



MORATORIUM UNDER INDIAN INSOLVENCY REGIME

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Introduction

Insolvency and Bankruptcy Code, since its inception has enumerated various concepts. One such concept enumerated is the concept of ‘MORATORIUM’ which is considered as the most important aspect of the Corporate Insolvency Resolution Process (CIRP). One of the goals of having an insolvency law is to ensure the suspension of debt collection actions by the creditors, and provide time for the debtors and creditors to re-negotiate their contract.¹ This requires a moratorium period. It was observed that the moratorium period was very much necessary for the corporate debtor so as to evaluate the possible option and ways for revival of the stressed entity. The Code explains that once the petition filed against a company is admitted by the Adjudicating Authority a moratorium is imposed on that company. The term ‘Moratorium’ is not defined in the Code, however it can actually be described as the time period where no judicial proceedings can take place against the Corporate Debtor for recovery of enforcement of security interest, sale or transfer of assets, or termination of essential contracts can be instituted or continued against the Corporate Debtor.

Purpose of Moratorium

The purpose of Moratorium is protecting the assets of the Corporate Debtor during CIRP and ensuring timely completion of the insolvency resolution procedure by continuing to keep the company as going concern. Moratorium not only puts a stay on the pending proceedings it also bars the Board of Directors of the company from the pulling out the finances available. Non declaration of the moratorium would lead to failure of the achievement of the objective of the code as creditors would resort to individual enforcement action for their debt.

Provisions under the Code²

Section 13(1) (a) of the Insolvency and Bankruptcy Code enables the Adjudicating Authority to impose moratorium on the Corporate Debtor. Section

¹https://ibbi.gov.in/BLRCReportVol1_04112015.pdf

²<https://ibbi.gov.in/uploads/legalframework/547c9c2af074c90ac5919fa8a5c60bd4.pdf>



14 of the Code lays down the purpose for declaration of the same prohibiting various actions on the Corporate Debtor.

Section 14 (1) of the Code prohibits the following on declaration of moratorium:

- 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.
- Transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein.
- 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
- The recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor

Code provides an explanation w.r.t. Section 14(1) 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 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

Section 14 (2) states that 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.

As per Section 14 (2A) where IRP/RP 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.

Section 14 (3) provides that prohibition of actions mentioned in Section 14(1) shall not apply to:



- 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.
- A surety in a contract of guarantee to a corporate debtor.

The order of moratorium shall have effect from the date of admission of the Insolvency Resolution Process of the Corporate Debtor 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.

Punishment on breach of Moratorium

Section 74 of the Code deals with the punishment for contravention of moratorium. When a Corporate Debtor or any of its officers or be it a creditor violated the provisions of Section 14 or knowingly or wilfully committed or authorised or permitted such contravention shall be punished in the following manner:

Officials of the Corporate Debtor	Creditors
Imprisonment for a term of atleast 3 years, which can be extended to 5 years	Imprisonment for a term of atleast 3 years, which can be extended to 5 years
Or	Or
Fine of atleast one lakh rupees, which can extend to three lakh rupees	Fine of atleast one lakh rupees, which can extend to one crore rupees
Or	Or
With both fine and imprisonment	With both fine and imprisonment

Concept of Interim Moratorium

Part III of the Insolvency and Bankruptcy Code throws light on the concept of interim- moratorium. As per Section 81(1), if a debtor files an application for fresh start, an interim-moratorium shall commence on the date of filing of said application in relation to all the debts and shall cease to have effect on the date of admission or rejection of such application, as the case may be. Similarly, Section 96 provides that whenever a debtor or a creditor files for the insolvency resolution process under this part of the code, an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application during the interim- moratorium period:

- Any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and
- The creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

Moratorium shall commence from the date of the admission of the application. However, Part III of the Code relating to fresh start process and the insolvency resolution process of individuals and partnership firms is yet to be notified. Interim-moratorium basically applies on the debts.

Part II of the Code under Section 14 which deals with Corporate Insolvency Resolution Process of the Corporate Debtors does not talk about interim-moratorium. There is no concept of interim-moratorium being imposed on application filed by the Operational Creditor, Financial Creditor or Corporate Debtor itself. Moratorium is imposed only on admission of the application.

Findings related to Moratorium

The Adjudicating Authority (NCLT) and the Appellate Authority (NCLAT) along with the Apex Court (Supreme Court) of India have taken a lot of decisions and passed a lot of orders discussing the application of moratorium and its impact on other laws.

The following table shows the orders passed by the decision making authorities regarding Resolution Plans since the inception of the Insolvency and Bankruptcy Code:

Date of Order	Case	Finding/Ruling
14-09-2017	Canara Bank Vs. Deccan Chronicle Holdings Limited	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.
23-10-2017	Alchemist Asset Reconstruction Company Ltd. Vs. M/S. Hotel Gaudavan Pvt. Ltd. &Ors.	Hon'ble Supreme Court held that after moratorium under Sec. 14 come into effect, arbitration proceedings cannot start or continue against the Corporate Debtor.
08.02.2018	Dakshin Gujarat VIJ Company Ltd. v. M/s. ABG Shipyard Ltd. &Anr	An order of Moratorium will not apply to payment of current charges payable by the Corporate Debtor for supply of Essential Goods and/or Services.
02.05.2018	ICICI Bank Ltd. v. Vista Steel Pvt. Ltd.	An order of Moratorium is applicable to proceedings pending before any court against the CD or Guarantor, but not applicable to filing of an application for triggering CIRP against a Corporate



		Guarantor or Personal Guarantor.
24.07.2018	GAIL (India) Limited v. Rajeev Manaadiar&Ors.	“Security Interest” does not include “Performance Bank Guarantee” given by Corporate Debtor and can be invoked by the Creditor during the moratorium period.
31.07.2018	Shah Brothers IspatPvt. Ltd. v. P. Mohanraj&Ors.	An order of moratorium will not cover or apply to a criminalproceeding initiated under Section 138 of Negotiable Instruments Act, 1881.
01.05.2019	Ranjit Kapoor and Others v. Hemant Sharma and Others Yajur International Private Limited v. Hemant Sharma, Resolution Professional of White Metals Limited	Any payment to Operational Creditors by Corporate Debtor after order of moratorium & before joining of Resolution Professional is in violation of provisions of Section 14, IBC.
02.05.2019	VarrsanalIspat Limited Through the Resolution ProfessionalMr. Anil Goel v. Deputy Director, Directorate of Enforcement	Section 14, IBC cannot give protection from criminal proceeding or any penal action involving imprisonment to an individual which may include the ex-director /shareholder of Corporate Debtor, relate to different field having no overriding effect of one Act over the other including Insolvency and Bankruptcy Code.
02.05.2019	Prasad Gempex v. Star Agro Marine Exports Ltd. &Anr.	Notwithstanding an order passed under Section 31, IBC, it is openfor a person to file a suit or an application against the CD after completion of Moratorium Period, in accordance with Section 60(6), IBC.
12-02-2019	Sterling Sez Infrastructure Ltd. v. Deputy Director, Directorate Of Enforcement, Prevention of Money Laundering Act	No attachment can be ordered under the Prevention of Money Laundering Act, 2002 with respect to the assets of the Corporate Debtor undergoing insolvency process.

International Perspective of Moratorium

▪ US Bankruptcy Code³

As per Sec 362 (a) of the US Bankruptcy Code, immediately on filing of Bankruptcy petition, an automatic stay or moratorium is imposed staying all litigation and prevents the enforcement of judgements and of security without leave of the court. The stay is imposed on:

- The commencement or continuation, including the issuance or employment of process, of a judicial, administrative, or other action or proceeding against the debtor that was or could have been commenced before the commencement of the case, or to recover a claim against the debtor that arose before the commencement of the case.
- The enforcement, against the debtor or against property of the estate, of a judgment obtained before the commencement of the case.

³<https://www.law.cornell.edu/uscode/text/11/362>



- Any act to obtain possession of property of the estate or of property from the estate or to exercise control over property of the estate.
- Any act to create, perfect, or enforce any lien against property of the estate.
- Any act to create, perfect, or enforce against property of the debtor any lien to the extent that such lien secures a claim that arose before the commencement of the case under the code.
- Any act to collect, assess, or recover a claim against the debtor that arose before the commencement of the case.
- The setoff of any debt owing to the debtor that arose before the commencement of the case against any claim against the debtor; and
- He commencement or continuation of a proceeding before the United States Tax Court concerning a tax liability of a debtor that is a corporation for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief.

On request of a party in interest and after notice and a hearing, the court shall grant relief from the stay provided, such as by terminating, annulling, modifying, or conditioning such stay for causes mentioned in Section 362(d).

Further, the Code gives debtor under Section 1121 right to file a plan of reorganization for 120 days from the relief order granted. The period of 120 days may not be extended beyond a date that is 18 months after the date of the order for relief. In most instances the debtor company will first take actions to stabilize its operations and formulate its business plan and thereafter proceed to formulate a plan of reorganization.⁴

Conclusion

The Code provides for the creation of a calm period for creditors and debtors to negotiate the viability of the entity. In the calm period a regulated insolvency professional controls the assets under the supervision of an adjudicating authority. The motivation behind the moratorium is that it is value maximising for the entity to continue operations even as viability is being assessed during the insolvency resolution process.⁵ Thus, it can be said that moratorium is that calm period under the insolvency code which might give a new life to the Corporate Debtor by protecting it against all odds.

⁴[https://www.jonesday.com/files/Publication/1ec093d4-66fb-42a6-8115-be0694c59443/Presentation/PublicationAttachment/e5b46572-7aeb-4c34-ab2e-bee2f8f3d3c2/Comparison%20of%20Chapter%2011%20\(A4\).pdf](https://www.jonesday.com/files/Publication/1ec093d4-66fb-42a6-8115-be0694c59443/Presentation/PublicationAttachment/e5b46572-7aeb-4c34-ab2e-bee2f8f3d3c2/Comparison%20of%20Chapter%2011%20(A4).pdf)

⁵https://ibbi.gov.in/BLRCReportVol1_04112015.pdf