COVID-19 & RECENT CHANGES IN IBC FRAMEWORK

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Vinod Kothari & Company

<table>
<thead>
<tr>
<th>Location</th>
<th>Address</th>
<th>Phone</th>
<th>Email</th>
</tr>
</thead>
<tbody>
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</tr>
</tbody>
</table>

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ABOUT US

- Vinod Kothari Consultants Private Limited, consultants and advisors
  - Based out of Kolkata, New Delhi & Mumbai
- We are a team of consultants, advisors & qualified professionals having over 30 years of practice.

Our Organization’s Credo:

*Focus on capabilities; opportunities follow*
Steps taken in light of COVID-19

Suo-moto Order of Hon’ble Supreme Court dated 23.02.2020, thereby exclusion lockdown period for determining limitation

Minimum default threshold for Filing application increased to Rs. 1,00,00,000/- w.e.f. 24.03.2020

CIRP Regulations- Reg. 40C- Relaxation in time- Lines for excluding lockdown Period

IBBI (Insolvency Professionals) Regulations, 2016- Extension for payment of fee till 30.06.2020

Suo-moto Order of Hon’ble NCLAT dated 30.03.2020, w.r.t. extension of CIRP period & validity of interim orders

Enrollment for Limited Insolvency Examination and Valuation Examination suspended till 14.04.2020

Liquidation Regulations- Reg 47A- Relaxation in timelines for excluding lockdown period
Increase in Minimum Default & its Impact

- W.e.f. 24.03.2020- min. default increased to Rs. 1,00,00,000/-
- No corresponding change in case of Personal Guarantors to Corporate Debtors -
  - It still remains as low as Rs. 1,000/-
  - Might lead to a shift of burden from CDs to Personal Guarantors
- Creditors, especially OCs in agony

** The minimum default threshold has been increased from Rs. 1 Lakh to Rs. 1 crore
What Led to Increase in Min. Default Amount

- Pre-dominance of frivolous applications filed by OCs
  - As on 31.12.2019, almost 50% of the total CIRP cases filed by OCs only
  - Majority of applications filed for the purpose of recovery
- For de-clogging the over-burdened NCLTs
- Preventing application against MSMEs, that may arise due the lock-down
Determining Threshold (1/4)

Illustration 1 -
XYZ Pvt. Ltd, has committed default of Rs. 2 crore of Bank A - Can A file application?
Yes- As per sec. 4, min. threshold of Rs. 1 crore satisfied

Illustration 2 -
In above situation, can B (a FC) having o/s of Rs. 10 lakhs (not defaulted) file application?
Yes- As per Sec. 7 (1), a FC can file claim for default of any financial debt.

Also appreciated by Insolvency Laws Committee-
“The default can be to any financial creditor to the entity, and not restricted to the creditor who triggers the IRP…”
Illustration 3-
XYZ Pvt. Ltd, has committed default of Rs. 50 lakhs of Bank A & of Rs. 75 lakhs of all other FCs - Can A file application?

Yes- As per Sec. 7, a FC can file application on grounds of aggregated financial debt (defaulted).

Thus, total defaulted financial debt in this case- Rs. 1.25 crores- hence, A can file application.

Illustration 4-
XYZ Pvt. Ltd, has committed default of Rs. 50 lakhs. There are other FCs of Rs. 75 lakhs, of which Rs. 45 lakhs is defaulted- Can A file application?

No- As per Sec. 7, a FC can file application on grounds of aggregated financial debt (defaulted).

Thus, total defaulted financial debt in this case- Rs. 50 lakhs + Rs. 45 lakhs= Rs. 95 lakhs

Hence, threshold u/s sec. 4 not satisfied- A cannot file application for initiation
Illustration 5-

XYZ Pvt. Ltd, has committed default of Rs. 50 lakhs of Bank A. There are other defaulted FCs of Rs. 40 lakhs. XYZ also has defaulted OCs- Rs. 60 lakhs. Can A file application?

No- As per Sec. 7, a FC can file application on grounds of aggregated financial debt only- not operational.

Thus, total defaulted financial debt in this case- Rs. 50 lakhs + Rs. 40 lakhs= Rs. 90 lakhs

Hence, threshold u/s sec. 4 not satisfied- A cannot file application for initiation

Illustration 6-

XYZ also has some operational creditors viz. M, N and O to the tune of Rs. 20 Lakhs, Rs. 1.5 Crores and Rs. 85 lakhs.

(a) Who can file application in individual capacity-

Only N meets the minimum threshold of Rs. 1 crore- hence, only N can file individual application- not M and O

(b) Can there be an application for combined debt?

The Code does not provide for combined application being filed by operational creditors. Hence, even though the total operational debt exceeds Rs. 1 crore, application cannot be filed towards cumulative operational debt.
Illustration 7-

XYZ also has total salaries outstanding to the tune of Rs. 5 crores- however, the dues of no individual employee exceeds Rs. 1 crore- Can an employee file an application?

- employees fall under the definition of “Operational Creditors”; as such can file application.
- Individual dues do not exceed 1 crore- hence, no individual application;
- however, a combined application, through representatives may be filed by the employees (see- Mr. Suresh Narayan Singh Vs. Tayo Rolls Limited Company Appeal (AT) (Insolvency) No. 112 of 2018)
Revision in Threshold - Impact on Existing Cases

Existing cases

Demand Notice served; application not filed
- Demand notice given for a claim < Rs. 1 cr. will not hold - application cannot be filed.

Application filed, pending admission
- A rectification window may be given to the applicant to meet the revised threshold*
  - or
  - Since the application is already filed before date of notification - shall remain valid

Application admitted
- Will remain unaffected

* There is no formal clarity w.r.t. the same. It has been inferred as similar rectification window was given in case of revision of threshold under IBC (Amendment) Bill, 2020 for application by Real-Estate Creditors
In light of the lockdown, The Hon’ble Supreme Court vide its *suo-moto* order dated 23.03.2020 relaxed the period of limitation in ALL proceedings, under general of special law, w.e.f. 15.03.2020 until further notice.

No clarity regarding implication upon actions to be taken pursuant to orders of NCLT/ NCLAT, for instance, filing of reply affidavit.
Relaxation in timelines under CIRP- implications

- Vide notification dated 29.03.2020, CIRP Regulations amended to insert regulation 40C-
  - To exclude the period of lockdown for the purpose of calculating timelines under the CIRP Regulations.
- However, IBBI, vide Press Release dated 29.03.2020, clarified that -
  “(The relaxation) would, however, be subject to the overall time-limit provided in the Code.”

- Hence, relaxation in timelines would not been that total CIRP period of 180/ 270 days would get extended by virtue of exclusion of lockdown period
  - However, NCLAT vide suo-moto order dated 30.03.2020, held that-
    - Period of lockdown will be excluded for the purpose of counting the time taken for CIRP
NCLAT’s *suo-moto* Order

- Period of lock-down to be excluded while determining total CIRP Period
  - Order passed under Rule 11 of NCLT Rules- Inherent powers of NCLT
  - Negates the clarification made by IBBI *via* press release

- All interim/ stay orders to continue until next order
  - On date of hearing decided by NCLT
  - For instance, X has obtained a stay order from NCLT w.r.t. vacation of property. RP forces X to vacate-
    - The stay order shall remain valid until next date of order
<table>
<thead>
<tr>
<th>Section/ Regulation</th>
<th>Activity to be done</th>
<th>Time-limit (T= Commencement of CIRP=Appointment of IRP)</th>
<th>Relaxation applicable (Yes/ No)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Reg. 16 (1)</td>
<td>Public Announcement for initiation of CIRP</td>
<td>T+3</td>
<td>Y</td>
</tr>
<tr>
<td>Section 12 – Reg. 40</td>
<td>CIRP Period, extension</td>
<td>T+180 (+90) &lt;= 330</td>
<td>Y</td>
</tr>
<tr>
<td>Sec. 15 (2) (c )/ Reg. 6 (2)(c ) and 12 (1)</td>
<td>Submission of claims</td>
<td>T+14</td>
<td>Y</td>
</tr>
<tr>
<td></td>
<td>(allowed till T+90- reg. 12 (2))</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Reg. 13 (1)</td>
<td>Verification of claims</td>
<td>T+21</td>
<td>Y</td>
</tr>
<tr>
<td>Sec 21 (6A)(b)/ Reg. 16A</td>
<td>Application for appointment of AR</td>
<td>T+23</td>
<td>Y</td>
</tr>
<tr>
<td>Reg. 17 (1)</td>
<td>Report verifying constitution of CoC</td>
<td>T+ 23</td>
<td>Y</td>
</tr>
<tr>
<td>Sec. 22(I)/ Reg. 19 (2)</td>
<td>1st meeting of CoC</td>
<td>T+30</td>
<td>Y</td>
</tr>
<tr>
<td>Reg. 36 (A)</td>
<td>Invitation of Eol (Form G)</td>
<td>T+75</td>
<td>Y</td>
</tr>
<tr>
<td>Reg. 36 (B)</td>
<td>Issue of Evaluation Matrix</td>
<td>T+ 105</td>
<td>Y</td>
</tr>
<tr>
<td>Reg. 39 (4)</td>
<td>Submission of CoC approved Resolution Plan</td>
<td>T+165</td>
<td>Y</td>
</tr>
</tbody>
</table>

NCLAT's order provided that lockdown will excluded for counting total CIRP Period also
Implementation of relaxations - Illustration

Say, order of commencement of CIRP w.r.t. ABC Pvt. Ltd. was passed on 13.03.2020 and Mr. X was appointed as IRP. In this case what will be the impact of the lock-down and subsequent relaxations and amendments - lets discuss.

- **Public Announcement**
  - To be done within 3 days - 16.03.2020
  - Since lock-down commenced on 15.03.2020
  - After conclusion, public announcement must be made within 1 day

- **Submission of claims**
  - To be made within 14 days - 27.03.2020
  - Only 2 days exhausted - extension to apply
  - Claims can be expected within 91st day
  - May not be extended - considering that the same is already an extended window

- **Verification of claims**
  - To be done within 21 days - 03.04.2020
  - Has to be extended

- **First Meeting of CoC**
  - To be conducted within 30 days - 12.04.2020
  - Shall be extended
  - However, considering that CoCs likely consist of FCs, IRP may explore the option of Video conferencing
  - Helpful for avoiding further delay

- **EoI & Evaluation Matrix**
  - To be invited and issued within 75 and 105 days respectively
  - Shall be extended
  - However, the RP may expedite the process to avoid delay

- **Completion of process**
  - As per amendment, the period shall not be extended;
  - However, NCLAT’s order suggests otherwise
Relaxation in timelines under Liquidation Regulations- implications

- Vide notification dated 17.04.2020, Liquidation Regulations amended to insert regulation 47A-
  - To be effective from 17.04.2020- Entire Period of lockdown to be excluded for purpose of determining timelines under the Liq. Regulations
  - Since Liquidation period falls under the Regulations (Reg 44)- will also be extended

- For example-
  Progress Report in the matter of XYZ Ltd- in liquidation for quarter ending March, 2020 is to be filed by 15.04.2020
  Now, the Liquidator shall get an extension of 15 days (for the period 01.04.2020- 15.04.2020) after lockdown.
### Summary of Timelines under Liquidation Regulations

<table>
<thead>
<tr>
<th>Section/ Regulation</th>
<th>Activity to be done</th>
<th>Timelines relaxed (L= Commencement of Liquidation=Appointment of liquidator)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sec. 33- Reg. 12 (1)</td>
<td>Public Announcement for initiation of Liquidation</td>
<td>L+5</td>
</tr>
<tr>
<td>Reg. 35 (2)</td>
<td>Appointment of valuer</td>
<td>L+7</td>
</tr>
<tr>
<td>Sec 38- Reg. 17, 18</td>
<td>Submission of claims;</td>
<td>L+30</td>
</tr>
<tr>
<td>Reg 21A</td>
<td>Intimation of decision of secured creditors w.r.t. relinquishment of sec, interest</td>
<td>L+30</td>
</tr>
<tr>
<td>Reg. 30</td>
<td>Verification of claims</td>
<td>L+60</td>
</tr>
<tr>
<td>Reg 31A</td>
<td>Constitution of SCC</td>
<td>L+60</td>
</tr>
<tr>
<td>Reg 31 (2)</td>
<td>Filing of list of stakeholders</td>
<td>L+75</td>
</tr>
<tr>
<td>Reg 13 &amp; 34</td>
<td>Filing of Prelim Report &amp; Asset Memorandum</td>
<td>L+75</td>
</tr>
<tr>
<td>Reg. 15 (1), (2), (3), (4) and (5), and 36</td>
<td>Submission of Reports</td>
<td>Prelim &amp; Quarterly</td>
</tr>
<tr>
<td>Reg 36 (A)</td>
<td>Invitation of Eol (Form G)</td>
<td>L+75</td>
</tr>
<tr>
<td>Reg. 44</td>
<td>Liquidation Period</td>
<td>L+365</td>
</tr>
</tbody>
</table>
Pertinent Questions w.r.t Relaxation in Timelines

- Have timelines changed?
- What happens to tax filings? - GST & Income Tax
- Impact on MCA Filings? - Can RP avail benefits for CD under CFSS?
- Filings before Stock Exchanges by Listed Companies
- Will extension apply to filing of progress reports also?
- Can CoC Meeting be held during lockdown?
<table>
<thead>
<tr>
<th>Form</th>
<th>Filed For</th>
<th>Due Date</th>
<th>Interest/ Late Fee</th>
<th>Relaxation</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>GST Forms</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>GSTR-1</td>
<td>monthly Statement of Outward Supplies to be furnished by registered entities making outward supplies of goods and services or both and contains details of outward supplies of goods and services.</td>
<td>11th of next month</td>
<td>Rs. 100 per day of delay</td>
<td>Late fee waived off</td>
<td>For March, April and May, if their returns are filed by 30.06.2020</td>
</tr>
<tr>
<td>GSTR-3B</td>
<td>month-based summary return to declare their summary GST liabilities for the tax period and the completion of these liabilities in time</td>
<td>20th of next month</td>
<td>(a) Interest @ 18%p.a. Late fee of Rs. 100 per day of delay</td>
<td>(a) Turnover-based classification; (b) Late fee waived off</td>
<td>Interests and late fee be waived off only if return filed within prescribed time-limit;</td>
</tr>
<tr>
<td>Income Tax filings</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Delayed payments of Advance Taxes, Self Assessment Tax, Regular Taxes, TDS, TCS etc.</td>
<td>(a) Interest chargeable @ 12%/ 18%</td>
<td>(a) Reduced interest rates at 9%</td>
<td>(b) Late fee of Rs. 200/ day in case of TDS</td>
<td>(b) No late fee/ penalty</td>
<td>(a) If payment/ returns made between 20.03.2020-30.06.2020</td>
</tr>
</tbody>
</table>
### Impact on MCA Filings

<table>
<thead>
<tr>
<th>Requirement</th>
<th>Relaxation</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cos holding BM through VC - could not transact the following:</td>
<td>BM can be held by VC and following are temporarily allowed to be transacted:</td>
<td>Upto 30.06.2020; N.A. in case of CIRP Process</td>
</tr>
<tr>
<td>(a) Approval of FS;</td>
<td>(a) Financial Statements;</td>
<td></td>
</tr>
<tr>
<td>(b) Approval of Board’s Report;</td>
<td>(b) Director’s Reports</td>
<td></td>
</tr>
<tr>
<td>(c) Approval of Prospectus;</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(d) Audit Committee Meeting; and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(e) Approval of merger, amalgamation etc.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Max. interval between board meeting &lt; 120 days</td>
<td>Interval has been extended upto 180 days</td>
<td>N.A. in case of CIRP Process</td>
</tr>
<tr>
<td>Filing of forms under Companies Fresh Start Scheme, 2020</td>
<td>Allowed to file late forms without any additional fee/ late fee</td>
<td>The forms must be filed within 30.09.2020</td>
</tr>
<tr>
<td>Sl. No.</td>
<td>Required Action</td>
<td>Due Date</td>
</tr>
<tr>
<td>--------</td>
<td>---------------------------------------------------------</td>
<td>----------------</td>
</tr>
<tr>
<td>1.</td>
<td>Compliance Certificate (half yearly)</td>
<td>30.04.2020</td>
</tr>
<tr>
<td>2.</td>
<td>Statement of Investor Complaints (Quarterly)</td>
<td>21.04.2020</td>
</tr>
<tr>
<td>3.</td>
<td>Secretarial Compliance Report (Yearly)</td>
<td>30.05.2020</td>
</tr>
<tr>
<td>4.</td>
<td>Corporate Governance Report (Quarterly)</td>
<td>15.04.2020</td>
</tr>
<tr>
<td>5.</td>
<td>Shareholding Pattern (Quarterly)</td>
<td>21.04.2020</td>
</tr>
<tr>
<td>6.</td>
<td>Financial Results (Quarterly)</td>
<td>15.05.2020</td>
</tr>
<tr>
<td>7.</td>
<td>Financial Results (Annual)</td>
<td>30.05.2020</td>
</tr>
<tr>
<td>8.</td>
<td>Certificate from PCS</td>
<td>30.04.2020</td>
</tr>
<tr>
<td>9.</td>
<td>NRC Meeting, Stakeholder Relationship Committee Meeting</td>
<td>31.03.2020</td>
</tr>
<tr>
<td>10.</td>
<td>Annual General Meeting by top 100 listed entities</td>
<td>31.08.2020</td>
</tr>
</tbody>
</table>

Above is an indicative list only.
Further expectations

In light of the relaxations introduced, relaxations mentioned below are expected to follow-

- Suspension of filing of application under sec. 7/ 9/ 10 for a period of 6 months, if required. (as mentioned by the Hon’ble FM in speech dated 24.03.2020)
  - Blanket Ban for 6 months;
  - May hurt the genuine creditors