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## **DETAILED ANALYSIS ON SECTION 14 OF INSOLVENCY AND BANKRUPTCY CODE**

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### **Abstract**

*This article provides insights into the commencement of moratorium, what is moratorium, objective of moratorium has been discussed in this article. This paper is an attempt to discuss in brief the provisions Section 14 of IBC, 2016. It tries to take an overview of the Detailed Analysis on Section 14 of Insolvency and Bankruptcy Code.*

### **Commencement of Moratorium**

Under Insolvency and Bankruptcy Code 2016, three people can initiate application and can file the application before NCLT for initiation of CIRP. Under Section 7 of IBC, Financial Creditors can file the application before the NCLT and under Section 9 of the IBC, the Operational Creditor can file the application and under Section 10 the corporate debtor can file the application before the NCLT. And after filing the application as soon as the application is admitted by the NCLT. One IRP is appointed by National Company Law Tribunal. Once the IRP is appointed by the adjudicating authority that is the National Company Law Tribunal, the moratorium period starts from that day itself. It means the day when IRP was appointed, the moratorium period starts from that day and it goes to the conclusion of the CIRP.

### **What is Moratorium**

The CIRP process was brought because the company or the LLP is unable to pay its debt. It means the company, or the LLP is under stress. Its assets are being called Stressed Assets and for these the

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process of CIRP is brought. Let us understand with the help of example- Supposed there is company named, XYZ Limited. And the XYZ has taken loan from the bank, whether it is a term loan or Cash credit limit, or any other kind of loan taken by the XYZ Limited from any bank. And company is unable to pay its instalment or the interest to the bank. So, in these circumstances the company will default and if the company will default, then the bank against the company under Section 7 of IBC can brought the CIRP. The bank will be known as financial creditor and the bank will initiate an application to NCLT under Section 7 of IBC, that these company has not paid the instalment or the interest. So take an action against them and start CIRP process and help to get the money back. The financial position of the company is not very good that is why the company is unable to pay it instalment to the bank.

## **Corporate Insolvency Resolution Process**

The NCLT that is been called the adjudicating authority, which will declare the moratorium, that moratorium is brought because the legislature intent to brought the company, that is already in stress therefore more other type of stress during the CIRP the company would not suffered, that moratorium provisions under IBC 2016 has brought. The moratorium will be applicable to that time period till the CIRP will applicable. The CIRP process continued for 180 and maximum extension of 90 days are allowed. If the company of creditor apply with the 66% of vote, then the NCLT can approve the further extension of 90 days. The total days for which the CIRP can go is 180 days and extra 90 days i.e., total 270 days.

## **Explanation of Section 14**

Under Section 14(1), Moratorium is given, Section 14 subsection 1 says that the adjudicating authority shall, by order prohibit the following namely:

- a) The Institution or continuation or proceedings of any suits against the corporate debtor including execution of any decree or any Judgment in any court of law including any tribunal or arbitration panel or any other authority.
- b) Transferring, encumbering, alienating, or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest. It means during the period of moratorium, the company or LLP any of its assets or property, they will not be able to transfer nor they will encumber (which

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mean to take loan by keeping the property in mortgage), neither they will alienate ( which mean they will not eliminate it or finish it). And in simple words they can not sale it.

c) Any action to foreclose, recover or enforce any security interest created by the corporate debtor including respect of its property including any action under the Securitizations and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It means Securitizations Act 2002, has been started and it is known as SARFAESI Act 2002. In this Act, it has been given that if any company became defaults and unable to pay its Interest, EMI or Instalment in bank. Then the bank against which the company has taken loan transfer the assets to Assets Reconstruction Company and that Assets Reconstruction company give the bank, the amount of that loan which its cost. So, the clause 3 of moratorium says, that all provision under SARFAESI Act 2002 will be suspended. During the period of moratorium, the SARFAESI Act 2002, also remain suspended.

d) The recovery of any property by an owner or the lessor where such property is occupied by the corporate debtor or is under the possession of the corporate debtor. It means, that if any property is taken in rent by the corporate debtor then during that moratorium period, that owner or the lessor of that property cannot recover that property from the corporate debtor. For example- Presumed that any XYZ company has taken, another person property on lease. During that moratorium period that person cannot recover that property or that fellow cannot asked the company to vacate the property during the period of moratorium.

The order of moratorium shall have effect from the date of order till the completion of CIRP or date approval of resolution plan or order of liquidation.

In case of **Alchemist Assets Reconstruction Company Limited v. M/s Hotel Gaudavan Private Limited & others<sup>i</sup>**, it had been held that mandate of recent insolvency law is that the moment an insolvency petition is admitted, the moratorium that comes into effect under sec 14(1)(a) expressly interdicts establishment or continuation of unfinished suits or proceeding against corporate debtors. Therefore once the commencement of moratorium even the initiation of arbitration proceeding was held to be not allowed.

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Section 14(2) of IBC "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". The essential goods and services referred to in section 14(2) shall mean

- a) Electricity,
- b) Water,
- c) Telecommunication services and,
- d) Information technology services, to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

In **Uttarakhand Power Corporation Limited v. M/s ANG Industries Limited<sup>ii</sup>**, as per the view of NCLAT, Appellant cannot recover the dues unpaid for period prior to the insolvency order however they can submit the claim before the Resolution professional like different operational creditors.

On the bare perusal of Section 14(3) it can be understood that it an exception provision of Moratorium, wherein any transaction which is notified by the Central Government shall not be considered to be invalid and moreover for the surety in guarantee of corporate debtor is exempted from moratorium.

The Supreme Court in the case of **State Bank of India vs. V. Ramakrishnan and Ors.<sup>iii</sup>** has held that moratorium below section 14 of The Insolvency and Bankruptcy Code, 2016 could now no longer follow to a personal guarantor of a company debtor. Section 14 of the IBC, 2016 gives for moratorium for the restrained duration in the code, on an admission of an insolvency petition, wherein no judicial complaints for recovery, enforcement of safety interest, sale or switch of assets, or termination of important contracts may be instituted or persisted towards the Corporate Debtor.

Under Section 14(4) of the code, wherein it is held that the order of moratorium shall have effect from the date of its order till the completion of insolvency process. This means, the order of moratorium shall be effective as when the Adjudicating Authority, who is the NCLT under IBC, passes an order stating moratorium and shall be effective till the insolvency process vets complete.

Provided, it to be noted that at any time during CIRP Process, if the Adjudicating Authority approves the resolution plan under section 31(1) or passes an order for liquidation of corporate

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debtor under section 33, the moratorium shall cease to have effect from the date of such approval or order. That means, such order of moratorium under section 14(4) shall not have effect if the Adjudicating Authority looks the matter under section 31(1) or section 33.

It is to be noted that section 31 talks about the Approval of resolution plan and section 33 talks about the initiation of liquidation. It is further to be noted that while considering the Section 14 of IBC pertaining to the Moratorium, we further need to read it with section 85, section 101 of the code.

## **Conclusion**

On my opinion Section 14 is very important under IBC, 2016 because when any company take a loan from a bank and fail to pay interest or instalment then is consider as default company, in such circumstances the bank is known as financial creditor under Section 7 of IBC then the bank file application to NCLT. Because, that action was taken against the company and with the help of TIRP process. The bank gets his money back with the new Amendment of Section 14 clause 3 which is a very important because the ambiguity which we had faced earlier is been solved by Section 14 clause 3 with the new Amendment. Therefore, the author contents that Moratorium acts as a watch dog for effective Insolvency process.

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<sup>i</sup> CIVIL APPEAL NO. 16929 OF 2017.

<sup>ii</sup> NCLAT, New Delhi, Company Appeal (AT) (Insolvency) No. 298 of 2017).

<sup>iii</sup> Civil Appeal No. 3595 and 4553 of 2018.