



**09.02.2021**

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## **1. Pre-packaged Insolvency Resolution Process in the making for Covid-hit India Inc**

With the moratorium on filing fresh insolvency coming to an end this March, the government is working on a pre-packaged insolvency resolution (PPIR) process for Covid-hit India Inc and to give banks a breather.

The pre-packaged insolvency process will not only avoid flooding of cases at NCLTs, but will also give existing promoters a chance to salvage their business.

The pre-packaged schemes should be available to all corporate debtors and for any stress, pre- or post- default. The panel said it could be implemented in phases.

"It may commence in respect of defaults from ₹1 lakh to ₹1 crore and Covid defaults for which the insolvency resolution process is not available today, followed by default above ₹1 crore, and then default from ₹1 to ₹1 lakh," said the panel.

The proposed insolvency package is akin to out-of-court settlements where the debtor gets to retain the company, while the insolvency professional takes over the management.

Though the debtor (the company that has defaulted on debt) can file an application for PPIR before the Adjudicating Authority, it requires 51 per cent consent from shareholders and a similar percentage point approval from unrelated financial creditors, thus, keeping the process of initiation absolutely transparent.

Unrelated financial creditors will appoint a Resolution Professional, who will monitor the entire process to ensure that lenders and debtors do not indulge in malpractice that is detrimental to other unsecured creditors.

The entire process has several benefits such as securing the interest of all stakeholders, the viability of the debtors' business, and being time-bound with 90 days for completion of PPIR and submission of resolution plans before the adjudicating authority, who will approve the plan within 30 days.

However, the process may slow down as there could be an influx of PPIR applications, adding to the burden of NCLTs, which are already burdened by regular CIRP.

Apart from deciding on the case, the Adjudicating Authority will decide on whether the moratorium will be applicable during the PPIR. With such a burden, it appears impossible for the Adjudicating Authority to complete the process within 90 days.

While the timeline for resolution looks good on paper, it is imperative that the number of NCLT benches are increased exponentially to achieve this target, he added.



### **SC ruling on IBC augurs well for bad loans-hit banks**

Why should the new owner of a bankrupt company bear the brunt of the legal problems pertaining to the old regime? That's a question that haunted the potential buyers of bankrupt companies, making them sceptical about the whole insolvency and bankruptcy code (IBC) process.

But the Supreme Court has finally brought in much-needed clarity on this question. On January 19, the apex court upheld Section 32A of the IBC granting statutory immunity to successful resolution applicant from prosecution.

"A bankrupt company and its assets cannot face criminal proceedings once it is sold to new owners," ANI quoted a bench of the apex court headed by Justice Rohinton Fali Nariman. Essentially, the court's ruling says that new owners will not face legal troubles or probes linked to the old cases faced by previous promoters. Both bankers and analysts have wholeheartedly welcomed this move.

**A push for IBC** came into effect in 2016, the IBC mechanism in India is still at early stages. Considered as a major reform in the Indian banking sector, the IBC platform has faced roadblocks in the initial years. Except for a few large cases, there hasn't been major progress in the IBC channel. The number of IBC cases have been increasing over the last three years.

But, with the COVID-19 increasing the stress on the economy, the IBC cases are likely to escalate further. But, this does not mean the stress will go away. Analysts agree that the banking system will face some stress but the extent may be less than initially expected.

As part of the COVID relief package, the government had put all the fresh IBC cases on hold till March, 2021.

As part of the economic package, the government had made a few key amendments to the IBC rules. These include increasing the minimum threshold to initiate insolvency proceedings raised to Rs 1 crore, special insolvency resolution framework for MSMEs, suspension of fresh initiation of insolvency proceedings and exclusion of COVID-19 related debts from the definition of default under the code.

Timely resolution of stressed assets is key in the banking system and IBC plays a key part in the resolution of large unresolved corporate debt. Banks try to resolve stress on corporate accounts by offering them relaxations in the repayment terms, which is commonly called loan restructuring.

But, in cases where resolution appears difficult through normal channels, IBC comes to their rescue. This ensures a resolution within a specific timeframe. Hence, strengthening of the IBC mechanism is even more important in the backdrop of a likely surge in the stress in the banking system.

In this context, the SC upholding Section 32A will give more comfort to the banking system with respect to stressed asset resolution.



### **Whether the NCLT has jurisdiction to entertain a particular case or not cannot be determined by the Registrar in the administrative capacity – Delhi High Court**

The case of the Petitioner is that the Registrar of the NCLT has failed to even list the Petitioner's matter before the appropriate bench of NCLT, on the ground that the threshold of the pecuniary jurisdiction of the NCLT has now been amended by a notification dated 24th November, 2020, from Rs.1 lakh, to Rs.1 crore. Hon'ble High Court held that the question as to whether the NCLT has jurisdiction to entertain a particular case or not cannot be determined by the Registrar in the administrative capacity. The Registrar would have to place the matter before the appropriate bench to even list the Petitioner's matter before the appropriate bench of NCLT, on the ground that the threshold of the pecuniary jurisdiction of the NCLT has now been amended by a notification dated 24th November, 2020, from Rs.1 lakh, to Rs.1 crore.

Hon'ble High Court held that the question as to whether the NCLT has jurisdiction to entertain a particular case or not cannot be determined by the Registrar in the administrative capacity. The Registrar would have to place the matter before the appropriate bench of the NCLT, for the said question to be judicially determined. The appropriate bench of the NCLT would have to then, take a considered view as to whether notice is liable to be issued in the matter or not. The question as to whether the notification dated 24th March, 2020 applies to a particular petition that has been filed prior to the said notification or not is also a question to be determined by the Bench of the NCLT and not by the Registrar of the Tribunal

**Rule 7 does not empower the Adjudicating Authority to examine the financial statements annexed with the application. The moment, Adjudicating Authority is satisfied that there is a debt and a default has occurred, the application must be admitted unless it is incomplete.**

**Brief of the case:**

An appeal was preferred by the appellant Pondicherry Extraction Industries Pvt. Ltd. (Corporate Applicant) against the order dated 11/2/2020 passed by the Adjudicating Authority (NCLT, Division Bench-I, Chennai) whereby the application preferred by the appellant under section 10 of the Insolvency & Bankruptcy Code, 2016 (In brief I&B Code) in Form 6 of the Insolvency and Bankruptcy (Application to the Adjudicating Authority) Rules 2016 (in Brief the Adjudicating Authority Rules) has been rejected. Adjudicating Authority has analysed the financial statements of the corporate applicant and held that there are discrepancies in financial statements.

**Decision:**

Hon'ble Appellate Tribunal set aside the order of NCLT and held that, "14. Rule 7 provides the procedure for filing the application under Section 10 of I&B Code. It does not empower the Adjudicating Authority to examine the financial statements annexed with the application. Ld. Counsel for the respondent has placed reliance on the judgment of Unigreen Global Pvt. Ltd. There is no ratio of this judgment that Rule 7 of Adjudicating Authority Rules empowers the Adjudicating Authority to examine the documents annexed with the application under Section 10 of I&B Code.

.. We are of the view that Id. Adjudicating Authority exceeded its jurisdiction in analysing the financial statements of the Corporate Applicant."

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### By Synergy Insolvency

- Inviting claims, maintaining records thereof and verification.
- Constitution of the Committee of Creditors
- Taking over control and custody of the Assets of CD.
- Maintaining Accounts
- Communicate with all the Stake Holders
- Appointment of the professionals
- Prepare Information Memorandum
- Invitation of EOI - finalization of evaluation matrix
- Ensuring compliance with Sec.29A
- Evaluation of Resolution Plan
- Invocation of Corporate /Personal Guarantee
- Identification of buyers and sale of the assets

### By Synergy Associates

- Appearance before NCLT and NCLAT
- Exploring prospects of getting out of IBC.
- One Time Settlement of the dues
- Restructuring of the debt - including lowering of interest rate.
- SARFAESI matters
- Transaction Audit
- Merger and Acquisition under CIRP.
- Preparation of Resolution Plan
- Arranging funds for acquisition of stressed asset

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