



Issue no.3

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What is new:

Insolvency and Bankruptcy Code changed attitude of debtors, creditors:

The Insolvency and Bankruptcy Code (IBC) has nudged the behaviours of debtors and creditors and this has resulted in substantial recoveries for creditors outside the framework of the code, said The Comptroller and Auditor General of India (CAG). "With the code in place, non-repayment of loan is no more an option and ownership of the firm is no more a divine right and equity is no more the only route to own a firm. The IBC was also reducing the incidence of default and helping to resolve the non-performing assets crisis affecting the banking system. It also improves corporate governance by deterring. It enables claw back of value lost on account of avoidance transactions like preferential, undervalued, fraudulent and extortionate transactions. This deters the management from indulging in such transactions and enables cleansing of corporate governance and improves the confidence of stakeholders. Prior to the IBC, the economy suffered from inefficiencies on account of several zombie entities due to the lack of an exit mechanism. By providing a market mechanism for the rescue of a failing yet viable firm or by freeing up resources through liquidation of unviable firms, the IBC provided the "ultimate freedom" to exit.

PARADIGM SHIFT

CAG Synopsis "With the code in place, non-repayment of loan is no more an option and ownership of the firm is no more a divine right and equity is no more the only route to own a firm,

Issue of the month:

Individual Indebtedness and Insolvency



BACKGROUND In four years since the enactment of the Insolvency and Bankruptcy Code, 2016 (Code), the entire ecosystem comprising the Adjudicating Authority (AA), the Insolvency and Bankruptcy Board of India (IBBI), Insolvency Professional Agencies, Insolvency Professionals, Information Utilities, Registered Valuers Organisations

and Registered Valuers has been in place. The provisions relating to corporate insolvency resolution, including fast track resolution, corporate liquidation and voluntary liquidation have been operationalised with considerable success. The behavioural changes, as anticipated from the Code, is clearly visible on the ground.

It is time now to focus on the next big thing, the individual insolvency: Individual insolvency framework pursues the objectives enshrined in the Code. It prevents creditors from harming the debtor by racing to be the first to recover their dues, and thereby facilitates resolution of insolvency. It facilitates an individual to get in and get out of business, undeterred by honest business failure, and thereby promotes entrepreneurship. It increases creditor's expected returns and thereby promotes availability of credit. It does not take away future income of the debtor after fresh / earned start and thereby does not undermine incentive to work. It relieves the debtor of the burden of debt and isolates minimum assets for his subsistence, while improving the prospects of realisation for creditors, thereby ensuring fairness and equity. These objectives are extremely important in the Indian context, where proprietorship and partnership firms have significant contribution to income and employment, and informal financial creditors (FCs) account for a significant share of credit.

From the Jury: Supreme Court:



Condonation of delay in filing an appeal beyond the prescribed period before NCLAT- held the prescribed limitation period can be extended but not the period up to which delay can be condoned in exercise of discretion conferred by the statute.

Any order of the NCLT, passed under the Companies Act, 2013, may be appealed against, before the NCLAT under section 421 of the Companies Act, 2013. Similarly, any order of the NCLT under the tenets of the Insolvency and Bankruptcy Code, 2016 may be appealed before the NCLAT under section 61 of the Insolvency and Bankruptcy Code, 2016.

The “**time limit**” set for appeals under section 421 of the Companies Act, 2013 is 45 days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved, with a “**further period**” of 45 days, beyond which, the NCLAT cannot condone delay.

Similarly, the time limit set for appeals under section 61 of the Insolvency and Bankruptcy Code, 2016 is 30 days with a further period of 15 days, beyond which, the NCLAT cannot condone delay.

In the context of computing the time limit for calculation of limitation and to determine whether an appeal is barred by limitation particularly in the context of the COVID-19 lockdown the extension of limitation order passed on 23.03.2020 by the Hon’ble Supreme Court of India.

In the recent judgment of the Hon’ble Supreme Court in ***Sagufa Ahmed vs. Upper Assam Plywood Products Pvt. Ltd.***, Civil Appeal No. 3007-3008 of 2020 the Hon’ble Court has clarified that the said order would only benefit cases where the “time period” prescribed under the Act has not expired and would not

apply to cases where the Courts have been vested with the discretion by the Statute to condone delay in filing an appeal.

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Vistara ITCL (India) Ltd.v. Dinkar Venkatasubramanian



Section 5(8), read with section 5(7), of the Insolvency and Bankruptcy Code, 2016 - Corporate insolvency resolution process - Financial debt - Whether creation of pledge of shares by corporate debtor does not tantamount to a guarantee or indemnity so as to bring it within meaning of financial debt - Held, yes

Whether since creation of pledge of shares by Corporate Debtor was said to be in regard to money lent to third parties and appellants had not lent any money directly to corporate debtor basic ingredients of financial debt i.e. debt along with interest disbursed against time value of money was lacking - Held, yes - Whether, therefore, application seeking direction to RP to include appellant in CoC as secured financial creditor was not maintainable - Held, yes [Para 4]

1. Vikash G Jain v. Gopala Polyplast Ltd

Section 31 of the Insolvency and Bankruptcy Code, 2016, read with regulation 38 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 - Corporate insolvency resolution process - Resolution plan - Approval of - CoC had approved Resolution Plan with 91.28 per cent voting in favour of approval of plan - Resolution Applicant fulfilled mandatory contents of Resolution Plan as provided under regulation 38 - Whether there can be no interference with commercial wisdom of CoC with regard to implementation of Resolution Plan - Held, yes - Whether since Resolution Plan as approved by CoC met requirements as referred to under section 30(2), Resolution Plan was to be approved - Held, yes - Whether Resolution Applicants on approval of Plan might approach Competent Authorities/Courts/Legal Forums/Offices, Government or semi Government/State or Central Government for appropriate concession, relief or dispensation as and when required for proper and effective implementation of Plan - Held, yes [Paras 6 and 7]

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