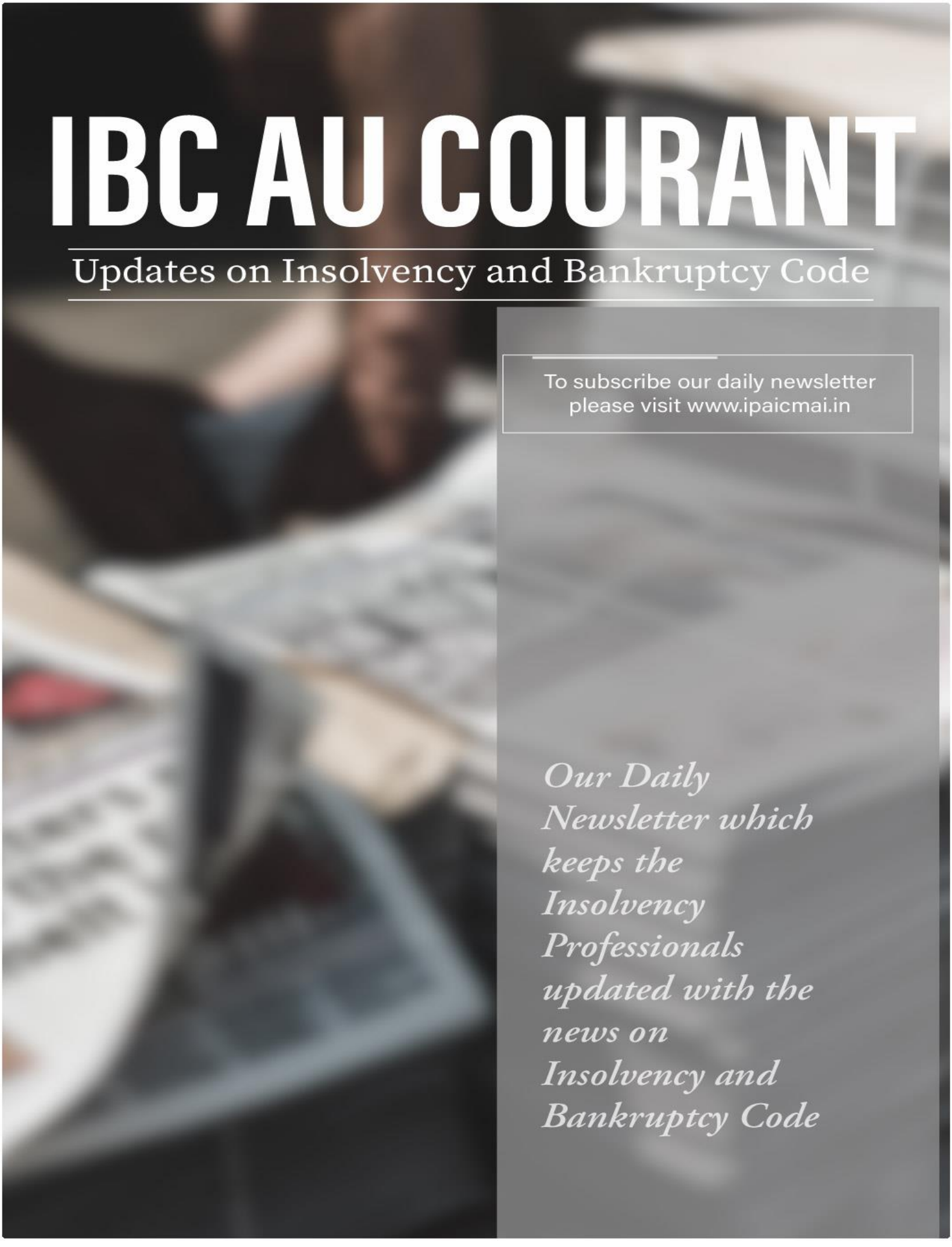
NCLAT Program at PhD Chambers of Commerce

Certification Course on Valuation on 16th November, 2019

EVENTS CONDUCTED

DECEMBER, 2019	
5th December 2019	Webinar on Authorization for Assignments
5th December 2019	Rules under the IBC with regard to Financial Service Providers wrt their Insolvency and Liquidation Proceedings
6th December 2019	Webinar on "Using Information Utility for CIRP"
7th December 2019	Certificate course on Insolvency and Bankruptcy of Personal Guarantors to Corporate Debtors
10th December 2019	Insolvency Case Management Systems for IP's
12th December 2019	Workshop on Insolvency of Personal Guarantors to Corporate Debtors - Hyderabad
21st December 2019	Awareness Program on IBC - Pune
20th December 2019- 22nd December 2019	Certification Course on IBC, 2016 (Preparatory Education Course for Limited Insolvency Exam)

NOVEMBER, 2019	
1st-2nd November, 2019	2nd Advance Workshop at Chandigarh by IBBI
2nd November, 2019	Orientation Program on IBC - Ludhiana
4th-10th November, 2019	24th Batch of Pre-Registration Educational Course - Jaipur
8th November, 2019	Colloquium with IPs on Liquidation under IBC,2016 (Delhi)
9th November, 2019	Workshop on Leveraging Digital Forensic and Big Data for Detecting Fraud.
9th November, 2019	Certificate Course on Group Insolvency - Kolkata
11th November, 2019	Colloquium with IPs on Liquidation under IBC,2016 (Bengaluru)
11th November, 2019	Colloquium with IPs on Liquidation under IBC,2016 (Hyderabad)
13th November, 2019	Colloquium with IPs on CIRP under IBC, 2016 (Mumbai)
15th-18th November, 2019	Certification Course on IBC, 2016 (Preparatory educational course for limited Insolvency Exam)
16th November, 2019	Certificate Course on Valuation
22nd November, 2019	Personal Insolvency and Bankruptcy of Guarantors to Corporate Debtors
24th November, 2019	Awareness Program on IBC - Cuttack
25th November 2019- 1st December 2019	25th Batch of Pre-Registration Educational Course - New Delhi from 25th November, 2019 to 01st December, 2019



IBC AU COURANT

Updates on Insolvency and Bankruptcy Code

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Our Daily Newsletter which keeps the Insolvency Professionals updated with the news on Insolvency and Bankruptcy Code


ARTICLES
Insolvency Professional Agency of Institute of Cost Accountants of India

ABLUTION BY RESOLUTION

The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019 seeks to wash out liability of corporate debtors resolved under IBC

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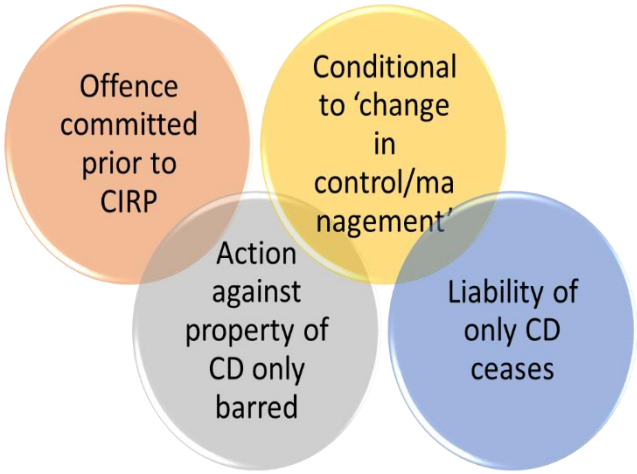
Ms. Sikha Bansal
Vinod Kothari & Company

Resolution under the Insolvency and Bankruptcy Code, 2016 ('Code') is a harbinger of fresh start of the corporate debtor, which passes into the control of a new management by the very application of section 29A. The fresh start would have no meaning if the corporate debtor or the new management thereof have to bear the brunt of offences which the corporate debtor or its officers committed prior to ablution under the Code - that is, one cannot be made to reap what they did not sow. As such, it was important to provide immunity to the corporate debtor and its assets, the successful resolution applicant and the new management personnel.



The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019 ('Bill') seeks to give effect to the same by way of insertion of section 32A in the Code. Seemingly vast and expansive in terms of drafting, **the section broadly operates on 3 fronts,** of course, subject to conditions

(i) **cessation of liability** of the corporate debtor in respect of an offence committee prior to the commencement of corporate insolvency resolution process,

(ii) **prohibition on any action against any property** of the corporate debtor covered under the resolution plan,

(iii) Requirement from the corporate debtor and other persons to extend **assistance and co-operation** to any investigating authority, notwithstanding the immunity granted as above.

At the outset, it is important to note that while releasing the liability against 'offences', the section does not define the scope of the word **'offence'** – hence, the same will have to interpreted broadly so as to cover any offence which the corporate debtor might have committed under any law including but not limited to corporate laws, tax laws, labour laws, environmental laws, and commercial laws. The view finds support in opening non-obstante phrase of section 32A (1).

Here, it is equally important to draw a line between offences committed by the corporate vehicle and offences committed by those running the corporate vehicle, as we discuss ahead.
Each of the three aspects are discussed threadbare as follows –

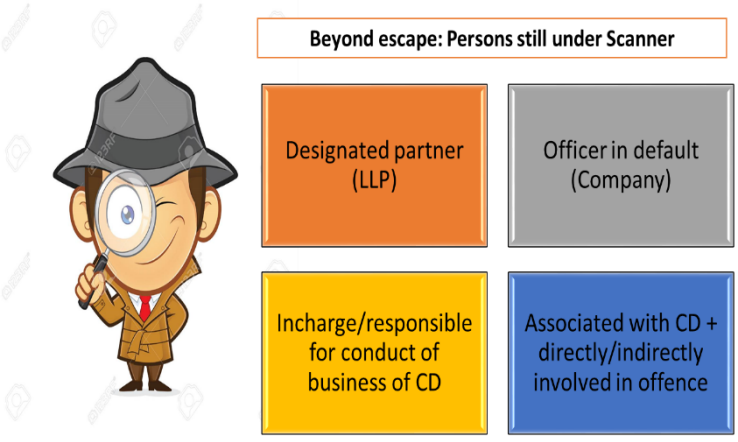
1. Cessation of liability

Sub-section (1) of section 32A is a non-obstante provision operating against anything contrary contained in the Code or any other law for the time being in force. The provisions can be summarized in the points –

(i) The sub-section grants immunity to the corporate debtor from any liability in respect of an **offence committed prior to the commencement of CIRP**.

(ii) The liability shall cease and **the corporate debtor shall not be prosecuted** from the date of approval of resolution plan. If prosecution was initiated during CIRP, the same shall stand discharged from the date of approval of resolution plan.

(iii) The benefit under this sub-section is **conditional** – the same is available only when the resolution plan has resulted into a change in management/control of the corporate debtor, such that a person who was a promoter or who was the person in management or control or who was a related party of such persons are **no more in the management/control** of the corporate debtor post approval of resolution plan.



(iv) Further, the person in management/control (post resolution) should not be the one with respect to whom any investigating authority has given adverse opinion vis-à-vis the offence committed, and has furnished a report/compliant to relevant statutory authority/court. Notably, the person might not be a direct accused, but the one who has been alleged to have abetted or conspired for the commission of offence (the persons, collectively with persons mentioned in (iii) above called **debarred persons** hereinafter).

(v) The sub-section though releases the corporate debtor, but continues to hold the concerned persons (individuals) liable for the offences. The concerned persons are –

a) designated partner (in case of LLP) or

b) an officer in default (in case of a Company), or

c) every person who was, in any manner, in charge of, or responsible to the corporate debtor for the conduct of its business, or

d) Every person associated with the corporate debtor in any manner and who was directly/indirectly involved in the commission of the offence as per report of the investigation authority.

Certain quick observations which flow from a reading of sub-section (1) are –

- In view of the provision, the resolution applicant and the persons who have assumed the seat of drivers of the corporate debtor post resolution have been explicitly saved from dealing with an array of punitive provisions of laws which the corporate debtor might have violated earlier.

- The sub-section **does not speak of liquidation** or where there is a sale during liquidation (especially a going concern sale). The law propounded in sub-section (1) is based on equity and justice, and shall appropriately apply to going concern sales in liquidation too. Going by principle and conventional provisions in laws across, only such persons are liable to be prosecuted and punished, who were in charge of the entity, *at the time* the offence was committed. Hence, it may be viewed that inspite of absence of explicit provision, the principle as incarnated in sub-section (1) of section 32A will hold good in liquidation (going concern) sales too. Note that sub-section (2) makes a reference to liquidation though.

- There is no exemption for **MSMEs**. Note that MSMEs have been exempted from certain provisions of section 29A. Thus, there can be instances where the promoter remains the same. If the lack of exemption is seen as an omission-by-will of the lawmakers, then the corporate debtor will continue to be liable for the offences committed prior to resolution. That is, resolution will ease only the financial burden of the MSMEs.

- The sub-section should not be taken as the only guide to prosecution of the persons allowed to be prosecuted. Ultimately, the prosecution shall take place in accordance with the law under which the offence was committed. Certain laws provide for liability irrespective of whether there was active participation of the accused, and certain laws provide for exemption where offence was committed without knowledge or connivance of the person.

2. Prohibition on action against property

While sub-section (1) operates in favour of corporate debtor as an entity, sub-section (2) bars action against property of the corporate debtor. Here, **'action'** has been described to include attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor. For instance, tax laws generally provide for attachment of

properties for default in payment of tax dues (including penalties). Such an action cannot be taken in view of this sub-section.

The sub-section makes the following provisions –

- The protection is again with respect to an offence committed prior to CIRP.
- The property, against which action is proposed to be taken, is **covered under the resolution plan** approved by the AA or sale under liquidation.
- The resolution plan should have **resulted in change in management/control** of the corporate debtor such that debarred persons are not in management/control of the corporate debtor post resolution. In case of sale in liquidation, the sale should not have been made to a debarred person.

(i) The action is **not barred against property of other persons** (for instance, say officers in default, guarantors, etc.)

As regards sub-section (2), the following points may be noted –

- Here again, there is no exemption for MSMEs.

3. Assistance and co-operation in investigation

Notwithstanding the immunity given in sub-sections (1) & (2), the corporate debtor or any person who may be required to extent assistance/co-operation to any authority investigating an offence committed prior to the commencement of CIRP, has been mandated to assist and co-operate accordingly.

4. Author remarks

The immunity purported to be given to the corporate debtor after resolution, will boost confidence of resolution applicants. The authorities, however, intending to proceed against the corporate debtor, will be barred to proceed as such.

NOTE ON - RULES NOTIFIED FOR FINANCIAL SERVICE PROVIDERS WRT THEIR INSOLVENCY & LIQUIDATION PROCEEDINGS

Dr. (h.c) Advocate Mamta Binani
Insolvency Professional
Vice President-National Company Law Tribunal Kolkata -Bar Association

PREFACE

November 15, 2019 marked the date for the notification of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 (the Rules) for invoking the provisions of the Insolvency & Bankruptcy Code, 2016 (the Code) in order to find resolution for stressed financial companies.

The Ministry of Corporate Affairs (MCA) has notified the Rules to provide a generic framework for insolvency and liquidation proceedings of systemically important Financial Service Providers (FSPs) other than banks.

This has been done vide section 227 of the Code wherein powers are conferred upon the Central Government to notify FSPs or categories of FSPs for the purpose of insolvency and liquidation proceedings.

Another notification dated November 18, 2019 specified that Category of FSPs {rule 2 of the Rules} to be undertaken in accordance with the provisions of the Code will be the Non-banking finance companies (which include housing finance companies) with asset size of Rs.500 crore or more, as per last audited balance sheet.

It also notified the Reserve Bank of India (RBI) to be the 'Appropriate Regulator' [clause (a) of sub-rule (1) of rule 3 of the Rules].

FSPs in general are not covered ordinarily under the provisions of the Code. Thus through the Rules that have been notified resolution can be sought for stressed financial companies in the likes of DHFL (Dewan Housing Finance Corporation Limited), PMC Bank (Punjab & Maharashtra Cooperative) & IL&FS (Infrastructure Leasing & Financial Services Limited). As for DHFL, even as most stakeholders agreed for resolution, some bondholders and mutual funds effectively thwarted the process as they sought repayment of their full dues and filed cases in debt recovery tribunals and courts.

Though, it has been specifically mentioned not to take banks into its ambit.

Corporate Affairs Secretary, Mr. Injeti Srinivas said the special framework is essentially aimed at serving as an interim mechanism to deal with any exigency

pending the introduction of a full-fledged enactment to deal with the resolution of banks and other systematically important financial service providers.

The government will also introduce the Financial Resolution and Deposit Insurance Bill (FRDI Bill) in parliament in the winter session.

Finance Minister Nirmala Sitharaman said the notification was necessitated because there was no system like the IBC that was designed exclusively for financial institutions.

Few highlights of the Rules

The Rules provide that the provisions of the Code relating to the Corporate Insolvency Resolution Process (CIRP), Liquidation Process and Voluntary Liquidation Process for a corporate debtor shall, mutatis mutandis, apply to a process for an FSP, subject to certain modifications as set out below:-

•Under the framework, the Corporate Insolvency Resolution Process (CIRP) will be initiated only on the application of the appropriate regulator (the RBI).

•The National Company Law Tribunal (NCLT) will appoint an administrator proposed by the regulator for financial service providers admitted into insolvency proceedings and will take on the management of the company, accept or reject claims of creditors and handle liquidation proceedings.

•Under the framework, approval of any resolution plan will also require the administrator to seek 'no objection' from the regulator regarding the persons who will take over the management of the FSP.

•The appropriate regulator shall issue 'no objection' on the basis of the 'fit and proper' criteria applicable to the business of the FSP without prejudice to the provision of Section 29A of the Code.

•Unlike the corporate insolvency process, the moratorium period for FSPs will begin as soon as the application for insolvency is filed by the regulator.

•The interim moratorium will be in effect till admission or rejection of application by the Adjudicating Authority.

•The provision of moratorium would not be applicable to third party assets in custody of the FSP, and the its license and registration would not be suspended/cancelled during interim-moratorium and during the proceedings of the CIRP.

•The administrator will have the same duties, obligations and rights and powers as enjoyed by the insolvency professional /resolution professional/liquidator in cases involving corporate debtors under the normal IBC process.

•The FSP shall obtain prior permission of the appropriate regulator for initiating voluntary liquidation proceedings. The adjudicating authority shall provide the appropriate regulator an opportunity of being heard before passing an order for liquidation or dissolution of the FSP.

Modification in the CIRP of FSP

(a) **Initiation of Corporate Insolvency Resolution Process**: -

(i)Application to be made by Appropriate Regulator (RBI): - No corporate insolvency resolution process shall be initiated against a

financial service provider which has committed a default under section 4, except upon an application made by the appropriate regulator in accordance with rule 6;

(ii)Consideration of the application to be dealt with as that filed by a financial creditor: - The application under sub-clause (i) shall be dealt with in the same manner as an application by a financial creditor under section 7, subject to clause (iii); and

(iii) Appointment of the Administrator: - On the admission of the application, the Adjudicating Authority shall appoint the individual proposed by the appropriate regulator in the application filed under sub-clause (i) of clause (a) of rule 5, as the Administrator.

(b) Moratorium: - Save as provided in section 14,

(i)Commencement of moratorium: - an interim moratorium shall commence on and from the date of filing of the application under clause (a) till its admission or rejection; and

Explanation: - For the purposes of this clause, "interim moratorium" shall have the effect of the provisions of sub-sections (1), (2) and (3) of section 14 (mentioned below) .

"(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c)any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(3) The provisions of sub-section (1) of section 14 shall not apply to —
(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
(b) a surety in a contract of guarantee to a corporate debtor."

(ii)Non-suspension of license or registration of the FSP: - the license or registration which authorises the financial service provider to engage in the business of providing financial services shall not be suspended or cancelled during the interim-moratorium and the corporate insolvency resolution process.

(c) Advisory Committee: -

(i)Constitution of the Advisory Committee: - The appropriate regulator may, where deemed necessary, constitute an Advisory Committee, within 45 days of the insolvency commencement date, to advise the Administrator in the operations of the financial service provider during the corporate insolvency resolution process;

(ii)Number of members in the Committee: - The Advisory Committee shall consist of three or more Members, who shall be persons of ability, integrity and standing, and who have expertise or experience in finance, economics, accountancy, law, public policy or any other profession in the area of financial services or risk management, administration, supervision or resolution of a financial service provider;

(iii)The terms and conditions of the Members & the manner of conducting of their meetings: - The terms and conditions of the Members of the Advisory Committee and the manner of conducting meetings and observance of rules of procedure shall be such as may be determined by the appropriate regulator;

(iv)Compensation to members: - The compensation paid to the Members of the Advisory Committee shall be part of the insolvency resolution process costs;

(v)Chairman of the meetings: - The Administrator shall chair the meetings of the Advisory Committee.

(d) Resolution plan: -

(i) Statement by the resolution applicant: - The resolution plan shall include a statement explaining how the resolution applicant satisfies or intends to satisfy the requirements of engaging in the business of the financial service provider, as per laws for the time being in force;

(ii)No-Objection from appropriate regulator w.r.t persons to be in control post approval of the resolution plan: - Upon approval of the resolution plan by the committee of creditors under sub-section (4) of section 30, the administrator shall seek 'no objection' of the appropriate regulator to the effect that it has no objection to the persons, who would be in control or management of the financial service provider after approval of the resolution plan under section 31;

(iii)Issuance of the 'No-Objection': - The appropriate regulator shall without prejudice to the provisions contained in section 29A, issue 'no objection' on the basis of the 'fit and proper' criteria applicable to the business of the financial service provider;

(iv)Deemed granting of 'No-Objection' on non-refusal: - Where an appropriate regulator does not refuse 'no objection' on an application made under clause (ii) within forty-five working days of receipt of such application, it shall be deemed that 'no objection' has been granted.

Conclusion

Eight months after the enactment of the Code in 2016, then Finance Minister Arun Jaitley introduced the FRDI (Financial Resolution and Deposit Insurance) Bill in the Lok Sabha to tackle insolvency of financial service providers (FSPs). However, the Bill was shelved as it ran into a controversy over the Rs 1 lakh deposit insurance per bank account. The fear was a depositor would be left with just one lakh of her entire life savings, which usually run into lakhs, in the case of a bank failure.

Recently, the government has contemplated to treat troubled FSPs under the IBC. The NBFC crisis involving the collapse of shadow banks such as IL&FS and DHFL has triggered this rethink. Section 227 of the IBC allows the government to notify NBFCs like DHFL for insolvency and liquidation in the 'manner' it prescribes.

The FSPs have been recently dealing with numerous cases with regard to troubled servicing of their debts. The regulator — the RBI, in the case of NBFCs — plays the key role in moving the resolution process and appointing an administrator while ensuring that the new investor interested in taking over the company is 'fit and proper'. The initiation of moratorium provided for FSPs will avoid needless litigations and fresh claims.

Banks have been avoided and rightly so since bankrupt banks would force depositors to take a hit and shake public confidence in the banking system, which continues to hold a predominant share of savings. The government has rightly distinguished between a bank and a shadow bank for the purpose of the Code.

With regard to banks, after a meeting with chiefs of state-run banks on October 14, finance minister Ms. Nirmala Sitharaman had said the government would soon introduce the revised FRDI Bill in Parliament and that there were discussions in the government to raise the cover on deposits. The Bill is still in the works.

The government is considering raising the insurance cover for bank deposits to anywhere between Rs 2 lakh and Rs 3 lakh from the current level of Rs 1 lakh under a modified Financial Resolution and Deposit Insurance (FRDI) law. The finance ministry is also debating whether the minimum insured amount can be allowed to be withdrawn by the depositors of a troubled bank even when it is continuing operations as a going concern, said the source. Under the extant rules, depositors are entitled to the insured amount of Rs 1 lakh only when the bank is liquidated, he added.

Hence to conclude, the bringing in of FSPs under the Code's ambit will pave a way for the FSPs to deal with the debt crisis situation and move towards a proper resolution to their distress.

RESOLVING A COMPANY VIS-À-VIS RESOLVING EVERYONE'S INTERESTS

Mr. Sarthak Ohri
Chartered Accountant

Introduction

It has been only three years since the Insolvency and Bankruptcy Code, 2016 ("IBC") got enacted and since then the interests of many stakeholders have been met yet many still feel deprived. How could legislation whose one of the primary objective is to balance the interests of all the stakeholders unbalance the interests? Or is it the stakeholders themselves shaking the weigh-scale to create an unbalanced situation?

In July 2019 the Appellate Authority for companies undergoing Corporate Insolvency Resolution Process ("CIRP") i.e, National Company Law Appellate Tribunal ("NCLAT") modified the order passed by the Adjudicating Authority in the case of "Standard Chartered Bank Vs. Satish Kumar Gupta, R.P. of Essar Steel Ltd. & Ors." ("Essar Steel case"). The NCLAT modified the repayment plan in an attempt to treat identically the Financial Creditors ("FC") and the Operational Creditors ("OC") for the purpose of distribution of proceeds. In November 2019 the said order of 'NCLAT' was further set aside by the Hon'ble Supreme Court wherein it was held that "neither the adjudicating authority nor the appellate authority has been endowed with the jurisdiction to reverse the commercial wisdom of the Committee of Creditors ("CoC")".

Through this article, I made an attempt to describe the rationale behind such 'commercial wisdom', the lessons learnt by the stakeholders, and what could be the way forward to such a scenario.

Creditors in 'IBC'

Countries across the globe have seen a number of formal and informal insolvency laws over the past many decades which kept on evolving to give rise to the new ones. Even after the enactment of a large number of laws the underlying issues remain common for many of them.

As per the legislative guide on Insolvency Law by the United Nations Commission on International Trade Laws ("UNCITRAL") "Insolvency" is, when a debtor is generally unable to pay its debts as they mature or when its liabilities exceed the value of its assets.

Since there is the presence of a liability it is quite evident that there must be some creditors to whom such liability is owed. Since there are creditors involved there must

be certain rights of such creditors and one of them must be rights to recover their debt.
Earlier this right was not available to everyone under a consolidated act. In a restructuring arrangement, the 'FCs' or banks used to negotiate the affairs on their own with little say of the 'OCs'. The outcome of such negotiation is optimal when the interests of the corporate debtor and creditors are aligned to maximize the economic value of the enterprise. However, there are several elements in the negotiation that increase the conflict, rather than preventing it between the parties. Not providing fair and equitable rights to creditors is a major reason for conflicts and also one of the lessons we are still learning.

The term 'Creditor' has been defined in section 3 (10) of the 'IBC', which reads as:
"creditor" means any person to whom a debt is owed and includes a financial creditor, an operational creditor, a secured creditor, an unsecured creditor and a decree-holder.
Section 3(30) defines 'secured creditor' as "a creditor in favour of whom security interest is created."

Section 5(7) defines 'financial creditor' as "any person to whom a financial debt is owed and includes a person to whom such debt has been legally assigned or transferred to."

Section 5(20) defines 'operational creditor' as "a person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred."

'FC' primarily is by way of loans and debt contracts and in most cases, they include banks and financial institutions. These creditors have always been part of the economic ecosystem as a business relies on them for their sources of finance.
'OC' covers a wide array of people, their interest needs to be secured because they can range from a tea vendor to a major supplier without whom the business may shut down completely. They can also range from a peon in the office to a CEO. It also includes Government and regulatory authorities. 'OC' also includes workmen, employees, and supplier of utilities. They have always been in books of Corporate Debtor because they support the core activities of the business.
As also noted by the Hon'ble NCLAT in "Binani Industries Limited vs. Bank of Baroda & Anr" that,

"If the Operational Creditors are ignored and provided with liquidation value on the basis of misplaced notion and misreading of Section 30(2)(b) of the I&B Code, then in such case no creditor will supply the goods or render services on credit to any Corporate Debtor."

Therefore, unbalancing the interests of 'OC' vis-à-vis 'FC' could have far-reaching consequences and create a ripple effect of an operational disability in the economy.

The rationale behind the judgement of the appellate authority Hon'ble NCLAT had, in front of it, questions that were unaddressed and addressing them would mean venturing into unknown territory. Though there were many questions that arose in the proceedings relating to the classification of creditors within a class of 'FCs', distribution to secured 'FCs', denying the rights of 'OCs' and other stakeholders, one of the most significant questions was whether the manner of distribution of funds among various classes of creditors is to be decided by the 'Resolution Applicant' or the 'CoC'?

As we look into the decision of the Appellate Authority, it is imperative to know how distribution was proposed in the order of NCLT. The 'OCs' who are workmen and employees, and the 'OCs' whose admitted dues is less than Rs. 1 Crore were proposed to be paid 100% of their dues, but the rest of the 'OCs' such as IOC, BPCL, GAIL whose claims were admitted at a notional amount of Rs.1/- (Rupees one), had been provided with 'NIL' amount i.e. 0% without any basis.
The Appellate Authority noted that suggestion of 'Resolution Applicant' to distribute the financial package offered by it only to the 'Secured Financial Creditors', denying the right of 'Operational Creditors' and other stakeholders, is also against the provisions of Section 30 (2) and Regulation 38 (1A), and thereby cannot be upheld.
Hon'ble Supreme Court in "Swiss Ribbons Pvt. Ltd. & Anr." noticed the 'UNCITRAL Guidelines' and observed:

"Quite apart from this, the United Nations Commission on International Trade Law, in its Legislative Guide on Insolvency Law ["UNCITRAL Guidelines"] recognizes the importance of ensuring equitable treatment to similarly placed creditors….."
The Hon'ble Supreme Court further observed that the NCLAT has, while looking into viability and feasibility of resolution plans that are approved by the 'CoC', always gone into whether 'OC' are given roughly the same treatment as 'FC', and if they are not, such plans are either rejected or modified so that the OC's rights are safeguarded.

The Hon'ble NCLAT, in the matter of Essar Steel, decided that the Resolution Applicant cannot take advantage of Section 53 for the purpose of determination of the manner in which distribution of the proposed upfront amount is to be made in favour of one or other stakeholders namely— the 'FC', 'OC' and other creditors.
The Hon'ble NCLAT came up with an interesting formulae and yet logical rationale behind it which led to the revised distribution wherein the ratio of 'Total Amount Available for Distribution (X)' to 'Total Amount of Claims (Y)' was 60.7%, and as a result of this magic number, 'OC' and 'FC' were proposed to be paid 60.7% of their admitted claims except workmen and 'OC' having claims less than Rs. 1 Crore which were paid 100%.

The rationale behind such equitable distribution was derived from section 30(2)(b) read with Section 31 of the 'IBC' which provides that the minimum payment made to operational creditors, should not be less than liquidation value. It also does not mean that they should not be provided with the amount more than the amount they could have received in the event of a liquidation which otherwise amounts to discrimination.

For deciding the power of 'CoC' to decide on the distribution to creditors, the Appellate Authority referred to the report of the Bankruptcy Law Reforms Committee ("BLRC") and held that even this report does not empower the 'CoC' to decide the distribution amongst the stakeholders. It took the view of Hon'ble Supreme Court in the matter of "K. Sashidhar v. Indian Overseas Bank and Ors" where the court held that the commercial decision of the 'CoC' is non-justiciable and will not be open to scrutiny by the Adjudicating Authority/Appellate Authority. However, it is the duty of the 'CoC' to balance responsibilities and duties towards all such stakeholders during the resolution process. The Apex Court in the matter of "Arcelor Mittal India Pvt. Ltd. v Satish Kumar Gupta &

Ors." and "Swiss Ribbons Pvt. Ltd. & Anr. v. Union of India" (supra) laid emphasis on the various responsibilities of the 'CoC' including safeguarding interests of other creditors and that resolution plans must provide fair and equitable treatment to 'OCs'.

Therefore, the order of the Appellate Authority made it clear that the 'CoC' has not been empowered to decide the manner in which the distribution is to be made among various classes of creditors. It is only required to notice the viability and feasibility of the 'Resolution Plan'. The code and regulations framed thereunder empower the 'Resolution Applicant' to decide the manner in which the distribution is to be made.

What the law says?

While the Code provides a clear system of priorities in liquidation, it is relevant to ascertain the system of priorities under the corporate insolvency resolution process of the Code.

Section 30(2) of the Code provides the minimum requirements of a resolution plan. A resolution plan must provide for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the payment of other debts of the corporate debtor and the payment of the minimum liquidation value due to 'OCs'.

However, Section 30 has been amended vide the Insolvency and Bankruptcy Code (Amendment) Act, 2018 to provide for the payment of debts to the 'OCs' which shall not be less than the higher of the following:

a. The amount payable to the 'OCs' in the event of liquidation under section 53; or
b. The amount that would have been paid to 'OCs', if the amount under the resolution plan had been distributed in accordance with the order of priority prescribed under section 53(1);

The amendment also provides for payment of minimum liquidation value to dissenting 'FCs'. Further as per amended sub-section (4) of section 30, 'CoC' has to approve the plan after considering its feasibility, viability, and the manner of distribution proposed which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor.

Regulation 38 also provides that the amount due to the 'OC' under a resolution plan shall be given priority in payment over 'FC' and that a resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including financial creditors and operational creditors, of the corporate debtor.

How does the apex court view this?

In the matter of "Committee of Creditors of Essar Steel India Ltd. Vs Satish Kumar Gupta & Os." the counsel, on behalf of the 'CoC', argued that if secured 'FC' are to be treated at par with unsecured creditors, such secured creditors would rather vote for liquidation rather than Corporate Resolution, contrary to the main objective sought to be achieved by the Code. The rationale for only financial creditors handling the affairs of the corporate debtor and resolving them is for reasons that have been deliberated upon by the 'BLRC' Report (supra).

As per regulation 39 , the committee shall evaluate the resolution plans received under sub-regulation (1) strictly as per the evaluation matrix to identify the best resolution plan and may approve it with such modifications as it deems fit. The Hon'ble Supreme Court observed in the instant case

that "This Regulation fleshes out Section 30(4) of the Code, making it clear that ultimately it is the commercial wisdom of the 'CoC' which operates to approve what is deemed by a majority of such creditors to be the best resolution plan which is finally accepted after negotiation of its terms by such Committee with prospective resolution applicants".

In K. Sashidhar's case (supra), the Hon'ble Supreme Court opined that "the legislature has not endowed the adjudicating authority with the jurisdiction or authority to analyze or evaluate the commercial decision of the 'CoC' much less to enquire into the justness of the rejection of the resolution plan by the dissenting financial creditors". It was further held that what is left to the majority decision of the 'CoC' is the "feasibility and viability" of a resolution plan, which obviously takes into account all aspects of the plan, including the manner of distribution of funds among the various classes of creditors. Court also noted that neither the adjudicating authority nor the appellate authority has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting 'FCs'. At best, the Adjudicating Authority may cause an enquiry into the approved resolution plan on limited grounds referred to in Section 30(2) read with Section 31(1) of the code and send back the plan to the 'CoC' for modification.

Thus, it is clear that the limited judicial review available, which can in no circumstance trespass upon a business decision of the majority of the 'CoC', has to be within the four corners of Section 30(2) of the Code, insofar as the Adjudicating Authority is concerned, and Section 32 read with Section 61(3) of the Code, insofar as the Appellate Tribunal is concerned.

The limited judicial review available is to see that the 'CoC' has taken into account the fact that the corporate debtor, continues as a going concern during the insolvency resolution process; that it needs to maximize the value of its assets and; that the interests of all stakeholders have been taken care of14.

The Hon'ble Supreme Court in the matter of "Miheer H. Mafatlal vs Mafatlal Industries Ltd" held that: -

"The Court acts like an umpire in a game of cricket who has to see that both the teams play according to the rules and do not overstep the limits. But subject to that how best the game is to be played is left to the players and not to the umpire."

As the above case is related to the scheme of compromise and arrangement under the Companies Act, 1956, however, in the context of 'IBC' vis-à-vis commercial wisdom of 'COC', it can be established that the Adjudicating or Appellate Authority shall not interfere in the commercial wisdom of the 'CoC'. It is the 'CoC', under Section 30(4) read with Regulation 39(3), that is vested with the power to approve resolution plans and make modifications therein as the Committee deems fit. Even under Sections 391 and 392, the High Court cannot act as a court of appeal and sit in judgment over such commercial wisdom.

Conclusion and the Way Forward

As we saw above that the plans must deal with all creditors in a fair and equitable manner, including those creditors who do not have the right to vote on the resolution plan since they are not 'FCs'. The plan must also not discriminate against equally situated creditors.

The grievance of the judgement pronounced by Hon'ble 'NCLAT' had mainly been to 'FCs'. But it is also very important to note that the inequitable treatment in the starting stage provided plenty of hopes to the petitioners. Since the plan was not meeting the requirements of law Hon'ble 'NCLAT' used it's wisdom to modify the plan after judicial scrutiny and having a grievance in such a situation is natural.

On the other hand, having Commercial Wisdom and deciding on fairness and equitableness is also a matter of subjectivity. Therefore, considering the recent order of Supreme Court, I would conclude that the commercial wisdom of the 'CoC' shall be subject to the limited judicial review where the 'CoC' has failed to fulfil its duties towards the other stakeholder represented by them during the 'CIRP' by a means of sending the plan back to the 'CoC' to re-submit such plan after satisfying the requirements.

I hope that the judgement and wisdom of the Hon'ble Supreme Court would prove to be helpful in resolving everyone's interests. Now the onus lies on the 'CoC' to evaluate the plans as per provisions of the act along with regulations, which could further help them in avoiding litigation.

Author Note:

The author is a member of the Institute of Chartered Accountants of India and currently pursuing two years prestigious 'Graduate Insolvency Programme' offered by the IBBI. The author possesses a deep interest in restructuring and insolvency domain. Coming with a passion for writing Sarthak has also authored a book in 2019. Apart from enjoying his profession, he loves to trek and actively take part in adventure sports like mountaineering. His other interests include cycling and playing the piano.

PERFORMANCE ANALYSIS OF ELECTROSTEEL STEELS LIMITED PRE, DURING AND POST CIRP A CASE STUDY

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Company Profile

Electrosteel Steels Limited (ESL) was originally incorporated as Electrosteel Integrated Limited as a subsidiary company of Electrosteel Castings Ltd.on December 20th, 2006 as a Public Limited Company which commenced its business on January 5th, 2007 and has been listed on the Indian stock exchanges since 2010. The name of the Company was changed from Electrosteel Integrated Limited to Electrosteel Steels Limited and a fresh certificate of incorporation was granted to the Company on May 5, 2010.

The main reason for the change in the name of the Company was that the new name would convey the business of the Company in a better manner, which would help the Company enjoy better market reputation and customer's reliance. What started off as Electrosteel Castings, a Steel Castings and Cast Iron Spun Pipe manufacturing company, evolved in time into a pioneer in manufacturing Ductile Iron Pipes and Fittings ESL is an integrated steel producer primarily in the long product segment.

Company's Plant

ESL has set up 2.51 Million Ton Per Annum (MTPA) planned capacity integrated Steel Plant near Siyaljori village, in the Bokaro district of Jharkhand which is currently commissioned at 1.5 MTPA capacity. The plant is located in Siyaljori Block, Bokaro District of Jharkhand State. The nearest town Bokaro, on the western side, is 22 kms away from the site. The land comprises mostly of barren land with small undulation. Source of water for the plant is the Damodar river and the location of the in-take pump house is will be near the bank of Damodar river, which is about 10 kms away from the plant site. The nearest railway station Talgheria, which is about 12 kms away from plant site, has single line electrified traction system.

ESL has tied up with leading Chinese Consultation Agency for supply of technology & engineering based on successfully operating Integrated Steel Plants in various locations in China. The Group has been allotted Parbatpur captive mine block for coking coal in Jharia Coalfield, near Bokaro. Total geological coal reserves is 231 MT. Iron Ore mine at Kodolibad near Barajamda and mine block for non-coking coal at Northdhadu, in the state of Jharkhand.

This integrated facility includes a Sinter Plant, Coke Oven, Blast Furnace, Basic Oxygen Furnace, Billet Caster, Wire Rod Mill, Bar Mill, DI Pipes Plant and Power Plant. It is one of the largest manufacturers of Ductile Iron (DI) Pipes in the Indian sub-continent, having a production capacity of 280,000 MT per annum. '

About 50% of Ductile Iron Pipes and Fittings produced by Electrosteel Steels is exported to various countries in Europe, USA, South America, South East Asia, Middle East, North and South African Countries.

A number of overseas offices and subsidiary companies have been established in France, Spain, United Kingdom, United States, Singapore and Algeria.

Accreditations

ESL has established excellence at every stage of production by bringing international expertise and solutions from reputed manufacturers. Along with the latest technology, the plant operates in synchronization with the highest ecological standards. Electrosteel Steels produces ductile iron pipes and fittings as per the international benchmark and its quality is approved in various countries. The Company obtained KITEMARK License from the British Standards Institute ("BSI") for its DI Spun Pipes & Fittings. In addition, it received accreditations from (Germany), BSI (UK) and various Government approval in Middle East. It also secured approvals from NSF, UL and FM from USA and ACS/NF from France. Its products are also certified by Drinking water Inspectorate (DWI) and Water Regulation Advisory Scheme (WRAS) of UK. Electrosteel Steels is an ISO 9001 and ISO 14001 certified organization and has SA8000 certification as a socially responsible organization.

Product Range of the company includes:

TMT TMT are basically thermo mechanically treated steel bars which are produced by controlled quenching & self-tempering process. V-Xega TMT bars are produced in Fe550D, CRS variety as per IS 1786/2008 grade. Carbon & Carbon Equivalent levels are kept to a lower level than as specified in the standards to attain better properties. V-Xega Fe550 D is ideal for dams, bridges, high rises or any critical structure where high yield strength is required without compromising on elongation properties.

DI Pipes Ductile Iron is considered the most preferred pipe material for water supply and pressure sewerage application all over the world. V-Ducpipe ensures good health flows to every home. Known for its high Tensile Strength and inherent corrosion resistance of Cast Iron.

Wire Rods V-Wirro Comes in Low Carbon, Medium Carbon & High Carbon grades to fit a wide range of applications in the Engineering, Construction, Power & Automobile Industry. With

feature like uniform mechanical properties, excellent surface finish and close dimensional tolerance, each wire rod is free from surface defects and inclusions.

Billets Cast through 5 strand casters integrated with Basic Oxygen Furnace linked to a Blast Furnace ensuring consistent quality steel. Suitable Grades for General Engineering, Structural, Rerolling & High Tensile Applications. Raw Material for Angles & Channels for High Tensile applications in Towers & Power Transmission industry. High applicability in construction industries also. Suitable for making consistent quality TMT with corrosion resistance and good seismic properties. Suitable for making fabricated products for various General Engineering Applications.

Pig Iron An excellent charge mix for EAF's, IF's & Foundries. Clean Steel ensuring quality of finished product. Consistent quality ensuring consistency in the liquid steel. Better Surface finish in Castings.

Electrosteel Steels Limited – Performance analysis

The Corporate Insolvency Resolution Process (CIRP) of ESL was commenced on 21st July, 2017 and the resolution was approved on 17th April, 2018. India's dedicated bankruptcy resolution programme, which seeks to untangle billions of dollars stuck in bad loans, recorded its second-biggest successful recovery to date after global resources major Vedanta acquired management control of Electrosteel Steels Ltd (ESL) and named a new board to run the distressed steelmaker.

The key performance indicators reflecting the operational and financial position of the company during Pre, During and Post Corporate Insolvency Process period (2017 to 2019) are as under

Performance indicators	**2017**	**2018**	**2019**
Current Ratio	1.27	1.57	1.72
Interest Coverage Ratio	0.35	0.82	0.93
Inventory days	178.66	164.71	131.23
Return on Assets (%)	1.33	1.83	3.03
Return on capital employed (%)	6.86	7.79	9.66
Assets turnover	0.32	0.36	0.55
Sales / working capital	3.99	8.63	9.44
EBITDA Margin %	14.37	15.06	17.18
Profit after tax margin %	3.5	4	6
Average collection period (Days)	116	97	78

Altman Z Score	1.05	1.47	2.43
Du Pont Ratio Du Pont ratio = (Net Profit/sales) x (Sales/Asset) x (Asset/Equity) NP/Sale Sale/Asset Asset/Equity Du Pont	 4.21 0.32 2.01 2.70	 2.32 0.36 1.94 3.62	 6.44 0.48 2.09 6.48

Heads	Pre-During % change (2016-17 to 2017-18)	During to Post % change (2017-18 to 2018-19)	Reasons for Change
			Income
Sales	11	18	Increased due to increased capacity utilization and ramp up of production
			Expenses
Material Cost	17	17	Material cost as a percent of sales revenue remained constant though there was an increase in output.
Employee Cost	-1	7	Manpower cost increased due to resumption and scaling up of production.
Other Expenses	19	10	Other expenses which includes administrative expenses, commission, selling and distribution expenses decreased due to improved efficiency and better expenses control.
Finance Expenses	1	11	Finance expenses increased due to increased current liabilities consequent upon increased volume of output

The Lenders had invoked Strategic Debt Restructuring pursuant to RBI Circulars dated 8th June, 2015 and 4th September, 2015 and implementation thereof is in progress. Lenders of the

Company are proposing to change the Management of the Company, in accordance with RBI Circular on Prudential Norms on change in Ownership of Borrowing entities (Outside SDR Scheme). As reported last year, since accumulated losses resulted in erosion of over 50% of peak net worth during the immediately preceding four financial years, your Company continues as a "Sick Company", the fact of which has already been reported to erstwhile Board for Industrial and Financial Reconstruction (BIFR). During the period under review, your Company, in spite of financial constrains as stated earlier, had been able to maintain its overall revenue. However, due to insufficient funds for completion of remaining modules of the Plant, the Company is not able to operationalize to its envisaged capacity. The total secured outstanding indebtedness (including interest) as on 31st March 2017 is Rs. 1,237,661.53 lakhs out of which the long term borrowings is Rs. 1,168,032.26 lakhs and short term borrowings (including interest) is Rs.69,629.27 lakhs. (Source : Annual Report 2016 -17 Pre CIRP)

As per the decision of the lenders of the Company at their meeting held on 22nd June, 2017, State Bank of India ("SBI"/ Financial Creditor), the Lead Banker, filed an application before the Hon'ble National Company Law Tribunal (NCLT), Kolkata, under Section 7 of the Insolvency and Bankruptcy Code, 2016 ("Code") and rules and regulations made there under, for initiation of Corporate Insolvency Resolution Process("CIRP") against the Company. NCLT vide its Order dated 21st July, 2017 ("CIRP commencement date) admitted the application of the Financial Creditors. Wide fluctuation in raw material prices, especially imported coking coal, also had a negative impact. Effective steps towards implementing better guidelines for operational procedure and precautionary measures thereto have been put in place. Continuous efforts were initiated to improve performance of the Company in both, quantitative and qualitative terms. Despite operational and funding challenges of working capital, the Company was able to improve turnover vis-a vis previous financial year. (Source : Annual Report 2017 -18 During CIRP)

The Fiscal year 2019 has been transformational year for the Company, where significant progress has been made in various fronts such as enhanced capacity utilisation, restarting of Blast furnace #3, improvement in cost through commercial and operational excellence, enhanced production of value added product (VAP) etc. These accomplishments set up strong momentum to aspire for robust growth for Fiscal Year 2020. In June 2018, Vedanta Limited acquired a 90% stake in Company, a primary producer of steel and downstream value added products. The Company was acquired under the Insolvency and Bankruptcy Code (IBC) 2016 in line with Resolution Plan approved by Hon'ble National Company Law Tribunal (NCLT), Kolkata Bench. Subsequent to the acquisition, Vedanta Limited, through its wholly owned subsidiary, Vedanta Star Limited, took over control and management of Electrosteel Steels Limited and acquired 90% shares of the Company. FY2019 recorded annual steel production at 1.2 million tonnes up 17% on year to year basis. The Company achieved hot metal production run rate of c.1.5mtpa in FY2019. The production ramped up substantially and other operational efficiencies has resulted in record EBITDA margin. Under Vedanta's management, the business has seen significant operational improvements leading to healthy financial position. (Source : Annual Report 2018 -19 Post CIRP)

Analytical Review

From the above analysis it appears that the performance of the company consistently improved over the pre CIRP to during the period of CIRP and thereafter post CIRP periods due mainly to operational and performance efficiencies coupled with strategic actions taken by the management

India's dedicated bankruptcy resolution programme, which seeks to untangle billions of dollars stuck in bad loans, recorded its second-biggest successful recovery to date after global resources major Vedanta acquired management control of Electrosteel Steels Ltd (ESL) Vedanta has deposited Rs 5,320 crore in an escrow account of ESL for 90 per cent equity in the bankrupt alloy maker. This is the second successful resolution of a stressed steel asset after Tata Steel acquired Bhushan. The transaction will complement Vedanta group's existing iron ore business through vertical integration of steel manufacturing. It will pay for the acquisition using existing cash resources. The company is charting out its growth trajectory, in the second phase of expansion, it is likely to move to flat products. The products would include hot-rolled, cold-rolled coil, and galvanized. ESL would work closely with the Vedanta group companies that are in zinc, aluminum and copper sectors, to come up with new products and for better synergies.

Vedanta's move followed the National Company Law Appellate Tribunal (NCLAT) order which allowed Vedanta to acquire ESL by depositing the upfront payment to the Committee of Creditors (CoC). ESL has outstanding dues of Rs 14,177.3 crore. According to the resolution plan, A wholly-owned subsidiary of Vedanta will subscribe to the share capital of Electrosteel for Rs 1,805 crore and provide additional funds of about Rs 3,515 crore by way of debt. Vedanta will hold about 90% of the paid-up share capital of Electrosteel while the remaining 10% will be held by Electrosteel's existing shareholders and the financial creditors, who will receive shares in exchange for the debt owed to them. In all, Electrosteel's creditors will receive dues to the tune of Rs 5,320 crore, The company owes lenders more than Rs 13,000 crore. Of the 13,000 cr. the banks would have provisioned 6500 cr. already, due to RBI rules stating that if an account goes to bankruptcy, banks have to take a 50% provision. But now, they'll have an additional Rs. 1300+ cr. as a further hit to be taken.

This acquisition marks Vedanta's entry in the ferrous space and gives it a foothold in the niche ductile iron pipes used for water transmission and distribution. Vedanta has some iron ore leases in eastern India and the steel plant acquisition would strengthen the company's bid for captive mines.

Valuation

Electrosteel Steels largely makes long steel products. Average EBITDA per tonne of its larger peers Steel Authority of India Ltd. and Jindal Steel and Power Ltd. Is around Rs 7,500. At these levels, enterprise value for the industry stands at 6 times the operating income. Given its capacity of 1.5 MTPA, derived EBITDA for Electrosteel Steels is Rs 1,155 crore. At the total deal value of Rs 5,320 crore (debt + equity), valuations for the asset work out to 4.8 times the EBITDA which is lower than the industry average.

Impact on shareholders

Essentially, Electrosteel Steels is getting a valuation of around Rs. 0.12 (12 paise) per share today, after lenders are issued shares for their hair cut, and then Vedanta is issued new shares. Even after it gets into enhanced production metrics, it's probably worth less than Rs. 0.30 per share.

ESL Turnaround

Acquisition of Electrosteel Steel Ltd (ESL) by Vedanta has led to a turnaround in the company in a space of eight months due to a combination of right people, higher volumes and tight cost control that led to the change. For the financial year ended March 2019, ESL achieved an EBIDTA of Rs. 9145 per tonne, as against Rs.4255 per tonne at the time of acquisition. Ramping up of production and improving operational efficiencies resulted in rise in EBIDTA The company posted record annual production at around 1.2 MTPA for FY19, registering a 17 per cent growth on a year-on-year basis. In eight months, Electrosteel Steel turned profit after tax (PAT)-positive. In 2018-19, Electrosteel's PAT stood at Rs 284 crore. The company is hoping to maintain its EBIDTA at the current levels given that the steel industry has been going through a "tough patch". The company has a strong order book position aggregating about Rs.800 crore as on June, 2019 comprising supply orders of about 1.5 lakh ton pipes. The orders are expected to be completed within next 7-8 months, indicating a satisfactory revenue visibility. The increasing level of gross cash accruals arising out of higher level of operating profit and significant amount of unavailed fund based working capital bank lines are matters of comfort for the company.

In view of the resolution plan approved by the NCLT, Kolkata and pursuant to issuance of additional equity shares by Electrosteel Steel Ltd. (ESL) for giving impact of resolution plan of the successful bidder, ESL had ceased to be an associate of ECL. In view of the above, the company has made a fair valuation of its investment in ESL and a sum of Rs. 578.68 crore representing the difference between the carrying value of the said investment and fair value as on the date of transfer has been written off in HY1FY19. Further, advances and trade receivable amounting to Rs.211.21 crore receivable from ESL has also been written off in HY1FY19

The cost of raw materials (i.e., coal, iron ore) is the largest component of total cost of sales (accounted for 45% in FY18). Due to de-allocation of coal mines and delay in clearance in iron-ore mine, ECL has to procure raw materials from the open market. It procures coking coal mainly from Australia and iron ore from the domestic market. The prices of these raw materials are volatile in nature and hence, ECL's profitability is susceptible to fluctuation in raw material prices.

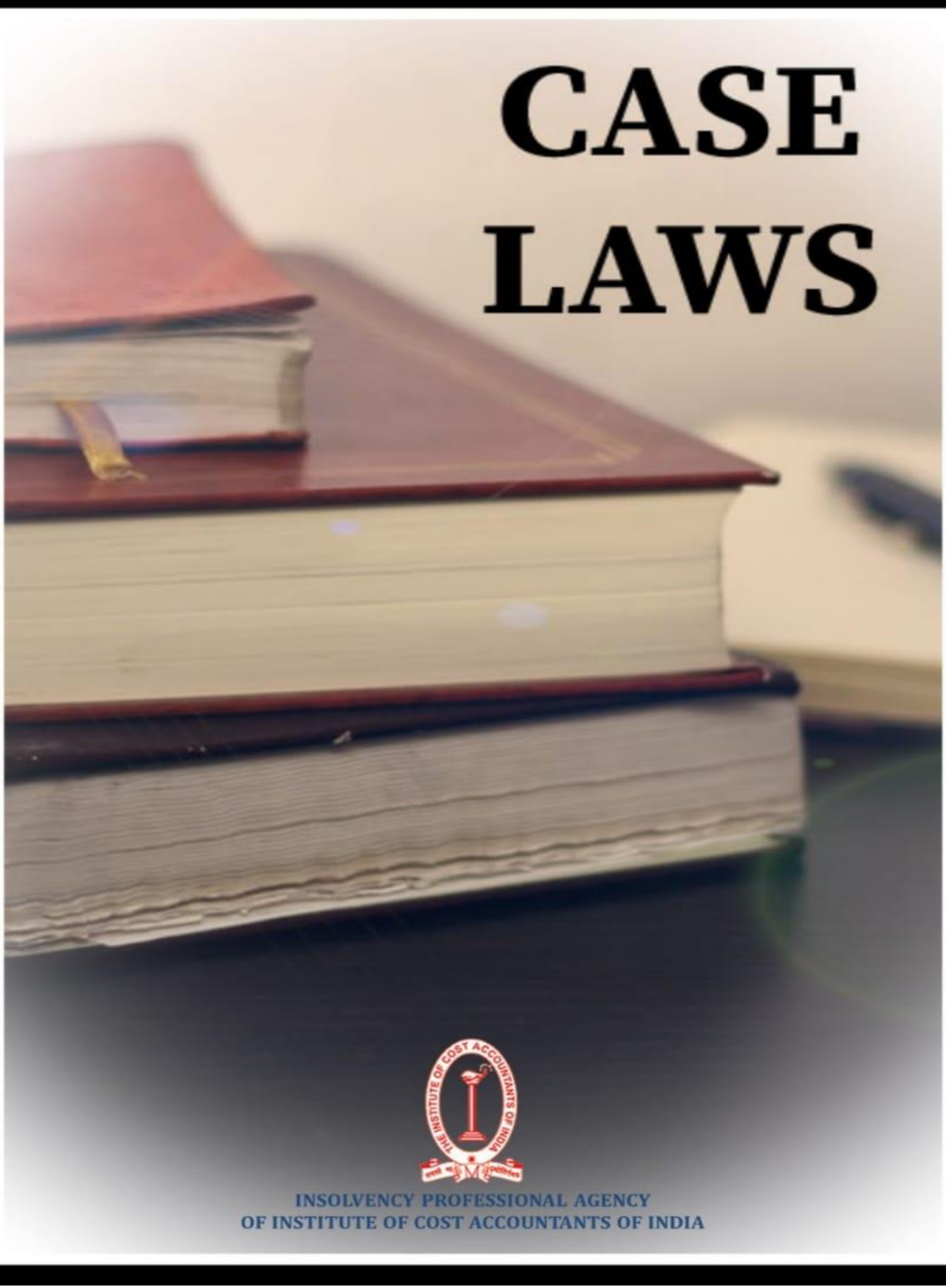
Favourable outlook for domestic D.I pipe market due rapid increase in population, urbanization and industrialization has led to a significant increase in water requirement, leading to demand overtaking the supply. Increased central government grants under JNNURM scheme, funding from developmental agencies and current Central Government additional impetus to this sector through the AMRUT (Atal Mission for Rejuvenation and Urban Transformation) scheme are matters for significant comfort for the D. I. pipe segment, as the investment in urban water supply and sanitation has increased manifold in the last couple of years.

Future plans

Having successfully turned around the operations of Electrosteel Steel Ltd (ESL) in less than a year post its acquisition, the Anil Agarwal-controlled Vedanta Ltd is now looking to scale up production capacity and revamp the product portfolio to improve profitability. Plans are also afoot to give the company an image makeover and rename it. There is a possibility of renaming ESL, and the board is likely to take a decision in this regard in the next three-to-six months.

Vedanta is looking forward to expand its steel business operations under Electrosteel Steel Limited and is planning to setup a new steel making plant in Jharkhand to increase the current steel production capacity from 1.5 MPTA to 10 million tonnes in the next five to six years through organic and inorganic options. Electrosteel's 1.5 MTPA capacity greenfield plant in Jharkhand's Bokaro will be scaled up to 3 MTPA over the next two years in the first phase of expansion. It is likely to cost Rs 4,000-5,000 crore. While the ramp-up from 3 million tonnes to 6 million tonnes will happen at Bokaro, for the next phase, the company could look at setting up a greenfield project at some other site or consider an acquisition. The growth plans are in sync with Vedanta's goal of making it one of the top three players in the industry.

CASE LAWS



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SEC. 5(6) - CORPORATE INSOLVENCY RESOLUTION PROCESS – DISPUTE

- **A.D. Electro Steel Co. (P.) Ltd. v. Anil Steels (Operational Creditor) [2017] 87 taxmann.com 26/144 SCL 448 (NCLAT)**

Where in reply to notice under section 138 of the Negotiable Instruments Act corporate debtor raised dispute about supply of certain quantities of goods supplied and it was also alleged that terms and conditions of agreement had been violated, there was an 'existence of dispute'

The respondent-operational creditor through advocate issued notice under section 138 of the Negotiable Instruments Act, 1881 and made certain claims. In reply to the same, corporate debtor raised the dispute about the supply of certain quantities of Buffer Plunger (Wagon) Casting and Buffer Casing (Wagon) Casting. It was also alleged that the terms and conditions of the agreement had been violated.
Held that in the present case there was an 'existence of dispute' between the parties.

Case review: Anil Steels (Operational Creditor) v. A.D. Electro Steel Co. (P.) Ltd. [2017] 85 taxmann.com 327 (NCLT - Kol.) set aside.

SEC. 242 - POWER TO REMOVE DIFFICULTIES

- **ATV Projects (India) Ltd. v. Union of India [2018] 89 taxmann.com 122/145 SCL 527 (Delhi)**

Where Draft Rehabilitation Scheme of petitioner was pending before BIFR and just before its acceptance, Sick Industrial Companies (Special Provisions) Repeal Act, 2003 was notified resulting into abatement of proceedings before BIFR, petitioner would be governed by Repeal Act as per which reference was to be made to NCLT in accordance with provision of Code

The Petitioner had been declared a sick company and its Draft Rehabilitation Scheme was pending before BIFR at a very advanced stage and was almost on verge of acceptance. However, just before its acceptance Sick Industrial Companies (Special Provisions) Repeal Act, 2003 was notified, section 4(b) of which resulted into abatement of proceedings before BIFR and provided that a company in respect of which such appeal/reference/inquiry stands abated under this section may make reference to the NCLT under code within 180 days from date of commencement of the code. The Petitioner challenged constitutional validity of section 4(b) of Repeal Act.

Held that once a law is repealed and a new legislation has been put in its place, it is not open for anyone to contend that it should be continued to be governed by old enactment, except where actions under existing laws had concluded. The Repeal Act and Code specifically state that proceedings under the SICA would not survive and would abate. Therefore, even though scheme of the petitioner had reached an advanced stage, but same was not approved by BIFR, and in meanwhile the SICA Act was repealed, the petitioner would be governed in accordance with section 4(b) of the Repeal Act.

- **Bank of New York Mellon, London Branch v. Zenith Infotech Ltd. [2017] 78 taxmann.com 254/140 SCL 333 (SC)**

When Registrar or Secretary and Chairman of BIFR had not been conferred any power of adjudication to determine question as to whether a company was an industrial company within meaning of section 3(e) and 3(f) of SICA, refusal of registration of reference on that basis was non-est in law; and reference must, therefore, be deemed to be pending on date of commencement of Insolvency and Bankruptcy Code attracting provisions of section 252 thereof

The Respondent No. 1 company filed a Reference before the Board for Industrial and Financial Reconstruction under section 15 of the SICA. The said application was refused registration by the Registrar and Secretary of the Board on the ground that the respondent company was not an industrial company within the meaning of section 3(e) and 3(f). The orders of the Secretary and Chairman of the Board rejecting the application for reference filed by the respondent No. 1 company were subjected to a challenge in a writ petition filed by the respondent company before the Delhi High Court. On writ, the High Court, by the impugned order, took the view that under the provisions of the SICA read with the Regulations, the Registrar and the other authorities like the Secretary and the Chairman of the Board had not been conferred any power of adjudication which would necessarily be involved in determining the question as to whether the Respondent No.1 company was an industrial company within the meaning of section 3(e) and 3(f) of the SICA. And as registration of the Reference sought for by the Respondent No. 1 company was refused on that basis the said orders were non-est in law.

Held that the High Court was correct in coming to the conclusion that the refusal of registration of the reference sought by the respondent company by the Registrar, Secretary/Chairman of the Board was non-est in law and the reference must, therefore, be understood to be pending before the Board on the relevant date attracting the provisions of section 252 of the Insolvency and Bankruptcy Code.

SEC. 9 - CORPORATE INSOLVENCY RESOLUTION PROCESS - APPLICATION BY OPERATIONAL CREDITOR

- **Agroh Infrastructure Developers (P.) Ltd. v. Narmada Construction (Indore) (P.) Ltd. [2018] 92 taxmann.com 188 (NCL-AT)**

Where NCLT admitted application under section 9 without giving any notice to corporate debtor, order admitting application being passed in violation of natural justice was to be set aside
The respondent, operational creditor filed an application under section 9 against the appellant, Corporate Debtor, in respect of debt arising out of a construction contract. The Adjudicating Authority (NCLT) admitted said application and declared moratorium. The appellant challenged the impugned order on ground that the Adjudicating Authority had not given any notice to it and admitted application in violation of rules of natural justice. Parties submitted that they had settled dispute and if impugned order was set aside on ground of violation of principle of natural justice the respondent will withdraw application.
Held that the impugned order was passed in violation of principles of natural justice and hence the impugned order was to be set aside and the liberty should be given to the financial creditor to withdraw application filed under section 9.

- **Ardor Global (P.) Ltd. v. Nirma Industries (P.) Ltd. [2018] 92 taxmann.com 187 (NCLAT)**

In view of rule 8 of Insolvency & Bankruptcy (Application to Adjudicating Authority) Rules, 2016, before admission of a case and where default has not been decided, it is always open to Adjudicating Authority to allow party(s) to withdraw an application and to grant liberty of filing a fresh application

In view of the rule 8 of the Insolvency & Bankruptcy (Application to the Adjudicating Authority) Rules, 2016, before admission of a case and where default has not been decided, it is always open to the Adjudicating Authority to allow the party(s) to withdraw an application and to grant liberty of filing a fresh application.
It cannot be submitted that once defect is pointed out in an application, then it is mandatory for the Adjudicating Authority to allow seven day' time to the 'operational creditor' to remove the defect and it has no authority to allow the 'operational creditor' to withdraw the application. In such a case as no decision was given by the Adjudicating Authority while allowing a party to withdraw the application with liberty to file a fresh application, it cannot be contended that filing of subsequent petition will be hit by 'constructive res judicata'.

- **Goa Antibiotics & Pharmaceuticals Ltd. v. Lark Chemicals (P.) Ltd. [2018] 91 taxmann.com 383 (NCLAT)**

Where corporate debtor committed default from 25-11-1998 onwards in repayment of principle amount along with interest while application to initiate corporate insolvency resolution process was filed in 2017, in absence of any explanation provided for delay, resolution proceeding could not be proceeded with
Where corporate debtor committed default from 25-11-1998 onwards in repayment of principle amount along with interest while application to initiate corporate insolvency resolution process was filed in 2017, in absence of any explanation provided for delay, resolution proceeding could not be proceeded with.

- **Impex Ferro Tech Ltd. v. Agarwal Coal Corporation (P.) Ltd. [2018] 92 taxmann.com 184 (SC)**

Where after passing of order of NCLT, settlement was entered into between parties, same was to be taken on record and also undertaking of both parties to abide by consent terms was to be recorded and judgment of NCLT would accordingly be substituted by instant order

Where settlement was arrived after passing of order of NCLT, terms of settlement entered into between the parties were to be taken on record and also undertaking of both the parties to abide by the consent terms were to be recorded and judgment of the NCLT would be substituted by the instant order.

SEC. 7 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INITIATION BY FINANCIAL CREDITOR

- **Ajay Agarwal v. Central Bank of India & State Bank of India [2018] 91 taxmann.com 69 (NCLAT)**

Mere mismatch of figures will ipso facto, not invalidate order initiating Corporate Insolvency Resolution Process under section 7 The respondents-financial creditors filed an application under section 7 against the appellant-corporate debtor alleging non-payment of debt. The adjudicating authority admitted application and passed order of moratorium. The appellant filed instant appeal alleging that there was 'mismatch of figures and dates of default' of dues of the financial creditor in application and, therefore, petition under section 7 preferred by the respondents was fit to be rejected.
Held that mere mismatch of figures will ipso facto, not invalidate order initiating Corporate Insolvency Resolution Process under section 7.
Since it had not been disputed that some debt was due and payable to the financial creditor and corporate debtor had defaulted in making such payment, no interference was called for against impugned order.

Case review: Central Bank of India v. Ashok Magnetics [2017] 86 taxmann.com 26 (NCLT - Chennai) affirmed.

- **Chand Khan v. RCI Industries & Technologies Ltd. [2018] 89 taxmann.com 314/145 SCL 553 (NCLAT)**

Where before admission of application under section 7, Adjudicating Authority had not issued any notice to corporate debtor, impugned order admitting application under section 7 was passed in violation of rules of natural justice and same was to be set aside

Application preferred by the respondent-financial creditor under section 7 had been admitted, by impugned order and order of moratorium had been passed and Interim Resolution Professional had been appointed.
Held that since before admission of application under section 7 Adjudicating Authority had not issued any notice to corporate debtor, impugned order had been passed in violation of rules of natural justice and same was to be set aside.

Case review: RCI Industries & Technologies Ltd. v. CK Infrastructure Ltd. [2017] 88 taxmann.com 235/[2018] 145 SCL 342 (NCLT - New Delhi) set aside.

- **Falcon Tyres Ltd. v. Edelweiss Asset Reconstruction Co. Ltd. [2018] 92 taxmann.com 182 (Kar.)**

In view of plea of petitioner-tyre manufacturer that order admitting initiation of corporate insolvency process against it was passed without providing opportunity of hearing, NCLT was to be directed to hear impugned insolvency proceedings afresh

In view of plea of the petitioner tyre manufacturer that order admitting initiation of the corporate insolvency process against it was passed without providing opportunity of the hearing, the NCLT was to be directed to hear impugned insolvency proceedings afresh.

- **Sree Metaliks Ltd. v. Union of India [2018] 92 taxmann.com 91 (Cal.)**

Since proceedings before NCLT are adversarial in nature, both sides are entitled to a reasonable opportunity of hearing; when NCLT receives an application under section 7 of Code, it must afford a reasonable opportunity of hearing to corporate debtor; however, challenge to vires to section 7 on this ground must fail

The NCLT acting under the provisions of the Companies Act, 2013 while disposing of any proceedings before it, is not to bound by the procedure laid down under the Code of Civil Procedure, 1908. However, it is to apply the principles of natural justice in the proceedings before it. It can regulate it own procedure, however, subject to the other provisions of the Companies Act, 2013 or the Insolvency and Bankruptcy Code of 2016 and any Rules made thereunder. The Code, read with the Rules is silent on the procedure to be adopted at the hearing of an application under section 7 presented before the NCLT, that is to say, it is silent whether a party respondent has a right of hearing before the adjudicating authority or not. Section 424 of the Companies Act, 2013 requires the NCLT and NCLAT to adhere to the principles of the natural justice above anything else. It also allows the NCLT and NCLAT the power to regulate their own procedure. Fetters of the Code of Civil Procedure, 1908 does not bind it. However, it is required to apply its principles. Principles of natural justice require an authority to hear the other party. In an application under section 7, the financial creditor is the applicant while the corporate debtor is the respondent. A proceeding for declaration of insolvency of a company has drastic consequences for a company. Such proceeding may end up in its liquidation. A person cannot be condemned unheard. Where a statute is silent on the right of hearing and it does not in express terms, oust the principles of natural justice, the same can and should be read into in. When the NCLT receives an application under section 7, it must afford a reasonable opportunity of hearing to the corporate debtor as section 424 of the Companies Act, 2013 mandates it to ascertain the existence of default as claimed by the financial creditor in the application. The NCLT is, therefore, obliged to afford a reasonable opportunity to the financial debtor to contest such claim of default by filing a written objection or any other written document as the NCLT may direct and provide a reasonable opportunity of hearing to the corporate debtor prior to admitting the petition filed under section 7. Section 7(4) requires the NCLT to ascertain the default of the corporate debtor. Such ascertainment of default must necessarily involve the consideration of the documentary claim of the financial creditor. This statutory requirement of ascertainment of default brings within its wake the extension of a reasonable opportunity to the corporate debtor to substantiate by document or otherwise, that there does not exist a default as claimed against it. The proceedings before the NCLT are adversarial in nature. Both the sides are, therefore, entitled to a reasonable opportunity of hearing. The requirement of NCLT and NCLAT to adhere to the principles of natural justice and the fact that, the principles of natural justice are not ousted by the Code can be found from section 7(4) and Rule 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016. Adherence to the principles of natural justice by NCLT or NCLAT would not mean that in every situation, NCLT or NCLAT is required to afford a reasonable opportunity of hearing to the respondent before passing its order. In a given case, a situation may arise which may require NCLT to pass an ex parte ad interim order against a respondent. Therefore, in such situation NCLT may proceed to pass an ex parte ad interim order, however, after recording the reasons for grant of such an order and why it has chosen not to adhere to the principles of

natural justice at that stage. It must, thereafter proceed to afford the party respondent an opportunity of hearing before confirming such ex parte ad interim order. It would be open to the parties to agitate their respective grievances with regard to any order of NCLT -or NCLAT as the case may be in accordance with law. It is also open to the parties to point out that the NCLT and the NCLAT are bound to follow the principles of natural justice while disposing of proceedings before them. In such circumstances, the challenge to the vires to section 7 of the Code fails.

SEC. 14 - CORPORATE INSOLVENCY RESOLUTION PROCESS – MORATORIUM

- **Alchemist Asset Reconstruction Company Ltd. v. Hotel Gaudavan (P.) Ltd. [2017] 88 taxmann.com 202/[2018] 145 SCL 428 (SC)**

Arbitration proceedings cannot be initiated after imposition of moratorium after section 14(1)(a) has come into effect; it will be non est in law and cannot be allowed to continue

The petition filed under Insolvency and Bankruptcy Code, 2016 was admitted by National Company Law Tribunal and as a result, moratorium imposed by section 14 came into effect and Interim Resolution Professional was appointed. Despite moratorium, the respondent sought to initiate arbitration proceedings.
Held that mandate of new Insolvency Code is that, the moment an insolvency petition is admitted, moratorium that comes into effect under section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against the Corporate Debtors. The arbitration proceeding sought to be initiated after said moratorium was non est in law and could not have been allowed to continue.

SEC. 10 - CORPORATE INSOLVENCY RESOLUTION PROCESS-INITIATION BY CORPORATE APPLICANT

- **Alpha & Omega Diagnostics (India) Ltd. v. Asset Reconstruction Company of India Ltd. [2018] 91 taxmann.com 162 (NCL-AT)**

Adjudicating Authority was justified in admitting application under section 10 subject to exception that property not owned by corporate debtor would not fall within ambit of moratorium as per section 14 and, consequently, moratorium would include assets of corporate debtor only

Where the appellant/corporate applicant filed an application under section 10 for initiation of the corporate insolvency resolution process in its own case, the Adjudicating Authority was justified in admitting said application subject to exception that property not owned by the corporate debtor would not fall within ambit of moratorium as per section 14 and, consequently, moratorium would include assets of the corporate debtor only and not any assets-movable or immovable, of a third party.

Case review: Alpha & Omega Diagnostics (India) Ltd. v. Asset Reconstruction Company of India Ltd. [2017] 83 taxmann.com 359 (NCLT - Mum.) affirmed.

SEC. 5(8) - CORPORATE INSOLVENCY RESOLUTION PROCESS - FINANCIAL DEBT

- **Anil Mahindroo v. Earth Iconic Infrastructure (P.) Ltd. [2018] 91 taxmann.com 143 (NCLAT)**

Where respondent/corporate debtor undertook to pay 'committed returns' from date of execution of agreement till physical possession of unit was handed over to appellant, appellant had successfully proved that money disbursed by them was against consideration for time value of money and thus, for all purpose, they came within meaning of financial creditor.

The appellants entered into sale-purchase agreement/memorandum of understanding with the respondent 'infrastructure company' for purchase of a flat in a project developed by the respondent. The appellant chose committed return plan. The respondent undertook to pay a particular amount to the appellant each month as 'committed returns' from date of execution of agreement till time actual physical possession of unit was handed over to the appellant. The respondent stopped paying committed returns.
Held that the appellant was an 'investor' and amount since due to the appellant would come within meaning of the 'financial debt'.

SEC. 8 - CORPORATE INSOLVENCY RESOLUTION PROCESS - DEMAND BY OPERATIONAL CREDITOR

- **Aruna Hotels Ltd. v. N. Krishnan [2018] 91 taxmann.com 167 (NCLAT)**

Where insolvency resolution process under section 9 was admitted on ground that appellant-employer had not paid arrears of salaries due to ex-employees, appellant-employer pleaded that no demand notice, as required under section 8, was separately given by any of ex-employees and that all notices of ex-employees were issued by same advocate, which were served as advocate's notice, for want of valid demand notice under section 8, impugned order for initiating corporate insolvency resolution process was to be set aside

An application of the respondent ex-employees for initiating corporate insolvency resolution process under section 9 was admitted on ground that the appellant-employer had not paid arrears of salaries due to ex-employees. The appellant-employer pleaded that no demand notice, as required under section 8, was separately given by any of ex-employees and that all notices of ex-employees were issued by same advocate, which were served as advocate notice.
Held that for want of valid demand notice under section 8, the impugned order for initiating corporate insolvency resolution process was to be set aside.

- **Centech Engineers (P.) Ltd. v. Omicron Sensing (P.) Ltd. [2018] 91 taxmann.com 146 (NCLAT)**

Where demand notice was issued by non-authorised persons (i.e. advocates), same could not be treated as a valid notice under section 8.

The appellants challenged impugned order of the NCLT admitting application to initiate corporate insolvency resolution process on ground that demand notice issued to them by the operational creditor was not as per section 8 as it was issued by an advocates firm, which was neither authorised in this regard by the board resolution nor was it holding any position in the operational creditor company.
Held that since demand notice issued was by the non-authorised persons, same could not be treated as a valid notice under section 8 and, hence, application for initiation of corporate insolvency resolution process was to be set aside.

SEC. 17 - CORPORATE INSOLVENCY RESOLUTION PROCESS - INTERIM RESOLUTION PROFESSIONAL - MANAGEMENT OF AFFAIRS OF CORPORATE DEBTOR

- **Bikram Chatterji v. Union of India [2018] 92 taxmann.com 176 (SC)**

Supreme Court directed Amrapali Builders to submit opinion about various deficiencies in their projects and completion of those projects

Pursuant to direction of the Supreme Court dated 15-3-2018, 14 projects of Amrapali Builders had been inspected. Details had been given of deficiencies of the projects where possession (partial) had been given but various deficiencies existed. Details were also submitted in respect of projects where some of the Towers were at advanced stage of construction and could be handed over possession shortly.

Held that concerned officers of Noida and Greater Noida Authorities were directed to submit inspection report as to what were deficiencies and requisites to be completed before issuance of completion certificate. The Amrapali Builders were also directed to submit their opinion and estimate amount of money required and how they were going to arrange it and how much work had been completed by now pursuant to order passed by Supreme Court on 15-3-2018. Meanwhile, Resolution Professionals of Amrapali Group was asked not to proceed any further in matter till further orders. No coercive action would be taken by any authority with respect to buildings where completion was going on under order passed by the Supreme Court.

- **Chitra Sharma v. Union of India [2017] 85 taxmann.com 209/144 SCL 1 (SC)**

Where NCLT admitted CIRP application filed by financial creditor bank IDBI against corporate debtor infrastructure company JIL for non-payment of debt and Supreme Court granted stay on order of NCLT, on plea of financial creditor bank-IDBI in instant petition, Supreme Court restored management of company JIL to IRP to secure management of company JIL by IRP who would make all necessary provisions in Interim Resolution Plan to protect interest of consumer-home buyers; further, holding company of JIL, namely, company JAL, was directed to deposit Rs. 2000 crore with Court

Company JIL was a Jaypee group infrastructure company. Company JAL was holding company of company JIL. Company JIL defaulted in repayment of loan taken from Financial creditor-IDBI. IDBI filed application under section 7 against corporate debtor-JIL. NCLT admitted said application. On petition filed by consumer-home buyers, Supreme Court by order in Chitra Sharma v. Union of India [2017] 85 taxmann.com 66 stayed order passed by NCLT. Financial

creditor-IDBI filed instant application seeking modification of order passed by Supreme Court on ground that consequence of stay would be that Management of JIL would stand restored which would affect rights of both creditors and consumers.
Held that earlier stay order passed by this Court was to be modified with a direction that Insolvency Resolution Professional would take over management of JIL and would make all necessary provisions in Interim Resolution Plan to protect interest of home buyers. The holding company JAL was further to be directed to deposit Rs. 2000 crore with the Court.

Case review: Chitra Sharma v. Union of India [2017] 85 taxmann.com 66 (SC) modified.

SEC. 61 - CORPORATE PERSON'S ADJUDICATING AUTHORITIES - APPEALS AND APPELLATE AUTHORITY

- **Uttam Galva Steels Ltd. v. Union of India [2018] 92 taxmann.com 194 (Bom.)**

As writ petitioner had alternative and efficacious remedy available to challenge impugned order by filing a statutory appeal, petitioner would be permitted to withdraw writ petition enabling it to file an appeal and apply for interim order before Appellate Tribunal
As the writ petitioner had alternative and efficacious remedy available to challenge impugned order by filing a statutory appeal, the petitioner would be permitted to withdraw writ petition enabling it to file an appeal and apply for interim order before the Appellate Tribunal.

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The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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