

Scope of moratorium prohibiting the initiation and continuation of all legal proceedings under section 14, of the Insolvency & Bankruptcy Code, 2016 – An Analysis.

The prohibition contained in section 14 of the Insolvency and Bankruptcy Code 2016, (“**the Act**”) against the initiation and continuation of legal proceedings, has recently been a topic of discussion in rulings of the National Company Law Appellate Tribunal (“**NCLAT**”) and the High Court of Allahabad and has now become a moot question of law.

Based on an analysis of these judgments, it is apparent that the prohibition contained in section 14 of the Act also extends to guarantors and mortgagors, if the liability against the principal debtor has not been crystallized before the declaration of moratorium; and that Writ Petitions filed before the Supreme Court and the High Courts, and orders passed by the Supreme Court under Article 136 of the Constitution are unaffected by section 14(1)(a) of the Act.

The provisions of section 14(1)(a) of the Act are very wide and appear to be a complete bar against the institution or continuation of suits or any legal proceedings against a corporate debtor on the declaration of moratorium by the adjudicating authority. Section 14(1)(a) of the Act reads as follows:

“14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —

- (a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;*
- (b) ...”*

Section 14(2) sets out the time limit for which the moratorium can be in effect for *i.e* until the completion of the corporate insolvency resolution process or on the approval of a resolution plan by the adjudicating authority or on a resolution of the committee of creditors to liquidate the corporate debtor, whichever is earlier.

As per section 12 of the Act, the corporate insolvency resolution process shall be completed within a period of one hundred and eighty days from the date of admission of the application to initiate such process, and the period can only be extended by ninety days, subject to an application being made to the adjudicating authority after a resolution is passed at a meeting of the committee of creditors by a vote of seventy-five percent of the voting shares.

Analysis: In a recent ruling of the Allahabad High Court in **Sanjeev Shriya & Ors vs State Bank**, it has been held that where a proceeding is stayed against the principal debtor before the crystallization of the claim by a declaration of moratorium under section 14 of the Act, then in such cases the proceedings initiated against the guarantors ought to also be stayed. This in effect broadens the extent and scope of section 14 of the Act.

In *Sanjeev Shriya’s* case, there were proceedings initiated by the lenders before the Debt Recovery Tribunal (“**DRT**”), arraying guarantors as parties also. Whilst the proceedings before the DRT were pending, the Corporate Debtor (LML), voluntarily filed an application before the National Company Law Tribunal (“**NCLT**”) for initiation of the corporate insolvency resolution process and thereby an order declaring moratorium under section 14 of the Act

came to be passed. LML along with the guarantors immediately applied to the DRT seeking a stay of the proceedings. Although a stay in favour of LML was granted, a stay in favour of the guarantors was rejected, against which rejection a Writ Petition was filed by the guarantors before the Allahabad High Court. The Allahabad High Court held in favour of the guarantors.

Although the ambit of section 14 covers the initiation and continuation of any proceedings, the NCLAT has in its judgment of **Canara Bank VS Deccan Chronicle Holdings Limited** categorically carved out an exception holding that the moratorium will not affect any proceedings initiated or pending before the Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of the Constitution of India. The NCLAT also concluded that the moratorium will not affect the powers of any High Court under Article 226 of the Constitution of India.

With the coming into effect of the Act, the Sick Industrial Companies Act, 1958 ("**SICA**") has been repealed. Under section 22 of SICA, the institution or continuation of suits or legal proceedings against a sick company were subject to liberty being obtained from the Board (the Adjudicating Authority under SICA). No such provision for obtaining liberty is provided under section 14 of the Act.

Based on the circumstances of each case under the SICA regime, the courts carved out a few exceptions to section 22 of SICA. For instance, in the judgment of **Shree Chamundi Mopeds Ltd. Vs Church of South India Trust Association CSI Cinod Secretariat Madras**, the full bench of the Supreme

Court held that section 22 of SICA does not bar the prosecution of eviction proceedings filed against a sick company, in view of the fact that the occupation of a premises by the company was in the capacity of a statutory tenant (therefore protected under the Rent Act) and consequently the tenancy could not have been regarded as the property of the company. Similarly, in the case of **BSI Ltd & Anr Vs. Gift Holdings Pvt Ltd & Anr** the Supreme Court held that proceedings under section 138 of the Negotiable Instrument Act, 1881 were also not barred by section 22 of SICA.

Conclusion: The language of section 14 of the Act is wide enough to include legal proceedings of any nature within its ambit. The intention of the legislature in relation to section 14(1)(a) is to ensure that after the declaration of moratorium, there is a standstill period during which the creditors cannot resort to individual enforcement action which would frustrate the very object of the corporate insolvency resolution process. On the other hand, section 22 of SICA in terms provided that liberty could be obtained from the Board, which provision is absent from section 14 of the Act.

In times to come it will interesting to see if judicial pronouncements, carve out any exceptions for certain legal proceedings from the applicability of section 14(1)(a) of the Act, as in the case of **Canara Bank Vs DCHL**.

The content of this article is intended to provide a general guide to the subject matter and should not be construed as legal advice.