

COVID-19 & RECENT CHANGES IN IBC FRAMEWORK

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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

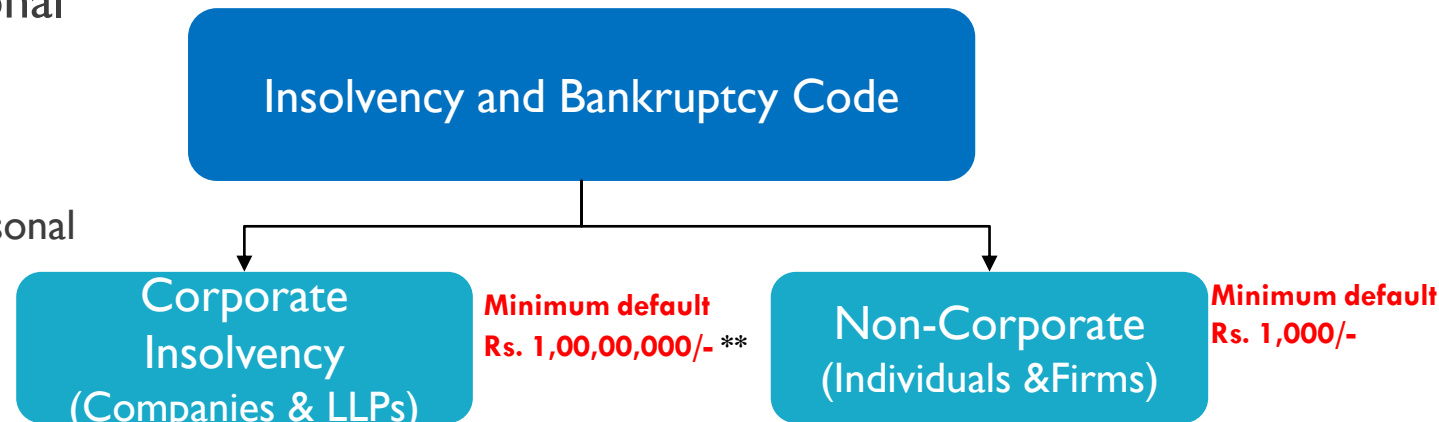
Suo-moto Order of Hon'ble NCLAT dated 30.03.2020, w.r.t. extension of CIRP period & validity of interim orders

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...”

Determining Threshold (2/4)

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

Determining Threshold (3/4)

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.

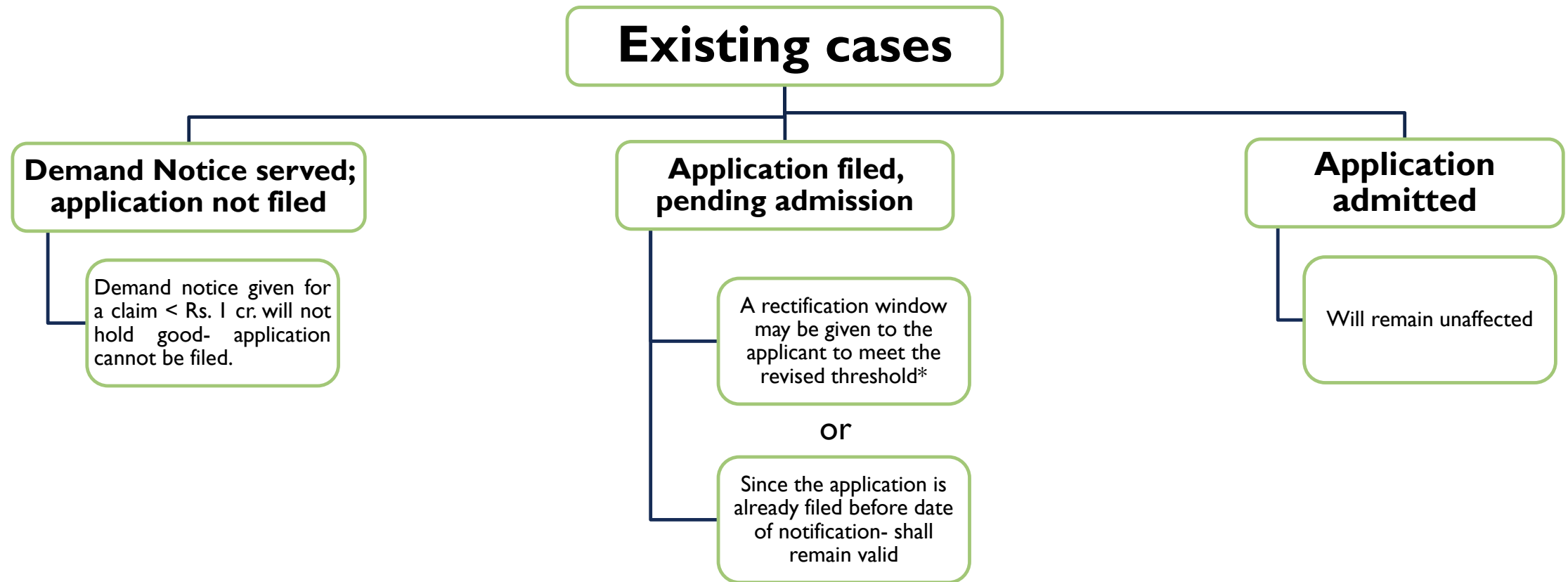
Determining Threshold (4/4)

- **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*)

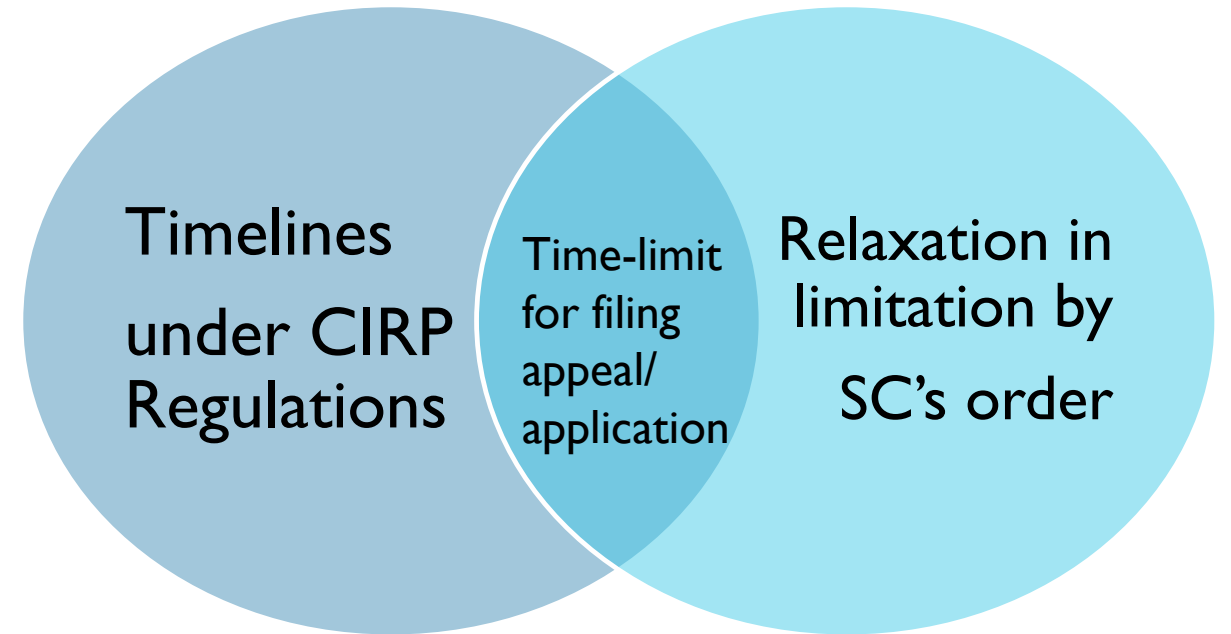
Revision in Threshold- Impact on Existing Cases



* 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

SC's *suo-moto* relaxation of Limitation Period

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 or 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 be 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

Summary of Timelines- CIRP

Section/ Regulation	Activity to be done	Time-limit (T= Commencement of CIRP=Appointment of IRP)	Relaxation applicable (Yes/ No)
Reg. 16 (1)	Public Announcement for initiation of CIRP	T+3	Y
Section 12 – Reg. 40	CIRP Period, extension	T+180 (+90) <= 330	Y
Sec. 15 (2) (c) / Reg. 6 (2)(c) and 12 (1)	Submission of claims	T+14 (allowed till T+90- reg. 12 (2))	Y
Reg. 13 (1)	Verification of claims	T+21	Y
Sec 21 (6A)(b)/ Reg. 16A	Application for appointment of AR	T+23	Y
Reg. 17 (1)	Report verifying constitution of CoC	T+ 23	Y
Sec. 22(1)/ Reg. 19 (2)	1 st meeting of CoC	T+30	Y
Reg. 36 (A)	Invitation of Eol (Form G)	T+75	Y
Reg. 36 (B)	Issue of Evaluation Matrix	T+ 105	Y
Reg. 39 (4)	Submission of CoC approved Resolution Plan	T+165	Y

NCLAT's order provided that lockdown will be 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 claim

- 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

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

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?

Relaxations w.r.t. Tax Filings

Form	Filed For	Due Date	Interest/ Late Fee	Relaxation	Remarks
GST Forms					
GSTR-1	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.	11 th of next month	Rs. 100 per day of delay	Late fee waived off	For March, April and May, if their returns are filed by 30.06.2020
GSTR-3B	month-based summary return to declare their summary GST liabilities for the tax period and the completion of these liabilities in time	20 th of next month	(a) Interest @ 18%p.a. (b) Late fee of Rs. 100 per day of delay	(a) Turnover-based classification; (b) Late fee waived off	Interests and late fee be waived off only if return filed within prescribed time-limit;
Income Tax filings					
	Delayed payments of Advance Taxes, Self Assessment Tax, Regular Taxes, TDS, TCS etc.		(a) Interest chargeable @ 12%/ 18% (b) Late fee of Rs. 200/ day in case of TDS	(a) Reduced interest rates at 9% (b) No late fee/ penalty	(a) If payment/ returns made between 20.03.2020-30.06.2020

Impact on MCA Filings

Requirement	Relaxation	Remarks
<p>Cos holding BM through VC- could not transact the following:</p> <ul style="list-style-type: none"> (a) Approval of FS; (b) Approval of Board's Report; (c) Approval of Prospectus; (d) Audit Committee Meeting; and (e) Approval of merger, amalgamation etc. 	<p>BM can be held by VC and following are temporarily allowed to be transacted:</p> <ul style="list-style-type: none"> (a) Financial Statements; (b) Director's Reports 	<p>Upto 30.06.2020; N.A. in case of CIRP Process</p>
<p>Max. interval between board meeting < 120 days</p>	<p>Interval has been extended upto 180 days</p>	<p>N.A. in case of CIRP Process</p>
<p>Filing of forms under Companies Fresh Start Scheme, 2020</p>	<p>Allowed to file late forms without any additional fee/ late fee</p>	<p>The forms must be filed within 30.09.2020</p>

Filings before Stock Exchange

Sl. No.	Required Action	Due Date	Relaxation	Remarks
1.	Compliance Certificate (half yearly)	30.04.2020	31.05.2020	
2.	Statement of Investor Complaints (Quarterly)	21.04.2020	15.05.2020	
3.	Secretarial Compliance Report (Yearly)	30.05.2020	30.06.2020	
4.	Corporate Governance Report (Quarterly)	15.04.2020	15.05.2020	
3.	Shareholding Pattern (Quarterly)	21.04.2020	15.05.2020	
4.	Financial Results (Quarterly)	15.05.2020	30.06.2020	
5.	Financial Results (Annual)	30.05.2020	30.06.2020	
6.	Certificate from PCS	30.04.2020	31.05.2020	
7.	NRC Meeting. Stakeholder Relationship Committee Meeting	31.03.2020	30.06.2020	N.A. under CIRP
8.	Annual General Meeting by top 100 listed entities	31.08.2020	30.09.2020	N.A. under CIRP

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

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