



Etching the Path: Issue 4

IMPACT OF COVID-19 ON THE INSOLVENCY AND BANKRUPTCY CODE, 2016

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INTRODUCTION

At the outset I hope everyone is staying safe amid this pandemic situation. As the whole world is experiencing an unprecedented situation, both in terms of health and the economy, ever since the outbreak of the novel coronavirus or the COVID-19 pandemic, there has been severe losses to many businesses owing to the coronavirus-induced lockdown announced by the Government of India to curb the spread of the disease.

The **Insolvency and Bankruptcy Code, 2016 (IBC)** is the bankruptcy law of India which seeks to consolidate the existing framework by creating a single law for insolvency and bankruptcy. The Code received the assent of the President of India on 28th May, 2016.¹ The bankruptcy code is a one stop solution for resolving insolvencies which previously was a long process that did not offer an economically viable arrangement. The code aims to protect the interests of small investors and make the process of doing business less cumbersome.² The IBC has helped India go up a few notches in the 'Ease of Doing Business' Index.

CHANGES BROUGHT ABOUT IN THE INSOLVENCY AND BANKRUPTCY CODE, 2016 OWING TO THE COVID-19 PANDEMIC SITUATION IN INDIA

¹ "Insolvency and Bankruptcy Code" (PDF). *Gazette of India*. Retrieved 31 May 2016 (July 10, 2020, 10:20 PM)

² "The Bankruptcy Code for India – A step to ease 'Doing Business'?". Centre for Public Policy Research (CPPR). 16 December 2015. Retrieved 7 December 2017. (July 10, 2020, 10:20 PM)
<https://www.cppr.in/centre-for-comparative-studies/the-bankruptcy-code-for-india-a-step-to-ease-doing-business>

EFFECT OF LOCKDOWN ON THE ECONOMY

The Government of India on 24-03-2020, announced a nation-wide lockdown of all shops, establishments, commercial spaces and almost everything barring a few essential services to curb the spread of the novel coronavirus. In this juncture, it is to note that since health was of primary importance, the Government imposed lockdown restrictions. Now, the businesses started to incur losses after a point of time due to the pandemic situation and the government considered health and economy while easing lockdown restrictions and helping businesses re-open.

RELAXATIONS GIVEN BY THE GOVERNMENT

To provide a relief measure, the Government gave some relaxation before filing insolvency suits against **Micro, Small and Medium Enterprises (MSME) Businesses**.

They were:

- a) Increasing the minimum amount of default to file an insolvency proceeding to **Rs. 1 Crore** only for MSME and not for Individuals and Partnership Firms – using its powers under **Section 4 of the Insolvency and Bankruptcy Code (IBC), 2016**.
- b) Not to include the lockdown period days to compute the **330-days period** to complete the insolvency process. - A special provision, namely, **Regulation 40-C** has also been inserted in the **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016** to exclude the lockdown period from the timelines prescribed under the IBC vide Notification dated 30.03.2020 Suo Moto – Company Appeal (AT) (Insolvency) No. 01 of 2020 which said that upon requests due to the pandemic, urgent cases to be listed telephonically to the Registrar of the National Company Law Appellate Tribunal, New Delhi, were asked for, hence the Appellate Tribunal rendered in ***Quinn Logistics India Pvt Ltd vs. Mack Soft Tech Pvt Ltd*** in Company Appeal (AT) (Insolvency) No. 185 of 2018, the period of lockdown shall be excluded 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. It also said that any interim order / stay order passed by this Appellate Tribunal in anyone or other Appeal under IBC, 2016 shall continue till the next date of hearing, which may be notified later.

SUSPENSION OF IBC FOR 6 MONTHS EXTENDABLE UPTO A YEAR DUE TO THE PANDEMIC

The Hon'ble President of India exercising his powers under **Article 123 of the Constitution of India** whereby he is empowered to promulgate ordinances during the absence of parliament sessions due to emergency situations, on 05.06.2020., had announced an **Insolvency and Bankruptcy (Amendment) Ordinance, 2020** to suspend the IBC (Section 7, 9 and 10) proceedings for upto six months extendable upto a year to safeguard the companies from being under-valued and taken away by creditors and secondly, to stop the number of cases from rising before the Insolvency Tribunals due to the unprecedented situation no business house expected itself to be in. **Section 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016** allow for insolvency filings by financial creditors, operational creditors and the corporate debtor itself. This effectively shuts down all insolvency filings against any company that defaults on a debt or payment. **The promulgation of this Ordinance has resulted in the insertion of new clauses, i.e., Section 10A and Section 66(3) in to the Insolvency and Bankruptcy Code, 2016.**

IMPLICATION OF THIS DECISION

The implication of this decision would mean that parallel to the moratorium allowed by banks for a six-month period, this suspension of IBC Code proceedings too would run parallelly. But, its impact would be felt by the creditors who have given loans to the firms and are not coming under the framework of banks as per Reserve Bank of India (RBI) norms. It would impact the creditors and be beneficial to the borrowers who run businesses. But the wordings in amending **Section 10A** of the **IBC, 2016** as “no application shall be filed” must be construed only from 25.03.2020. till whenever the lockdown period extends and not prior to this date or after the entire lockdown ceases to exist. **Section 66 has been amended to include clause (3)** which says, the provision provides relaxation from wrongful trading provisions, i.e., resolution professionals will be barred from initiating wrongful trading applications against directors of companies where the IBC process is suspended.

Etching the Path: Issue 4

The Loop holes that may be found with this decision are, that the objectives of the IBC which state that the time period for execution of law in a time bound settlement of insolvency (ie. 180 days) may be lost. But, also, if default occurred due to covid situation, lienancy maybe granted because the entire nation was under a stand still due to non operation of businesses and hence losses were accumulating to the entrepreneurs. Due to the suspension of IBC on operational creditors may caused disturbance in the capital flow of the economy as the prohibition would restrict the creditors from receiving any money from the companies which would then lead to the creditors making a default to their lenders as a spiralling effect.

CONCLUSION

Thus, the Government on its part is giving relaxation of norms by increasing the threshold amount and allowing only cases prior to 25.03.2020. to be filed and barring filing of cases when the IBC is temporarily suspended. The true intent of such an amendment in the eyes of law, is to provide respite to business houses which have already bore the brunt of the pandemic and they did not carry out any business activity for the last 3 months at the least and hence would be put in a pressurized situation had they been taken to insolvency proceedings as businesses rotate the capital to do their daily business and without proper cash flows they may not be in a position to re-pay the amounts borrowed to do business. Thus, by providing some respite like this, the MSME's may fall well under the 1-crore bracket and therefore won't be taken to such proceedings. The amendment would only mean a prospective effect and not a retrospective effect so those who have defaulted prior to the lockdown cannot gain advantage with this amendment. It is to be construed in a manner to help the businesses revive in a post covid-19 era and help them with easier fund flows to repay their borrowings.

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Etching the Path: Issue 4

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5. <http://www.lawstreetindia.com/experts/column?sid=394#:~:text=Disturbance%20in%20the%20capital%20flow,further%20defaults%20to%20their%20lenders.>
6. [https://en.wikipedia.org/wiki/Insolvency_and_Bankruptcy_Code,_2016#:~:text=The%20Insolvency%20and%20Bankruptcy%20Code%2C%202016%20\(IBC\)%20is%20the,Lok%20Sabha%20in%20December%202015.](https://en.wikipedia.org/wiki/Insolvency_and_Bankruptcy_Code,_2016#:~:text=The%20Insolvency%20and%20Bankruptcy%20Code%2C%202016%20(IBC)%20is%20the,Lok%20Sabha%20in%20December%202015.)