Insolvency and Bankruptcy Code (Amendment) Act, 2020

Introduction

The Amendments aim to remove certain difficulties being faced during insolvency resolution process to realise the objects of the code.

The Act was notified in the official Gazette on 13/03/2020 which contains the following amendments in the Code:

Source: ***egazette.nic.in/WriteReadData/2020/218654.pdf***

Amendments in the Act

1. Amendment in section 5(12)-Insolvency commencement date

In section 5 of the principal Act-

(i) in clause (12), the proviso shall be omitted;

The existing provisions under this section 5(12)

> *"where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority."*

Comments:-

It can be inferred that when the Honorable NCLT admits a case but where the interim resolution professional has not been appointed because the applicant has not named any Insolvency Resolution Professional in the application, then the Adjudicating Authority will appoint the IRP from the list provided by the IBBI who are empanelled with the Board.

In that case, the date of appointment of IRP by the adjudicating authority will be the date of the insolvency commencement date.

As there exists a confusion in the insolvency commencement date in such cases, the said amendment provides the clarity on the insolvency commencement date by way of omitting the proviso to clause (12) of section 5 of the Code so as to mention that the insolvency commencement date is the date of admission of an application for initiating corporate insolvency resolution process.

Now that the threshold limit has been increased for triggering IBC, it is expected that the operational creditors (applicants) will also start including the names of the Insolvency Professionals in the application itself.

The time period taken, if any, from the date of admission of the application by the adjudicating authority till the appointment of IRP will now be no more excluded from the CIRP Process period.

2. Amendment in section 5(15)-Interim finance

(ii) in clause (15), after the words "*during the insolvency resolution process period*" occurring at the end, the words "**and *such other debt as may be notified***" shall be inserted.

Existing section

> *(15) "Interim finance" means any financial debt raised by the resolution professional during the insolvency resolution process period."*

Comments

Now, the amendment includes ***"such other debt as may be notified".***

After this notification the Central Government may notify any other debt as Interim Finance to keep the business of the Corporate Debtor as a going concern.

'Interim Finance' essentially refers to short term loans required to keep the Corporate Debtor under the CIRP as the going concern.

The Code allows an IRP/RP to raise interim finance in order to protect and preserve the value of the property of a corporate debtor and keep the Corporate Debtor as a going concern. According to the Code, the Insolvency Resolution Process Cost includes Interim Finance.

By expanding the definition of Interim Finance, the Government has given the importance for Interim Finance which is essential to keep the Corporate Debtor as the going concern.

New Notification u/s 5(15)

After this amendment the Central Government issued notification dated 18/03/2020 under section 5(15) of the IBC and notified that-

Any debt raised from the "Special Window for Affordable and Middle-Income Housing Investment Fund I" will be treated as Interim Finance under section 5(15).

This notification will definitely help the Central Government to fund the Real Estate Companies to complete their stalled real estate projects.

Source:

https://www.ibbi.gov.in/uploads/legalframwork/0186fe5ab891e0dc62071c239b4479fc.pdf

3. Amendment in section 7(1)-Initiation of corporate insolvency resolution process by financial creditor

In section 7 of the principal Act, in sub-section (1), before the Explanation, the following provisos shall be inserted-

> *"Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent of the total number of such creditors in the same class, whichever is less.*
>
> *Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent of the total number of such allottees under the same real estate project, whichever is less:*
>
> *Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2019, such application shall be modified to comply with the requirements of the first and second provisos within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission."*

Comments:

According to the existing provision, even one deposit holder or one debenture holder or one home buyer could have filed an Insolvency application under IBC Code, which was felt to be effecting the interest of the other creditors or other home buyers who are allottees in other real estate projects of the same corporate debtor.

To address these issues, the Central Government has brought this amendment which contains the threshold limit for filing the case under section 7 by the financial creditors as prescribed in section 21(6A) of the Code as follows:

> *The financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent of the total number of such creditors in the same class, whichever is less.*
>
> *The financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent of the total number of such allottees under the same real estate project, whichever is less.*

After the said Amendment, a single home buyer cannot file the IBC Case against the builder and dislocate the Company.

One would recall that the Government had amended the definition of Financial Debt–section 5(8)(f) *vide* IBC Second Amendment Act 2018, effective 06.06.2018 and included that, any amount raised from allottees under the Real Estate Project shall be deemed to be an amount having the commercial effect of borrowing and hence will be treated as a Financial Debt and thereby granted the Financial Creditor status u/s 5(7).

The aggrieved Real Estate Companies filed a writ petition in the Hon'ble Supreme Court and challenged the amendment.

Hon'ble Supreme Court in the Matter of Pioneer Urban Land and Infrastructure Limited vs. Union of India

In their judgment dated August 9, 2019 it upheld the constitutional validity of the amendment and rejected the Real Estate Companies plea and said that the Home buyers are Financial Creditor.

Now the Government has brought this amendment by including the threshold for filing Insolvency Case by the Home Buyers against the Builders.

Aggrieved by this Amendment, the aggrieved Home Buyers have filed a writ petition in the Hon'ble Supreme Court, challenging the amendment.

Hon'ble Supreme Court in the matter of Manish Kumar & Ors. Versus Union of India & Anr.

In the Writ Petition Civil no.26/2020, the Hon'ble Supreme Court has passed an interim order to maintain the status quo of the pending applications till the matter is decided by the Apex Court.

However, it may be noted that the Hon'ble Supreme Court has not stayed the IBC Amendments.

Source:
https://ibbi.gov.in//uploads/order/436f4158dece9f5f58fb44b0d29dacdb.pdf

4. Amendment in section 11-Persons not entitled to make application

In section 11 of the principal Act:

The Explanation shall be numbered as Explanation I and after Explanation I as so numbered, the following Explanation shall be inserted-

namely:—"Explanation II.—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor."

Existing Section 11-Persons not entitled to make application

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely:

(a) a corporate debtor undergoing a corporate insolvency resolution process; or
(b) a corporate debtor having completed corporate insolvency resolution process twelve months preceding the date of making of the application; or
(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application under this Chapter; or
(d) a corporate debtor in respect of whom a liquidation order has been made.

Explanation-for the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Comments

This step is likely to enhance the maximization of value of a corporate debtor.

The existing provisions were read to make a sense that the corporate debtor was prohibited from initiating corporate insolvency resolution process against another corporate debtor, because of which the corporate debtor was not in a position to file IBC case against its debtors for its debts, even if its receivables were more than its debts.

In the matter of S. N. Plumbing Pvt. Ltd. (Through RP-Sanjay Kumar Ruia) ...Appellant Vs. IL&FS Engineering & Construction Co. Ltd…Respondent

Hon'ble NCLAT allowed the Appellants appeal and ordered the NCLT to decide on the Application of 'S. N. Plumbing Pvt. Ltd.' wanting to initiate proceeding under Section 7 or Section 9 against 'IL&FS Engineering & Construction Co. Ltd.

Source:
https://nclat.nic.in/Useradmin/upload/19458335155c11fdff5d8b8.pdf

Therefore, section 11 of the Code has been amended to clarify that a corporate debtor is not prevented from filing an application for initiation of corporate insolvency resolution process against other corporate debtor(s).

It will be pertinent to lay down the definition of 'Corporate Debtor' here:
Section 3(8) of IBC: 'Corporate Debtor means a corporate person who owes a debt to any person'

And 'Corporate Person' has been defined in section 3(7) of the IBC: Means a company as defined in clause (20) of section 2 of the Companies Act, 2013, a Limited Liability Partnership Act, 2008 or any other person incorporated with

limited liability under any law for the time being in force but shall nt include any financial service provider.'

5. Amendment in section 14(1), (2) & (3)-Moratorium

In section 14 of the principal Act—

(a) in sub-section (1), the following Explanation shall be inserted:

"Explanation.—For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

(b) after sub-section (2), the following sub-section shall be inserted, namely:—"(2A) The supply of goods or services that the interim resolution professional or resolution professional, as the case may be, considers critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except if such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.";

(c) in sub-section (3), for clause (a), the following clause shall be substituted-"(a) such transactions, ***agreements or other arrangements*** *as may be notified by the Central Government in consultation with any financial sector regulator* ***or any other authority****;"*

Existing Section-14

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) 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.]

(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process:
Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

Comments:

This amendment clarifies that a license, permit, registration, quota, concession, clearances or a similar grant or right cannot be terminated or suspended during the Moratorium period.

In some cases when the CIRP is initiated against the Corporate Debtor, the Government Authorities start cancelling the permit, licenses granted to them during the CIRP period. This makes it very difficult for the Insolvency Professional or the Successful Resolution Applicants to once again obtain the required permits, license or registration etc. to run the business even after they take over the Management of the Company. Therefore to remove these

difficulties faced by the Successful Resolution Applicants and also that faced in the Process, the necessary amendments have been carried out.

This amendment is necessitated in view of the Hon'ble Supreme Court Judgement in the matter of Embassy Property Development Pvt. Ltd. Vs. State of Karnataka, Civil Appeal No. 9170 of 2019 dated December 3, 2019.

Wherein it dealt with the issue of deemed extension of lease granted by the Government. It was observed by the Apex Court that the purpose of moratorium is only to preserve the status quo and not to create a new right, and that Section 14(1)(d) only prohibits the right not to be dispossessed, but not the right to have renewal of the lease of such property.

The newly inserted explanation to Section 14(1) augments the hopes of a CD facing CIRP, and advances the intent of IBC to preserve the status of a CD as a going concern.

6. **Amendment in section 16(1)-Appointment and tenure of interim resolution professional**

*In section 16 of the principal Act, in sub-section (1), for the words "within fourteen days from the insolvency commencement date", the words "**on the insolvency commencement date**" shall be substituted.*

Existing Section 16

"(1) The Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date……"

Comments:

In some of the cases, the Applicants are not naming the Insolvency Professional in their applications which sometimes leads to delay in the appointment of IRP after the case is admitted by the Adjudicating Authority. To avoid delays in completion of CIRP, an amendment to section 16 of the Code was carried out.

The amendment mentions categorically that the insolvency resolution professional should be appointed on the date of admission of the application for initiation of insolvency resolution process, itself. The above amendment curtails the anticipated delay in completion of the resolution process.

7. Amendment in section 21-Committee of creditors

*In section 21 of the principal Act, in sub-section (2), in the second proviso, after the words "convertible into equity shares", the words "**or completion of such transactions as may be prescribed**," shall be inserted.*

Existing Provision

"Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date"

After this Amendment

Provided further that the ***first proviso*** shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares ***[or completion of such transactions as may be prescribed],*** prior to the insolvency commencement date

Comments

The words "completion of such transactions as may be prescribed" is included in the Act. The Central Government will prescribe such transactions which ***will be exempt from the applicability of First proviso*** of Section 21(2).

The First Proviso of Section 21(2) is:

"Provided that a financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, *if it is a related party of the corporate debtor, shall not have any right of representation, participation or voting in a meeting of the committee of creditors……*".

8. Amendment in section 23-Resolution professional to conduct corporate insolvency resolution process

> *"Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31* ***or appointing a liquidator under section 34 is passed by the Adjudicating Authority***."

Existing Section-23 Resolution professional to conduct corporate insolvency resolution process

(1) Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period:

[Provided that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31.]

(2)The resolution professional shall exercise powers and perform duties as are vested or conferred on the interim resolution professional under this Chapter.

(3)In case of any appointment of a resolution professional under sub-section (4) of section 22, the interim resolution professional shall provide all the information, documents and records pertaining to the corporate debtor in his possession and knowledge to the resolution professional.

Comments:

This amendment will enable the "resolution professional" to manage the affairs of the corporate debtor till the Resolution plan is approved by the Adjudicating Authority or till the appointment of a Liquidator by the AA in the event of rejection of the resolution plan for failure to meet requirements mentioned in Section 30. Because of this amendment, now the Resolution Professional will be in no need to file applications each and every time seeking suitable direction/s

and also removes all ambiguities that prevailed due to the uncertainty as to who is the person responsible to drive the process.

9. Amendment in section 29A-Persons not eligible to be resolution applicant

(i) in clause (c), in the second proviso, in the Explanation I, after the words, "*convertible into equity shares*", the words "***or completion of such transactions as may be prescribed,***" shall be inserted;

(ii) in clause (j), in Explanation I, in the second proviso, after the words "*convertible into equity shares*", the words "*or* ***completion of such transactions as may be prescribed***," shall be inserted.

Comments:

The words "completion of such transactions as may be prescribed" has been included in the Act vide this Amendment. The Central Government will prescribe such transactions which will be exempt from the applicability of Section 29A.

10. Insertion of new section 32A-Liability for prior offences etc.

32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

(a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets

under the provisions of Chapter III of Part II of this Code to a person, who was not—

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

"Explanation.—for the purposes of this sub-section, it is hereby clarified that,—

(i) An action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an

offence committed prior to the commencement of the corporate insolvency resolution process.

Comments:

This new section is inserted to protect new owners of such Corporate Debtors from any criminal accountability concerning the time when the said firms were controlled by the erstwhile promoters. This also brings confidence to the buyers of distressed Companies/assets, acquirers who were otherwise wary about the over-reach of the investigative authorities.

The imposition of criminal liability on the CD and co-existence of the Code with other penal statutes has been decided by the Courts in some instances:

The NCLT, Mumbai in *Sterling SEZ Infrastructure Ltd. Vs. Deputy Director, Directorate of Enforcement*

had held that IBC would have an overriding effect on Prevention of money laundering Act.

The Honourable Delhi High Court in the matter of the Deputy Directorate of Directorate of Enforcement, Delhi Vs. Axis Bank & Ors.

held that regulations such as the Recovery of Debts Due to Bank and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002, the PMLA and the Code must co-exist and shall be construed and enforced harmoniously, without one being in derogation of the other.

The NCLAT in Varrsana Ispat Limited Vs. Deputy Director, Directorate of Enforcement, and thereafter, in Rotomac Global Private Limited Vs. Deputy Director, Directorate of Enforcement

Held that the PMLA relates to different fields of penal action of 'proceeds of crime', and therefore, Section 14 of the Code is not applicable to the criminal proceedings or any penal action taken pursuant to the criminal proceedings that

can be invoked simultaneously with the Code, having no overriding effect of one Act over the other.

11. Amendment in section 227- Power of Central Government to notify financial sector providers etc

In section 227 of the principal Act-

*(i) for the words "examined in this Code", the words "**contained in this Code**" shall be substituted;(ii) the following Explanation shall be inserted, namely:*

"Explanation—For the removal of doubts, it is hereby clarified that the insolvency and liquidation proceedings for financial service providers or categories of financial service providers may be conducted with such modifications and in such manner as may be prescribed."

Existing Provision

Notwithstanding anything to the contrary examined in this Codeor any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed.

Comments:

This amendment is to clarify that the insolvency and liquidation proceedings for financial service providers may be conducted with such modifications and in such manner as may be prescribed;

For example, in exercise of the powers conferred under section 227 read with clause (zk) of sub-section (2) of section 239 of the Insolvency and Bankruptcy Code, 2016, the Central Government made and notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019, which was made to apply to such financial service providers or categories of financial service providers, as notified by the Central Government under section 227, from time to time, for the purpose of their insolvency and liquidation proceedings under these rules, which is:

Non-banking finance companies (which include housing finance companies) with asset size of Rs.500 crore or more, as per last audited balance sheet.

12. <u>Amendment in section 239-Power to make rules</u>

In section 239 of the principal Act, in sub-section (2), after clause (f), the following clauses shall be inserted-

"(fa) the transactions under the second proviso to sub-section (2) of section 21;

(fb) the transactions under the Explanation I to clause (c) of section 29A;

(fc) the transactions under the second proviso to clause (j) of section 29A.

13. Amendment of section 240- Power to make regulations

In section 240 of the principal Act, in sub-section (2), after clause (i), the following clause shall be inserted:

"(ia) circumstances in which supply of critical goods or services may be terminated, suspended or interrupted during the period of moratorium under sub-section (2A) of section 14".

Comments:

The amendments in section 239 and 240 are consequential in nature.

Conclusion:

The Amendments to the Code will remove bottlenecks, streamline the CIRP and protect last mile funding which will boost investment in financially distressed sectors. It will also prevent frivolous triggering of Corporate Insolvency Resolution Process (CIRP) and ensures that the business of corporate debtor continues as a going concern because the licenses, permits, concessions, clearances etc. cannot be terminated or suspended during the moratorium period. This also brings confidence to the buyers of distressed assets.

RECENT IMPORTANT JUDGMENTS

1. ***In Oriental Bank of Commerce Vs M/s Ruchi Global Limited***

Source:
https://ibbi.gov.in//uploads/order/5efe410b76c669d852be38451b884230.pdf

The Honourable NCLAT considered the impact of an inter-creditor agreement of a consortium of banks on the right of a bank to file an application under Section 7 of the Code. It held that an inter-creditor agreement being inter-se between the banks, the Corporate Debtor cannot take benefit of the clauses in that agreement, which are binding only on the banks.

If there is a default by any member of the consortium, it would be a matter for the other banks to be aggrieved with and Corporate Debtor cannot take benefit of the same to raise grievance. If the creditor bank did not act in tune with the consortium agreement, it may be a matter of consideration for the other banks of the consortium and / or the Reserve Bank of India (hereinafter referred to as the 'RBI').

However, the NCLAT held that there was no bar to file an application under Section 7 of the Code by the creditor bank. Even if there is a Clause that the bank which wants to take action should give notice of 30 days, if notice was not given that would be a matter for the lead bank to look into. However, that does not create any bar for the creditor bank to move an application under Section 7 of the Code.

2. ***Mr. M. Ravindranath Reddy Vs Mr. G. Kishan & Ors.,***

Source:
https://ibbi.gov.in//uploads/order/52c68bc0ae6b34160150d012e7f52f65.pdf

The Honourable NCLAT held that the *lease of an immovable property* cannot be considered as a supply of goods or rendering of any services; thus, dues arising from the lease of an immovable property cannot fall within the definition of operational debt.

3. ***In I Value Advisors Private Limited Vs Srinagar Banihal Expressway Limited***

Source:
https://ibbi.gov.in//uploads/order/825f29742e662f5030980432657825e8.pdf

The Honourable NCLAT held that merely because the creditor has initiated proceedings under the Micro, Small and Medium Enterprise Development Act, 2006 (hereinafter referred to as the 'MSMED Act') for recovery of the operational debt owed to it, but even if the conciliation mechanism under the MSMED Act had not started, such action would not result in the creation of a dispute so as to bar a petition under Section 9 of the Code.

It was further held that even if the conciliation proceeding was to start, if the Corporate Debtor did not raise dispute regarding the supply of goods or quality of services, still it would be open for the NCLT to look into the question whether or not dispute as covered under the Code is attracted.

4. ***In Punjab National Bank Vs Mr. Kiran Shah Liquidator of ORG Informatics Limited***

   Source:
   https://ibbi.gov.in//uploads/order/8a16406c1036e59dd0f578559e06e6ae.pdf

   The Honorable NCLAT held that after liquidation, the COC has no role to play and it is simply a claimant whose matters are to be determined by the Liquidator and further held that the COC cannot move an application for removal of Liquidator in the absence of any provisions under the law.

5. ***Santosh Wasantrao Walokar Vs Vijay Kumar V. Iyer Resolution Professional, Murli Industries Limited and Anr.***

   Source:
   https://ibbi.gov.in//uploads/order/b112ed1108368e2d01639cc796a13b6b.pdf

   The Honourable NCLAT held that if claims are not submitted or are not accepted or dealt with by the Resolution Professional in the Resolution Plan and where such Resolution Plan submitted by the Resolution Professional is approved then those claims that are not submitted or are not accepted or dealt with would stand extinguished. It was further held that the NCLT does not have power to modify its own Order but can only correct mistakes apparent from the record.

The Hon'ble NCLAT in their order referred to the Honourable Supreme Court in Essar Judgment case where it was held that:

> *A successful Resolution Applicant cannot suddenly be faced with "undecided" claims after the Resolution Plan submitted by him has been accepted as this would amount to an extra amount coming up for payment afterthe debts have been dealt by the Resolution Applicant and the Resolution Plan has been approved. This would throw into uncertainty amounts payable by a prospective Resolution Applicant who successfully takes over the business of the Corporate Debtor. All claims must be submitted to and decided by the Resolution Professional so that a prospective Resolution Applicant knows exactly who has to be paid in order that it may then take over and run the business of the Corporate Debtor. Therefore, claims that are not submitted or are not accepted or dealt with by the Resolution Professional and such Resolution Plan submitted by the Resolution Professional is approved then those claims would stand extinguished.*

6. ***In Neeraj Jain Director of M/s Flipkart India Private Limited vs. Cloudwalker Streaming Technologies Private Limited &Anr.***

Source:
https://ibbi.gov.in//uploads/order/5a91ac556e474826ed2c61666394cf08.pdf

The Honourable NCLAT held that an operational creditor does not have the discretion to send the demand notice in Form 3 or Form 4 of the Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016 as per its convenience. It was further held that the choice of format depends directly on the nature of the operational debt and applicability of Form 3 or

Form 4 as per the nature of the transaction i.e. if the operational debt involves transactions where corresponding invoices are generated, then Form 4 would have to be utilized and in other cases, Form 3.

7. ***In the Matter of Maharasthra Seamless Limited...Appellant Versus Padmanabhan Venkatesh & Ors....Respondents In Civil Appeal No. 4242 of 2019***

Source:
https://ibbi.gov.in//uploads/order/55e89c436edcc6a95f8fe35cd9d28197.pdf

The Honourable Supreme Court in its order dated 22/01/2020 held that:

"No provision in Insolvency and Bankruptcy Code, 2016 or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

It appears to us that the object behind prescribing such valuation process is to assist the CoC to take decision on a resolution plan properly. Once, a resolution plan is approved by the CoC, the statutory mandate on the Adjudicating Authority under Section 31(1) of the Code is to ascertain that a resolution plan meets the requirement of sub-sections (2) and (4) of Section 30 thereof. We, per se, do not find any breach of the said provisions in the order of the Adjudicating Authority in approving the resolution plan."

8. In The Matter of Tata Steel BSL Limited Vs. Union Of India And Another-The Honourable Delhi High Court Held In W.P.(CRL) 3037/2019 And CRL.M.A. 39126/2019

Source:
https://ibbi.gov.in//uploads/order/9788b8a21170dc9a1a10309895394106.pdf

It was held that, in terms of Section 32A of the IBC, as inserted by virtue of the Insolvency of Bankruptcy Code Second (Amendment) Act 2020; the Corporate Debtor would not be liable for any offence committed prior to commencement of the CIRP and the corporate debtor would not be prosecuted if a resolution plan has been approved by the Adjudicating Authority and further clarified that, this order will not affect the prosecution of the erstwhile promoters or any of the officers who may be directly responsible for committing the offences in relation to the affairs of the petitioner company.

9. The Honourable Supreme Court in the Matter of State Bank Of India Versus Accord Life Spec Private Limited

Source:
https://ibbi.gov.in//uploads/order/e0d8955837f66c8cb9b036df6201f972.pdf

In this Civil Appeal bearing no. 9036 of 2019, it referred to its earlier judgment dated 22/01/2020 in Civil Appeal No. 4242 of 2019 titled as *Maharashtra Seamless Limited vs. PadmanabhanVenkatesh & Ors.* in which the Court had categorically held as under:

"No provision in the Code or Regulations has been brought to our notice under which the bid of any Resolution Applicant has to match liquidation value arrived at in the manner provided in Clause35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016."

Therefore the appeal was allowed and the NCLAT order was set aside.

10. In Tourism Finance Corporation of India Ltd. Vs. Rainbow Papers Ltd. &Ors. [Judgment dated 19/12/2019 in Company Appeal (AT) (Insolvency) No. 354 of 2019]

Source:
https://ibbi.gov.in//uploads/order/d7ebb8af6284fe530b019b50f372db16.pdf

The NCLAT held that the NCLT or the NCLAT has no jurisdiction to decide the question of fact relating to whether a creditor is a secured creditor or unsecured creditor, in an appeal preferred under Section 61(3) of the Code.

11. Suo Moto Writ Petition (Civil)-Hon'ble Supreme Court of India No.03 of 2020 vide its Order dated 23.03.2020: Cognizance for extension of Limitation

Motu cognizance of the situation arising out of the challenge faced by the country on account of Covid-19 Virus and the resultant difficulties that may be faced by litigants across the country in filing their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws (both Central and/or State) was taken up.

To obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such 2 proceedings in respective Courts/Tribunals across the country including this Court, an order has been made that the period of limitation in all such proceedings, irrespective of the limitation prescribed under the general law or Special Laws whether condonable or not shall stand extended w.e.f. 15th March 2020 till further order/s to be passed by this Court in present proceedings.

This power was exercised under Article 142 read with Article 141 of the Constitution of India and it was declared that this order is a binding order within the meaning of Article 141 on all Courts/Tribunals and authorities.

And it was mentioned that this order be brought to the notice of all High Courts for being communicated to all subordinate Courts/Tribunals within their respective jurisdiction.

12. Suo Moto- Company Appeal (AT) (Insolvency) No.01 of 2020 vide its Order dated 30.03.2020

Source:
https://www.ibbi.gov.in/uploads/order/0fd02d6fd104fcdd63936eb4cb23021b.pdf

Having regard to the hardships being faced by various stakeholders as also the legal fraternity, which go beyond filing of Appeals/ cases, which has already been taken care of by the Hon'ble Apex Court by extending the period of limitation with effect from 15th March, 2020 till further order/s in terms of order dated 23rd March, 2020 in Suo Motu Writ Petition (Civil) No(s).03/2020, inasmuch as certain steps required to be taken by various Authorities under Insolvency and Bankruptcy Code, 2016 or to comply with various provisions

and to adhere to the prescribed timelines for taking the 'Resolution Process' to its logical conclusion in order to obviate and mitigate such hardships, this Appellate Tribunal in exercise of powers conferred by Rule 11 of National Company Law Appellate Tribunal Rules, 2016 r/w the decision of this Appellate Tribunal rendered in "Quinn Logistics India Pvt. Ltd. vs. Mack Soft Tech Pvt. Ltd. in Company Appeal (AT) (Insolvency) No.185 of 2018" decided on 8th May, 2018 ordered as follows:

(1) That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for 'Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where 'Corporate Insolvency Resolution Process' has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal

(2) It is further ordered that any interim order/ stay order passed by this Appellate Tribunal in anyone or the other Appeal under Insolvency and Bankruptcy Code, 2016 shall continue till next date of hearing, which may be notified later.

RECENT AMENDMENTS IN IBC

Section 1: Short title, extent and commencement

Previous to the Order dated 18.03.2020, Part III of the Insolvency & Bankruptcy Code, 2016 was not extended to the State of Jammu and Kashmir.

Now, **vide the Government's Order dated 18.03.2020** which is called the Jammu and Kashmir Reorganisation (Adaptation of Central Laws) Order, 2020, issued by the Ministry of Home Affairs (Department of Jammu, Kashmir and Ladakh Affairs), in exercise of the powers conferred by section 96 of the Jammu and Kashmir Reorganisation Act 2019, Part III of the Insolvency & Bankruptcy Code, 2016 stands extended to whole of India.

The proviso which carried the exception has been omitted.

Notification dated 21.03.2020 bearing no.11/2020 by Central Tax Authorities

In exercise of the powers conferred by section 148 of the Central Goods and Services Tax Act, 2017, the Government has notified that the debtors under the provisions of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), undergoing the corporate insolvency resolution process and the management of whose affairs are being undertaken by interim resolution professionals (IRP) or resolution professionals (RP), shall with effect from the date of appointment of IRP/RP, be treated as a distinct person of the corporate debtor, and shall be liable to take a new registration, within thirty days of the appointment of the IRP/RP and provided that in cases where the IRP/RP has been appointed prior to the date of this notification, he shall take registration within thirty days from the commencement of this notification, with effect from date of his appointment as IRP/RP.

Section 4: Application of this Part

Vide a notification dated 24.03.2020, in exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code 2016, the Central Government has **specified Rs.1.00 crore (Rupees One Crore) as the minimum amount of default for the purposes of the said section**.

Hence, the trigger threshold is now no more Rs.1.00 lakh. It has increased to Rs.1.00 crore.

By:

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