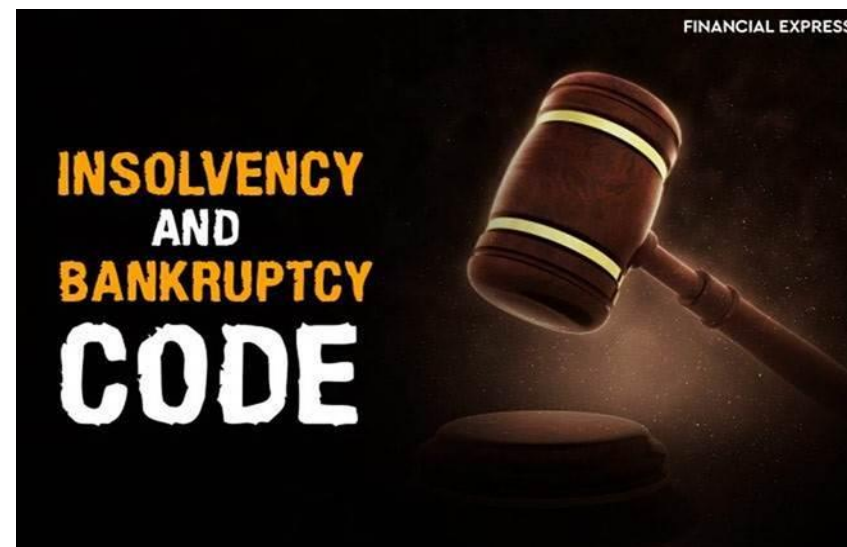


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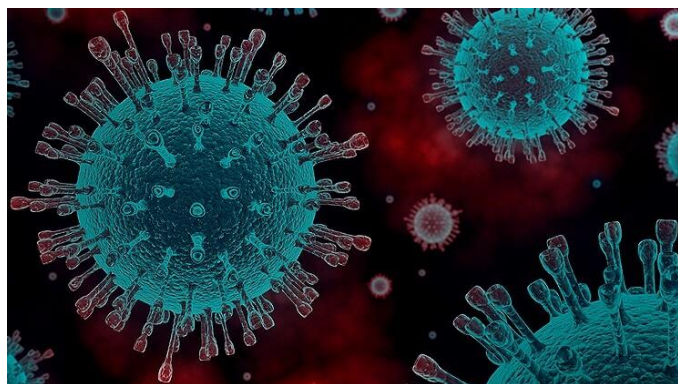
*May 9, 2020*

## IBC Amendments and its impact in the wake of Covid-19



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The pandemic COVID-19 virus has forced the governments all over the world to bring in measures to combat the threat in order to avoid the increase in the blowout of the COVID-19 cases worldwide. In view of the same and propagating an agenda focussing on the containment of the Covid-19 cases in India, a nationwide lockdown was declared by the Hon'ble Prime Minister of India as well.



The Union Finance Minister, Smt. Nirmala Sitaraman, had broadcasted a press conference just two days after the announcement of the nationwide lockdown, wherein various decisions to combat the economic challenges faced due to the pandemic COVID-19 were laid down such as increasing the threshold of default for the initiation of insolvency and resolution process against companies under the Insolvency and Bankruptcy Code, 2016 (the "**IBC, 2016**"). The Union Finance Minister also announced that, in the event the situation due to COVID-19 does not

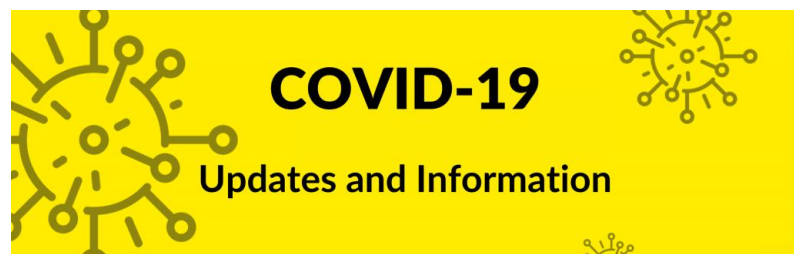
improve by April 30, 2020, the government shall consider taking necessary steps to suspend filing of applications filed by creditors or companies under Section 7, Section 9 and Section 10 of the IBC, 2016 for six (6) months in order to stop companies into being forced into insolvency during such trying times faced worldwide. This seems to be a nearing reality now since we have entered the month of May and the rising numbers of COVID-19 cases in India have increased innumerable and therefore the extension of the lockdown hangs above our necks. Surprisingly, as on date, Government of India has not yet issued any ordinance to this effect.

However, the Government of India directed the Ministry of Corporate Affairs, Stock Exchange Board of India, Income Tax department and the legislative authorities to provide various relaxations and extensions in relation to compliances and timelines to be otherwise compulsorily adhered to, by corporate entities.

The judiciary, including the apex courts high courts and lower courts and tribunals, *vide* various notifications and circulars declared that all courts shall function remotely only for extreme urgent matters via video conferencing. The Hon'ble Supreme Court has gone a step further by pronouncing an order under Article 142 of the Constitution of India, thereby extending the period of limitation with effect from March 15,

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2020 till further order(s) are passed by applying such extension to apply to all proceedings such as the filing of petitions/applications/suits/appeals, in any court / tribunal / forum in India. The Hon'ble Supreme Court has also recently *vide* an order dated May 6, 2020 applied this extension of period of limitation starting from March 15, 2020 till further orders to the limitation period prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of Negotiable Instruments Act, 1881.



On another note, the Central Government and MCA, *vide* its notification dated March 24, 2020 increased the amount of default for initiating insolvency and resolution process against a corporate debtor to a hundred times i.e. the threshold was increased from Rs.1,00,000 (*Rupees one lakh*) to Rs.1,00,00,000 (*Rupees one crore*). This amendment came into force with immediate effect. This was done in exercise of the powers of the Central Government conferred to them by the proviso to section 4 of the IBC, 2016. The said amendment is a great step for curbing frivolous litigations and this is the highest that can be prescribed under IBC, 2016.

Another major issue faced by the applicants under IBC, 2016 was relating

to the adherence of the strict timelines of the corporate insolvency resolution process which were difficult to follow due to the lock down being in force. Clarifications with respect to the conduct of the resolution professional and completing its duties within the timelines, conducting of the meeting of the members of the committee of creditors, the resolution applicants and filing of resolution plans and the duties and conduct of the corporate debtor itself during the corporate insolvency resolution period was required.

In a relief provided by the Insolvency and Bankruptcy Board of India (IBBI), the IBBI has amended the regulations governing IBC, 2016 by introducing the Insolvency and Bankruptcy Board of India (*Insolvency Resolution Process for Corporate Persons*) (*Third Amendment*) Regulations, 2020 (the "**Amended CIRP Regulations, 2020**") which came into effect from March 29, 2020. The Amended CIRP Regulations, 2020 states that the period from the date of the announcement of the nation-wide lockdown by the Hon'ble Prime Minister until the said lockdown is in force by the Central Government shall not be taken into consideration for calculating the time-lines for any activity in relation to a corporate insolvency resolution process, which could not have been fulfilled by any persons or entities due to the lockdown.

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The waiver under the Amended CIRP Regulations, 2020 is subject to the overall time-limit for completion of corporate insolvency resolution process as provided under IBC, 2020, i.e. 330 days' time limit shall still be under force. However, the Hon'ble National Company Appellate Law Tribunal in *Suo Moto Company Appeal (AT) (Insolvency) 01 of 2020 vide order dated March 30, 2020*, have extended the waiver to the overall time limit as well, i.e. beyond 330 days' time limit.

In addition to the extension of timelines for CIRP, IBBI has also brought in the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2020 (the "**Amended Liquidation Regulations, 2020**"), which has come into effect from April 15, 2020. The said Amended Liquidation Regulations, 2020 has excluded the period of lockdown for counting the time-lines for any activity in relation to liquidation process, which could not have been fulfilled by any persons or entities because of the lockdown.

In times where the amounts of debt were ever increasing, IBC had managed to maintain some sort of balance to the debt insanity prevailing around various industries prior to IBC era. With the sword of suspension of invocation of any new cases under the provisions of the Code hanging above our necks, confusion has bottled up with the various lenders in relation to the impact of the said impending ordinance. While suspension

will surely provide a huge sigh of relief to the already stressed companies in these desperate times, but at the same time, it will have a major impact on suppliers and lenders including, banks and financial institutions. Clarity will be awaited on the impact of the said ordinance on the pending applications (*which are filed but are not admitted by the Adjudicating Authority*) since the applicants might feel prejudiced since even they have been victimised by the aura of pandemic. Although this impending ordinance might provide a temporary sigh of relief to the borrowers but it will drastically change the outlook of the lenders forcing them to adopt earlier long drawn mechanisms which might not revive the corporate debtor and which is more time consuming in nature such as initiating arbitration or SARFAESI.



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It would also be interesting to see the progress of on-going insolvency process of various corporate debtors after the COVID issue subsides. It is worry of various resolution professionals that they might receive subdued valuation of their corporate debtor or where resolution applicant(s), who may have already submitted their resolution plans before the CoC or where resolution plans may have been approved before the CoC but not yet approved by NCLT, may either try to back out or substantially lower their acquisition price.

To conclude, there will be tough times ahead not only for already distressed companies but also for various suppliers, lenders and resolution professionals, etc. Covid-19 will lead us to qualms on many levels, including the struggle of entities to run as a going concern, liquidity crunch at financial institutions level and limited options for revival plans for corporate entities.

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