

## **FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS: THE WAY AHEAD**

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### **ABSTRACT**

*The insolvency resolution process in India has in the past involved the simultaneous operation of several statutory instruments. These include the Sick Industrial Companies Act, 1985, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993.*

*A plethora of legislation dealing with insolvency and liquidation led to immense confusion in the legal system, and there was a grave necessity to overhaul the insolvency regime. There is lot more strain on the Indian credit system, as is evidenced from the prevailing legal and institutional framework which does not aid or help the lenders for the effective and timely recovery or even restructuring of defaulted assets.*

*Each Insolvency Resolution Process (IRP) must be carried out within the maximum period set in the Code. However, this is the time taken for the resolution of a very complex entity, where complexity may come in the structure of liabilities and assets, or size of operations. The researcher in this article deals with the fast track insolvency resolution process wherein the entities are likely to have a less complex structure in these aspects. Therefore, their insolvency is likely to take a shorter time to resolve. The criterion for invoking Fast Track Resolution depends on the corporate debtor's assets, income and nature of creditors or quantum of debt. The entire process is completed within 90 days. However, the NCLT may, if satisfied, extend the period of 90 days by another 45 days.*

**Keywords:** *Fast track Insolvency Resolution Process, Insolvency & Bankruptcy Code-2016.*

## **INTRODUCTION**

The Indian Parliament recently paved the way for a new legal framework governing insolvency of corporate and individuals: The Insolvency and Bankruptcy Code, 2016 ('Code'). The Code provides an entirely new legal regime, both substantive and procedural, to deal with insolvency and bankruptcy proceedings.

The Insolvency and Bankruptcy Code (Code) is a masterpiece legislation crafted keeping into account the needs and requirements of the present time. Insolvency and Bankruptcy Code, 2016 consolidates and amends the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of these persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders. Chapter IV, Part II, of the Code, comprising of section 55 to section 58 deals with matters relating to the fast track insolvency resolution process of corporate.

In exercise of the powers conferred by sub-section (3) of section 1 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government on 14 June, 2017 notified section 55 to section 58 (both inclusive) of the said Code. The Insolvency and Bankruptcy Board of India in exercise of the powers conferred under sections 58, 196 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), on 14 June, 2017 notified Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017.

## **NEED FOR FAST TRACK RESOLUTION PROCESS**

India's rank with respect to insolvency resolution is a dismal low of 136 out of 189 as per the World Bank estimate. It is observed by the World Bank's Ease of doing business report that it takes more than four years to resolve insolvency in India. There is lot more strain on the Indian credit system, as is evidenced from the prevailing legal and institutional framework which does not aid or help the lenders for the effective and timely recovery or even restructuring of defaulted assets. There is no doubt that the Indian Banking Industry is in the throes of a crisis.

NPA (Non - performing assets) have been piling up in trillions of INR. The input and output of cash needs to be properly balanced in a given system or else there are more chances of collapsing.

Each Insolvency Resolution Process (IRP) must be carried out within the maximum period set in the Code. However, this is the time taken for the resolution of a very complex entity, where complexity may come in the structure of liabilities and assets, or size of operations. Most entities are likely to have a less complex structure in these aspects. Therefore, their insolvency is likely to take a shorter time to resolve.

The Committee<sup>i</sup> (BLRC) observed that there is merit in creating explicit provisions for cases where the IRP to be necessarily carried out in shorter time periods than the most complex case. Such cases need to go in the fast track Insolvency Resolution Process.

## **APPLICATION OF THE FAST TRACK PROVISIONS**

The Code<sup>ii</sup> prescribes fast track corporate insolvency resolution process wherein an application for fast track corporate insolvency resolution process may be made in respect of the following corporate debtors namely: -

- a. A corporate debtor with assets and income below a level as may be notified by the Central Government; or
- b. A corporate debtor with such class of creditors or such amount of debt as may be notified by the Central Government; or
- c. Such other category of corporate persons as may be notified by the Central Government.

The Central Government through the Ministry of Corporate Affairs has notified<sup>iii</sup> that the fast track process shall apply to the following categories of corporate debtors-

- a. A small company, as defined under clause (85) of section 2 of the Companies Act, 2013; or

- b. A Startup (other than the partnership firm), as defined in the notification dated 23<sup>rd</sup> May, 2017 of the Ministry of Commerce and Industry; or
- c. An unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding Rs.1 crore.

## **SCHEDULE FOR COMPLETING FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS**

The Code<sup>iv</sup> provides that the fast track corporate insolvency resolution process shall be completed within a period of ninety days from the insolvency commencement date.

If at a meeting of the committee of creditors a resolution is passed with the support of a vote of seventy five percent of the voting share to extend the period of the fast track corporate insolvency resolution process beyond ninety days. The resolution professional shall file an application to the Adjudicating Authority to extend the period of the fast track corporate insolvency resolution process<sup>v</sup>.

When an application for extension of the period for the fast track corporate insolvency resolution process is made by the resolution professional on recommendations of the committee of creditors the Adjudicating Authority on satisfaction that the subject matter of the case is such that fast track corporate insolvency resolution process cannot be completed within a period of ninety days, it may, by order, extend the duration of such process beyond the said period of ninety days by such further period, as it thinks fit, but not exceeding forty-five days<sup>vi</sup>.

It is to be noted that the extension of the fast track corporate insolvency resolution process under this provision shall be granted only once.

## **INITIATION OF FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS**

A creditor or corporate debtor can make an application for fast track corporate insolvency resolution process under the Code<sup>vii</sup>. The creditor's application must be supported with the proof of default for the application to be admitted by the Adjudicating Authority. Where the Adjudicating Authority is satisfied that a default has occurred and the application is complete, it may, by order, admit such application.

Where the Adjudicating Authority is satisfied that a default has not occurred or the application is incomplete, it may, by order, reject such application. The Adjudicating Authority before rejecting the application shall give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice from the Adjudicating Authority.

The corporate debtor himself can also file an application for initiating the fast track corporate insolvency resolution process under the Code by furnishing such other information as may be specified by the Board to establish that the corporate debtor is eligible for fast track corporate insolvency resolution process<sup>viii</sup>.

It is to be noted that the fast track corporate insolvency resolution process shall commence from the date of admission of the application.

## **FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS - MECHANISM**

The Insolvency and Bankruptcy Board of India in exercise of the powers conferred under sections 58, 196 and 208 read with section 240 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), on 14 June, 2017 notified Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017.



## **RESOLUTION PROFESSIONAL – APPOINTMENT**

An insolvency professional can be appointed as a resolution professional for a fast track insolvency resolution process if he is independent of the corporate debtor.

If an insolvency professional is not a related party of the corporate debtor or is eligible to be appointed as an independent director on the board of the corporate debtor or has not been an employee of the corporate debtor at any time in the preceding three years shall be considered independent of the corporate debtor.

An insolvency professional shall make disclosures at the time of his appointment and thereafter in accordance with the Code of Conduct.

## **ACCESS TO INFORMATION**

The resolution professional to discharge his duties under the Code has authority to access the books of account, records and other relevant documents and information of the corporate debtor held with depositories of securities, information utilities or with other authorities.

## **PUBLIC ANNOUNCEMENT**

An insolvency professional shall make a public announcement not later than three days from the date of his appointment as an interim resolution professional.

The public announcement shall be hosted on the website of the corporate debtor; and on the website designated by the Board for the purpose. The public announcement shall be published in one English and one regional language newspaper with wide circulation at the location of the registered office and principal office, if any, of the corporate debtor.

The Public announcement should also inform all the creditors the last date for submission of proofs of claim, which shall be ten days from the date of appointment of the interim resolution professional.

## **SUBMISSIONS OF THE CLAIMS**

An operational creditor, a financial creditor, workman or an employee of the corporate debtor shall submit proof of his claim to the interim resolution professional in person, by post or by electronic means or as may be prescribed. The creditors may submit supplementary documents or clarifications in support of the claim before the constitution of the committee.

A person claiming to be a creditor, other than the operational creditor, a financial creditor, workman or an employee of the corporate debtor shall submit proof of its claim to the interim resolution professional or resolution professional in person, by post or by electronic means.

## **VERIFICATION OF CLAIMS**

On receipt of claims, the resolution professional shall verify the claims received within seven days from the end date for receipts of claims. The resolution professional if needed may call for such other evidence or clarification as he deems fit from a creditor for substantiating the whole or part of its claim. Thereafter a list of creditors shall be drafted by the resolution professional along with the amount claimed by them, the amount of their claims admitted

## **COMMITTEE OF CREDITORS**

The Committee of creditors is to be formed of financial creditors. In case of fast track Insolvency resolution process in the absence of any financial creditors of the corporate debtor or the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, Committee of creditors shall consist of only the Operational creditors.

The members of the committee shall consist of

- a. eighteen largest operational creditors by value. In case the operational creditors are less than eighteen then the committee shall include all such operational creditors.
- b. one representative of the workmen.

- c. one representative of the employees.

The voting rights of the members of the committee shall be in proportion of the debt due to such creditor or debt represented by such representative.

## **FILINGS WITH THE ADJUDICATING AUTHORITIES**

Resolution professional has to report to the Adjudicating Authorities regarding the formation of the Committee of creditors. If the interim resolution professional on scrutiny of the records of the corporate debtor and the claims, and is of the opinion that the fast track process is not applicable to the corporate debtor he shall file an application to the Adjudicating Authority along with the report to pass an order converting the fast track process to corporate insolvency resolution process under Chapter II of Part II of the Code.

If the Adjudicating Authority passes an order converting fast track to corporate insolvency resolution process then the process shall be carried on in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

## **COMMITTEE OF CREDITORS – MEETING**

The resolution professional shall convene the first meeting of the newly constituted committee of creditors within seven days of filing the report. The notice for the meeting shall be served at least seven days in advance prior to the date of the meeting and shall inform the participants of the agenda, venue, the time and date of the meeting and of the option available to them to participate

The notice for the meeting shall be in writing and delivered to the members either by hand delivery, speed post, or electronically. Thereafter the meeting of the committee can be convened at any time as and when required. The resolution professional may convene a meeting



of the committee on the request of members of the committee after obtaining a vote of thirty-three percent voting share.

A meeting of the committee shall be quorate if members of the committee representing at least thirty-three percent of the voting rights are present either in person or by video conferencing or other audio and visual means.

### **APPOINTMENT OF REGISTERED VALUER**

The Resolution Professional shall appoint only One Registered Valuer within seven days of his appointment to determine the fair value and the liquidation value of the Corporate Debtor. After the receipt of Resolution Plans, the Resolution Professional shall provide the fair value and the liquidation value to each member of the Committee of Creditors in electronic form, on receiving a confidentiality undertaking.

The Resolution Professional shall issue an invitation, including the evaluation matrix, to the prospective Resolution Applicants. The prospective resolution applicant shall get at least 15 days from the issue of invitation or modification thereof, whichever is later, to submit resolution plans.

A Resolution Plan shall provide for the measures, as may be necessary, for insolvency resolution of the Corporate Debtor for maximization of value of its assets. These may include reduction in the amount payable to the creditors, extension of a maturity date or a change in interest rate or other terms of a debt due from the Corporate Debtor, change in portfolio of goods or services produced or rendered by the Corporate Debtor, and change in technology used by the Corporate Debtor.

The Resolution Professional shall submit the Resolution Plan approved by the Committee of Creditors to the Adjudicating Authority, at least 15 days before the expiry of the maximum period permitted for the completion of the fast track Corporate Insolvency Resolution Process.

## **FAST TRACK CORPORATE INSOLVENCY RESOLUTION PROCESS - CHALLENGES AND WAY FORWARD**

### *Area of Concern*

Any creditor or a Resolution applicant can propose a resolution proposal. The IBBI is likely to be flooded with numerous resolution plans in just one insolvency matter only.

The time frame provided by the Code of 90 days, with an extension of 45 days, is not enough to prepare a resolution plan and in the alternate to conclude a fast track corporate insolvency resolution process.

The preparation of the Information memorandum is a big challenge to the Insolvency professional as he needs time to understand the the company, its cash flows, its creditors and others

### **CONCLUSION**

All proceedings under the Code in respect of Fast track Corporate Insolvency Resolution Process are to be adjudicated by the NCLT, which has been designed as the special one window forum which can tackle all aspects of insolvency resolution. No other court or tribunal can grant a stay against an action initiated before the NCLT. Appeals from the orders of the NCLT lie before the National Company Law Appellate Tribunal ('NCLAT'). All appeals from orders of the NCLAT lie to the Supreme Court of India.

Fast Track Resolution Process are measures to help revive a company. The Code attempts to first examine possibilities of a revival of a corporate debtor failing which, the entity will be liquidated. It is evident that the Indian government is leaving no stone unturned in its aim to improve the Ease of Doing Business in India.

## REFERENCES

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<sup>i</sup> The Bankruptcy Law Reforms Committee,

<sup>ii</sup> Section 55 of Insolvency and Bankruptcy Code, 2016

<sup>iii</sup> vide S.O.1911(E). dated 14<sup>th</sup> June 2017

<sup>iv</sup> Section 56 of Insolvency and Bankruptcy Code, 2016

<sup>v</sup> Section 56(2) of Insolvency and Bankruptcy Code, 2016

<sup>vi</sup> Section 56(3) of Insolvency and Bankruptcy Code, 2016

<sup>vii</sup> Section 57 of Insolvency and Bankruptcy Code, 2016

<sup>viii</sup> Section 57 of Insolvency and Bankruptcy Code, 2016

