



# **ASC**

INSOLVENCY TIMES

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# INSOLVENT?





## From the Editor's Desk

Dear Insolvency Professionals,



### Corona Virus and Insolvency laws

The courts and the people are all working from home to curb this pandemic down. But the real global emergency is companies and industries getting bankrupt due to disrupted working. We must not forget that the food, economy, daily needs, and everything for survival will be from the market, the companies and different

industries. The result that the unemployment rate has risen due to people being sacked from the work, due to failure of project resultant of the spread of corona virus is one major distress. The second one is where the companies are going bankrupt, there is no generation of work in the global economies. Corona Virus will and has been affecting every sector and every person in some way or the other.

The financials have been swept off from the market. The future sector, because of Covid- 19, that can bring boost is only insolvency. The Insolvency law comes to rescue to keep the companies going, either by resolution or by flow of money in the market through liquidation. The laws of Insolvency are well equipped to handle this situation.

On the other hand, the notification to change the limit of Rs. 1 lakh to Rs. 1cr for filing application under Insolvency and Bankruptcy Code, makes it a very unbalanced approach. This amendment while economy going through the pandemic might make the adjudicating authorities less approachable.

Expect more vibrancy from Insolvency Resolution Process.

Stay Alert!

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## **NEWS FLASH FROM THE LAST MONTH**

### **For Black Money Investment in Companies Facing Liquidation, the Government should Open IBC Back Door:**

Bidding for assets stuck at the NCLT should be looked upon by the Narendra Modi government, which has been involved in easing its aggressive anti- tax evasion stance. There are more “assets” than bidders. It has been reported at the end of December, 2019 by the IBBI that out of 3,312 bankruptcy cases filed at the various benches of the NCLT, 1961 are still work-in-progress.

The number of pending cases are increasing every year, with December 2017 seeing 438 pending cases, rising to 848 in the next year. Pending cases are been doubling every year. The value recovered by banks from future bids will start falling as we look at more unviable businesses. Recoveries of money will certainly crash when the focus will shift to assets of companies with bad balance-sheets and bad business models.

The decisions of the Union Cabinet is to be supplemented with another kind of amnesty scheme, one which is focussed on the sale of assets is now rotting at various insolvency courts. It is good to make banks more solvent by allowing black money in through the IBC route.

### **The IBBI has amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 in a press release on 29<sup>th</sup> March, 2020**

As a measure to prevent the spread of the transmission of Novel Coronavirus (COVID- 19), the Central Government has declared a lockdown of twenty-one days w.e.f. 25<sup>th</sup> March, 2020. Since, it is difficult for the Insolvency Professionals (IPs) to continue carrying out the activities of Corporate Insolvency Resolution Process (CIRP), for the members of the Committee of Creditors (CoCs) to attend the meetings, and also for the prospective Resolution Applicants for the preparation and submission of resolution plans, during the period of this lockdown. It, therefore, may be difficult to complete various activities during a CIRP within the time-period specified in the CIRP regulations.

The IBBI has amended the CIRP Regulations to address this problem in order to provide that the period of lockdown which has been imposed by the Government of India due to the outbreak of COVID-19 shall not be counted for the purposes of the time-line for activities which could not be completed due to this lockdown, which relates to a Corporate Insolvency Resolution Process. However, this would be subject to the overall-time limit provided in the Code.



## **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020:**

In a notification release by the IBBI on 29<sup>th</sup> March, 2020, third amendment has been done regarding the Insolvency Resolution Process for Corporate Persons, Regulations, 2020 which is as follows:

The IBBI has made the following Regulations to amend the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, in the exercise of the powers conferred by Section 196(1)(t) read with Section 240 of the IBC, 2016, (31 of 2016).

These regulations shall come into effect from 29<sup>th</sup> March, 2020. Following regulation may be inserted in the IBBI (Insolvency Resolution Process for Corporate Persons), Regulations, 2016, after regulation 40B which is as follows:

### **Regulation 40C: Special provision relating to the time-line:**

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process.”

This notification shall be published in the Official Gazette of India as soon as the Government Press accepts the same for its publication.

### **NBFCs can initiate SARFAESI Act on a total value of 50 lac and above**

The budget has proposed to ease the eligibility criteria for NBFCs for debt recovery under the SARFAESI Act, 2002 to asset size of 100 crore, down from Rs. 500 crore, and loan size of at least Rs. 50 lakh against existing Rs.1 crore.

The budget provision will allow more number of NBFCs to take SARFAESI route for the recovery of asset. There remains scope for further liberalising the eligibility criteria for NBFCs. Using the SARFAESI option also predicates a substantial time to recovery, as there is a 90 days’ time for a debt to turn into a NPA; there is a mandatory 60 days’ notice before any repossession action and there is a mandatory 30 days’ time before the sale of the asset.

### **The Insolvency Process of Yes Bank: bane or boon in this case?**

The insolvency condition of Yes bank has provoked the whole country. The central government has been acting as the saviour and RBI as the resolution applicant by introducing the Resolution Plan. There is anticipation of moratorium ending soon ie. maybe before the designated time given as SBI acquires 49% stake.

If the Resolution process of YES bank is prolonged, there may be a risk that the banking sector gets the hit. However, this may raise the investor’s perception of credit risk in the banking system, which can tighten funding and the cash flow in market and affect the overall GDP.



## LATEST JUDGEMENTS

### **Mr. Hemang Phophalia v. The Greater Bombay Co-Operative Bank Ltd. (Company Appeal)- NCLAT, New Delhi**

NCLAT held that the NCLT who is the adjudicating authority/ tribunal is empowered to restore the name of the Company and all other persons in their respective position for the purpose of initiation of the CIRP under Sections 7 and 9 of the IBC, 2016, based on an application if it has been filed by the financial creditor or operational creditor or a workman within twenty years from the date the name of the company has been struck off under Section 248(5). In this case, an application under Section 7 of the IBC, 2016 having admitted, the 'Corporate Debtor' and its directors, officers, etc. deemed to have restored in terms of Section 252(3) of the Companies Act.

The application filled under Sections 7 & 9 of the IBC, 2016 will be maintainable against a Corporate Debtor, even if the name of the Corporate Debtor has been struck off from the Register of RoC.

### **Y. Shivram Prasad v. S. Dhanpal & Ors.- NCLAT**

The issue raised in the case is that: Whether the NCLT/ Adjudicating Authority has the power to play a dual role, one as the Adjudicating Authority in the matter of liquidation and the other as a Tribunal for passing order under Section 230 of the Companies Act, 2013.

It has been held by the honourable NCLAT that: during proceeding under Section 230, if any objection has been raised, it is open to the NCLT which has powers to pass on order under Section 230 of the Companies Act, 2013 to overrule the objections, if the arrangement and scheme is beneficial for revival of the corporate debtor/ company. The NCLT has played a dual role while passing such order, one as the Adjudicating Authority in the matter of the liquidation of the company and the other as a Tribunal for passing an order under Section 230 of the Companies Act, 2013. The arrangement of scheme should be in consonance with the statement and object of the IBC, 2016 i.e., the scheme should ensure maximization of the assets of the Corporate Debtor and balance the stakeholders like financial creditors, operational creditors, secured creditors and unsecured creditors without any discrimination.



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- Fresh Start Process,
- Hearing of Cases or any other enquiries

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