SYNERGY IPE

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IBBI Proposes to restrict the number of assignments handled by IP

The Insolvency and Bankruptcy Board of India (IBBI) has proposed to limit the number of corporate insolvency cases a single insolvency professional (IP) is permitted to handle at any given time. Currently, there is no limit on the number of assignments an IP is permitted to take, however, the code of conduct requires IPs to not accept assignments if they will not be able to devote adequate time to them.

Keeping in mind the skewed work allocation amongst the IPs and the observations of Honorable Supreme Court, Honorable Adjudicating Authority, and given the expansive and intense responsibilities of an IP in corporate processes, IBBI have proposed to issue necessary guidelines to IPs advising them to limit the maximum number of assignments handled by them under CIRP/Liquidation process to five, at a given point of time, subject to the same being in line with the matrix given below:

Turnover of CD	Assignments
<= Rs. 1000 Cr	5
> Rs.1,000 Cr < = Rs.5,000 Cr	4
> Rs.5,000 Cr < = Rs.10,000 Cr	3
> Rs.10,000 Cr	2
> Rs. 50,000 Cr	1

Experts believe that the said restriction on an IPs will put a check on undesirable instances of delay and disturbance to the processes led by IPs while simultaneously handling too many assignments under the Code and this move by IBBI would likely promote better value preservation of corporate debtors.

Further enhancement of Ease of Doing business through IBC related measures

In a bid to provide relief to Micro, Small and Medium Enterprises (MSMEs), the Ministry of Corporate Affairs (MCA) is finalizing a special insolvency resolution under section 240A of the Insolvency and Bankruptcy Code (IBC), 2016.

The Ministry of Corporate Affairs has already raised the threshold of default under Section 4 of the IBC, 2016 to Rs. 1 Crore from Rs. 1 lakh i.e. “in exercise of powers conferred under Section 4 of Insolvency & Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specified Rs. 1 Crore as the minimum amount of default for the purposes of the said section” vide Notification dated 24.6.2020.

Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 has also provided relief by insertion of Section 10A in the Insolvency and Bankruptcy Code 2016 to temporarily suspend initiation of Corporate Insolvency Resolution Process (CIRP) under Section 7, 9 & 10 of the Code for a period of six months or such further period, not exceeding one year from such date.

However, as per a recent study, MSMEs have nearly Rs 3.3 lakh Crore of their funds stuck with strong large corporates in form of receivables. The liquidity crunch being faced by MSMEs is on account of two key issues, including the lack of a funding

line from the banking system and stretched working capital because of low bargaining power with large corporates to have payments released. Therefore, the Ministry of Corporate Affairs is finalizing a special insolvency resolution under section 240A of the Code, to provide relief to the MSMEs and the same would be notified soon.

The Insolvency and Bankruptcy Board of India (IBBI) has invited research proposals to promote research legal, economic and interdisciplinary - and discourse in areas relevant for the evolving insolvency and bankruptcy regime in India

IBBI under its Research Initiative, 2019 has invited proposals from researchers who can be an individual, a team of individuals or an academic Institute to carry out research work in various areas relating to Insolvency and bankruptcy from 1st August, 2019. A research proposal will be screened by the Board to verify that it is appropriately structured and is covered under the Initiative, within a week of its receipt. If found to be in order, it will be sent to a referee for evaluation. If the proposal is accepted, the Researcher has to complete the research in six months from the date of approval of the research proposal by the Board. The research paper shall be sent to one referee for evaluation. The referee shall consider whether the issue has been sufficiently researched and well-developed and whether the findings are persuasive. If the referee accepts the paper, the researcher shall be paid a research scholarship of Rs.70,000 (Rupees seventy thousand only) (US$ 1,000 for a foreign researcher) to partially meet the expenses incurred by him for or on the research.

Insolvency Professional Entities (IPEs) to provide support services to all Insolvency professionals

IBBI has recently amended the Insolvency Professional Regulations where it has done away with the earlier restriction placed upon Insolvency Professional Entities (IPEs) to provide support services to only their partners and directors. With this amendment, the IPEs are now allowed to provide support services to any insolvency professional (IP), even if he is not a partner/director in that IPE.

This amendment is a welcome move by IBBI, prior to this amendment the individual IPs are expected to manage the company operations, manage the insolvency process, and find an investor who can take over the company, and thereby, resolve the insolvency. The process certainly requires the team work and the IP were taking support from their existing staff, non-IPE firms. Now after the amendment, the IPEs are allowed to provide support services to any insolvency professional (IP), even if he is not a partner/director in that IPE. This move will bring all the related activities performed for insolvency resolution or liquidation within the regulatory oversight of IBBI.

From the Founder's Desk

CA Praveen Agrawal
(Founder Synergy IPE)

Hello All,

Greetings from Synergy Insolvency Professionals LLP an IPE!

Synergy is registered as Insolvency Professional Entity (IPE) with Insolvency and Bankruptcy Board of India (IBBI) vide Registration no. IBBI/IPE/0104, with the objective to resolve insolvency cases in India and to support effective implementation of IBC, 2016. With this objective, we formed Synergy, and are continuously expanding.

As you would be aware of that IBBI has amended "Insolvency Professional Regulations 2016" vide notification dated 30th June 2020. The amendment has in effect allowed IPE to provide support services to Insolvency professionals whether or not it's Partner.

We therefore take this opportunity to offer our services to Insolvency professionals. Synergy Insolvency Professionals LLP is operating out of Noida with branches in Delhi, Ghaziabad, Gurgaon, Chandigarh, Pune, Nagpur, Ludhiana and Chennai.

Our core team of 12 Partners, comprises senior professionals having combined experience of more than 200 years in various fields. The knowledge pool and hands-on experience of these partners can handle all kinds of challenges that come under IBC 2016 and provide meaningful resolution to corporate debtors.

In addition, we have on our panel ARCs, PE/VC Investors, HNI, Senior Ex-Bankers, Chartered accountants, Company secretaries, MBA, Advocates, Sector/domain experts having vast experience and knowledge in business & banking industry which brings value to the resolution of a stressed company. We have wide contacts in the banking/finance industry as well who are ready to fund any acquisition deal.

Our Scope of work for support services includes but not limited to, assisting in compliance under IBC code, assisting and coordinating in Claim Verification, appointment of Publication services, Security Services, Valuation service, Transaction/Forensic Services, Domain Expert, Legal Counsel Services, Audit Services on need basis only, Preparation of Information Memorandum, COC Constitution, Preparation of Status reports, Agenda of COC, Notices COC, Minutes of COC, Representation before COC and other bodies, Preparation of Evaluation Matrix, Vetting of Resolution Plan, Preparation of Presentation before COC which shall be in line with IBC code 2016 wherein we as team shall be running the CIRP and Liquidation assignment as mutual interest only.

We have a panel of vendors to provide services like Publication, Insurance to IP, Audit and senior legal counsel to assist the IP in appointment of the same. Detailed terms and conditions could be discussed and decided depending upon the nature and scope of assignment.

Best wishes. Stay Safe and Healthy.

Praveen Agarwal

Issue of the Month

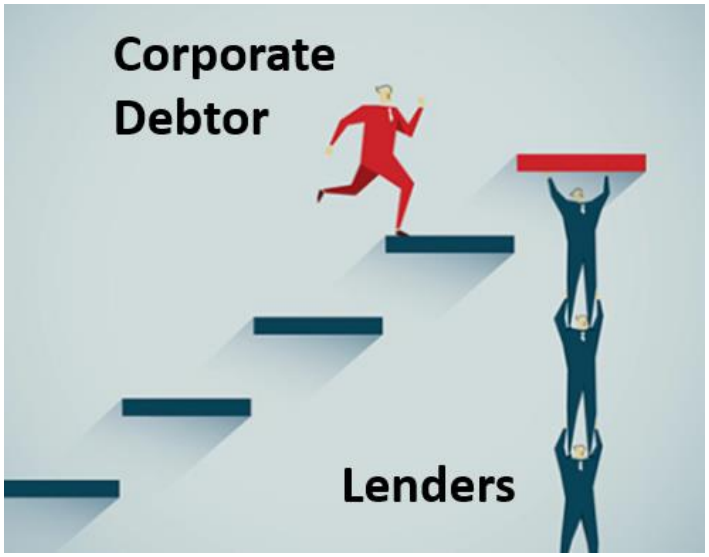
A Debtor friendly resolution regime introduced in UK through Corporate Insolvency and Governance Act 2020. Does India also require such regime?

The Corporate Insolvency and Governance Act 2020 (CIGA) has introduced new procedures and measures to seek to rescue companies in financial distress as a result of the COVID-19 pandemic and the resulting economic crisis. CIGA came into force on June 26, 2020 after a speedy progression. CIGA is part of the Government's response to the COVID-19 crisis which introduces a number of debtor friendly measures to English restructuring and insolvency law. The two new permanent restructuring procedures leave the current directors in office, with an opportunity to restructure the business with the benefit of wide ranging moratorium and stays of creditor and counterparty rights.

In addition the Act introduces a number of temporary measures intended to assist in reducing the number of companies entering into restructuring or insolvency procedures and to mitigate the effect of the insolvency regime on the responsibilities of directors whose businesses are struggling due to the COVID-19 crisis. The CIGA also includes extensive powers for the Secretary of State to amend certain provisions, recognising that this is a complex piece of legislation which has been implemented on an accelerated basis.

UK being proactive in introducing the remedial measures, however, there will inevitably be some adjustments required to deal with issues arising in practice as the Act begins to be used.

In India also, for companies to stay afloat the covid-19 challenges, finance ministry announced a slew of economic relief packages aimed at businesses, especially MSMEs, to provide fiscal stimulus, ramp up production and ultimately enhance liquidity beside suspending Sections 7, 9, and 10 of IBC along with an increased threshold value of Rs. 1 Crore from the previous, Rs. 1 Lakh.



On the other hand, these measures would have detrimental effects on financial and operational creditors having outstanding debts less than Rs. 1 Crore, tipping the scales of leverage in favour of small-scale borrowers. This creates hindrances in resolving the debt-issues and recuperating the credit. This suspension will place the banks in desperate monetary emergency, as they will stay remediless for at least a half year, after which they may look for redressal under the IBC, which will additionally take 330 days to recover the credit from the corporate debtors.

Government has also excluded the Covid-19 related debt from the definition of 'default' under Insolvency and Bankruptcy Code. This may result in rise in fraudulent activities by debtors trying to get away without repayment on the pretext of the pandemic. Therefore, more financial institutions like Banks, NBFCs, HFCs, and MFIs, are expected to utilize the restructuring route a lot more over the coming year to notch up recoveries.

Now, it can be speculated that changes to the IBC solely intend to revive the supply side of the economy thereby compelling financial institutions and the lenders to take massive haircuts and opt for OTS mechanisms to recover monies in an economy starved for revenues. Changes made to the IBC must be supported by similar changes in other recovery mechanisms available to lenders. Consequently, there should be a system of checks and balances to ensure intended positive effects and to ensure business continuity of MSMEs as well financial institutions.

For this IBBI is devising a special resolution framework for MSMEs and a prepack resolution framework, to service emerging needs. A key challenge yet to be resolved is the timeline. Let's hope, that the special framework for MSMEs and prepack resolution would bring faster resolution and would be able to circumvent the otherwise lopsided sustenance and growth of the economy.

CA Karun Nagpal
Partner, Synergy Insolvency professional LLP

Latest updates & amendments

Duff & Phelps filed an appeal against IBBI order against senior advisor

In our previous issue we have shared that, the insolvency and bankruptcy board of India (IBBI) penalized Vijay Kumar Garg, the resolution professional for Gitanjali Gems, Nakshatra World and other companies promoted by Mehul Choksi, accusing him of "attempted to siphon off crores of rupees" from the companies he was managing through the insolvency process. The action have been taken by IBBI against Mr. Vijay Kumar Garg for engaging his own affiliate Duff & Phelps India Private Limited and charging him for converting the noble insolvency profession to a business.

IBBI accused him of "attempted to siphon off Crores of rupees" from the companies he was managing through the insolvency process. Duff & Phelps petitioned the Delhi High Court, challenging the observations that the IBBI made against its senior advisor. The case filed by the company is expected to decide the fate of several corporate insolvency resolutions processes under the bankruptcy law, where the resolution professionals have appointed a third-party consulting firm to carry out operations.

Madras High Court dismisses plea challenging levy of fees by IBBI on IPs

The Madras High Court has dismissed a writ petition that challenged and sought the striking down of insolvency regulator IBBI's

regulation requiring Insolvency Professionals (IPs) to pay a levy of 0.25 per cent of their professional fee earned from services rendered the preceding financial year.

The regulations stipulated that this fee had to be paid to IBBI before April 30 every year. However, for the financial year 2019-20, an IP had to pay the fee on or before June 30. In its verdict on the petition filed by Venkata Siva Kumar, a chartered accountant and a registered Insolvency professional, the Madras High Court concluded that the IBBI is duly empowered under Sections 196 and 207 of the IBC to levy a fee on IPs, including as a percentage of the annual remuneration as an IP in the preceding financial year.

Reacting to this ruling, Dr. Sahoo, Chairman, IBBI said, "Regulators usually recover a part of their cost from the regulated. Unlike every other profession, the IBBI supervises and monitors services rendered by an Insolvency Professional. Regulatory burden that an Insolvency Professional imposes on IBBI corresponds to the volume of services he renders. Therefore, IBBI levies a nominal fee on Insolvency Professionals, using volume of services as measure".

Allow promoters to renegotiate under IBC, said former RBI governor Raghuram Rajan

In one of his recent interviews, former RBI Governor has advised that instead of closing the insolvency option completely for Covid-19 defaults, borrowers should be allowed to renegotiate the loans under the bankruptcy platform and retain their businesses.

Currently under Section 29A of the Insolvency Act, defaulters cannot bid for their own business under the bankruptcy process. Lenders are extra careful to ensure that bidders have no connection with the defaulters. He said that after Covid-19, there was a tendency to take a stand that this is a new kind of situation and requires a new kind of process and therefore cases cannot be referred under the Insolvency and Bankruptcy Code (IBC). This is unfortunate because it treats bankruptcy as some kind of punishment rather than a necessary way of restructuring capital structure and ownership. We need to look at it carefully as a lot of distressed cases will be coming out. Calling for a more effective Chapter 11 like structure, Rajan said that currently under the insolvency process at the National Company Law Tribunal, the defaulting firm is auctioned to the highest bidder even if it is a reasonably viable firm. "There were reasons why it went to that structure. The bias under the old structure for removing management can be relooked at. Banks want some court blessing so that they can remove their own liability. These are complicated cases, but rather than close the court down, we need to look at what will work," said Rajan.

Pointing out that private banks were ahead in raising capital, Rajan said that government banks also need recapitalization. "If you do not do anything, you have much less working capital and much less investment and there will be many more zombies — the living dead — holding back growth," he said.

From the Jury

Corporate Affairs Ministry Challenges NCLT Order in Delhi Gymkhana Club Case

The corporate affairs ministry, which is seeking to take over the management control of the Delhi Gymkhana Club, has moved the National Company Law Appellate Tribunal (NCLAT) against a ruling in the matter.

In an order passed in June, the National Company Law Tribunal (NCLT) asked the ministry to appoint two members to the General Committee of the club as well as constitute a five-member panel to look into certain issues related to the club. However, the tribunal observed that the affairs of the club "prima facie" are being conducted in a "manner prejudicial to the public interest", it declined the ministry's plea for takeover of the club. The ministry filed a petition challenging the NCLT order which is pending before a three-member bench of the NCLAT headed by its acting Chairperson Justice B L Bhat.

NCLT allows liquidator to sell company stressed assets attached by agencies

In a recent judgment by the Kolkata bench of the National Company Law Tribunal has allowed the liquidator to sell the assets of a

company that were attached by investigative agencies. NCLT held, that the liquidator is permitted to sell the assets of the corporate debtor…which were attached by the Enforcement Directorate, subject to the right of the buyer to apply for detachment in its order pronounced on July 22. The ruling is expected to help speed up the insolvency process in similar cases where investigative agencies have attached assets of a corporate debtor and will unlock a lot of value in various assets owned by companies which are attached by any investigating agencies.

Bikram chatterji and others vs Union of India and others (SC)

Facts of the case - An interim application has been filed by Royal golf Link City Projects Private Limited (the 'company') for modification of an earlier order by which Court directed that a sum of Rs.48.52 crores, which was the principal amount received by the company from the Amrapali Group to be repaid along with 12% interest and the attachment of 30 villas was to continue unless otherwise ordered.

In this regard, an undertaking was also required to be furnished by CFO as well as by all the Directors to deposit the amount as ordered. The Court directed that 25% of the amount be paid in first tranche, 30% in second tranche and the remaining amount in third and final tranche. The interest was to be calculated until the date of the payment. The Company, after construction, was to give 30 villas to the Amrapali Ultra Homes as per the Agreement entered into between them. A sum of Rs.48.52 crores was received as the principal amount by the company. This application has been filed to modify the order passed by Court because the company though deposited a sum of Rs.48.52 crores, but it had extreme hardship in depositing 12% of interest on the amount.

Contentions of the Applicant - It was submitted that due to litigation, the goodwill of the project has been severely affected, and construction work was considerably slowed down due to lack of funds. The vendors have stopped offering credit. The existing buyers were not making payments.

- The average yearly collections had also dropped from Rs.61.86 crores in the year 2018-19 to Rs.17.85 crores in 2019-2020. Despite part injunction lifted by Court, the project could register new sales of only 15 units, and only Rs.1.42 crores could be recovered. The banks had also stopped making further disbursement of the retail loans to individual home buyers. Fourteen buyers had cancelled their units.

- The RERA had ordered a refund of 6 units along with interest upon the complaints filed before it.

- A loan was taken at a very high rate of 21% in order to deposit the amount. It would be difficult to repay the loan in case interest was not waived. Home buyers interest was at stake as the project had been delayed for more than three years due to the injunction of Court.

- The Court directed various entities to deposit the amount with the Registry and did not direct payment of any interest, but in the case of the applicant, interest had been ordered to be paid.

Decision - The Apex Court held that financial hardship in complying with Court direction of paying interest cannot override unjust enrichment enjoyed by holding huge money of flat buyers for substantial period. Thus no merit was found in the application, and the same was dismissed. The Company was directed to deposit interest within six weeks, failing which appropriate action would be taken for violation of undertaking furnished by the CFO and the Directors and for violation of the order passed by Court.

Reasoning given by the Apex Court - The value of money increased at the hands of the Company and the value of houses and villas which were to be handed over to Ultra Homes, has also been appreciated. Considering over all facts and circumstances of the case, a reasonable interest rate of 12% was ordered.

As it was the money of home buyers, which was diverted, they must have a refund of their money with a reasonable rate of interest. It was found that the hardships, which are pointed out, are all commercial one and the company is bound to disgorge the advantage it received out of huge money of Rs.48.52 crores, which remained with it for a substantial period; otherwise, it would tantamount to unjust enrichment.

Sanghvi Movers Ltd. v. Tech Sharp Engineers (P.) Ltd (NCLAT)

Where debt became due in 2013 and winding up petition was filed in 2015, CIRP petition filed within three years from date when right under section 9 of Code accrued to operational creditor was within period of limitation.

As the corporate debtor stopped payment, legal notice was issued on 6-5-2013 by the operational creditor, in reply to which the corporate debtor admitted dues. Due to nonpayment, a winding up petition was filed on 4-7-2015. During pendency of said winding up petition, the IBC came into force, and winding up proceeding stood transferred to the Tribunal. Held that since winding up petition had not reached finality and in meantime, the IBC came in force and demand notice was issued, there was continuous cause of action and, thus, claim was within period of limitation.

Srei Infrastructure Finance Ltd. v. Sundresh Bhatt (NCLAT)

Where corporate debtor was running its business from premises of its related entity, although said property did not belong to corporate debtor, in view of section 14, corporate debtor could not be ejected or disturbed from said premises, in question, during Moratorium.

The applicant was a financial creditor of related entity of the corporate debtor, under moratorium. The applicant by evicting said related entity from its premises took physical possession of said premises. Since office of the corporate debtor was running from said premises, the Adjudicated Authority directed the applicant to return said property by restraining it from doing any further action. Therefore, the applicant filed instant application on ground that the immovable property, in question, did not belong to the corporate debtor and being a third party property, order of moratorium would not be applicable over said property.

Held that although said property did not belong to the corporate debtor, in view of section 14, the corporate debtor could not be ejected or disturbed from premises, in question, during moratorium.

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