



INSOLVENCY AND BANKRUPTCY CODE, 2016

SECTION COVERED IN THE PRESENTATION: 11 TO 15.

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SECTION 11: PERSONS NOT ENTITLED TO MAKE APPLICATION.

- * *a corporate debtor undergoing a CIRP or a pre-packaged insolvency resolution process; or*
- * *a financial creditor or an operational creditor of a corporate debtor undergoing a pre-packaged insolvency resolution process; or*
- * *a corporate debtor having completed CIRP within twelve months preceding the date of making of the application; or*
- * *a corporate debtor in respect of whom a resolution plan has been approved twelve months preceding the date of making of the application; or*
- * *a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved twelve months before the date of making of an application; or*
- * *a corporate debtor in respect of whom a liquidation order has been made.*

The word pre-packaged insolvency resolution process and clause (d) has been inserted by notification IBBI (Amendment) Act, 2021 dated 12.08.2021.

For more detail refer the link -

<https://ibbi.gov.in/uploads/legalframework/0150ec26cf05f06e66bd82b2ec4f6296.pdf>

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RELATED CASELAW -

INDIABULLS HOUSING FINANCE LTD. V. SHREE RAM URBAN INFRASTRUCTURE LTD (NCLAT)

FACTS - NCLAT examined judgments governing the issue to hold that the High Court of Bombay has **already ordered for winding-up** of corporate debtor, which is the second stage of the proceeding.

JUDGEMENT - NCLAT held that question of initiation of ‘Corporate Insolvency Resolution Process’ which is the **first stage** of resolution process against the same corporate debtor **doesn’t arise**.

(Order dated 9th February 2018).

SECTION 11A: DISPOSAL OF APPLICATIONS UNDER SECTION 54C AND UNDER SECTION 7, 9 OR 10.

(1) Where an application filed under section 54C is pending, the Adjudicating Authority shall pass an order to admit or reject such application, before considering any application filed under section 7, 9 or 10 during the pendency of such application under section 54C, in respect of the same corporate debtor.

(2) Where an application under section 54C is filed within fourteen days of filing of any application under section 7, 9 or 10, which is pending, in respect of the same corporate debtor, then, notwithstanding anything contained in sections 7, 9 and 10, the Adjudicating Authority shall first dispose of the application under section 54C.

(3) Where an application under section 54C is filed after fourteen days of the filing of any application under section 7, 9 or 10, in respect of the same corporate debtor, the Adjudicating Authority shall first dispose of the application under section 7, 9 or 10.

Section 11A has been inserted through inserted by notification IBBI (Amendment) Act, 2021 dated 12.08.2021. For more detail refer the link -

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SECTION 12: TIME-LIMIT FOR COMPLETION OF INSOLVENCY RESOLUTION PROCESS. –

(1) The corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process

(2) The resolution professional shall file an application to the Adjudicating Authority to extend the period of the CIRP beyond 180 days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of 66% of the voting shares.

(3) On receipt of an application if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process can't be completed within 180 days,

it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding 90 days.

(4) Provided that any extension of the period of CIRP under this section shall not be granted more than once.

(5) Provided further that the CIRP shall be mandatorily be completed within a period of 330 days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor.

RELATED CASELAW -

ARCELORMITTAL INDIA PVT. LTD. V. SATISH KUMAR GUPTA & ORS.

(SUPREME COURT)

LEGAL ISSUE - Time limit for completion of the insolvency resolution process as laid down under Section 12 is **directory or mandatory?**

JUDGEMENT -

Time limit for completion of the insolvency resolution process as laid down under Section 12 of the Code is **mandatory**.

(Order dated 4th October, 2018).

SECTION 12A: WITHDRAWAL OF APPLICATION ADMITTED UNDER SECTION 7, 9 OR 10.

The Adjudicating Authority may allow the withdrawal of application admitted under section 7, 9 or 10, on an application made by the Financial, Operation Creditors or by Corporate Debtor itself with the approval of 90% voting share of the committee of creditors, in Form FA.

RELATED CASELAW -

COAL INDIA LTD. v. GULF COIL LUBRICANTS INDIA LTD & ANR. (NCLAT)

FACTS - An application under Section 9 of IBC was filed by **Operational Creditor** for initiation of the 'Corporate Insolvency Resolution Process' against corporate debtor. The said application has been admitted by NCLT.

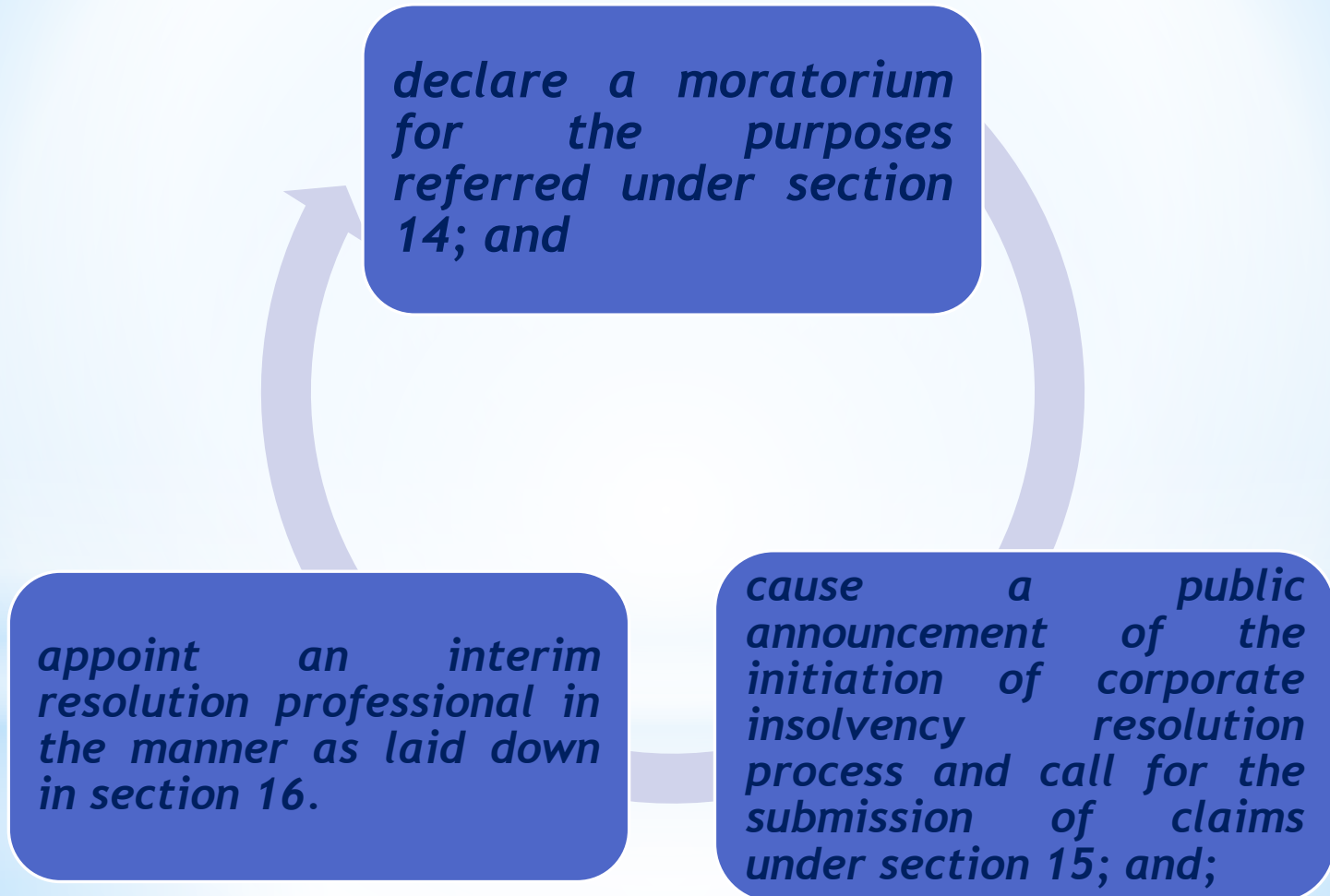
Meanwhile the Operational Creditor and Corporate Debtor **reached a settlement** and the Corporate Debtor paid the amount agreed;

Now the application for withdrawal was filed to NCLT, which NCLT rejected and hence this appeal was preferred.

JUDGEMENT - **Case can be withdrawn** under IBC if a settlement is reached before constitution of the COC.

(Order dated 23th December 2018)

SECTION 13. PROCESS AFTER ADMISSION OF APPLICATION FOR INITIATING CIRP.



SECTION 14: MORATORIUM.

Moratorium period is a concept whereby it is ensure that the status quo of the corporate debtor is maintained during CIRP.

PURPOSE OF MORATORIUM PERIOD

To ensure that multiple proceedings are not taking place simultaneously and thus avoid the possibility of conflicting outcome of related proceeding;

To keep the corporate debtor's assets together during the insolvency resolution process and facilitates orderly completion of the process;

To ensure that the company my continue as a going concern while the creditors assess the option for resolution of default;

Prohibition on disposal of the corporate debtor's assets that the corporate debtor/management doesn't transfer its assets, thereby stripping the corporate debtor of the value during the CIRP.

THE FOLLOWING ACT ARE PROHIBITED DURING THE MORATORIUM PERIOD.

- * the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, 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 SARFAESI 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.

Explanation - It is hereby clarified that notwithstanding anything contained in any other law for the time being in force, a license, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectorial 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, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period;

THE FOLLOWING SHALL NOT BE AFFECTED BY AN ORDER OF MORATORIUM.

- * 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 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. Except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances.

The order of moratorium shall have effect from the date of such order till the completion of the CIRP or termination of CIRP, as the case may be.

RELATED CASELAW -

ANAND RAO KORADA RESOLUTION PROFESSIONAL v. M/S VARSHA FABRICS (P) LTD. (SUPREME COURT)

FACTS - In the writ petitions filed by the workers Union, the **High Court passed order** directing certain properties of the corporate debtor to put on **auction sale** and the determined dues to be paid to workers.

Meanwhile, one financial creditor initiated corporate insolvency proceedings against the corporate debtor and the **NCLT ordered the moratorium**. The sale of the properties was to be made during the period of moratorium and the resolution professional challenged the orders of the High Court;

The Appellant Resolution Professional filed the present Civil Appeals to challenge the Interim Orders passed by the Odisha High Court on the ground that since the CIRP against Respondent had commenced, the proceedings before the High Court is ought to be stayed.

JUDGEMENT -

Once application has been admitted by NCLT, **no order regarding the assets of the Corporate Debtor can be passed by any court.**

(Order dated 18th November 2019).

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SECTION 15: PUBLIC ANNOUNCEMENT OF CORPORATE INSOLVENCY RESOLUTION PROCESS.

(a) name and address of the corporate debtor under the CIRP;

(b) name of the authority with which the corporate debtor is incorporated or registered;

(c) the last date for submission of claims;

(d) details of the interim resolution professional who shall be vested (d) with the management of the corporate debtor and be responsible for receiving claims;

(e) penalties for false or misleading claims; and

(f) the date on which the CIRP shall close, which shall be the 180 day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

(g) The public announcement under this section shall be made in Form A .

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Thank you!

If you need any further assistance, Feel free to contact us. <https://bkacs.com/>