

ADJUDICATORY TIME LIMIT PRESCRIBED BY IBC NOT MANDATORY

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Editor's Notes: The Preamble of the Code describes IBC as "An Act to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner...". As such, IBC envisages timelines to be followed by parties. While there are time limits for each party (the IRP, RP, bidder, claimant, etc., there are several time limits for the adjudicatory authorities as well. Are the latter mandatory? While judicial thinking in this regard has been discussed in the article, it is humbly submitted that the tight timelines and the objective of putting India's insolvency resolution in a different trajectory than in the past will be realised only if the timelines are followed by every participant in the process.

In the case of *Surendra Trading Company v. Juggilal Kamlapat Jute Mills Co. Ltd. & Ors.*, the Apex Court was concerned with the correctness of the order passed by NCLAT whereby it was held that the time of 7 (Seven) days prescribed in proviso to section 9(5) of the Insolvency and Bankruptcy Code, 2016 (IBC), for admitting or rejecting a petition or initiation of insolvency resolution process, is mandatory in nature and the Hon'ble Supreme Court has set aside part of the impugned judgment of NCLAT. The ruling is broadly discussed below.

Timeline laid down for AA:

To ascertain admissibility of Application- 14 days

Provision of Law:

IBC stipulates time limits for taking certain actions by either the operational creditor or adjudicating authority. As per section 9 (1), application can be filed after the expiry of period of 10 (Ten) days from the delivery of notice or invoice demanding payment, which is in tune with the provisions contained in section 8 that gives 10 (Ten) days' time to the corporate debtor to take any of the steps mentioned in section 8 (2). As per section 9(5), once such an application is filed and received by the adjudicating authority, 14 (Fourteen) days' time is granted to the adjudicating authority to ascertain whether default on the part of corporate debtor exists or not. In case the adjudicating authority, after the scrutiny of the application, finds that there are certain defects therein, the proviso to section 9 (5) mandates that before rejecting the application, the adjudicating authority has to give a notice to the applicant to rectify the defect in his application within 7 (Seven) days of receipt of such notice.

View Taken By NCLAT:

The statutory scheme laying down time limits sends a clear message that time is the essence of IBC. Notwithstanding this salutary theme and spirit behind the Code, the NCLAT has concluded that as far as 14 (Fourteen) days' time provided to the adjudicating authority for admitting or rejecting the application for initiation of insolvency resolution process is concerned, this period is not mandatory,

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whereas period of 7 (Seven) days given to the operational creditor for rectifying the defects is mandatory in nature. The relevant extract of the judgment is reproduced hereunder-

“43. Thus, in view of the aforementioned unambiguous position of law laid down by the Hon’ble Apex Court and discussion as made above, we hold that the mandate of sub-section (5) of section 7 or sub-section (5) of section 9 or sub-section (4) of section 10 is procedural in nature, a tool of aid in expeditious dispensation of justice and is directory.

44. However, the 7 days’ period for the rectification of defects as stipulated under proviso to the relevant provisions as noticed above is required to be complied with by the corporate debtor whose application, otherwise, being incomplete is fit to be rejected. In this background we hold that the proviso to sub-section (5) of [section 7](#) or proviso to sub-section (5) of [section 9](#) or proviso to sub-section (4) of [section 10](#) to remove the defect within 7 days are mandatory, and on failure applications are fit to be rejected.”

Judgment Of Supreme Court:

The Hon’ble Supreme Court has observed that the nature of the provisions contained in section 7 (5), 9 (5) and 10 (4) of IBC is procedural in nature cannot be treated to be a mandate of law. The object behind the time period prescribed under the aforementioned sections is to prevent the delay in hearing the disposal of the cases and the Adjudicating Authority cannot ignore the provisions, but in appropriate cases, for the reasons to be recorded in writing, it can admit or reject the petition after the period prescribed under section 7, 9 or 10. Also, at times applicants or their counsel may show laxity by not removing the objections within the time given and make take it for granted that they would be given unlimited time for such a purpose. There may also be cases where such applications are frivolous in nature which would be filed for some oblique motives and the applicants may want those applications to remain pending and, therefore, would not remove the defects. In order to take care of such cases, a balanced approach is needed.

The Apex Court also opined that the object of specified timelines is to expedite the hearing and not to scuttle the same. The process of justice may be speeded up and hurried but the fairness which is a basic element of justice cannot be permitted to be buried. Stipulating time limit spells out a disability on the applicant but does not impose an embargo on the power of the court to extend the time. Such provision, being in the domain of the procedural law, has to be held directory and not mandatory.

Some relevant cases cited in this regard are as hereunder.

Hon’ble Supreme Court in *Smt. Rani Kusum v. Smt. Kanchan Devi*:

- *“...Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice...”*
- *“...A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed....”*

In *P.T. Rajan Vs. T.P.M. Sahir and Ors.*⁴², the Hon'ble Supreme Court observed that where Adjudicating Authority has to perform a statutory function like admitting or rejecting an application within a time period prescribed, the time period would have to be held to be directory and not mandatory. In the said case, Hon'ble Apex Court observed:

"48. It is well-settled principle of law that where a statutory functionary is asked to perform a statutory duty within the time prescribed therefor, the same would be directory and not mandatory. (See [Shiveshwar Prasad Sinha v. The District Magistrate of Monghur & Anr.](#) AIR (1966) Patna 144, [Nomita Chowdhury v. The State of West Bengal & Ors.](#) (1999) CLJ 21 and [Garbari Union Co-operative Agricultural Credit Society Limited & Anr. V. Swapan Kumar Jana & Ors.](#) (1997) 1 CHN 189).

49. Furthermore, a provision in a statute which is procedural in nature although employs the word "shall" may not be held to be mandatory if thereby no prejudice is caused."

The Hon'ble Supreme Court in the matter of *Smt. Rani Kusum v. Smt. Kanchan Devi*⁴³, concurring with the ratio laid down in *Kailash v. Nanhku and Ors.*⁴⁴ held-

"10. All the rules of procedure are the handmaid of justice. The language employed by the draftsman of processual law may be liberal or stringent, but the fact remains that the object of prescribing procedure is to advance the cause of justice. In an adversarial system, no party should ordinarily be denied the opportunity of participating in the process of justice dispensation. Unless compelled by express and specific language of the statute, the provisions of CPC or any other procedural enactment ought not to be construed in a manner which would leave the court helpless to meet extraordinary situations in the ends of justice.
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*** 12. The processual law so dominates in certain systems as to overpower substantive rights and substantial justice. The humanist rule that procedure should be the handmaid, not the mistress, of legal justice compels consideration of vesting a residuary power in the judges to act *ex debito justitiae* where the tragic sequel otherwise would be wholly inequitable. Justice is the goal of jurisprudence, processual, as much as substantive. (See [Sushil Kumar Sen v. State of Bihar](#) [(1975) 1 SCC 774])*

*13. ** A procedural law should not ordinarily be construed as mandatory; the procedural law is always subservient to and is in aid to justice. Any interpretation which eludes or frustrates the recipient of justice is not to be followed. (See [Shreenath v. Rajesh](#) [(1998) 4 SCC 543: AIR 1998 SC 1827])*

14. Processual law is not to be a tyrant but a servant, not an obstruction but an aid to justice. Procedural prescriptions are the handmaid and not the mistress, a lubricant, not a resistant in the administration of justice."

Analysis:

⁴²(2003) 8 SCC 498

⁴³(2005) 6 SCC 705

⁴⁴(2005) 4 SCC 480

***Time Limit for Adjudicating Authority-
Not Mandatory***

As correctly pointed out in the instant case, the power of the court to extend time beyond the time schedule cannot be completely taken away. However, such extension shall not be granted just as a matter of routine and merely for the asking, more so when the period stipulated under IBC has expired. Extension of time may only be allowed on the satisfaction of the court that there existed exceptional circumstances, occasioned by acts beyond the control of the applicant and that non-extension would cause grave injustice. Further, affidavit or documents in support of the grounds pleaded for extension may be demanded, the reasons assigned by the applicant shall be placed on record in writing by the court and the court may also impose costs.
