

## The Timeline is the essence of CIRP under IBC: A Review Study

**Mrs. P. Anitha, Mrs. C. Latha, Dr. S. Pardhasaradhi**

*Mrs. P. Anitha Research Scholar- GITAM School of Business – Hyderabad, Assistant professor, Department of Business management, St. Pious X P.G (MBA) College for women, affiliated to Osmania University-Hyderabad*

*Mrs. C. Latha Research Scholar- GITAM School of Business – Hyderabad, Assistant professor, Department of Business management, St. Pious X P.G (MBA) College for women, affiliated to Osmania University-Hyderabad*

*Dr. S. Pardhasaradhi St. Pious X PG (MBA) College for Women, , Professor of Business Management & Dean, Research Affiliated to Osmania University-Hyderabad Department & College*

### Abstract

The Insolvency & Bankruptcy Code, 2016<sup>1</sup> (IBC) is a behavioral law, wherein the time frame in the Corporate Insolvency Resolution Process (CIRP) is essential. Section 12 of the code prescribes the timeline for the CIRP. The Regulation 40A of the IBC Regulations<sup>2</sup>

provides the model timeline for compliance. Basically, it is 180 days and can be extended by 90 days once with sufficient reasons permitted under the code. In all, there are 330 days, including time consumed in the legal process. However, in exceptional circumstances, CIRP has exceeded beyond 330 days also, where it is approved by the CoC by 100 % under special justified circumstances. The commercial wisdom of CoC is not generally questioned by the judiciary. In this paper an attempt is made to trace certain judicial pronouncements pertaining to the time element of CIRP, to trace what are circumstances under which the extension were permitted and to what extent the time frame is maintained in general.

Key words: Committee of creditors (COC), insolvency and bankruptcy, ibc, behavioral law, CIRP.

### 1. INTRODUCTION

The success of the Insolvency and Bankruptcy Code, 2016<sup>3</sup> (IBC) is based on the timeline under IBC. In terms of section 12 of the IBC, it is mandatory that the Corporate Insolvency Resolution Process (CIRP) needs to be completed within the maximum period of 180 days. The CIRP of 180 days is counted with effect from the date of admission of the application for the purpose of initiating the CIRP. In certain circumstances, where there is a need to extend the period by 180 days, the Resolution Professional may seek an extension of the duration with the Adjudicating Authority for a further maximum period of 90 days. The basis of such an application by Insolvency Professional shall be based on the

resolution approved by the commerce of creditors (CoC) by a vote of 66% of voting shares. The AA may grant an extension if it is satisfied that such an extension is desirable. The code does not permit further extension once it is granted extension as aforesaid. Further, the maximum CIRP timeline shall be 330 days, including an extension of 90 days and time taken in judicial proceedings. In this paper an attempt is made to review the several judicial precedents on the time line in CIRP and the extension of the time period. The paper considered the judicial precedents in respect of the following aspects for the extension of time period under CIRP.

Resolution Professional should file an application to the AA for extension of the period of the CIRP, only if instructed to do so by a resolution passed at a meeting of the CoC by a vote of 75% of the voting shares.

## 1. Body of Paper

### 2(a) Time is the essence of CIRP in achieving the objectives of IBC:

The crux of the judgement in respect of Innoventive Industries Ltd. Vs. ICICI Bank & Anr. [Civil Appeal Nos. 8337-8338 of 2017] SC order dt. 31.08.2017<sup>4</sup>, **that** time is important in seeing whether the corporate body can be put back on its feet, so as to stave off liquidation.

It was established in the aforesaid case that -

- speed is of the essence.
- Without effective leadership, the firm will tend to fail.
- The longer the delay, the more likely it is that liquidation will be the only answer.

- the liquidation value tends to go down with time.
- a going concern approach yields fairly good realisation;
- identifying and combating the sources of delay fetches high recovery;
- An effective legal framework for timely resolution of insolvency and bankruptcy would support the development of credit markets and encourage entrepreneurship.
- It would also improve the ease of doing business, and facilitate more investments, leading to higher economic growth and development

It was further observed in the case that -

- When default takes place, control is supposed to be transferred to the creditors; equity owners have no say.
- The appropriate disposition of a defaulting firm is a business decision, and only the creditors should make it with commercial wisdom.

In the case of Arcelormittal India Pvt. Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal Nos. 9402-9405 of 2018 and other appeals] SC order dt. 04.10.2018<sup>5</sup>, it was considered time is the essence in the CIRP. The case further established that -

- the time referred to in section 12 of the code is mandatory in view of the fact that the objects of the code are linked to the time element in CIRP.
- It is also essential because of the implications under the provisions of Sec 33 of the code. The model time line under Regulation 40A and the same is considered very significant and essential.

In the case of Maharashtra Seamless Ltd. Vs. State Bank of India & Ors. [CA (AT) (Ins.) No. 1039 of

2020] NCLAT order dt. 07.12.2020<sup>6</sup>, it was held that CIRP must strictly adhere to the timeline under the code. The process such as withdrawal and settlement as may be considered by CoC shall in any case be materialised within the timeline under the code.

## **2(b) In Timeline - what is mandatory and directory in admitting the case:**

It was held in the case of Surendra Trading Company Vs. Juggilal Kamlatpat Jute Mills Company Ltd. & Ors. [Civil Appeal No. 8400 of 2017 and other appeals] SC order dt. 19.09.2017<sup>7</sup> as to what is mandatory and directory in admitting the case with reference to the timeline.

The time limit of 14 days under section 9(5) of the code for ascertaining the existence of default and ultimately accepting or rejecting the application for admission under the Code by NCLAT is considered by the supreme court to be directory. NCLAT holds that the mandate of sub-section (5) of section 7 or sub-section (5) of section 9 or sub-section (4) of section 10 are all procedural in nature, a tool of aid in expeditious dispensation of justice and is directory. Similarly, supreme court held that seven days for rectifying the defects under section 9(5) of the code is directory in nature and not mandatory. The intention behind these provisions is to expedite the process of resolution.

It was further held in the case of Essar Steel India Ltd. Vs. Satish Kumar Gupta & Ors. [Civil Appeal No. 8766-67 of 2019 with other Civil Appeals and WP(C)s] SC order dt. 15.11.2019<sup>8</sup> that -

- The “mandatorily” in section 12(3) of IBC was struck down as it is considered arbitrary under

Article 14 of the Constitution Committee of Creditors;

- as being an unreasonable restriction on the litigant’s right to carry on business under Article 19(1)(g) of the Constitution.

- the effect of this declaration is that ordinarily the time taken in relation to the CIRP must be completed within the outer limit of 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings.

- The Supreme Court recognized that the Sick Industrial Companies (Special Provisions) Act, 1985<sup>9</sup>, The Recovery of Debts Due to Banks and Financial Institutions Act, 1993<sup>10</sup> and the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002<sup>11</sup> failed in resolution of stressed assets due to the legal proceedings under these legislations being dragged on for years.

- Therefore, to ensure maximization of realization of value of the assets of the stressed company in line with the objectives of the IBC, the Supreme Court did not consider it fit to strike down Section 4 of the IBC Amendment Act which provided for a mandatory timeline within which the CIRP (including legal proceedings) needed to be completed.

- Instead, the Supreme Court read down such provision by striking down the word “mandatorily” before the stated timeline to ensure its constitutional validity. Therefore, the CIRP should ordinarily be completed within the prescribed 330-day timeline.

- Therefore, the Adjudicating Authority may provide exemptions in certain exceptional cases

where the failure to adhere to such timelines could not be attributed to any fault of the relevant litigants.

### **2(c) Time taken by Resolution Professional in taking charge to be excluded:**

After the admission of the application under IBC, the time taken by the Resolution Professional to take charge was excluded by the AA. In the case of Velamur Varadan Anand Vs. Union Bank of India & Anr. [CA (AT) (Ins.) No. 161 of 2018] NCLAT order dt.16.05.2018<sup>12</sup>, the application was admitted on 16<sup>th</sup> August, 2017 and subsequently, on intimation, on 14<sup>th</sup> September, 2017, Resolution Professional took over charge. In this case, National Company Law Appellate Tribunal (NCLAT) directed the AA to exclude the period of 30 days from 16<sup>th</sup> August, 2017 to 14<sup>th</sup> September, 2017 for the purpose of counting the period of CIRP.

### **2(d) Failure on the part of the Resolution Applicant to fulfill the commitment:**

In terms of section 10(2) of the code, it is provided in the third proviso, that where the CIRP of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019. The same was held in the case of the Committee of Creditors of Amtek Auto Ltd. Vs. Dinkar T. Venkatsubramanian & Ors. [Civil Appeal No(s). 6707/2019 and another appeal] SC order dt. 24.09.2019<sup>13</sup> that where the Resolution Plan already utilised time given under section 12 of the Code and failed owing to non fulfilment of the commitment by Liberty House, resolution applicant. The SC observed that the IBC (Amendment) Act,

2019 permits resolution process for a further period of 90 days from the date of commencement of the Amendment Act, I.e. w.e.f. 16.08.2019. The Resolution Professional was permitted to call for fresh offers within a period of 21 days, considering the time limit of 15.11.2019,

### **2(e) Infirmary in the impugned liquidation order during the resolution process:**

In respect of not considering the setting aside the order in the case of liquidation case, the NCLAT focused on the very objective of IBC, mainly the time line of CIRP and going concern and maximisation of the value of the assets by not setting aside an order for certain defects.

In the case of Sunil S. Kakkad Vs. Parag Sheth & Anr. [CA (AT) (Ins.) Nos. 1260-1261 of 2019 and another appeal] NCLAT order dt. 19.11.2019<sup>14</sup>, the NCLAT did not consider a set-aside order of liquidation for re-starting the CIRP. This was considered despite the fact that there was some infirmity in the impugned liquidation order as already two years had passed after the commencement of CIRP. Further, it was held that there was no use in reconsidering as it is a case of liquidation and the company was not a going concern. NCLAT considered it would be a futile effort. While rejecting the same, the following observations were made (i) The Corporate Debtor Company is not a going concern, and it has been out of business for five years. There are no Key Managerial Personnel available in the Corporate Debtor Company; (ii) There is no employee in the Corporate Debtor Company and the balance

sheet figures are not favourable and there was no single resolution plan submitted.

## 2(f) Existence of circumstances for granting time under section 12 of the code:

It was held in the case of Sky Blue Papers Pvt. Ltd., In re. [CP No. IB No. 09/Chd/CHD/ 2017] NCLT, Chandigarh order dt. 03.10.2017<sup>15</sup>, there must exist the necessary circumstances in order to grant an extension of time under section 12(1).

The extension is preferred for possible resolution plan instead of liquidation, which is a last resort. This view was held in the case of Quantum Limited Vs. Indus Finance Corporation Ltd. [CA (AT) (Ins.) No. 35 of 2018] NCLAT order dt. 20.02.2018.<sup>16</sup>

The reason could be based on doing justice. If the extension is not granted, it would lead to gross injustice under a given circumstances, then extension is preferred. A similar view was considered in granting an extension in the case of RBL Bank Ltd. Vs. MBL Infrastructures Ltd. [CA (IB) Nos. 270/KB/2017, 238/KB/2018, 288/KB/2018 in CP (IB) No. 170/KB/2017] NCLT, Kolkata order dt. 18.04.2018<sup>17</sup>.

Abhilash Lal, RP of Sevenhills Healthcare Pvt. Ltd. [IA No. 137 of 2020 in CP(IB) No. 282/7/HDB/2018] NCLT, Amravati order dt. 06.10.2020<sup>18</sup> established the outcome shall balance the interests of all the stakeholders.

The extension of time period enabling for completion of CIRP would be in the interest of all stakeholders, to allow the completion of CIRP

rather than going into liquidation of the CD which should only be initiated as a last resort. It approved the extension of the period by 90 days.

## 2(g) In the timeline of 270 days - discretionary aspects:

The AA may exclude certain period in the computation of 27 days based on certain justified reasons. Section 12 prescribes the 'time limit for completion of the insolvency resolution process', which reads as follows: Time-limit for completion of insolvency resolution process - (1) Subject to sub-section (2), the corporate insolvency resolution process shall be completed within a period of one hundred and eighty 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 corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of seventy-five per cent of the voting shares.

In Quinn Logistics India Pvt. Ltd. Vs. Mack Soft Tech Pvt. Ltd. & Ors. [CA (AT) (Ins.) No. 185 of 2018] NCLAT order dt. 08.05.2018<sup>19</sup>, it was held that NCLAT excluded some period in the computation of 270 days based on the circumstances which were justified in excluding some period. In this case, the exclusion of the some period was based on unforeseen circumstances.

In this case, it is further observed that -

- - the corporate insolvency resolution process remained stayed for 166 days due to the interim order passed by the Adjudicating Authority



on 15th September, 2017 which was vacated on 28th February, 2018, and accordingly, the 'Committee of Creditors' / 'Resolution Professional' rightly requested the Adjudicating Authority to exclude the period of 166 days for the purpose of counting the total period of 270 days.

- Taking into consideration the stand taken by the parties and the stage of the corporate insolvency resolution process, NCLAT directed the Adjudicating Authority to exclude 166 days for the purpose of counting the period of corporate insolvency resolution process and thereby allow the Resolution professional / Committee of Creditors further 166 days with immediate effect (i.e. 8th May, 2018) to complete the corporate insolvency resolution.

2(h) Extension of CIRP time beyond 330 days:

**In the case of IDBI Bank Ltd. Vs. Cyclo Transmissions Ltd. [IA No. 1053 of 2020 in CP(IB) No. 381 of 2018] NCLT, Mumbai order dt. 07.10.2020<sup>20</sup>**, the NCLT extended the time period beyond 330 days in the interest of CD and all the stakeholders. Further, it is approved 100 % by the CoC.

In permitting the case beyond 330 days, it was further held that -

- the NCLT of the opinion that by virtue of the mandatory contents of the resolution plan, the same is in accordance with Section 30 and 31 of the Code, and also complies with the requirements of the Regulations 38 and 39 of CIRP Regulations.

- Therefore, when the provision of law and the law laid down by the Hon'ble Supreme Court is applied to the case on hand, it becomes clear that this

resolution plan approved by the CoC with the required majority, satisfies all the criteria required for approval of Resolution Plan and accordingly the resolution plan is approved.

The case also established that -

- the judiciary shall not interfere with the commercial or business wisdom of the CoC;
- the resolution plan is in compliance with all the provisions and regulations under IBC as required and it is approved by 100 % of the CoC;
- the protection of stakeholders is ensured.

To prevent liquidation, the time line beyond 330 days was allowed by NCLAT to the Committee of Creditors, in the case of Trading Engineers International Ltd. Vs. Trading Engineers International Ltd. through RP [CA (AT) (Ins.) No. 61 of 2021] NCLAT order dt. 02.02.2021.<sup>21</sup> The essential element of the objectives of the code is concerning approach and resolution rather than liquidation. Accordingly, the discretionary is exercised in this case to achieve the objectives of the code.

### Conclusion:

Time is considered the essence of CIRP, both under going concern approach as well as the liquidation process. Time is the essence of the insolvency process to establish maximisation of the value of assets is based on a timeline. The other objectives, such as ease of doing business, entrepreneurship development, change in the credit culture etc., are the outcome of expeditious CIRP.

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