

RELIEF MEASURES INTRODUCED IN INSOLVENCY RESOLUTION PROCESS IN THE COUNTRY DUE TO OUTBREAK OF COVID- 19 PANDEMIC



Committee on Insolvency & Bankruptcy Code
The Institute of Chartered Accountants of India



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Message

The outbreak of COVID-19 pandemic and the subsequent restrictions due to lockdowns have severely affected the wellbeing of economies across the world. It has completely jeopardized everyone's life and the normal operation of business. Governments in various countries are adopting significant actions to save their people and the business entities from this unparalleled situation.

We all know that the pace with which the Insolvency and Bankruptcy Code is being implemented in the country, it has helped India in improving its 'ease of doing business' rankings. However it is imminent that the Proceedings under the Code will be impacted because of the prevailing conditions.

At such difficult times, to safeguard the people, business and all the stakeholders, preemptive actions were undertaken in the country in the insolvency resolution space by Hon'ble Courts, Ministry of Corporate Affairs, IBBI and RBI to provide assistance and relief to the concerned. The notable amongst those actions were the promulgation of The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 and the increase in minimum threshold to trigger insolvency to help the MSME sector.

In this regard, the Committee on Insolvency & Bankruptcy Code of ICAI has taken the initiative of bringing out this Booklet which provides information on all such Relief Measures introduced in Insolvency Resolution Process in the country due to the outbreak of the pandemic for the benefit of members and other stakeholders.

I compliment the entire Committee and extend my sincere appreciation to CA. Anil Satyanarayan Bhandari, Chairman and CA. Pramod Kumar Boob, Vice-Chairman, Committee on Insolvency & Bankruptcy Code in bringing out this Booklet.

CA. Atul Kumar Gupta
President ICAI



Preface

The global pandemic resulting in Lockdown has indeed reduced the momentum of the economy and we already are facing daunting challenges before us. As professionals we need to understand the implications of this fallout on the various segments of our economy.

With the effective implementation of Corporate Insolvency Resolution Process under The Insolvency and Bankruptcy Code, 2016, we could see a number of cases getting resolved, thus helping revival of businesses. But the onslaught of COVID-19, which has put everything in a standstill mode, has also affected the insolvency regime in the country. The prime objective of the Regulators became to rescue the viable firms at this time of pandemic.

The Hon'ble Courts, Government and Regulators have taken various actions to combat the situation and underlying challenges in the insolvency and bankruptcy laws because of this unprecedented moment in the business environment and in our lives. We saw several announcements being made and measures taken to take care of various stakeholders especially the vulnerable sections so that they are protected and saved from strain at this challenging time.

The Committee on Insolvency & Bankruptcy Code of ICAI at this backdrop decided to bring out the details in the form of a Booklet on the Relief Measures taken in Insolvency Resolution Process in the country due to the outbreak of COVID-19 for the benefit of the professionals and stakeholders at large.

We would like to thank the President of ICAI, CA. Atul Kumar Gupta and Vice President of ICAI, CA. Nihar Niranjana Jambusaria for their support and encouragement in this initiative of the Committee.

CA. Anil Satyanarayan Bhandari

Chairman, Committee on Insolvency & Bankruptcy Code, ICAI

CA. Pramod Kumar Boob

Vice-Chairman, Committee on Insolvency & Bankruptcy Code, ICAI



Background

Several relief measures were introduced in the insolvency resolution process in the country due to the outbreak of COVID- 19 pandemic by the Government and by the Regulators.

The Honourable Supreme Court had taken cognizance of the prevailing situation and gave its order for extension of limitation period.

Also Suo Moto Order of NCLAT provided to exclude lockdown period in Corporate Insolvency Resolution Process under the Insolvency and Bankruptcy Code, 2016.

Thus important judicial, legislative and economic measures have been initiated due to the unprecedented condition and due to the financial distress on business on account of huge disruptions in their normal functioning.

The list of such measures that have been taken are enumerated in the ensuing section for the benefit of professionals and other stakeholders.





A Glimpse

**20th March
2020**

IBBI issued Advisory stating that preregistration educational courses completed online will be accepted for registration

**23rd March
2020**

Suo Moto Writ Petition at Supreme Court of India in cognizance for extension of Limitation

**24th March
2020**

Hon'ble Finance Minister made announcement for minimum threshold to trigger insolvency to be a default of Rs. 1 crore

**24th March
2020**

MCA issued Notification which specified minimum amount of default as Rs 1 crore for the purpose of Section 4 of IBC, 2016

**27th March
2020**

RBI brought Statement on Developmental and Regulatory Policies

**27th March
2020**

RBI issued Notification regarding COVID-19 Regulatory package

**29th March
2020**

IBBI (Third Amd) Regulations, 2020 in CIRP notified to exclude lockdown period in CIRP

**30th March
2020**

Suo Moto Order of NCLAT to exclude lockdown period in CIRP

**17th April
2020**

RBI Governor Statement issued

**17th April
2020**

Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2020 notified to exclude period of lockdown for computation of timeline in liquidation process

**5th May
2020**

NCLT Office Order for Cancellation of Summer Vacation of NCLT benches

**6th May
2020**

IN RE : Cognizance for extension of limitation (Supreme Court) [Suo Moto Writ (Civil) No. 3 of 2020 and other IAs]

**13th May
2020**

NCLAT Notice for Cancellation of Annual Vacation of NCLAT

**17th May
2020**

Atma Nirbhar Bharat Part-5: Government Reforms and Enablers as presented by Hon'ble Finance Minister

**5th June
2020**

Promulgation of The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

**10th July
2020**

IBBI issued Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020



Details of Relief measures introduced in Insolvency Resolution Process in the country due to outbreak of COVID- 19 pandemic

1. 20th March 2020: IBBI issued Advisory stating that preregistration educational courses completed online will be accepted for registration

Insolvency and Bankruptcy Board of India issued an Advisory stating that preregistration educational courses completed online will be accepted for registration. The Advisory mentioned that-

“In view of the advisories issued by various authorities in the wake of COVID-19, it may be difficult for the IPAs to deliver pre-registration educational courses through class room sessions. To minimise difficulties for the prospective IPs, it has been decided that preregistration educational courses completed online will be accepted for registration. Therefore, the IPAs are encouraged to deliver pre-registration educational courses online for their professional members.

The IBBI Advisory may be accessed at:

<https://www.ibbi.gov.in/uploads/legalframework/fcb78c7a64c682ec5656dc9e281b35f.pdf>

2. 23rd March 2020: Suo Moto Writ Petition at Supreme Court of India in cognizance for extension of Limitation

The Supreme Court took cognizance of the prevailing situation because of COVID- 19 and ordered that irrespective of the limitation period prescribed under the general law or special law whether condonable or not, it will be extended from March 15, 2020 till further orders.

The objective is to ensure that lawyers/litigants do not have to come physically to file their petitions/applications/suits/ appeals/all other proceedings within the period of limitation prescribed under the general law of limitation or under Special Laws in respective Courts/ Tribunals across the country.

The Supreme Court Order may be accessed at:

<https://ibbi.gov.in/uploads/order/ba13679c3c9779782c75ad2dbd7c65ca.pdf>

3. 24th March, 2020: Hon’ble Finance Minister made announcement for minimum threshold to trigger insolvency to be a default of Rs. 1 crore

The Hon’ble Finance Minister announced that with immediate effect the minimum threshold to trigger insolvency resolution process will be a default of Rs. 1 crore instead of 1 lakh. This will help the MSME sector to be prevented from being brought under insolvency proceedings as per IBC.

As per the PIB Press Release, it was mentioned that-

“Due to the emerging financial distress faced by most companies on account of the large-scale



economic distress caused by COVID 19, it has been decided to raise the threshold of default under section 4 of the IBC 2016 to Rs 1 crore (from the existing threshold of Rs 1 lakh). This will by and large prevent triggering of insolvency proceedings against MSMEs.”

The PIB Press Release of Ministry of Finance may be accessed at:
<https://pib.gov.in/PressReleasePage.aspx?PRID=1607942>

4. 24th March 2020: MCA issued Notification which specified minimum amount of default as Rs 1 crore for the purpose of Section 4 of IBC, 2016

MCA vide its Notification specified the minimum amount of default as Rs.1 crore for the purpose of Section 4 of IBC, 2016. The Notification provided that-

“In exercise of the powers conferred by the proviso to section 4 of the

Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section”.

The MCA Notification may be accessed at:
<https://www.ibbi.gov.in/uploads/legalframework/48bf32150f5d6b30477b74f652964edc.pdf>

5. 27th March, 2020: RBI brought Statement on Developmental and Regulatory Policies

RBI brought out Statement on Developmental and Regulatory Policies.

The Statement sets out various developmental and regulatory policies that directly address the stress in financial conditions caused by COVID-19.

In Para No. 5 - Moratorium on Term Loans it is mentioned-

“All commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies and micro-finance institutions) (“lending institutions”) are being permitted to allow a moratorium of three months on payment of instalments in respect of all term loans outstanding as on March 1, 2020. Accordingly, the repayment schedule and all subsequent due dates, as also the tenor for such loans, may be shifted across the board by three months.”

RBI Statement on Developmental and Regulatory Policies may be accessed at:
<https://rbidocs.rbi.org.in/rdocs/PressRelease/PDFs/PR21302E204AFFBB614305B56DD6B843A520DB.PDF>

6. 27th March, 2020: RBI issued Notification regarding COVID-19 Regulatory package

With reference to the RBI Statement of Development and Regulatory Policies released on March 27, 2020 where inter alia certain regulatory measures were announced to mitigate the burden of debt servicing brought about by disruptions on account of COVID-19 pandemic and to ensure the continuity of viable businesses, RBI further issued the detailed instructions vide its Notification dt. 27th March, 2020.

The RBI Notification granted moratorium of 3 months on payment of all installments between March 1 to May 31, 2020.

In Para 2 of the Notification with respect to Rescheduling of Payments – Term Loans it was mentioned-



“In respect of all term loans (including agricultural term loans, retail and crop loans), all commercial banks (including regional rural banks, small finance banks and local area banks), co-operative banks, all-India Financial Institutions, and NBFCs (including housing finance companies) (“lending institutions”) are permitted to grant a moratorium of three months on payment of all instalments falling due between March 1, 2020 and May 31, 2020. The repayment schedule for such loans as also the residual tenor, will be shifted across the board by three months after the moratorium period. Interest shall continue to accrue on the outstanding portion of the term loans during the moratorium period”.

The RBI Notification may be accessed at:

<https://rbidocs.rbi.org.in/rdocs/notification/PDFs/NOTI186B27003E9DB3D4FB49BDDF955F4289D68.PDF>

7. 29th March, 2020: IBBI (Third Amd) Regulations, 2020 in CIRP notified to exclude lockdown period in CIRP

The Insolvency and Bankruptcy Board of India amended the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 providing that the period of lockdown will not be counted for calculating timeline for Corporate Insolvency Resolution Process (CIRP).

As per the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020, after regulation 40B, the following regulation shall be inserted, namely: -

“40C. Special provision relating to time-line.

Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process”.

The IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020 may be accessed at:

<https://www.ibbi.gov.in/uploads/whatsnew/be2e7697e91a349bc55033b58d249cef.pdf>

8. 30th March, 2020: Suo Moto Order of NCLAT to exclude lockdown period in CIRP

Suo Moto Order of NCLAT provided that the period of lockdown shall be excluded for counting for period for CIRP.

It was held-

“That the period of lockdown ordered by the Central Government and the State Governments including the period as may be extended either in whole or part of the country, where the registered office of the Corporate Debtor may be located, shall be excluded for the purpose of counting of the period for ‘Resolution Process under Section 12 of the Insolvency and Bankruptcy Code, 2016, in all cases where ‘Corporate Insolvency Resolution Process’ has been initiated and pending before any Bench of the National Company Law Tribunal or in Appeal before this Appellate Tribunal.

The Suo Moto Order Of NCLAT may be accessed at:

<https://www.ibbi.gov.in/uploads/order/Ofd02d6fd104fcdd63936eb4cb23021b.pdf>



9. 17th April, 2020: RBI Governor Statement issued

RBI Governor made Statement with regard to-

Asset Classification: It has been decided that in respect of all accounts for which lending institutions decide to grant moratorium or deferment, and which were standard as on March 1, 2020, the 90-day NPA norm shall exclude the moratorium period, i.e., there would be an asset classification standstill for all such accounts from March 1, 2020 to May 31, 2020.

Extension of Resolution Timeline: Under RBI's prudential framework of resolution of stressed assets dated June 7, 2019, in the case of large accounts under default, Scheduled Commercial Banks, AIFs, NBFC-ND-SIs and NBFC-D are currently required to hold an additional provision of 20 per cent if a resolution plan has not been implemented within 210 days from the date of such default. Recognizing the challenges to resolution of stressed assets in the current volatile environment, it has been decided that the period for resolution plan shall be extended by 90 days.

The RBI Governor Statement may be accessed at:

<https://rbidocs.rbi.org.in/rdocs/Content/PDFs/GOVERNORSTATEMENTF22E618703AE48A4B2F6EC4A8003F88D.PDF>

10. 17th April, 2020: Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2020 notified to exclude period of lockdown for computation of timeline in liquidation process

Insolvency and Bankruptcy Board of India amended the Insolvency and Bankruptcy Board of India (Liquidation Process) Regulations, 2016, providing that the period of lockdown shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.

As per the Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2020 after regulation 47, the following regulation shall be inserted, namely: -

“Exclusion of period of lockdown. 47A.

Subject to the provisions of the Code, the period of lockdown imposed by the Central Government in the wake of COVID-19 outbreak shall not be counted for the purposes of computation of the time-line for any task that could not be completed due to such lockdown, in relation to any liquidation process.”.

The IBBI Liquidation Process Second Amendment Regulations 2020 may be accessed at:

<https://www.ibbi.gov.in/uploads/whatsnew/4697af9d01b6c12c0816f4be28ea6835.pdf>

11. 5th May, 2020: NCLT Office Order for Cancellation of Summer Vacation of NCLT benches

The Office Order of NCLT mentions that Summer Vacation falling in the months of May/June/July 2020 as shown in the Calendar of the respective NCLT Bench stand cancelled and all Benches of NCLT shall function during the said period.

The NCLT Office Order may be accessed at:

<https://www.ibbi.gov.in/uploads/whatsnew/36525f49498e355468ca6bb2d38ed573.pdf>



12. 6th May, 2020: IN RE : Cognizance for extension of limitation

(Supreme Court) [Suo Moto Writ (Civil) No. 3 of 2020 and other IAs]

In view of this Court's earlier order dated 23.03.2020 passed in Suo Motu Writ Petition (Civil) No.3/2020 and taking into consideration the effect of the Corona Virus (COVID 19) and resultant difficulties being faced by the lawyers and litigants and with a view to obviate such difficulties and to ensure that lawyers/litigants do not have to come physically to file such proceedings in respective Courts/Tribunal across the country including this Court, it was ordered that all periods of limitation prescribed under the Arbitration and Conciliation Act, 1996 and under section 138 of the Negotiable Instruments Act 1881 shall be extended with effect from 15.03.2020 till further orders to be passed by this Court in the present proceedings.

The Supreme Court Order may be accessed at:

<https://ibbi.gov.in/uploads/order/8947e770e779bc95599ba1093e75d2a3.pdf>

13. 13th May, 2020: NCLAT Notice for Cancellation of Annual Vacation of NCLAT

The NCLAT notice mentions that to make good the shortfall in working days occasioned due to imposition of Lockdown on account of outbreak of COVID-19 declared as Pandemic, the Annual Vacation commencing w.e.f. 1st June, 2020 till 30th June, 2020 notified earlier in the Calendar 2020, shall stand cancelled and the Court shall function during the month of June 2020.

The NCLAT Notice may be accessed at:

<https://www.ibbi.gov.in/uploads/whatsnew/d946af655fb0a7ac20c3e93398dcc681.pdf>

14. 17th May, 2020: Atma Nirbhar Bharat Part-5: Government Reforms and Enablers as presented by Hon'ble Finance Minister

It was mentioned in the Atma Nirbhar Bharat Part- 5 presentation that:

In 221 resolved cases, 44% Recovery has been achieved since inception of IBC, 2016.

Admitted claims amount to Rs. 4.13 Lakh crores

Realizable amount is Rs. 1.84 Lakh crores

Under IBC, 13,566 cases involving a total amount of Rs. 5.01 lakh crores (approx.) have been withdrawn before admission under provisions of IBC till 29th Feb 2020.

Globally, potential investors look at a country's **Doing Business Report** (DBR) ranking.

Sustained measures taken have resulted in steadily improving **India's position in World Bank's Doing Business Report rank from 142 in 2014 to 63 in 2019.**

Improvements in rankings in "starting a business" and "insolvency resolution" have contributed to the overall improvement in India's ranking on Ease of Doing Business.

Key reforms to include power to create additional/specialised benches for NCLAT.

Further enhancement of Ease of Doing business through IBC related measures as announced:

Minimum threshold to initiate insolvency proceedings raised to Rs. 1 crore (from Rs. 1 lakh, which largely insulates MSMEs.)



Special insolvency resolution framework for MSMEs under Section 240A of the Code to be notified soon.

Suspension of fresh initiation of insolvency proceedings up to one year depending upon the pandemic situation.

Empowering Central Government to exclude COVID- 19 related debt from the definition of “default” under the Code for the purpose of triggering insolvency proceedings.

The PPT on Atma Nirbhar Bharat Part-5: Government Reforms and Enablers may be accessed at:

<https://static.pib.gov.in/WriteReadData/userfiles/Aatma%20Nirbhar%20Bharat%20%20Presentation%20Part%205%2017-5-2020.pdf>

15. 5th June, 2020: Promulgation of The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020

The reasons which have been stated for the promulgation of the Ordinance are as follows:

COVID-19 pandemic has impacted business, financial markets and economy across the world including India and created uncertainty and stress for business beyond their control.

The nationwide lockdown since 25.03.2020 has added disruption to the normal business operations.

It is difficult to find adequate number of resolution applicants to rescue the corporate person.

It is expedient to exclude the defaults arising on account of unprecedented situation.

In the Amendment Ordinance, two amendments have been made. Extract is given below.

1. After Section 10, New Section 10A is inserted.

Section 10A. Suspension of initiation of corporate insolvency resolution process

“Notwithstanding anything contained in sections 7, 9 and 10, no application of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation: For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March, 2020.”

2. Amendment of Section 66 (Fraudulent trading or wrongful trading)

“After subsection (2), the following sub-section shall be inserted, namely:-

(3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A.”

The IBC Amendment Ordinance 2020 may be accessed at:

<https://ibbi.gov.in/uploads/legalframework/741059f0d8777f311ec76332ced1e9cf.pdf>



16. 10th July, 2020: IBBI issued Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020

IBBI issued Insolvency and Bankruptcy Board of India (Online Delivery of Educational Course and Continuing Professional Education by Insolvency Professional Agencies and Registered Valuers Organisations) Guidelines, 2020.

In the Guidelines it is mentioned that-

“in the wake of COVID-19, it was felt that it would be difficult for RVOs and IPAs to deliver educational courses and continuing professional education through classroom mode due to social distancing norms mandated by the Central Government. To minimize difficulties for the registered valuers, IPs, valuer members and prospective IPs, the Board, vide its advisories No. IBBI/IPA/031/2020 dated 20th March, 2020 and No. IBBI/RVO/032/2020 dated 20th March, 2020, allowed online delivery of courses by RVOs and IPAs and continuing education by RVOs till 30th September, 2020.

The menace of COVID-19 continues with no resolution in sight. It is considered necessary to continue online delivery of education beyond 30th September, 2020, in addition to classroom mode, wherever possible. However, it is necessary that such delivery is as effective as classroom delivery of education”.

Therefore, the Guidelines are issued to govern the online delivery of education by IPAs and RVOs.

The Guidelines shall be effective till 31st March 2021, unless rescinded or extended otherwise.

The IBBI Guidelines, 2020 for online delivery of Educational Course and Continuing Professional Education by IPAs and RVOs may be accessed at:

<https://www.ibbi.gov.in/uploads/legalframework/27b396627077e4426e0b8fbfd5a69727.pdf>

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