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CIRP REGULATION AMENDMENTS: A STEP CLOSER TOWARDS A SMOOTH FUNCTIONING INSOLVENCY REGIME

In June 2018, came an amendment in the Insolvency and Bankruptcy Code, 2016 ("the Code") which have introduced many new changes in the Code. When such change occurs, the rules and regulations forming part of the whole scheme also need to be amended accordingly to ensure the smooth functioning of the scheme. Accordingly, on 04th July 2018 amendment to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 ("Regulations") were notified.

These omissions, editions and additions to the Regulations by the way of the third amendment compliment the changes in the Code. Apart from the small changes in the Regulations, the following are the major changes that have taken place.

Authorised Representative

Where the Corporate Debtor has class of creditors with such number of creditors in a class as specified, the Interim Resolution Professional (IRP), as per the amended regulations, shall offer a choice of three (3) Insolvency Professionals (IP) to act as the Authorised Representative of Creditors of the respective class. Such offer shall be made in Public Announcement. The Insolvency Professional to get the maximum number of votes by the creditors of that respective class shall be appointed as the Authorised Representative of that class. This has been provided in the new regulations 4A, 16A and 16B.

For the purpose, of counting the voting percentage of Creditors, it has been clarified in Regulation 16A that where the rate of interest has not been agreed to between the parties in case of creditors in a class, the voting share of such a creditor shall be in proportion to the financial debt that includes an interest at the rate of eight per cent per annum.

Constitution of Committee

Before the amendment, under Regulation 17, the IRP needs to file the report w.r.t constitution of Committee with the Adjudicating Authority on or before the expiry of Thirty (30) days from the date of his appointment and the first meeting of the such Committee was required to be convened within seven (7) days of filing of such report.

Under the amended regulation, the IRP shall file the report certifying the Constitution of the Committee to the Adjudication Authority within two (2) days of verification of claims under Regulation 12(1). Thereafter, the first meeting of the Committee needs to be convened within Seven (7) days of filing of such report.

IRP to act as RP

Amended Regulation 17(3)[1] provides, if by any reason the appointment of RP is delay then the IRP shall act as the RP from the Fortieth (40) day of commencement Corporate Insolvency Resolution Process (CIRP) date till the RP is appointed under Section 22 of the Code.

Notice for calling the Meeting of Committee

The time period to call the meeting of the Committee under Regulation 19 has been changed from Seven (7) days to Five (5).

The Regulation 19 further provides that the time period of serving notice can further be reduced from Five (5) days to such other other. period of not less than forty-eight (48) hours where there is any authorised representative and to twenty-four hours in all other cases.

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[1] *Section 16(5) of the I&B Code 2016*

Voting in case of Creditors in a class

As per newly inserted Regulation 16(A)(9), the Authorised Representative shall circulate the agenda to creditors in a class and announce the voting window at least twenty-four hours before the window opens for voting instructions and keep the voting window open for at least twelve hours.

Withdrawal of Application

Section 12 A of the Code, provides that withdrawal of an Application admitted under Sections 7, 9 or 10 of the Code by Hon'ble Adjudicating Authority can be filed before issue of invitation for expression of interest under Regulation 36A i.e. before Seventy-fifth (75) day of initiation of CIRP.

As per Regulation 30A, such application for withdrawal needs to be submitted to the IRP or the RP along with a bank guarantee towards estimated cost incurred for purposes of clauses (c) and (d) of Regulation 31 till the date of application. The committee shall consider the application within seven (7) days of its constitution or seven days of receipt of the application, whichever is later. If approved by 90% votes or more, the RP shall submit the application to the Adjudicating Authority on behalf of the applicant, within three (3) days of such approval. The option of withdrawal of application gives the applicant an opportunity to have the situation corrected without forcing the corporate debtor into insolvency. This is especially helpful to corporate debtors who themselves have filed for insolvency as it helps them to reconsider the decision and improve their status on their own.

Timelines for determining Preferential and Other Transactions

Though the Code provides Section 43 that the RP/Liquidator have formed an opinion that the Corporate Debtor has at a relevant time given a Preference to such transactions as enumerated under Sub section (2) with persons enumerated under sub section (4), it can file an application before the Adjudicating Authority for avoidance of such transactions however there were no timelines provided to file such application.

Accordingly, Regulation 35A which was inserted vide second amendment have now been substituted and a time period has been given to RP within which an opinion be formed, determined and accordingly been filed before Adjudicating Authority for relief.
As per the amended regulation, the RP needs to form an opinion whether the Corporate Debtor has been subjected to any transactions covered under Section 43,45,50 and 66 on or before Seventy fifth (75) day of insolvency commencement date. Further, under the intimation of the Board, the determination of such transactions be made on or before the One Hundred and Fifteenth (115) day of insolvency commencement date.

Furthermore, an application be filed on or before One Hundred Thirty Fifth (135) day from insolvency commencement date for appropriate relief before the Hon'ble Adjudicating Authority.
Such inclusion of timelines is a welcome insertion as otherwise in many cases the application before the Hon'ble Adjudicating Authority have been filed for relief near to the end date of CIRP, when all the efforts should be towards completing the CIRP with a resolution plan.

Submission of Information Memorandum

Regulation 36 have been amended to the extent that the RP is required to submit the Information Memorandum in electronic form to each member of committee within two (2) weeks of his appointment but not later than fifty-fourth (54) day from the insolvency commencement date, whichever is earlier.

In other words, where the appointment of RP is delayed and IRP continues as per Regulation 17(3) then IRP will be required to submit the information memorandum by Fifty Fourth (54) day from the insolvency commencement date.

Furthermore, earlier under Regulation 36 (4), the information memorandum can be shared with potential resolution applicant after receiving an undertaking however now after the amendment the information memorandum cannot be shared with potential resolution applicant.

[2]Regulation 31 (c): Expenses incurred on or by the IRP to the extent ratified under Regulation 33; Regulation 31(d): Expenses incurred on or by the Resolution Professional fixed under Regulation 34.

Invitation for Expression of Interest

The existing Regulation 36A has been substituted with insertion of new Regulation 36A. in the newly substituted Regulation 36A, a resolution professional is required to publish an invitation for submitting Expression of Interest (EOI) in Form G by the Seventy Fifth (75) day of insolvency commencement date specifying basic information about the Corporate Debtor, the criteria *(which has been approved by Committee under Section 25 of the Code)*, ineligibility *(as stated under Section 29A of the code)*, last date for submission of the EOI, documents required to be submitted along with EOI and such other details as need be.

The resolution professional after receiving of the EOI will be required to conduct due diligence based on material on record and issue a provisional list of prospective resolution applicants within 10 days of the last date of submission of EOI with Committee and to all Prospective Resolution Applicants who have submitted the EOI.

Any objection w.r.t provisional list need so to be made within five (5) days from the date of issue of the provisional list. The final list needs to be issued within 10 days of the last date for receipt of objections.

Request for Resolution Plans

A new Regulation 36B has been inserted which provides for the mode and manner to Request for Resolution Plans.
A RP is required to issue information memorandum, evaluation matrix and request for resolution plans, within five (5) days of issue of the provisional list to the prospective resolution applicants who are part of the provisional list and also to the prospective resolution applicant who has contested the decision of the RP against its inclusion I the provisional list. The request for Resolution plans shall details step in the process, the manner and purposes of interaction between the resolution professional and the prospective resolution applicant, along with corresponding timelines.

Minimum time period given to Prospective Resolution Applicant for submission of Resolution Plan should not be less than 30 days. If any modified request for submission of Resolution Plan is made by RP or there is any amendment in evaluation matrix shall be deemed to be a fresh issue and shall be subject to timeline given in the regulation. Any extension in the submission of Resolution Plans shall be with the approval of Committee. Further, in case the Resolution Plans received are not satisfactory, the RP can with the approval Committee however such request will be made to the prospective resolution applicants of the final list.

Timelines for submission of Resolution Plan approved by Committee

As per substituted Regulation 39(4), the RP shall take all endeavors to submit the Resolution Plan approved by the Committee to the Adjudicating Authority at least fifteen (15) days before the maximum period for completion of CIRP. The said submission will be accompanied along with Form H (Compliance Certificate).

Model Timeline

The legislature has inserted a model timeline for the corporate insolvency resolution process by the way of adding regulation 40A. A welcomed addition as there was always confusion and distress with respect to a stable universal timeline for the process as the dates and deadlines were scattered in various regulations and not jotted down at one place. It assumes that the interim resolution professional is appointed on the date of commencement of the process and the time available is hundred and eighty (180) days.

AA: Adjudicating Authority; AR: Authorised Representative; CIRP: Corporate Insolvency Resolution Process; CoC: Committee of Creditors; EoI: Expression of Interest; IM: Information Memorandum; IRP: Interim Resolution Professional; RA: Resolution Applicant; RP: Resolution Professional; RFRP: Request for Resolution Plan. References to all sections are with respect to the Insolvency and Bankruptcy Code, 2016. References to all regulations are with respect to the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

Section/Regulation	Description of Activity	Norm	Timeline
Section 16(1)	Commencement of CIRP and appointment of IRP	....	T
Regulation 6(1)	Public announcement inviting claims	Within 3 days of Appointment of IRP	T+3
Section 15(1)(c)/ Regulations 6(2)(c) and 12 (1)	Submission of claims	For 14 Days from Appointment of IRP	T+14
Regulation 12(2)	Submission of claims	Up to 90th day of commencement	T+90
Regulation 13(1)	Verification of claims received under regulation 12(1)	Within 7 days from the receipt of the claim	T+21
Regulation 13(2)	Verification of claims received under regulation 12(2)		T+97
Section 21(6A) (b) / Regulation 16A	Application for appointment of AR	Within 2 days from verification of claims received under regulation 12(1)	T+23
Regulation 17(1)	Report certifying constitution of CoC		T+23
Section 22(1)/ Regulation 19(1)	1st meeting of the CoC	Within 7 days of the constitution of the CoC, but with seven days' notice	T+30
Section 22(2)	Resolution to appoint RP by the CoC	In the first meeting of the CoC	T+30
Section 16(5)	Appointment of RP	On approval by the AA	.....
Regulation 17(3)	IRP performs the functions of RP till the RP is appointed	If RP is not appointed by 40th day of commencement	T+40
Regulation 27	Appointment of valuer	Within 7 days of appointment of RP, but not later than 40th day of commencement	T+47
Section 12(A)/Regulation 30A	Submission of application for withdrawal of application admitted	Before issue of EoI	W
	CoC to dispose of the application	Within 7 days of its receipt or 7 days of constitution of CoC, whichever is later	W+7
	Filling application of withdrawal, if approved by CoC with 90% majority voting by RP to AA	Within 3 days of approval by CoC	W+10
Regulation 35A	RP to form an opinion on preferential and other transactions	Within 75 days of the commencement	T+75
	RP to make a determination on preferential and other transactions	Within 115 days of commencement	T+115
	RP to file applications to AA for appropriate relief	Within 135 days of commencement	T+135
Regulation 36(1)	Submission of IM to CoC	Within 2 weeks of appointment of RP but not later than 54th day of commencement	T+54

Regulation 36A	Publish Form G	Within 75 days of commencement	T+75
	Invitation of EOI		
	Submission of EoI	At least 15 days from issue of EoI (Assume 15 days)	T+90
	Provisional List of RAs by RP	Within 10 days from the last day of receipt of EoI	T+100
	Submission of objections to provisional list	For 5 days from the date of provisional list	T+105
	Final list of RAs by RP	Within 10 days of the receipt of objections	T+115
Regulation 36B	Issue of RFRP, including Evaluation Matrix and IM	Within 5 days of the issue of the provisional list	T+105
	Receipt of Resolution Plans	At least 30 days from issue of RFRP (Assume 30 days)	T+135
Regulation 39(4)	Submission of CoC approved Resolution Plan to AA	As soon as approved by the CoC	T+165
Section 31(1)	Approval of resolution plan by AA		T=180

Changes and Additions in Forms

Form A: Public Announcement

To get in sync with the matters relating to class of creditors and authorised representatives, From A has been amended to add

12. Classes of creditors, if any, under clause (b) of sub-section (6A) of section 21, ascertained by the interim resolution professional.
13. Names of Insolvency Professionals identified to act as Authorised Representative of creditors in a class (Three names for each class).
14. (a)Relevant Forms and
(b)Details of authorised representatives are available at:

Form AA: Written Consent to Act as Resolution Professional

This is a new addition which is basically a consent form stating that the resolution professional consents to act as the same. It is required under regulation 3(1A).

Form AB: Written Consent to Act as Authorised Representative

Similar to Form AA, it is a consent form stating that the authorised representative consents to act as the same. It is required under regulation 4A (3).

Form CA: Submission of Claims by Financial Creditors in a Class

As the freshly introduced regulation 8A talks about claims by creditors in a class, it was understood that there should be a form complementing the regulation, like Form C with respect to regulation 8.

Form FA: Application for Withdrawal of Corporate Insolvency Resolution Process

Since the possibility of withdrawal of application has been included in the Code and, with the third amendment, in the regulations, the necessity of a form for the same does not require any clarification. It is with respect to regulation 30A.

Form G: Invitation for Expression of Interest

As the regulation 36A relating to Invitation of Resolution Plans has been divided into two new regulations, namely, regulation 36A relating to Invitation for expression of interest and regulation 36B relating to request of resolution plans, the old form G has been changed to correspond with the new regulation 36A.

Form H: Compliance Certificate

This form has been added as a requirement as per regulation 39(4) as the resolution plan requirements and functioning have majorly changed in the amended Code. This makes the easier and faster for the resolution professional to check whether all compliances as per the Regulations have been completed or not. This form is basically the compliance certificate which is now necessary to get the approval of the resolution plan. This makes things more transparent and avoids confusion.

INSOLVENCY PROFESSIONALS TO ACT AS INTERIM RESOLUTION PROFESSIONALS OR LIQUIDATORS (RECOMMENDATION) GUIDELINES, 2018

Under the I&B Code, an Insolvency Professional (hereinafter referred as 'IP' or 'IRP') plays a vital role during Corporate Insolvency Resolution Process (CIRP). The IRP or RP steps in the shoes of the Management as the management of the Corporate Debtor remains suspended during the CIRP. A whole array of statutory and legal duties and power is vested with IRP/RP. Section 20 of the I&B Code require him to makes every endeavor to protect and preserve the value of the property of the corporate debtor and manage its operation as a going concern.

With respect to appointment of IRP/RP, under Section 16 and 34 of the I&B Code, the Adjudicatory Authority can request the Insolvency and Bankruptcy Board of India (hereinafter referred as "the Board") to recommend an IRP/RP/Liquidator for appointment. The time period within which the Board has to give recommendation as provided under the Code is 10 days. At times there are problems been faced by the Board to recommend the names which results in delay in appointing a Resolution Professional.

Furthermore, the Board lacked the information about the volume, nature and complexity of the CIRP or liquidation Process and resources available at the disposal of an IRP/IP recommended by it. In such situation, the Board is unlikely to add much value by recommending an IP for a CIRP/ Liquidation.

In the interest of avoiding administrative delays, the Board had recently on 31st May 2018 issued guidelines w.r.t preparing a Panel of IPs/Liquidators for the purpose of section 16(4) and 34(6) from the Registered IPs.

Panel of IPs

The Board will prepare a Panel of IPs for appointment as IRP or Liquidator and share the same Panel list with the AA from where the AA can choose name for appointment of IRP/RP/Liquidator. The Panel will have Bench wise list of IPs based on the registered office of the IP. The list will be valid of six months and new panel will replace the earlier after every six months.

Eligibility Criteria to be on the Panel

An IP will be eligible to be in Panel, if
a) there is no disciplinary proceeding;
b) not been convicted in the last three years and
c) expresses his interest to be included in the Panel.

Expression of Interest

As per the guidelines issued the Board will invite the expression of Interest from time to time for the empanelment of IPs. The interested IP will be required to express the interest in Form A by the specified dates.

The Board will prepare the list of eligible IPs (Panel) in order of the volume of ongoing process they have in hand. The IP who has

the lowest volume of ongoing process will get a score of 100 and will be at the top of the Panels. The IP who has the highest volume of ongoing process will get a score of 0 and other IPs will get score between 0 and 100 depending on volume of their ongoing assignment. In case of tie, the IP registered earlier will be placed above.

Resignation as IP

The guidelines provide that an IP included in the Panel cannot refuse to act as an IRP or Liquidator, if appointed. He cannot withdraw his interest to act as an IRP/RP and cannot surrender his registration during the validity of the Panel.

Now, as the Code of Conduct require that an IP must adhere to the time limits prescribed in the Code and must carefully plan his actions and promptly communicate with all stakeholders involved for the timely discharge of his duties. The law does not envisage any discontinuity or break in a process. It does not envisage any break for an IP in a process; nor does it provide time for switchover from one IP to another. When the life of a person undergoing resolution is at a stake, the process cannot have a break by resignation or otherwise. This is why section 16(5) of the Code mandates the IRP to continue in office till the date of appointment of RP under section 22 of the Code.

Discharge from the responsibility as IRP/RP/Liquidator

On 21st June 2018, the Insolvency and Bankruptcy Board of India had published a discussion paper on discharge from the responsibility as Interim Resolution Professional, Resolution Professional or Liquidator of the Corporate Process under the Code. The motive of the discussion paper was to invite the comments of the stakeholders on what could be the ground on which the IP should be discharge from responsibility.

The discussion paper proposes to allow an IP to seek discharge from a process only on the ground that is he is incapacitated to continue as IRP, RP or Liquidator. Here, incapacitated is defined as:

(a) If he suffers from health problems rendering him unable run the process, to the satisfaction of the Adjudicating Authority, and
(b) If he becomes ineligible under the law.

In either case, the approval of the Adjudicating Authority will be necessary. If an IP seeks discharge from process on any other ground, it proposed that he may be debarred from taking any fresh assignment for a period of five years.

Many feels that this proposal of giving discharge on only two grounds is harsh as this will mean that an IP will be forced to perform the duties.

The comments/suggestions from the stakeholders with respect to the grounds on which the RP can be discharge from the responsibility were invited till 15th July, 2018.

One has to wait and watch what will be the final guidelines with respect to the grounds on which the IRP/RP/Liquidator can seek discharge.

CROSS BORDER INSOLVENCY: CATCHING UP WITH THE WORLD

The Ministry of Corporate Affairs, Government of India have released the draft with respect to provisions to be introduced as Chapter for Cross Border Insolvency under the present Insolvency and Bankruptcy Code 2016 (Code). These guidelines are based on the UNCITRAL Model Law. The same was introduced keeping in view the need of such provisions separately available under the Code for ease and reference of Creditor both domestic and foreign to enforce their right over assets of Corporate Debtor situated overseas or in case of foreign proceedings to recognize such insolvency proceedings in India over assets in India. Further, at times due to foreign proceedings and moratorium it is hard for creditor to enforce its right under domestic proceedings against Corporate Debtor with available options but the proposed provisions once enforced the moratorium under foreign proceedings will not bar commencement of domestic proceedings.

This move will be a welcome step for Indian Creditors as otherwise it was difficult to reach out to the overseas assets of Corporate Debtor. At present the Code has Section 234 and Section 235 (both not yet notified) to deal with such situations.

Section 234 of the code empowers Central Government to enter bilateral agreement with countries to resolve situations pertaining to cross border insolvency and Section 235 empowers the Hon'ble Adjudicating Authority to issue letter to the court of such country with whom bilateral agreement has been signed.

However, the provisions are not effective considering that being a bilateral agreement only the countries with whom the same have been signed can be enforced under the Code. The need for separate bilateral treaties with foreign governments under the present Code will either become a cumbersome task that will never be completed with respect to all major countries, or it will turn into a nightmare for the judiciary and legal fraternity to keep up with all such agreements.

As enumerated in the draft made public, the benefits of cross border insolvency provisions will include reduction in time for exchanging necessary information between countries, increase in credit recovery efficiency, cooperation and coordination will help in preserving Corporate Debtor's assets, Insolvency Professionals can have access to foreign jurisdiction assets though subject to adherence of law of such country. The draft provision strictly provides that any relief given to a foreign insolvency representative in relation to the foreign proceedings shall be subject to protection of domestic creditors and interested persons.

Major takeaways from the draft

- Section 2 of the proposed draft differentiates between proceedings in a state where the corporate debtor has the centre of his main interests and one where it has an establishment with the former being called 'foreign main proceedings' and the latter, 'foreign non-main proceedings'.
- Section 3 authorises a resolution professional or liquidator to act in a foreign state.
- Section 7 entitles a foreign representative to apply to the adjudicating authority to be able to exercise his powers and functions under the Code, in the manner as may be prescribed.
- Similarly section 8 deals with the foreign representative commencing a proceeding under the code and section 9 deals with the representative's participation in the proceedings under the Code.
- Sections 10 and 11 make it easier for foreign creditors to become a part of insolvency proceedings in India. Section 10 gives the foreign creditors the same rights, in a proceeding under the Code, as domestic creditors of the same rank.
- Sections 12-18 give the conditions for recognizing foreign proceedings and give related explanations.
    - Section 12 enables a foreign representative to apply to the adjudicating authority for recognition of foreign proceedings in which the foreign representative has been appointed. Certain court documents and evidences will be needed for the same;
    - Section 13 provides that if the documents/information submitted under Section12(2) signifies that the foreign proceedings fall within the purview of proceedings as per section 2(g) and the foreign representative is a body or person within the meaning of section 2(h), then the Adjudicating Authority is will so presume.

- Section 14 refers to one of the main points of discussion in cross-border insolvency issues, 'Centre of Main Interests'. Sub-section (1) presumes that unless it's proven to the contrary, the corporate debtor's centre of main interests is the State in which the registered office of the corporate debtor is located. As per sub-section (2) the presumption as per sub-section (1) only applies if the office has not been moved to another state within 3 months prior to the commencement of the proceedings.
- Section 15 lays down the conditions for recognition of foreign proceedings by the adjudicating authority and classifies them as foreign main proceedings or foreign non-main proceedings. The conditions to be met are-
  i. Foreign proceedings falling under section 2(g);
  ii. Foreign representative falling under section 2(h);
  iii. Requirements of section 12 being met.
- Section 16 states that if there has been any change in the status of foreign proceedings or foreign representative, or any other foreign proceedings related to the same corporate debtor becomes known to the foreign representative, after filling the application for recognition of foreign proceedings, the foreign representative shall inform the adjudicating authority of the same.
- Section 17 enables the adjudicating authority to, in case of a foreign proceeding being regarded as foreign main proceeding, declare moratorium, subject to section 14 of the Code.
- Section 18 states that relief, in terms of moratorium, court proceedings, etc, may be granted by the adjudicating authority upon recognition of a foreign proceeding.

- Section 19 states that the adjudicating authority shall protect the interest of creditors while granting any relief under section 18.

- Section 20 enables the foreign representative to make applications to the adjudicating authority under sections 43,45,49,50 & 66 of the Code.

- Section 21 talks about the corporation and communication between the adjudicating authority and foreign courts (or foreign representatives), elaborating on the heart and soul of the UNCITRAL Model Law.

- Section 22 talks about cooperation and direct communication between the resolution professionals and liquidators and foreign courts (or foreign representatives).

- Section 23 says that sections 21 & 22 may be implemented by any appropriate means including –
  - Appointment of a person or body to act at the direction of the adjudicating authority.
  - Communication of information by appropriate means.
  - Coordination of administration and supervision of the corporate debtor's assets and affairs.
  - Approval or implementation, by courts, of agreements concerning the coordination of proceedings.
  - Coordination of concurrent proceedings regarding the same corporate debtor.

- Sections 24-28 explain the law with respect to concurrent proceedings.

- Section 24 states post the recognition of foreign proceedings as foreign main proceedings, any proceeding under the Code may only commence if the corporate debtor has assets in India and shall be restricted to such assets in India with respect to sections 21, 22 & 23.

- Section 25 talks about a proceeding under the Code and a foreign proceeding running simultaneously with respect to sections 17,18,21,22 & 23.

- Section 26 talks about coordination between proceedings under the Code and more than one foreign proceeding.

- Section 28 states the rule of payment in concurrent proceedings. A creditor under the Code, whether in the corporate insolvency resolution process or liquidation process, who has already received payment from foreign proceedings may not receive any remaining part of his claim from proceedings initiated under the Code, so long as the payment to the creditors of the same ranking is proportionately less than the payment the creditor has already received. Under the liquidation process, the same is without prejudice to secured claims or rights in rem.

- Section 29 enables the central government to issue notifications under this part in the official gazette.

1) Adjudicatory Authority cannot go beyond the provisions of the Code in Scrutinizing the Resolution Plan for approval.

Tomorrow Sales Agency vs Rajiv Khurana
[CA (AT) (Ins) No. 164 of 2018]

An appeal was filed against the impugned order of the Hon'ble Adjudicating Authority (National Company Law Tribunal) Chandigarh bench wherein the AA does not approve the original Resolution Plan on the reasons that a) consent of shareholders for transfer of shares have not been taken b) discrimination in payment to the operational creditors and promoter wherein the Operational Creditors will be paid 40% upfront payment and promoters will be paid in three years and c) retaining to two directors of the Corporate Debtor. Further, as there was objection of the Hon'ble Adjudicating Authority, the Resolution Plan was again amended whereby 100% payment to operational creditor was agreed upon and in addition to it the promoters will be paid as and when the financial position will be better. It was further submitted that the amended Resolution Plan was approved by 100% vote of Committee of Creditors. W.r.t observation regarding retention of two directors of Corporate Debtor it was submitted that there is no bar under the code w.r.t same as Section 29A of the Code only provides for eligibility criteria of the Resolution Applicant.

The NCLAT, while allowing the appeal, observed that the amended Resolution Plan was in consonant with the section 30(2) of the Code, 2016. The rationale given by the Hon'ble NCLAT were that the as per the requirement of the Code, 2016 the Committee of creditor has approved the resolution plan with 100% voting shares. Further the Resolution Applicant is eligible and not ineligible under any of the clause of Section 29A or explanation below the same. Merely retention of the Directors of the Corporate Debtor does not violate any of the provision of Section 29A of the Code, 2016.

2) Modification by the Adjudicating Authority in the Resolution Plan is not binding on the Resolution Applicant

Tarini Steel Company Pvt. Ltd. vs. Trinity Auto Components Ltd. & Anr.
[CA (AT) (Ins) No. 75 of 2018]

An appeal was filed against the impugned order of the Hon'ble Adjudicating Authority, (NCLT), Mumbai Bench, approving a resolution plan with certain modifications. The appellant contended that the AA has no jurisdiction to make any modification to the resolution plan after it was approved by the Committee of Creditors (hereinafter referred as "CoC").

Without going into the merit of the case, the NCLAT said that if the resolution applicant is not satisfied with the modifications made by the AA then the resolution applicant is at the liberty to withdraw the plan and AA will allow and proceed for the liquidation.

Meaning thereby, the modification suggested by the AA is not binding on the resolution applicant. The resolution applicant has the liberty to withdraw the resolution plan if he does not concur with the modification made by the AA.

3) NCLAT declined to intervene in the settlement talks of the parties prior to the admission of the Insolvency application.

Uttam Galva Metallics Ltd. vs State Bank of India
CA (AT) (Ins) No. 315 of 2018

Two appeals came before the Hon'ble NCLAT challenging the impugned order wherein the Adjudicatory Authority has order to list the cases for pronouncement of order(s). The appellant has submitted that the applications have not yet been admitted and Corporate Debtor is negotiating with a third party foreign investor who agreed to invest and pay amount to the Financial Creditor (State Bank of India). The Hon'ble NCLAT observed that the identity of the investor is not known and it cannot refrain the Adjudicating Authority from pronouncement of orders which were required to be pronounced within 14 days from filing of the application as there is no concrete settlement document and merely on the ground that settlement talks are going on it cannot direct the Hon'ble Adjudicating Authority to accept the plea.

The Hon'ble NCLAT also observed further that if any settlement is reached between Corporate Debtor and the Financial Creditor, it will be open to move before the appropriate forum for appropriate relief.

Further, the section 12A of the Insolvency Ordinance, 2018 provides that approval of 90% voting share of Committee of Creditor (hereinafter referred as "CoC") is needed for the withdrawal of admitted application. Once the 90% of voting share of CoC has approved, the Adjudicating Authority can withdraw the application. Consequently, once the application is admitted then the CoC will be appropriate forum to decide whether to withdraw the application or not.

4) Resolution for extension of Resolution Process should be passed within the period of180 days.

Quantum Limited vs. Indus Finance Corporation Ltd.
[CA (AT) (Ins) No. 35 of 2018]

An appeal had been filed against an order of Hon'ble Adjudicating Authority, (NCLT), Mumbai Bench, rejecting the extension of time on the ground that there is no provision to file such application after the expiry of 180 days of CIRP.
The Hon'ble NCLAT has said that from sub-section (2) of section 12, it is clear that resolution professional can file an application to the Adjudicating Authority for extension of the period, only if instructed by CoC by a vote of 75% of the voting shares. If within 180 days including the last day i.e. 180th day, a resolution is passed by the committee of creditors by a majority vote of 75% of the voting shares for extension of the resolution process then in the interest of justice and to ensure the resolution process is completed following all procedures time should be allowed by the AA, who is empowered to extend such period up to 90 days.

5) Resolution Professional is the head of the management and whole management requires to function on his directions.

M/s. Subasri Realty Private Limited vs. Mr. N. Subramanian & Anr.
[CA (AT) (Ins) No. 290 of 2017]

The Hon'ble NCLAT observed that after appointment of the Interim Resolution Professional (hereinafter referred as 'IRP') and declaration of moratorium, the Board of Director stands suspended, but that does not amount to suspension of Managing Director or any of the Director or officer or employee of the Corporate Debtor. To ensure that the Corporate Debtor remains on going concern, all the Director/employees are required to function and assist the IRP who manages the affairs of the Corporate Debtor during the period of moratorium. If one or other officer or employee had the power to sign a cheque on behalf of the Corporate Debtor prior to the order of moratorium, such power does not stand suspended on suspension of the Board of Directors nor can be taken away by the Resolution Professional. If, the person empowered to sign cheque refuse to function on the direction of the Resolution Professional or misuse the power, in such case it is always open to the Resolution Professional to take away such power after notice to the person concerned.

6) Share subscription money does not fall within the definition of expression of "Financial Debt"

M/s ACPC Enterprises vs. Affinity Beauty Salon Pvt. Ltd.
[(IB)-352(PB)/2017]

The Hon'ble Adjudicating Authority (Principle Bench, New Delhi) has observed that the amount paid for share subscription money would not fall within the definition of expression of "Financial Debt". Financial Creditor would be any person to whom financial debt

has been owned and includes a person to whom such debt has been legally assigned or transferred to. The expression "financial debt" has been defined under section 5(8) of the Code which means a debt along with interest which is disbursed against the consideration for time value of money and includes money borrowed against the payment of interest. The subscription amount has not been disbursed against the consideration for time value of money nor this is money borrowed against the payment of interest because it lacks the basic ingredient of consideration for the time value of money and it is not borrowed against the payment of interest.

7) Divergent view of NCLAT on unsecured loan as Financial Debt.

Mack Soft Tech Pvt. Ltd. vs. Quinn Logistics India Ltd.
[CA(AT)(Ins) No. 143 of 2017]

The Appellant (Mack Soft Tech Pvt. Ltd.) was developing an office complex by the name of 'Q-city' in Hyderabad. In the process of developing such a complex, the Respondent acquired majority of shareholding of the Appellant for the consideration of Rs. 162.7 Cr. Subsequently, the Respondent has given interest free unsecured loan for the development of .Q-city'. The Hon'ble NCLAT has observed that grant of loan and to get benefit of development is the object of the Respondent. Thus, there is a 'disbursement' made by the Respondent against the 'consideration for time value of money'. The investment was made to get benefit of the development of 'Q-city', which is the "consideration for the time value of money". Thus, the Respondent comes under the ambit of the Financial Creditor.

However, the Hon'ble NCLAT has given different opinion in case of Shreyans Realtors Pvt. Ltd. vs. Saroj Realtors & Developers Pvt. Ltd. [CA(AT)(Ins) No. 311 of 2018], where the appellant has granted the unsecured loan to the Corporate Debtor for repayment along with the interest. The Tribunal has said that the Corporate Debtor never accepted to take loan with interest and never understand to replay the load with interest. Therefore the loan in the present case cannot be considered as a "Financial debt" under section 5(8) of the Code.

8) Admission of Insolvency Application against the Corporate Debtor even when loan was not disbursed to Corporate Debtor but to a related party and both are co-borrowers.

Au Small Finance Bank Ltd. vs Prabhu Shanti Real Estate Pvt. Ltd.
(IB) 477 (PB)/2017

The Hon'ble NCLT (Principle Bench, New Delhi) has observed that an insolvency application is admissible even when the loan was not disbursed to the corporate debtor but to the related party (Education society) and both the parties are co-borrowers. The reasons stated by the Hon'ble bench for admitting the application was that the corporate debtor is a co-borrower and has also created charge on its property with respect to the loan.

Further the Hon'ble bench said that the shareholders of the corporate debtor was also member of the education society and fall under the same management. Further, the Hon'ble bench has observed that the affair of the association being managed by the persons who were holding key managerial position and had majority of shareholdings in Corporate Debtor.

9) Operational Creditor have no locus to challenge an application filed under Section 7 by Financial Creditor

ATC Telecom Infrastructure Pvt. Ltd. V/s State Bank of India
CA (AT) (Insolvency) No. 381 of 2018

An appeal had been filed by the Appellant before Hon'ble NCLAT in the capacity of Operational Creditor challenging the Corporate Insolvency Resolution Process initiated on basis of the admission of the application by Hon'ble Adjudicating Authority filed by the Respondent against the Corporate Debtor namely "Videocon Telecommunications Limited". The main ground of appeal was that the financial creditor had filed the application under Section 7 by colluding with the Corporate Debtor. The Hon'ble NCLAT while dismissing the application filed by the Appellant held that the Operational creditor has no locus to challenge the application under Section 7. Further the Appellate Tribunal also held that the Operational Creditor cannot be considered as aggrieved person and accordingly cannot file an appeal. Further, the question of collusion can only be raised by the Shareholders of the Corporate Debtor been an aggrieved person.

OTHER AMENDMENTS

1) Representation of class of financial creditors in the existing Corporate Insolvency Resolution Process.

Section 21(6A)(b) of the I&B Code 2016 read with Regulation 16A of I&B (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (Regulations) provides for the mechanism w.r.t representation of class of financial creditors where the number of such financial creditors are of such number as prescribed through Authorized Representative. It provides that the obligation to offer a choice of Resolution Professional who should represent the class of financial creditor is on the Interim Resolution Professional. In Insolvency Resolution Professional will be required to provide the name of three Insolvency Professional in the public announcement and creditors belonging to such class need to name one of such Insolvency Professional. The Insolvency Professional having the maximum votes will accordingly get appointed as Authorised Representative of such class of creditors.

The Insolvency and Bankruptcy of Board of India (IBBI/Board) has recently issued a Circular using its powers given under Section196(1)(aa) of the Insolvency and Bankruptcy Code 2016 in consultation with Ministry of Corporate Affairs. In the circular, the Board had clarified that in case of ongoing Corporate Insolvency Resolution Process (CIRP) where the class of financial creditors are not represented through Authorized Representative, the Insolvency Resolution Professional will take necessary steps so that the class of financial creditors are duly represented through Authorized Representative by exercising the rights given to him under Section 23(2) which states that Resolution Professional will have all powers and performs the duties as vested or conferred on the Interim Resolution Professional.

Further, the board had further clarified that in cases where the approval of Resolution Plan is at least 15 days away (under Regulation 39(3)), the steps w.r.t appointment of authorized representative to present the interest of class of financial creditor should be taken expeditiously through electronic means.

2) Amendment in Securities and Exchange Board of India (Issue of Capital and Disclosure Requirments), 2009

The Securities and Exchange Board of India (SEBI) has issued the guidelines for preferential issues for prevention of allotment of shares by a company at a low price as compared to the market price. Regulation 70 to 79 under Chapter VII of SEBI (Issue of Capital and Disclosure Requirements), 2009, (ICDR'), have been framed to deal with such intentions of SEBI.

To align with the provisions of the Insolvency and Bankruptcy Code (IBC), 2016, the SEBI on May 31, 2018, has issued notification wherein it had amended Regulation 70 of SEBI (ICDR) Regulations, 2009 as follows:

i. The provisions of Chapter VII of SEBI (ICDR), except the lock-in provisions, shall not apply where the preferential issue of specified securities is made in terms of the rehabilitation scheme approved by the Board of Industrial and Financial Reconstruction under the Sick Industrial Companies (Special Provisions) Act, 1985 or the resolution plan approved under section 31 of the Insolvency and Bankruptcy Code (IBC), 2016 whichever applicable.

ii. Earlier under clause (c) Regulation 70 (1), the provisions of this Chapter was not applicable where the preferential issue of equity shares was made in terms of the Tribunal under the Insolvency and Bankruptcy Code, 2016. Now the same has been substituted with reference to the resolution plan that will be approved under section 31 of the Insolvency and Bankruptcy Code (IBC), 2016;

iii. Sec. 31(1) of IBC 2016 states that if, the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan.

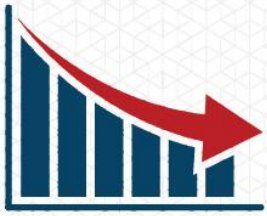
3) Amendment in Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 2011 (Commonly known as Takeover Regulations)

To give ease for the implementation of approved Resolution Plan in case of Corporate Debtor under CIRP and to keep in align with the spirit of I&B Code 2016 had inserted a proviso to Regulation 3, sub regulation (2) of Takeover Regulations. The newly inserted proviso reads "provided further that, acquisition pursuant to a resolution plan approved under Section 31 of the Insolvency and Bankruptcy Code, 2016 shall be exempt from the obligation under the proviso to the sub regulation (2) of regulation 3". Regulation 3 of the Takeover Regulations provides for the requirement of making public announcements wherever there is a substantial acquisition of shares or voting rights.

Proviso to the sub-regulation (2) provides that where an acquirer even though if following the procedure prescribed under Regulation 3 shall not be entitled to acquire or enter into any agreement to acquire shares or voting rights exceeding such number of shares as would take the aggregate shareholding pursuant to acquisition above the maximum permissible non-public shareholding.

4) Amendment in Securities and Exchange Board of India (Delisting of Equity Shares) Regulations 2009

SEBI had vide its notification dated 31st May 2018, had amended the Delisting Regulations in order to give a way for approved Resolution Plan of a listed entity. A sub-regulation (3) has been inserted under regulation 3 of the Delisting Regulations. As per the new sub regulations, the regulations will not apply to any delisting of equity shares of a listed entity who is undergoing CIRP and whose plan has been approved under Section 31 of the I&B Code 2016 and such resolution plan provides for procedure to complete the delisting of the shares or provides an exit option to the existing public shareholders at a price specified in the resolution plan.



The new sub regulation further provides that the price to be given for exit to the shareholder should not be less than the liquidation value determined under Regulation 35 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations 2016 after paying off dues in the order of priority as defined under Section 53 of I&B Code 2016.

Furthermore, in order to give a parity, the sub regulation provides in second proviso that if the existing promoters or any other shareholders are proposed to be provided an opportunity to exit under the resolution plan at a price higher than the price determined on the basis of liquidation value less the paying off dues then the existing public shareholders shall also be provided an exit option at a price which shall not be less than the price, by whatever name called, at which such promoter or other shareholders, directly or indirectly are provided to exit.

The details w.r.t delisting of such shares along with the justification of exit price in respect of delisting proposed needs to be disclosed to the recognized stock exchanges within one (1) day of resolution plan being approved under Section 31 of the I&B Code 2016.
An amendment has also been made in Regulation 30 (Listing of delisted Equity Shares), by inserting sub regulation 2A wherein it has been permitted that an application for listing of delisted equity shares may be made in respect of a company which has undergone CIRP.

5) Amendment in Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations 2015

SEBI had vide amendment dated 31st May 2018, and relaxed the listing obligation regulations to be complied by Listed Companies for those companies who are undergoing CIRP. The relaxation includes:

(a) **Board of Directors:** Insertion of sub-regulation (2A) under regulation 15 which relaxes representation of executive, non-executive, independent, women directors on board of the Company, committees to be formed by listed companies, etc. considering as per the mandate of I&B Code 2016, during the CIRP the powers of the board vests with Resolution Professional however, the said Resolution Professional shall fulfill all roles and responsibilities which otherwise has been conferred by the regulations on the board.

(b) **Approval of shareholder in related party transactions:** Further related party transactions which are to be carried out due to Resolution Plan under section 31 of I&B Code 2016 will not require approval of shareholders however the necessary disclosure in this regard needs to be given to the recognized stock exchanges within one (1) day of the resolution plan being approved (sub-regulation 4 to regulation 23).

(c) **Disposal of shares of material subsidiary:** Company undergoing CIRP is allowed to dispose shares in its material subsidiary resulting in reduction of its shareholding to less than fifty per cent or cease the exercise of control over the subsidiary without passing a special resolution in its General Meeting if same is the condition of approved resolution plan under Section 31 (sub regulation 4 to regulation 24)

(d) Similarly amendments have been made to Regulation 35A, 37 (draft scheme of arrangement and scheme of arrangement).

In Schedule III, part A (Disclosure of events or information: specified securities) a sub clause 16 has been inserted which details the events in relation to CIRP of a listed corporate debtor under the insolvency code which needs to be disclosed to the stock exchanges as and when they occur in terms of Regulation 30.

RCOM INSOLVENCY PROCEEDINGS: SITUATIONS GALORE

The Reliance Communication-Ericsson legal battle, which led the Anil Ambani controlled company to the insolvency court, has been a watershed moment not just for reflecting the state of the telecom sector, but also for the effectiveness of the Insolvency and Bankruptcy Code ("the Code").

For a person tracking the development of Insolvency Law, this particular case has evoked a lot of interest as it continues to pose new situations and prod the lawmakers to evaluate the practicality and effectiveness of an otherwise wonderful regime. To start with, it was a unique case where the Corporate Debtor was taken to the insolvency court by a disgruntled operational creditor despite the financial creditors of the Corporate Debtor rallying in support behind it. The Financial Creditors, despite the risk to their investment and classification of account as NPA, were opposed to insolvency proceedings being initiated and were trying to work out a settlement which in their assessment would have fetched them a better recovery on their exposures. That is where the (over) simplification of the process played a villain.

Over the last 2 years, the Legislature, Government, the Insolvency and Bankruptcy Board (IBBI) and the Hon'ble Adjudicating Authorities have all worked towards making the provisions of the Code simpler and efficacious to deliver on the stated purpose. Towards this end the process has been streamlined and frivolous objections, raised solely to delay the process, have been done away with. By the time the Ericsson application landed before the Hon'ble Adjudicating Authority, Mumbai it had repeatedly held that if the insolvency application meets the 3fold test as prescribed in the Code i.e. the application being complete, there being default, and there being no disciplinary proceedings against the nominated Insolvency Resolution Professional (IRP), the application ought to be admitted. Any extra consideration, whether positive or negative, related or unrelated, has to be ignored to ensure the object of the Code of time bound resolution.

This is where RCOM faltered. It for sure didn't not have the ability to honour its debts both to operational and financial creditors. However, it was working out an arrangement whereby major assets were being sold to elder brother's Jio Infocom and proceeds were to go for payment of creditors. All the financial creditors were on board this plan as it gave them a view of expected realisation than what they would have had realised following the CIRP. But just when everything was going as per plan, Ericsson put a spanner in the wheels and derailed the entire plan.

The admission of insolvency petition against RCOM by the Hon'ble Adjudicating Authority also raised a pertinent question regarding the eligibility of Mukesh Ambani's Jio infocomm to participate in the Insolvency proceedings of the RCOM. The amendment brought in January 2018, the Code prevented promoters and their relatives to come in as resolution applicants and regain control of Corporate Debtor. While this was done to encourage fiscal discipline and to keep unscrupulous people away, the way the disqualification was defined even prevented the richest person in India to take control of estranged brothers RCOM. Given the bitter acrimony at one time and the fact that both manage separate businesses, such a restriction by virtue of their blood relation was grossly absurd. Moreover, given the situation of the telecom industry it was unlikely that any other bidder would have the intention or the might to take over RCOM thus leaving the assets to rot and reducing any chances of recovery that the banks otherwise had.

Another strange development that has taken place in the matter is the intervention of Hon'ble National Company Law Appellate Tribunal (NCLAT) to stay the insolvency proceedings[3] in view of the settlement taking place between RCOM and Ericsson. The Hon'ble Adjudicating Authority as well as Appellate Tribunal i.e both NCLT and NCLAT have refrained from using their inherent powers and restricted themselves to powers expressly bestowed under the Code and rules and regulations contained therein. Insolvency being a time bound process, a stay application suspending the CIRP is usually not allowed. On the contrary extensions of IRP, RP, resolution plan timelines, etc. are generally extended to as to ensure that the object of the code is met. In fact, in the matter of *Lokhandwala Kataria Construction Private Limited vs. Nisus Finance and Investment Manager LLP*[4], the Hon'ble Appellate Tribunal, specifically held that it does not have power to allow withdrawal of application after it has been admitted as there is nothing on record to suggest that it can use its inherent power under Rule 11 of the NCLAT rules to decide upon Insolvency Petitions. Though the Supreme Court also concurred with the view of the NCLAT, it did nudge the government and the board to make suitable amendments from preventing such petitions from coming directly before the Supreme Court invoking extraordinary jurisdiction under Article 142.

However, in the RCOM matter, when faced with the situation that all the creditors including Ericsson, on whose application the insolvency petition was admitted, were willing for a settlement, the Hon'ble Appellate Tribunal (maybe due to vacation) stayed the insolvency proceedings in the pendency of the appeal and directed RCOM to settle the matter with Ericsson. The ex-management was again handed over the reins of the company and RCOM was even allowed to conclude asset sale during the period of stay. A careful perusal of the order of the Hon'ble Appellate Tribunal reveals that it raises more questions than it answers.

[3]*Order dated 30.05.2015 in Company Appeal (AT) (Insolvency) Nos. 255-256 of 2018*

[4]*Company Appeal (AT) (Insolvency) No. 95 of 2017*

Vide the order dated 30.05.2018, the Hon'ble Appellate Tribunal have directed the IRP, who also has been allowed to continue to attend office of RCOM, to allow the ex-management to function. Such directions are quite interesting as though the insolvency proceedings are stayed, the IRP continues to function.

Also, it is not RCOM but its lenders who have been allowed to sell the assets and appropriate the proceeds thereof. Furthermore a sum of Rs.550 crore is directed to be paid to Ericsson within 120 days failing which the appeals will be dismissed. Again quite interestingly, it is only the interests of Financial Creditors and a single operational creditor which is being addressed by the intervention of the Hon'ble Appellate Tribunal and the interests of all other stakeholders have been ignored. Should the insolvency proceed or is set aside, all the other creditors would also stand a chance to file their claims. However, in the present situation it is only Ericsson who gets it money and the lenders, who gets to sell the assets and appropriate the proceeds. The Insolvency proceedings were initiated on 15.05.2018 and stayed on 30.05.2018 and during this time a lot of claims would be have been received by the IRP following the public announcement. The fate of such claims and the one's being received after the proceedings are stayed is uncertain and open to speculation.

Furthermore, should the Appeals be dismissed eventually, the insolvency will proceed and the amount paid to Ericsson or the amount realised by sale of assets will stand credited back to the account of RCOM. Such a situation is also bound to create confusion as it may lead to a situation wherein the accounts of the Corporate Debtor are flush with funds and yet cannot be appropriated by its lenders against their dues. Also, it will be against the object of the Code as there might be nothing left in RCOM for any potential resolution applicant and the only option that might be left would be to liquidate.

Even procedurally, the order of the Hon'ble Appellate Tribunal, though welcomed by all stakeholders and unlikely to be challenged, drifted away from the position held thus far. Till the RCOM interim order by Hon'ble NCLAT, any settlement post admission of insolvency were either effected by the Hon'ble Supreme Court or accommodated by Hon'ble NCLAT while setting aside the Hon'ble Adjudicating Authority orders in view of some flaw and not remitting it back in view of the settlement.

In retrospect, the Hon'ble NCLAT decision finds itself on stable ground in view of the recent amendment to the Code vide the ordinance dated 06.06.2018. The ordinance stipulated that even post admission, insolvency proceedings can be withdrawn upon the same being approved by a vote of 90% of COC. Considering the fact that the COC only consists of Financial Creditors, their consent to withdraw is what is required. In the case of RCOM, all the financial creditors appearing in the matter were amenable to settlement and wanted the Insolvency proceedings to be set aside.

In effect, while deviating from ordinary practices, the Hon'ble NCLAT actually took a pragmatic decision in suspending the insolvency proceedings in which no party was really interested in. The same now even has backing in law in view of the amendments brought in by the recent ordinance. Given the fact that the Code is a new enactment and jurisprudence is still evolving, there will be umpteen number of unforeseen situations that will have to be addressed on a day to day basis and cannot wait for an amendment to be promulgated. Ergo, it is the need of the day that the inherent powers of the tribunals be extended to the proceedings under the Code to tackle such unforeseen situations and ensure that the Code remains fit for purpose and any absurdity due to absence of specific provision is avoided.

[3]*Order dated 30.05.2015 in Company Appeal (AT) (Insolvency) Nos. 255-256 of 2018*

[4]*Company Appeal (AT) (Insolvency) No. 95 of 2017*

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