



India: Effective Enforcement of The Insolvency And Bankruptcy Code, 2016

The objective of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the 'Code') is multi-faceted. Not only does it seek to promote entrepreneurship, by making availability of credit more transparent, but it also balances the interests of all stakeholders by consolidating and amending the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals, in a time bound manner and for maximization of the value assets of such persons and other related matters.

The former framework of insolvency and bankruptcy provisions were inadequate, ineffective and resulted in undue delays in resolution, which is why the present Code was brought into effect. One of the primary objectives of the Code is to bring the insolvency law in India under a single unified umbrella with the intention of speeding up the insolvency process.

In the recent judgement of **M/s Innoventive Industries Vs. ICICI Bank & Anr** (Civil Appeal Nos. 8337-8338 of 2017) passed by the Hon'ble Supreme Court of India, the functionality and operation of the Code has been discussed elaborately.

Brief facts

In furtherance to the service of debts, a corporate debt restructuring was proposed by Innoventive Industries which was admitted and thus a Master Restructuring Agreement (MRA) was entered into between the parties by which funds were to be infused by the creditors and certain obligations were to be met by the debtors.

An application was filed by ICICI at National Company Law Tribunal (NCLT) alleging that Innoventive Industries was a defaulter within the meaning of the Code, and prayed for insolvency resolution process to be set in motion. Innoventive Industries replied to the same by filing an interim application claiming that no debts were legally due vide the notifications issued under the Maharashtra Relief Undertakings (Special Provisions Act), 1958 (hereinafter referred to as the 'Maharashtra Act') and accordingly its liabilities were temporarily suspended for a period of one year in the first instance and for another period of one year subsequently. Innoventive Industries further pleaded via second application that owing to non-release of funds under MRA, it was unable to pay back its debts.



Appeal arose to the Supreme Court when the National Companies Law Tribunal (NCLT) and National Companies Appellate Law Tribunal (NCLAT) dismissed the aforesaid application of Innoventive Industries.

Decision

The Hon'ble Supreme Court upheld the decision of NCLT and NCLAT that the obligation of the corporate debtor was unconditional and did not depend upon infusing of funds by the creditors under MRA.

Further the Court categorically stated that the appeal by Innoventive Industries was not maintainable as the erstwhile directors were no longer in the management once an insolvency professional was appointed to manage the company.

Ratio

The Court gave comprehensive reasoning for its decision which was based on the following points:

- The scheme of the Code is to ensure that when a default takes place, in the sense that a debt becomes due and is not paid, the insolvency resolution process begins.
- A comparative analysis was made between the insolvency proceedings initiated by the financial creditors and those by operational creditors. As per the provisions of the Code, under Section 7 in the case of insolvency proceedings initiated by a financial creditor, the Adjudicating Authority has merely to see the records of the information utility or other evidence produced by the financial creditor to satisfy itself that a default has occurred. Whereas under the provisions of Section 8 of the Code, the operational creditor is required to first deliver a demand notice of the unpaid debt to the operational debtor in case of occurrence of default.
- It is of no consequence that the **debt is disputed so long as the debt is “due”** i.e. payable unless interdicted by some law or has not yet become due in the sense that it is payable at some future date. When the same is proved to the satisfaction of the adjudicating authority it may reject an application and not otherwise.
- The Adjudicating Authority while deliberating upon the provisions of Section 7 is to **ascertain the existence of a default** from the records of the information utility or on the basis of evidence furnished by the financial creditor and this process must be done within **14 days** of receipt of the application.
- Once the application is admitted, erstwhile management of the corporate debtor is vested in an **interim resolution professional under the Code appointed to manage the operations** of the corporate debtor as a going concern under the provisions of Section 17.



The Code makes an attempt by divesting the erstwhile management of its powers and vesting it in a professional agency, to continue the business of the corporate body as a going concern until a resolution plan is drawn up, in which event the management is handed over under the plan so that the corporate body is able to pay back its debts and get back on its feet. The said process is to be done within a period of 6 months with a maximum extension of another 90 days else the liquidation process would commence as per the provisions of Section 12.

- Under the provisions of Constitutional Law, relating to **repugnancy** between the Central and State Laws, the Central enactment prevails and operates over the State Law (Article 254 of the Constitution). By giving effect to the State law (Maharashtra Act), the scheme under the Parliamentary statute (the Code) would directly be hindered and/or obstructed to thereby causing clash in the taking over of the management and the imposition of moratorium. Also, the timeframe of 1-15 years as per the State Law (Maharashtra Act) would defeat the very purpose of speedy resolution according to the Central Law (Code) which restricts the time for the Company to be brought to commercial fold or face liquidation.
- The Court confirmed the decision of NCLT and NCLAT in not accepting the second application by Innoventive Industries for the reasons that the period of 14 days within which the application is to be decided was long over by the time the second application was made before the Tribunal. Also, the application appeared to be an after-thought for the reason that the corporate debtor was fully aware of the fact of failure of MRA which could have been brought by the first application itself.

Opinion

The aforesaid judgement has dealt with the aims and objectives of the Insolvency and Bankruptcy Code 2016 in exhaustive details. It has not only clarified the purpose of the Code, but, had also focused on its efficacious implementation. Instilling confidence in the creditors, it is a comprehensive, systemic and speedy reform which paves way for development and progress. It has reposed the faith in the judicious approach of the legislature inculcating protection against unscrupulous debtors escaping and delaying the repayment of debts incurred by using the legislative framework thereby preventing taking advantage of one's own wrong.