



IBC KNOWLEDGE CAPSULE 18

Framework for “Moratorium” in CIRP Proceedings under IBC

Introduction:

The term “Moratorium” is nowhere defined in the Insolvency and Bankruptcy Code (hereinafter referred as ‘IBC/Code’). The moratorium in terms of IBC is described as a period wherein no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets, or termination of essential contracts can be instituted or continued against the Corporate Debtor. The Adjudicating Authority [National Company Law Tribunal], whilst admitting a petition against the Corporate Debtor is required to declare the moratorium period as described under Section 14 of the Code. The main purpose of declaring the moratorium period is to keep the Corporate Debtor’s assets intact during the CIRP, which otherwise may be attached by any competent court of law during the pendency of proceedings against the Corporate Debtor. Most of the law evolved on ‘moratorium’ is through orders passed by the Courts/Tribunals. The below table tries to cover all such issues that arose in the court of law.

The available framework with important provisions and case laws is summarized in the table below.

The table has been color coded as follows:

Provisions of the Code	
Supreme Court Cases	
High Court Cases	
NCLAT/NCLT Cases	
Circulars/Notifications/Reports	

TABLE: Moratorium under IBC

Source	Details	Explanation
Section 13	<p><i>13. Declaration of moratorium and public announcement. –</i></p> <p><i>(1) The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order –</i></p> <p><i>(a) declare a moratorium for the purposes referred to in section 14;</i></p>	Once an application for initiating CIRP is admitted by NCLT, instant moratorium is imposed on the Corporate Debtor
Section 14	<p><i>14. Moratorium. –</i></p> <p><i>(1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: -</i></p> <p><i>(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;</i></p> <p><i>(b) transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;</i></p> <p><i>(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);</i></p> <p><i>(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.</i></p> <p><i>[Explanation.-For the purposes of this sub-section, it is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or</i></p>	<p>The moratorium means a period wherein no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets, or termination of essential contracts can be instituted or continued against the Corporate Debtor.</p> <p>The purposes of the moratorium include keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the processes envisaged during the insolvency resolution process</p>

	<p><i>any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period;]</i></p> <p><i>(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.</i></p> <p><i>(2A) Where the interim resolution professional or resolution professional, as the case may be, considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.</i></p> <p><i>(3) The provisions of sub-section (1) shall not apply to —</i></p> <p style="padding-left: 40px;"><i>(a) such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;</i></p> <p style="padding-left: 40px;"><i>(b) a surety in a contract of guarantee to a corporate debtor.</i></p> <p><i>(4) The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be</i></p>	
<p>Section 31(3)</p>	<p><i>(3) After the order of approval under sub-section (1), -</i></p> <p style="padding-left: 40px;"><i>(a) the moratorium order passed by the Adjudicating Authority under section 14 shall cease to have effect</i></p>	<p>The moratorium ceases as soon as the Resolution Plan is approved by the Adjudicating Authority.</p>

Section 74	<p><i>74. Punishment for contravention of moratorium or the resolution plan. –</i></p> <p><i>(1) Where the corporate debtor or any of its officer violates the provisions of section 14, any such officer who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable with imprisonment for a term which shall not be less than three years, but may extend to five years or with fine which shall not be less than one lakh rupees, but may extend to three lakh rupees, or with both.</i></p> <p><i>(2) Where any creditor violates the provisions of section 14, any person who knowingly and wilfully authorised or permitted such contravention by a creditor shall be punishable with imprisonment for a term which shall not be less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.</i></p> <p><i>(3) Where the corporate debtor, any of its officers or creditors or any person on whom the approved resolution plan is binding under section 31, knowingly and wilfully contravenes any of the terms of such resolution plan or abets such contravention, such corporate debtor, officer, creditor or person shall be punishable with imprisonment of not less than one year, but may extend to five years, or with fine which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both.</i></p>	The imposition of the moratorium is to be considered serious enough to warrant punishment if not followed.
Mr. Anand Rao Korada Resolution Professional Vs. M/s. Varsha Fabrics (P) Ltd. & Ors, (18 th November 2019), Supreme Court	<i>“High Court ought not to have proceeded with the auction of the property of the Corporate Debtor, once the proceedings under the IBC had commenced, and an Order declaring moratorium was passed by the NCLT. “</i>	The Supreme Court held that the High Court was not justified in passing the Orders dated 14.08.2019 and 05.09.2019 for carrying out auction of the assets of the Corporate Debtor before the NCLT. If the assets of the Company (Corporate Debtor) are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardize the interest of all the stakeholders.
Alchemist Asset	<i>“The mandate of the new Insolvency Code is that the moment an</i>	The Supreme Court held that an Arbitration

<p>Reconstruction Company Ltd. Vs. M/S. Hotel Gaudavan Pvt. Ltd. & Ors., (23rd October 2017), Supreme Court</p>	<p><i>insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against Corporate Debtors.”</i></p>	<p>Proceeding cannot be started owing to the fact that moratorium had already been imposed after initiation of CIRP.</p>
<p>Gouri Shankar Jain vs. Punjab National Bank and Anr., (13th November 2019), High Court of Calcutta</p>	<p><i>“37. Section 14 of the Code of 2016 does not apply to a personal guarantor. The Code of 2016 does not allow personal guarantors to escape their liability. When an application under Section 7 of the Code of 2016 is admitted by the Adjudicating Authority, the steps taken subsequent thereto flows out of the statute. The two termination points of an application under Section 7 of the Code of 2016, after the admission of such application, do not result in any variance, made without the surety’s consent, in the terms of the contract between the principal debtor and the creditor to constitute a discharge of a surety under Section 133 of the Act of 1872.”</i></p>	<p>The High Court clarified the position of personal guarantors and the imposition of moratorium on them, once the proceedings have started.</p>
<p>Tayal Cotton Pvt. Ltd. Vs. The State of Maharashtra & Others, (6th August 2018), High Court of Bombay</p>	<p><i>“As can be seen from Clause (a) of Sub Section 1 of Section 14 of the Code, once the adjudicating authority declares moratorium for prohibiting institution of suits or continuation of pending suits or proceeding against the corporate debtor including execution of any judgment, decree or order in any Court of law, Arbitration Tribunal or other authority. As is the principle of interpretation of Statutes, these words would take colour from words preceding thereto. These words will have to be interpreted ejusdem generis with the words ‘suits’ used earlier thereto. So interpreted, the word ‘proceedings’ used therein and even the words ‘order’ and ‘in Court of law’ will have to be interpreted as a proceeding arising in the nature of a suit and orders passed in such proceedings and suits. Apart from the fact that the Legislature has not conspicuously used the</i></p>	<p>The High Court of Bombay carefully interpreted the term ‘suits’ as given in Section 14(1)(a) and held that, applying this principle of interpretation, one cannot put any other interpretation on this provision contained in Section 14 of the Code except that it only prohibits a suit or a proceeding of a like nature and does not include any criminal proceeding.</p> <p>The same view was taken in the NCLAT orders in <i>Shah Brothers Ispat Pvt. Ltd. Vs. P. Mohanraj & Ors.</i> (31st July 2018) and</p>

	<i>words 'criminal' as an adjective to the word 'proceedings' and as an adjective to the noun 'Court of law', it must be assumed that the Legislature in its wisdom has consciously omitted to use such adjectives since it must have intended to prohibit only the suits and execution of the judgments and decrees or a proceeding of the like nature."</i>	<i>Varrsana Ispat Limited Vs. Deputy Director Directorate of Enforcement (2nd May 2019)</i>
Power Grid Corporation Of India Ltd Vs. Jyoti Structures Ltd., (11 th December 2017), High Court of Delhi	<i>In the light of the purpose or object behind the moratorium, Section 14 of the Code would not apply to the proceedings which are in the benefit of the corporate debtor, like the one before this court in as much these proceedings are not a "debt recovery action" and its conclusion would not endanger, diminish, dissipate or impact the assets of the corporate debtor in any manner whatsoever and hence shall be in sync with the purpose of moratorium which includes keeping the corporate debtor's assets together during the insolvency resolution process and facilitating orderly completion of the process envisaged during the insolvency resolution process and ensuring the company may continue as a going concern. If such proceedings is against the corporate debtor or is in its favour. Stay of proceedings against an award in favour of the corporate debtor would rather be stalking the debtor's effort to recover its money and hence would not fall in the embargo of Section 14 (1) (a) of the Code.</i>	Moratorium would not apply to the proceedings which are in the benefit of the corporate debtor.
SSMP Industries Ltd Vs. Perkan Food Processors Pvt. Ltd, (18 th July 2019), High Court of Delhi	<i>"till the defence is adjudicated, there is no threat to the assets of the corporate debtor and the continuation of the counter claim would not adversely impact the assets of the corporate debtor. Once the counter claims are adjudicated and the amount to be paid/recovered is determined, at that stage, or in execution proceedings, depending upon the situation prevalent, Section 14 could be triggered. At this stage, due to the reasons set out above, the counter claim does not deserve to be stayed under Section 14 of the Code. The suit and the counter claim would proceed to trial before this Court."</i>	High Court held that a counter claim would be in the nature of a suit against the Plaintiff which in this case is the 'corporate debtor'. Under Section 14(1)(a) of the Code, strictly speaking, a counter claim would be covered by the moratorium which bars "the institution of suits or continuation of pending suits or proceedings against the corporate debtor". A counter claim would be a proceeding against the corporate debtor.
Suresh Chand Garg Vs. Aditya	<i>"From the record, we find that the personal and individual assets of a Director is not the subject matter of the 'corporate insolvency</i>	NCLAT held that a personal and individual asset of a Director is not the subject matter of

Birla Finance Ltd., (23 rd July 2018), NCLAT	<i>resolution process' and the moratorium only extends to the assets of the 'Corporate Debtor'. This has also been held by the Adjudicating Authority."</i>	the corporate insolvency resolution process and the moratorium only extends to the assets of the Corporate Debtor.
Canara Bank Vs. Deccan Chronicle Holdings Limited, (14 th September 2017)	<i>"The Hon'ble Supreme Court has power under Article 32 of the Constitution of India and Hon'ble High Court under Article 226 of Constitution of India which power cannot be curtailed by any provision of an Act or a Court. In view of the aforesaid provision of law, we make it clear that 'moratorium' will not affect any suit or case pending before the Hon'ble Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India. However, so far as suit, if filed before any High Court under original jurisdiction which is a money suit or suit for recovery, against the 'corporate debtor' such suit cannot proceed after declaration of 'moratorium, under Section 14 of the I&B Code."</i>	NCLAT held that moratorium will not affect any suit or case pending before the Hon'ble Supreme Court under Article 32 or where an order is passed under Article 136 or the power of the High Court under Article 226.
Ms. Anju Agarwal Vs. Bombay Stock Exchange & Ors., (23 rd April 2019), NCLAT	<i>"However, in view of Section 18 of the 'I&B Code', the 'Interim Resolution Professional' while taking control and custody of any asset including the tangible and intangible assets, cannot sell the shares of the 'Corporate Debtor' during the period of 'Moratorium' except in accordance with the provisions of the 'I&B Code' and with the approval of the 'Committee of Creditors'. Therefore, dealing with the shares of the 'Corporate Debtor' by the 'Bombay Stock Exchange' during the period of 'Moratorium' normally does not arise. The shares can be transferred only in the manner prescribed under the 'I&B Code' and following requirements framed under the 'SEBI Act, 1992' and the 'Companies Act, 2013'."</i>	NCLAT held that Section 14 of the Code will prevail over Section 28A of the SEBI Act, 1992 and SEBI cannot recover any amount including the penalty from the Corporate Debtor. The Bombay Stock Exchange for the same very reason cannot take any coercive steps against the Corporate Debtor nor can threaten the Corporate Debtor for suspension of trading of shares.
Canara Bank v. Deccan Chronicle Holdings Limited, (19 th July 2017), NCLT, Hyderabad	<i>"Section 14(2) Of the IBC Code, 2016 already exempted supply of essential goods and services to the Corporate Debtor and in addition the Learned Counsels for the Respondent submitted that goods/services viz. Water, Electricity, printing ink, Printing plates, Printing Blanket, Solvents etc. will also come under the purview Of</i>	NCLT, Hyderabad Bench passed a judgment on what constitutes an essential service that is exempt from moratorium as under Section 14(2).

Bench	<p><i>exemption and thus prayed to exempt above good/services from moratorium. We are convinced with the prayer of the Respondent that the above goods and services would come under exemption under this Section. Hence, we clarify that goods/services viz. Water, Electricity, Printing ink, Printing plates, Printing Blanket, Solvents etc. will come under this Section and these essential goods or services to Corporate Debtor shall not be terminated or suspended and interrupted during the moratorium period”</i></p>	
Insolvency Law Committee Report (2020)	<p><i>The moratorium period is critical for running the corporate debtor as a going concern during CIRP. The licenses, permits and quotas, concessions, registrations, or other rights that the corporate debtor enjoys, form the basis of its business, without which it will not be possible to resolve the corporate debtor as a going concern. For this reason, the legislative intent behind introducing the provision for moratorium was to bar termination or suspension of such grants by Government authorities. As a result, the termination or suspension of such grants during the moratorium period would be prevented by Section 14. However, in order to avoid any scope for ambiguity, it has been recommended that the legislative intent may be made explicit by introducing an Explanation by way of an amendment to Section 14(1) regarding termination or suspension of grants on account of non-insolvency reasons.</i></p>	<p>Full Report is available at : https://ibbi.gov.in/uploads/resources/c6cb71c9f69f66858830630da08e45b4.pdf</p>

Notes:

Abbreviations used:

IBBI: Insolvency and Bankruptcy Board of India
IPA: Insolvency Professional Agency
ICSI IIP: ICSI Institute of Insolvency Professionals
IP: Insolvency Professional
CIRP: Corporate insolvency resolution process
IRP: Interim Resolution Professional
AR: Authorised Representative
COC: Committee of Creditors
CD: Corporate Debtor
FC: Financial Creditor
OC: Operational Creditor
Code: Insolvency and Bankruptcy Code, 2016

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