

Conducting corporate insolvency resolution process

4.1 Background

After commencement of corporate insolvency resolution process under section 7, 9 or 10 of Insolvency Code, 2016, further action will commence before Adjudicating Authority (NCLT).

Procedure before NCLT shall be as per rules 20 to 24 and 26 of Part III of NCLT Rules, 2016 [Till rules under Insolvency and Bankruptcy Code are notified] - rule 10 of Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016.

A Committee of Creditors (CoC) is required to be constituted to oversee the insolvency resolution process.

The actual work will be done by 'resolution professional' under supervision of Committee of Creditors and Adjudicating Authority (NCLT).

4.1-1 Timeline to complete resolution process

The process is required to be completed within 180 days from date of application by NCLT to initiate the corporate insolvency process - section 12(1) of Insolvency Code, 2016.

This period can be extended if resolution professional files application to Adjudicating Authority, if instructed by resolution passed at a meeting of the Committee of Creditors (CoC) by a vote of sixty-six per cent (66%) of the voting shares – section 12(2) of

Insolvency Code, 2016 [Till 6-6-2018, the resolution was required to be passed by seventy-five per cent (75%) of voting shares of CoC].

“Voting share” means the share of the voting rights of a single financial creditor in the committee of creditors which is based on the proportion of the financial debt owed to such financial creditor in relation to the financial debt owed by the corporate debtor - Section 5(28) of Insolvency Code, 2016.

On receipt of such approval, resolution professional shall make application to adjudicating authority (NCLT) - Regulation 40 of IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

On receipt of such application, Adjudicating Authority (NCLT) can grant only one extension up to maximum 90 days - section 12(3) of Insolvency Code, 2016.

If initially 30 days extension was granted, further 60 days extension can be granted - *Brasher Boot Co v. Forward Shoes* (2018) 146 SCL 1- 90 taxmann.com 41 (NCLT).

Such application should be filed before expiry of 180 days. If not so filed, the moratorium will not be extended - *Anshuman Chatruvedi v. IDBI Bank* (2018) 145 SCL 507 = 89 taxmann.com 175 (NCLT).

In *Hero Steels Ltd. v. Rolex Cycles (P.) Ltd.* [2018] 91 taxmann.com 45 (NCLT), no resolution plan was submitted by RP and even extension was not asked for. Hence, liquidation was ordered but with different liquidator/RP.

In *Punjab National Bank v. Bhushan Power* (2018) 147 SCL 475 = 92 taxmann.com 369 (NCLT), Applicant (Liberty House) had filed resolution plan to participate in Corporate Insolvency Resolution Process 30 days before expiry of maximum period provided under section 12, which was extended. Hence, it was held that resolution plan of Applicant (Liberty House) should be considered.

Period gets extended, if stay was granted by Appellate Tribunal -

The statutory period as specified in section 12 gets extended, if stay was granted by Appellate Tribunal - *RBL Bank Ltd. In re* (2018) 147 SCL 393 = 93 taxmann.com 253 (NCLT).

Order of liquidation if process not completed in 270 days - In *ICICI Bank Ltd. v. Innoventive Industries Ltd.* (2018) 145 SCL 463 = 88 taxmann.com 230 (NCLT), the insolvency resolution process of 270

days was over and hence order of liquidation of corporate debtor was made – similar order in *Raman Ispat P Ltd. In re* (2018) 146 SCL 583 = 91 taxmann.com 408 (NCLT).

Delay in taking over by IRP – In *Velamur Varadan Anand v. Union Bank of India* [2018] 94 taxmann.com 58 (NCLAT), Adjudicating Authority admitted application to initiate corporate insolvency resolution process and same was informed to Resolution Professional, but he took over charges after 30 days of admission of such application - This period of 30 days was to be excluded for purpose of counting period of 180 days for completing CIRP.

4.2 Moratorium and public announcement

After admission of application, Adjudicating Authority shall pass following orders [section 13(1) of Insolvency Code, 2016].

- (a) declare a moratorium for the purposes referred to in section 14 of Insolvency Code, 2016.
- (b) cause a public announcement of the initiation of corporate insolvency resolution process and call for the submission of claims under section 15 of Insolvency Code, 2016, and
- (c) appoint an interim resolution professional in the manner as laid down in section 16 of Insolvency Code, 2016.

The public announcement referred to above shall be made immediately after the appointment of the interim resolution professional – section 13(2) of Insolvency Code, 2016.

Meaning of Moratorium - A “moratorium” is a delay or suspension of an activity or a law. In a legal context, it may refer to the temporary suspension of a law to allow a legal challenge to be carried out. It is legal authorisation to debtors to delay payments due.

No recovery proceedings after moratorium granted under Insolvency Code - Once NCLT has issued moratorium under section 14 of Insolvency Code in respect of company in liquidation, Bank cannot pursue proceedings under section 19 of RDDBFI Act for recovery of loan - *Sanjeev Shriya v. State Bank of India* (2017) 144 SCL 545 = 87 taxmann.com 309 (All HC).

Financial creditor cannot recover any amount from account of Corporate Debtor after moratorium is declared - *Indian Overseas*

Bank v. Dinkar T Venkatsubramaniam Resolution Professional for Amtek Auto Ltd. (2018) 145 SCL 138 = 88 taxmann.com 132 (NCLAT).

Corporate guarantee cannot be invoked after application is admitted and moratorium orders - *Axis Bank Ltd. v. Edu Smart Services P. Ltd.* (2017) 87 taxmann.com 99 (NCLT).

No arbitration proceedings after moratorium - Once petition under Insolvency Code is admitted by NCLT, moratorium comes into effect and arbitration proceedings cannot continue - *Alchemist Asset Reconstruction Co. Ltd. v. Hotel Gaudavan P. Ltd.* (2017) 88 taxmann.com 202 (SC) – followed in *K S Oils v. State Trading Corporation of India* (2018) 146 SCL 588 = 91 taxmann.com 423 (NCLAT).

Electricity connection cannot be cut after moratorium - Section 14(2) of Insolvency Code prevails over section 56 of Electricity Act, since electricity is 'essential goods' to corporate debtor. Hence, power supply to corporate debtor cannot be cut during moratorium period - *ABG Shipyard v. ICICI Bank* (2018) 145 SCL 430 = 88 taxmann.com 196 (NCLT) * *Nitin Hasmukhlal Parikh v. Madhya Gujarat Vij Company Ltd.* [2018] 90 taxmann.com 398 (NCLT) * *Citi Bank NA v. Cosmic Ferro Alloys* (2018) 146 SCL 727 = 92 taxmann.com 32 (NCLT).

Performance guarantees given to customs by corporate debtor can be encashed during moratorium - Performance guarantees given to customs by corporate debtor can be encashed during moratorium, as section 3(31) of Insolvency Code clearly says that performance guarantee are not included in security interest - *Nitin Hasmukhlal Parikh v. Madhya Gujarat Vij Company Ltd.* [2018] 90 taxmann.com 398 (NCLT).

Goods in custody of customs authorities cannot be taken possession by Corporate Debtor during moratorium - Even if moratorium is ordered, goods in customs warehouse in custody of customs authorities cannot be taken possession by Corporate Debtor during moratorium, without clearance from customs authorities (on payment of customs duty due) – *Bharati Defence and Infrastructure Ltd. v. Mannu Carrier* (2018) 147 SCL 43 = 91 taxmann.com 367 (NCLT).

Company cannot file appeal after CIRP is admitted? - In *Shree Ganesh Jewellery House (I) Ltd. v. Abhishek Stock Broking Services (P.) Ltd.* [2018] 93 taxmann.com 46 (NCLAT), it was held that Once