

# MORATORIUM UNDER IBC: ISSUES AND CHALLENGES

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## ABSTRACT

*The Insolvency law in India is a new and developing law. Though, there were laws or provisions before enactment of new Insolvency and Bankruptcy Code. To overcome the flaws in old legislations this Code was enacted. Moratorium is an important aspect under this law as it is a part of the procedural provisions of the code and also affects the final judgment or order of the Adjudicating Authority while adjudicating Insolvency Proceedings. As Moratorium is the stage which prevents all the judicial or other enforcement proceedings. Hence, it created a huge number of disputes. As it is a new or developing law, the disputes related to moratorium arising under this code can only be resolved by judicial interference or interpretation. The courts have given various judicial interpretations in relation with the various aspects of these provisions. In this paper the provisions and the judicial interpretations related with Moratorium under new Insolvency law and old laws will be discussed.*

## INTRODUCTION

As per the meaning provided in Cambridge Dictionary the word Moratorium means a period of time during which a particular activity is stopped. It is believed that the word was originated in Late 19th century modern Latin, neuter (used as a noun) of late Latin moratorius 'delaying', from Latin *morat-* 'delayed', from the verb *morari*, from *mora* 'delay'.

The moratorium, in terms of IBC, is *inter alia* defined as "a period wherein no judicial proceedings for recovery, enforcement of security interest, sale or transfer of assets or termination of essential contracts can be instituted or continued against the corporate debtor."<sup>i</sup>

The various meanings as explained by different renowned dictionaries, it can be understood that Moratorium is just a process or step in which no new legal proceedings or enforcement proceedings can be initiated or filed in any court or adjudicating authority other than the parent

adjudicating authority in which the process of adjudication is going on. In reference with Insolvency Law it can be understood that Moratorium order is the order which prohibits other judicial and enforcement proceedings while the Insolvency Process is in force.

#### ❖ STATUS UNDER PREVIOUS LAWS

Before enactment of new code there were no provisions for moratorium as exists presently. Though there was provision for taking consent of Adjudicating Authority before which the process of insolvency being done, but no exact provision of Moratorium existed unlike today. Before enactment of this new code there was SICA. Under this law insolvency processes were done. It too had slight similar process of insolvency or revival of sick industries. Sec. 22 of SICA prescribed that the consent of the adjudicatory body was required to initiate new judicial proceeding or enforcement proceeding before any authority other than the adjudicatory body adjudicating upon the process initiated for the sick company.<sup>ii</sup> It can be understood from merely plain reading of the provisions made under the SICA that the consent of Adjudicatory body was required. But there was no absolute bar on initiation of new proceedings.

#### ❖ MORATORIUM UNDER NEW CODE

Though the term is not specifically defined under the code but it can be understood by reading of the provisions of the code made under Sec.14 of IBC as how and what proceedings are barred by it. The section prescribes that Moratorium is an absolute bar on initiation of new proceedings during Insolvency process which has been introduced under Insolvency and Bankruptcy Code, 2016. This provision absolutely bars new proceedings. First we shall understand the application of provisions of Sec.14 by reading of the text and various interpretations done by various honourable courts. The Sub-Section(1)<sup>iii</sup> of it states certain proceedings which will be prohibited from the date of order of issuance of the order of moratorium and those proceedings are-

- Institution or continuation of pending suits or any other proceeding against “Corporate Debtor” including Execution of judgment, decree or order passed by any Court, tribunal, arbitration panel or other body against “Corporate Debtor”.
- Transfer, Encumbrance, Alienation or disposition of any of its assets or any other legal right or beneficial interest by “Corporate Debtor” .

- Action of foreclosure, recovery or enforcement of any security interest created by “Corporate Debtor” in respect of its property including any action under SARFAESI Act, 2002.
- Recovery of any property by owner or lessor which is occupied by or in possession of the corporate debtor.

Sub-section (1) states processes which cannot be done while Moratorium is in force. Sub-section(2)<sup>iv</sup> of the same Section provides certain immunities or provisions which help the “Corporate Debtor” in survival or in carrying on Business so that the maximum amount can be recovered from the “Corporate Debtor”. This Sub-section provides that the supply of essential goods or services which are specified and required to the corporate debtor shall not be terminated or stopped. Basically, it is just a provision to keep the entity in working condition.

The Sub-section(3)<sup>v</sup> to the same section provides certain transactions on which moratorium shall not apply. These are transactions which are specifically notified by central government in consultation with financial sector regulator. It is apparent from the provision itself that these are certain transactions which are kept in this category just to prevent the adverse effects of them being eligible for moratorium. These transactions kept out of Moratorium because these are the transactions having serious impact on whole financial sector and need to be regulated. Sub-section (4)<sup>vi</sup> talks about date or duration effectiveness of the order of Moratorium. The Moratorium shall have effect from the date of the order till completion of the CIRP. Effect of It shall be ceased from the date of approval of resolution plan or date of order of liquidation.

The plain reading of the provisions just provide certain kind of proceedings which will be suspended and cannot be initiated. Additionally, it provides certain kinds of transactions or activities which cannot be suspended. It also provides that on what kind of transactions this order of Moratorium will not have effect.

As the law developed and transactions or proceedings started taking place under new law, disputes or conflicts started arising. As it can be seen from the nature of disputes or conflicts arose or brought before courts of law, these were issues mainly related with interpretation or scope of the law.

As the Law grew, number of conflicts increased. There were questions of applicability, jurisdiction, overlapping of laws, winding up issues, liability of promoters, Applicability on personal guarantor and applicability of Moratorium on Arbitration proceedings etc. All these challenges and issues will be further discussed in this paper.

## **MORATORIUM UNDER USA AND UK LAWS**

USA and UK have their laws to deal with this issue. In USA, law to deal with this is provided under Title 11 of United States Code. UK has the Insolvency Act 1986 to govern this aspect of law. Certain provisions of the Act of 1986 were amended by Insolvency Act, 2000. The Title 11 of United States Code has used nomenclature 'Automatic Stay'. Which is absolutely correct and similar to Indian system. But, UK Insolvency Act 1986 and 2000 have used the same nomenclature as of Indian Law.

## **MORATORIUM UNDER UK INSOLVENCY LAW**

Provisions for Moratorium are provided in Schedule B1 of the Insolvency Act 1986<sup>vii</sup>. Insolvency Act, 2000 amended the Act and added Sec.1A<sup>viii</sup> after Sec. 1 of the Act of 1986. This section was for Moratorium where directors of eligible company can make proposal for voluntary agreement. Provisions related with moratorium are quite similar to the provisions under Indian Law. UK insolvency law provisions also require that the moratorium imposed during Insolvency proceedings stays all litigation, prevents enforcement of judgments and security without leave or consent of the court. This stays all the pre-existing proceedings and bars new proceedings<sup>ix</sup>. In India Moratorium comes into force after an order of Adjudicating Authority while in UK it comes into force from the day of Application for insolvency itself.

## **AUTOMATIC STAY IN USA BANKRUPTCY LAW**

Section 362 of Subchapter IV of Chapter 3 of Title 11 of United States Code<sup>x</sup> provides for Automatic stay on commencement or continuation of judicial, administrative or other action against the debtor. This section provides a quite descriptive and detailed provisions about the

proceedings which are to be stayed under this provision from the day of Application under Title 11. Indian code does not provide exclusive list of the proceedings to be stayed while Moratorium is in force. Due to which ambiguities arise and number of conflicts arise.

a secured creditor or any party in interest who is affected by the statutory stay can apply for lifting the stay. The person who is seeking relief by applying for lifting the Stay is bound to show or prove that the person is affected by that stay. In India there is no such scenario, it comes to an end by order of adjudicatory authority.<sup>xi</sup>

## **GENERAL ISSUES AND CHALLENGES**

Most of the legislations enacted by legislatures face challenges while implementation. In India enactment of new IBC is a significant change in area of commercial laws. As, before this there was no comprehensive legislation like this in India. As this law focused on rescue of industries or companies it has contained various provisions. Provisions related with Moratorium were very important and significant provisions as these provisions give an opportunity of relaxation or calm period<sup>xii</sup> so that the interests of all the parties involved can be protected. As, moratorium is imposed on adjudicatory proceedings going on in various courts and adjudicatory bodies hence, those proceedings are governed by various other laws. Hence, the chances of repugnancy and complications are high. Some of these challenges are being discussed herein under this paper.

## **APPLICABILITY OF MORATORIUM ON CRIMINAL PROCEEDINGS**

The provision as prescribed under Sec.14 of the code bars all the adjudication proceedings. The section clearly states that from the date of order of Moratorium no new suit can be initiated and no pending suit can be continued. The section specifically provided that execution of any judgment, decree or order of any court of law, tribunal, arbitration panel or other authority will be prohibited. Hence, it created disputes or conflicts as parties started demanding stay or prohibition on initiation of new cases and continuation of pending suits.



The problem was related with interpretation of law. Hence, Honourable High Court of Bombay decided it in *Tayal Cotton (P.) Ltd. Vs. State of Maharashtra*<sup>xiii</sup>. *The issue was completely about interpretation. As it was argued that honourable lower court has already passed an order prohibiting all the proceedings, the criminal proceeding must be stayed. But then Honourable High Court applied "ejusdem generis"<sup>xiv</sup> which is a Latin maxim means "of the same kind." Honourable court held that –*

*“he word 'proceedings' used therein and even the words 'order' and 'in Court of law' will have to be interpreted as a proceeding arising in the nature of a suit and orders passed in such proceedings and suits. Apart from the fact that the Legislature has not conspicuously used the words 'criminal' as an adjective to the word 'proceedings' and as an adjective to the noun 'Court of law', it must be assumed that the Legislature in its wisdom has consciously omitted to use such adjectives since it must have intended to prohibit only the suits and execution of the judgments and decrees or a proceeding of the like nature. Therefore, applying this principle of interpretation, one cannot put any other interpretation on this provision contained in Section 14 of the Code except that it only prohibits a suit or a proceeding of a like nature and does not include any criminal proceeding.”*

It is evident from the judgment given by honourable Bombay High Court that Criminal proceedings being of different nature and type are not prohibited under Sec. 14 while Moratorium is in force.

Though, position of law is quite clear after this judgment of Honourable Bombay HC. Still, reference can be made to a judgment of Honourable Calcutta High Court. *M/S.Mbl Infrastructure Ltd. & Anr vs Sri Manik Chand Somani*<sup>xv</sup> was a case of criminal proceeding related to dishonor of cheque under Sec. 139 of N.I. Act and Sec. 482 of Cr.P.C. . Honourable Court while deciding this matter held that-

*“Declaration of moratorium itself does not create any bar for continuation of the criminal proceedings under Section 138/141 of the Negotiable Instruments Act. It is well settled*

*that while considering an application under Section 482 of the Code of Criminal Procedure for quashing any criminal proceedings, the Court has ordinarily to proceed on the basis of the averments made in the written complaint. In the present case admittedly cheque was issued by the petitioners in favour of complainant. In terms of Section 139 of the Negotiable Instruments Act there shall be necessary presumption of existing liability in favour of holder of the cheque. Averments made in the petition of complaint prima facie clearly indicate the commission of alleged offence under Section 138/141 of the Negotiable Instruments Act.”*

It is evident from the judgments of various courts that Moratorium has no applicability on Criminal proceedings and the same cannot be barred by imposing Moratorium.

### **APPLICABILITY OF MORATORIUM ON PROCEEDINGS UNDER ART. 32, 136 AND 226 OF CONSTITUTION OF INDIA**

As the provision of IBC suggests that all the proceedings will be barred. As the provision states that no new suit can be initiated or continued. It also prohibits execution of order or decree of any court of law, tribunal, arbitration panel or other authority. The powers under Art. 32 and 136 are powers of Supreme Court to admit Writ petitions and Special Leave Petitions. As the provision specifically prohibits the proceedings it was understood that the proceedings cannot be initiated and continued under these provisions too. Another aspect was that these powers are granted by Constitution of India, hence cannot be taken away. The conflict reached to the court. Honourable NCLAT Delhi in *Canara Bank v. Deccan Chronicle Holdings Limited*<sup>xvi</sup> held that –

*“In view of the aforesaid provision of law, we make it clear that ‘moratorium’ will not affect any suit or case pending before the Hon’ble Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of*

*Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India."*

It is clear from the judgment of Honourable Court that the powers of Honourable Supreme Court under Art.32 and 126 or powers of High courts under Art. 226 of Constitution of India cannot be curtailed by any provision of an Act or court. Hence, the order of Moratorium issued under Sec. 14 cannot cover the proceedings in Supreme Court or High Courts. It is also a significant step towards upholding the supremacy of the Constitution and power of judicial review of the High Court/(s) and the Supreme Court, as a basic structure of the Constitution<sup>xvii</sup>.

### **APPLICABILITY OF MORATORIUM ON SEC 138 OF NEGOTIABLE INSTRUMENT (NI) ACT, 1891**

Insolvency proceeding is a concept related with entities involved in commercial activities. As the system of banking grew and more payment options were made available hence, these commercial entities started paying via using cheques and other negotiable instruments. It is known that insolvency proceedings are initiated when there are no assets or less assets to fulfill the demands or dues. Hence, in this kind of case the cheques issued by Corporate debtor either bounce or cannot be encashed. In that situation the parties involved in this kind of matters initiate proceedings under Sec. 138 of Negotiable Instruments Act 1891. As this paper is dealing with issue of Moratorium under Sec. 14 of IBC which prohibits adjudication, arbitration and other proceedings. The question arises here is that 'Whether Moratorium order issued under Sec.14 of IBC is applicable on proceedings under Sec. 138 of NI Act or not'? This question was decided by Honourable NCLAT, New Delhi in *Shah Brothers Ispat Pvt. Ltd v. P. Mohanraj & Ors*<sup>xviii</sup>. Honourable NCLAT held that-

*"We do not agree with such submission as Section 138 is a penal provision, which empowers the court of competent jurisdiction to pass order of imprisonment or fine, which cannot be held to be proceeding or any judgment or decree of money claim. Imposition of fine cannot held to be a money claim or recovery against the Corporate Debtor nor order of imprisonment, if passed by the court of competent jurisdiction on the Directors,*



*they cannot come within the purview of Section 14. Infact no criminal proceeding is covered under Section 14 of I&B Code.”*

It is evident from judgment of honourable NCLAT that the proceedings initiated under Sec. 138 of NI Act are not covered under this section. The reasoning taken by honourable court was that it considered this kind of proceedings as criminal proceedings. As, they are so in their very nature. It was already decided that criminal proceedings are not covered by order of Moratorium under Sec. 14 of IBC.

### **APPLICABILITY OF MORATORIUM ON PERSONAL GUARANTOR**

Order of Moratorium stays all the proceedings and execution of orders of liabilities as issued by courts. There might be many persons like Creditor, Guarantor, Surety etc. whose liability can arise out of any order. The issue here as to applicability of Moratorium is that on what orders of liabilities the order of Moratorium will apply? There was no clarity as to types of persons or entities on whom Moratorium may apply. While the confusion was going on Allahabad High Court in *Sanjeev Shriya v. State Bank of India*<sup>xix</sup> held that when Corporate Insolvency Resolution Process ("CIRP") is going on against the corporate debtor, then the debt owed by the corporate debtor is not final till the resolution plan is approved. So, again there was no clarity as to applicability of Moratorium as the liability of the Corporate Debtor could not be decided. Hence, the liability of the surety also could not be decided.

*As the confusion regarding applicability of Moratorium on Personal Guarantor could not be clarified by honourable High courts and other courts it led to litigation by Honourable Supreme Court. Honourable Supreme Court in State Bank of India v. Ramakrishnan and Ors*<sup>xx</sup> decided this matter. Honourable Supreme Court held that –

*“The Court observed that Section 14 did not make any reference to personal guarantors and it was only the corporate debtor, which was referred to therein. In such a scenario, a plain reading of Section 14 would lead to the conclusion that the period of moratorium would have no application to the personal guarantors of a corporate debtor. The Court also considered it appropriate to refer to Section 22 of the erstwhile Sick Industrial*

*Companies (Special Provisions) Act, 1985 (SICA), which inter alia provided that no suit for the enforcement of any guarantee in respect of loans or advances granted to the industrial company shall lie/be proceeded with, except with the consent of the Board of Industrial and Financial Reconstruction (BIFR) or the Appellate Authority. In this context, the Court noted that SICA was repealed on 1 December 2016 and Section 14 of the Code was brought into force with effect from the same date. The Court, therefore, concluded that the Parliament, while enacting Section 14, had this history in mind and specifically did not provide for any moratorium along the lines of Section 22 of SICA.”*

Honourable court interpreted it by plain reading of the provision and held that the term personal guarantor is not mentioned in the Section itself. It also took help of Section 22 of SICA as in that provision there was no consent of Adjudicatory Authority was required. It also held that this code is a substitute or replacement of SICA hence the interpretation of SICA can be used here too<sup>xxi</sup>. So, it can be said that the Moratorium order as issued under Sec. 14 of IBC doesn't apply to the personal guarantors.

## **AMENDMENT**

The principal laid down by Honourable Supreme Court in *V. Ramakrishna* has been endorsed by Parliament by making an Amendment in Sec. 14 of IBC by Insolvency and Bankruptcy Code (Second Amendment) Act, 2018<sup>xxii</sup>. Now the Sec. 14(3) (b) of IBC specifically provides that the order of Moratorium shall not apply to a surety in a contract of guarantee to a Corporate Debtor<sup>xxiii</sup>. So, now the position is quite clear that Moratorium will not apply to Personal Guarantor.

## **ARBITRATION PROCEEDINGS UNDER ARBITRATION AND CONCILIATION ACT, 1996**

As provided in Sec. 14 of IBC it is understood that the Arbitration proceedings as pending under Arbitration and Conciliation Act shall be stayed by order of Moratorium as issued under Sec. 14. Section 14 provides that Arbitration proceedings along with another adjudication

proceedings will be stayed. As it was clear from the plain reading of the provision itself that Arbitration Proceedings will be stayed but the same was objected by various corporate entities or petitioners. There was uncertainty as to application of Moratorium on Arbitration proceedings. Honourable courts decided the same by adjudication in various judgments. Like honourable NCLAT decided in *Ksheeraabd Constructions (P) Ltd. v. Vijay Nirman Co. (P) Ltd.*<sup>xxiv</sup>. Honourable NCLAT had categorically held that-

*“ In accordance with Section 238 of the IB Code all other laws are overridden, including Indian Arbitration and Conciliation Act, 1996. Hence, it was held that the provision under the IB Code with regard to the finality of an arbitral award for initiation of “Corporate Insolvency Resolution Process” would prevail over the provisions of the Arbitration and Conciliation Act, 1996.”*

As per the judgment of honourable NCLAT it can be understood that the CIRP would be prevailing over A&C Act 1996, which means that the Moratorium as imposed under Sec. 14 of IBC would be effective or cover the Arbitration proceedings in it.

Further the issue went up to honourable Supreme Court. Honourable Supreme Court decided it in *Alchemist Asset Reconstruction Company Ltd v. Hotel Gaudavan Pvt. Ltd. & Ors.*<sup>xxv</sup>

*“The mandate of the new Insolvency Code is that the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts **institution or continuation** of pending suits or proceedings against Corporate Debtors.*

*....we are surprised that an arbitration proceeding has been purported to be started after the imposition of the said moratorium and appeals under Section 37 of the Arbitration Act are being entertained. Therefore, we set aside the order of the District Judge dated 06.07.2017 and further state that the effect of Section 14(1)(a) is that the arbitration that has been instituted after the aforesaid moratorium is **non est in law.**”*

*As per the judgment of honourable Supreme Court it was clear that order of Moratorium as passed under Sec 14 of IBC will be applicable on Arbitration proceedings too. Which means that the proceedings of Arbitration will be stayed by order of Moratorium.*

*The judgments as passed by various honourable court held that the Arbitration proceeding would be covered by Moratorium. It can be understood by seeing all these judgments that the purpose with which the Code was enacted was being diluted or sidelined or remaining unfulfilled. As it can be seen in the long title of the Code that the purpose of IBC was “**maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders**”. But, these delays or stays in proceedings beneficial for all the stakeholders were sidelining these purposes. Hence, the issue reached to Honourable High Court of Delhi in **Power Grid Corporation of India Limited Vs. Jyoti Structures Limited**<sup>xxvi</sup>*

*.....the present proceeding would not be hit by the embargo of Section 14(1)(a) viz., (a) ‘proceedings’ do not mean ‘all proceedings’; (b) moratorium under section 14(1)(a) of the code is intended to prohibit debt recovery actions against the assets of corporate debtor; (c) continuation of proceedings under section 34 of the Arbitration Act which do not result in endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor are not prohibited under section 14(1)(a) of the code; (d) term ‘including’ is clarificatory of the scope and ambit of the term ‘proceedings’; (e) the term ‘proceeding’ would be restricted to the nature of action that follows it i.e. debt recovery action against assets of the corporate debtor; (f) the use of narrower term “against the corporate debtor” in section 14(1)(a) as opposed to the wider phrase “by or against the corporate debtor” used in section 33(5) of the code further makes it evident that section 14(1)(a) is intended to have restrictive meaning and applicability; (g) the Arbitration Act draws a distinction between proceedings under section 34 (i.e. objections to the award) and under section 36 (i.e. the*



*enforceability and execution of the award). The proceedings under section 34 are a step prior to the execution of an award. Only after determination of objections under section 34, the party may move a step forward to execute such award and in case the objections are settled against the corporate debtor, its enforceability against the corporate debtor then certainly shall be covered by moratorium of section 14(1)(a).*

So, here in this case finally honourable high court allowed Arbitration proceedings to be continued. The reasoning taken by honourable court was that the proceedings are in benefit of the Corporate Debtor. As, the Arbitration proceedings are beneficial to the Corporate Debtor they will be helpful in restructuring of the same. The honourable court also took view that the Sec. 14 of IBC prohibits the execution of the award and this step is much prior to execution. So, the main element which court kept in mind while giving this judgment is that the protection of interest of all the stakeholders. Hence, the same can be allowed to continue keeping the benefit of Corporate Debtor in mind.

## **APPLICATION OF MORATORIUM ON FOREIGN ARBITRAL AWARD OR CROSS BORDER INSOLVENCY TRANSACTIONS**

As it is clear from the *Powergrid* judgment that Arbitration proceedings can be allowed keeping the benefit of the Corporate Debtor in mind. The question arose as to application of Moratorium on foreign Arbitral Award .The issue was raised when SICA was in force. Hence, Honorable Bombay High Court in *Ashapura Minechem Ltd. v. Armada (Singapore) (P.) Ltd.*<sup>xxvii</sup> In this case the Bombay High Court affirmed that-

*“ prima facie provisions of Section 22 have only territorial application and would not be attracted to restrain a party from proceeding with the suit instituted outside India even before an application was moved by other party before the BIFR. It held that the courts would not injunct proceedings in a foreign court unless this court by itself would have jurisdiction to grant the relief.*



*Hence, judicial interpretation of moratorium provision under the SICA clearly lays down that it will not have extraterritorial application.”*

Though, the judgment was given while SICA was in force, IBC too does not contain provisions for Cross border insolvency. So, on the basis of this SICA judgment it can be said that the Moratorium issued under Sec. 14 will not cover the Arbitral awards or Cross Border insolvency awards.

## **CONCLUSION**

After doing this extensive research on this topic it can be said that the general conclusion or conclusion construed on the basis of plain readings of the provision could not be appropriate. As, the provision says that all the adjudicatory proceedings will be stayed by order of Moratorium, but the situation is not like that.

As per the plain reading interpretation of the provision it is understood that all the court proceedings will be stayed after the order of Moratorium. But, it can be seen by various judgments that the Criminal proceedings or the proceedings going on in High Courts or Supreme Court on the basis of constitutional powers cannot be stayed by Moratorium. It can also be said that the proceedings under Negotiable Instruments Act also cannot be stayed because the offence under this Act leads to criminal proceedings. Similar views were there about Arbitration proceedings, that these proceedings too will be stayed by order of Moratorium. But the situation is different, after seeing judgment of honourable court it can be concluded that Arbitration beneficial to the Corporate debtor can be allowed. As, it was helpful in restructuring or rescue of corporate entity, which will ultimately lead to fulfillment of the purpose of IBC. Though, many challenges or issues have been resolved by courts. Still, there is a huge scope of interpretational issues in this code. Hence, the same should be resolved before handed to avoid such problems.

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<sup>ii</sup> Sec. 22 SICA

<sup>iii</sup> Sec. 14. Moratorium

(1) *Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely:—*

(a) *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;*

(b) *transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

(c) *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;*

(d) *the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.*

(2) *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.*

(3) *The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.*

(4) *The order of moratorium shall have effect from the date of such order 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.*

<sup>iv</sup> *Supra* note

<sup>v</sup> *Supra* note

<sup>vi</sup> *Supra* note

<sup>vii</sup> **Schedule B1 of the Insolvency Act 1986**

### **Moratorium on insolvency proceedings**

42(1) *This paragraph applies to a company in administration.*

(2) *No resolution may be passed for the winding up of the company.*

(3) *No order may be made for the winding up of the company.*

(4) *Sub-paragraph (3) does not apply to an order made on a petition presented under—*

(a) *section 124A (public interest), or*

*[F8(aa)section 124B (SEs),]*

(b) *section 367 of the Financial Services and Markets Act 2000 (c. 8) (petition by [F9Financial Conduct Authority or Prudential Regulation Authority]).*

(5) *If a petition presented under a provision referred to in sub-paragraph (4) comes to the attention of the administrator, he shall apply to the court for directions under paragraph 63.*

viii“**Sec 2 of Schedule 1 of Insolvency Act, 2000**

Moratorium. 1A.—

(1) *Where the directors of an eligible company intend to make a proposal for a voluntary arrangement, they may take steps to obtain a moratorium for the company.*

(2) *The provisions of Schedule A1 to this Act have effect with respect to—*

(a) *companies eligible for a moratorium under this section,*

(b) *the procedure for obtaining such a moratorium,*

(c) *the effects of such a moratorium, and*

(d) *the procedure applicable (in place of sections 2 to 6 and 7) in relation to the approval and implementation of a voluntary arrangement where such a moratorium is or has been in force.”*

ix Comparison of Chapter 11 of the United States Bankruptcy Code, Jones Day, 2007, [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)

x Section 362 of Subchapter IV of Chapter 3 of Title 11 of United States Code enacted on November 6, 1978.

xi SHUBHAM PATEL and SHIKHAR TONDON, Corporate Rescue Regime: Perspectives, Analysis and Lessons, 4 RFMLR 1 (2017)], 99, <http://uisolutions.ca/rfmlawreview/Files/RG04052017182817250.pdf> (2017).

xii Pratiksha Bhandari, Legal Service India, <http://www.legalserviceindia.com/legal/article-373-moratorium-suspension-of-proceedings-or-not-.html>

xiii CRIMINAL WRIT PETITION 1437 OF 2017 Dated August 6, 2018.)

xiv [https://www.law.cornell.edu/wex/ejudem\\_generis](https://www.law.cornell.edu/wex/ejudem_generis)

xv C.R.R. 3455 of 2018 Dated April 14, 2019.

xvi Company Appeal (AT) (Insolvency) No. 147 of 2017 dated September 14, 2017.

xvii Ajay Bhargava, Jeevan Ballav Panda and Shalini Sati Prasad , NCLAT: GRANT OF MORATORIUM CANNOT USURP THE POWERS OF JUDICIAL REVIEW OF CONSTITUTIONAL COURTS (September 26, 2017, <https://www.khaitanco.com/PublicationsDocs/Khaitan%20%20Co-Ergo-Newsflash-26Sept2017NCLAT.pdf>

xviii Company Appeal (AT) (Insolvency) No. 306 of 2018 Dated July 31, 2018.

xix Civil Writ Petition No. 30285 of 2017 Dated September 6, 2017.

xx Civil Appeal No. 3595 and 4553 of 2018 Dated August 14, 2018.

xxi *Supra* 19.

xxii Amit Bhaskar ,Applicability of Moratorium to Personal Guarantor under Insolvency and Bankruptcy Code, 2016: An Analysis, [2019] 105 taxmann.com 54 (Article), April 30, 2019.

xxiii Sec.14(3) of IBC- The provisions of sub-section

(1) shall not apply to—

(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;

(b) a surety in a contract of guarantee to a corporate debtor."

xxiv 2017 SCC OnLine NCLAT 309 Dated August 29, 2017.

xxv 2017 SCC OnLine SC 1362 Dated October 23, 2017.

xxvi 017 SCC OnLine Del 12189 Dated December 11, 2017.

xxvii MANU/MH/1123/2016 Dated June 29, 2016.