

## Moratorium under CIRP: Statutory Provision Under IBC & Judicial Interpretations



*Moratorium denotes the 'cooling period' which starts with the commencement of CIRP and ends when the Resolution Plan is either accepted or rejected by the Adjudicating Authority and if there is no resolution plan then liquidation petition is filed by the IRP/ RP. It gives time to the Corporate Debtor a chance to revive and come out of the financial distress by giving protection from recovery of pending debts and litigations etc.*

*The present article analyses the various provisions of Section 14 of the IBC and related judicial interpretations made by various courts which have shaped the concept of moratorium under the IBC regime as it exists today.*

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### 1. Meaning of Moratorium

The word 'Moratorium' has not been defined under the Insolvency and Bankruptcy Code, 2016 (IBC/ the Code). Moratorium is an authorized postponement in the deadline for paying a debt or performing an obligation. This authorized period of delay or suspension of a specific act is termed as moratorium. Generically moratorium also means the time period allowed before repayment or payment of interest on a loan commences<sup>1</sup>. Moratorium means a legal authorization to a debtor to postpone payment for a certain time<sup>2</sup>.

### 2. Rationale behind the Moratorium

One of the goals of having an insolvency law is to ensure the suspension of debt collection actions by the creditors and provide time for the debtors and creditors to re-negotiate their contract. This requires a moratorium period in which there is no collection or other action by creditors against debtors<sup>3</sup>.

In the matter of *Power Grid Corporation of India Limited Vs. Jyoti Structures Limited*, the Delhi High Court held

<sup>1</sup> *National Hydroelectric Power Corporation Ltd Vs. The Chairman Punjab State Electricity Board*, Appellate Tribunal for Electricity, Appeal No. 130 of 2006, dated 10th December, 2009

<sup>2</sup> Section 3(f) of Andhra Pradesh Farmers Agricultural Debts (Moratorium) Act, 2004.

<sup>3</sup> Para 6.4.1 of Banking Law Reforms Committee, Volume I, Report-November, 2015.

that the object of the IBC is to ensure that the Corporate Debtor (CD) receives relief during the “standstill” period, protecting its assets from being diminished, and alternatively using this period to strengthen its financial position<sup>4</sup>.

**In the matter of *Power Grid Corporation of India Limited Vs. Jyoti Structures Limited*, Delhi High Court held that moratorium under section 14(1)(a) of the code is intended to prohibit debt recovery actions against the assets of CD.**

### 3. When Moratorium starts [Section 13(1)(a)]

The Adjudicating Authority, after admission of the application under section 7 or section 9 or section 10, shall, by an order declare a moratorium for the purposes referred to in section 14. Section 14(4) states that the order of moratorium shall have effect from the date of such order. The insolvency commencement date starts from the date when the Adjudicating Authority admits the application filed as mentioned above for Corporate Insolvency Resolution Process (CIRP).

### 4. Effect of Moratorium on CIRP

#### 4.1. Prohibition of Suits etc. [Section 14(1)(a)]

On the insolvency commencement date the Adjudicating Authority shall by order declare for prohibition of:

- Institution of suits
- Continuation of pending suits
- Proceedings against the corporate debtor
- Execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority.

#### 4.1.1. Moratorium declared under the Code supersedes the moratorium already imposed by any State Government Authority

In the matter of *M/s. Innoventive Industries Ltd. Vs. ICICI Bank & Anr.*<sup>5</sup> the Supreme Court opined that Maharashtra Relief Undertaking (Special Provisions) Act, 1958 (MRU Act) is repugnant to IBC as under MRU Act, State Government may take over management of undertaking and impose moratorium in the same manner as contained in IBC. However, moratorium imposed under MRU Act is discretionary, whereas moratorium imposed under IBC relates to all matters listed in section 14 and follows as a

matter of course. The non-obstante clause of IBC will prevail over non-obstante clause in MRU Act, hence MRU Act cannot stand in way of corporate insolvency resolution process under IBC. Therefore, application filed by respondent bank had rightly been admitted.

#### 4.1.2. No Arbitration Proceedings could go on

In the matter of *Alchemist Asset Reconstruction Company Ltd Vs. M/s. Hotel Gaudavan Pvt. Ltd. & Ors*<sup>6</sup>, the Supreme Court ordered that the mandate of the Code is, the moment an insolvency petition is admitted, the moratorium that comes into effect under Section 14(1)(a) expressly interdicts institution or continuation of pending suits or proceedings against Corporate Debtors. The effect of Section 14(1)(a) is that the arbitration that has been instituted after the aforesaid moratorium is non est in law.

#### 4.1.3. Continuation of proceedings under section 34 of the Arbitration Act which do not result in endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor are not prohibited under section 14(1)(a) of the code.

In the matter of *Power Grid Corporation of India Limited Vs. Jyoti Structures Limited*,<sup>7</sup> Delhi High Court held that moratorium under section 14(1)(a) of the code is intended to prohibit debt recovery actions against the assets of CD. Continuation of proceedings under section 34 of the Arbitration Act which do not result in endangering, diminishing, dissipating or adversely impacting the assets of corporate debtor are not prohibited under section 14(1)(a) of the code. The use of narrower term "against the corporate debtor" in section 14(1)(a) as opposed to the wider phrase "by or against the corporate debtor" used in section 33(5) of the code further makes it evident that section 14(1)(a) is intended to have restrictive meaning and applicability. The proceedings under section 34 are a step prior to the execution of an award. Only after determination of objections under section 34, the party may move a step forward to execute such award and in case the objections are settled against the corporate debtor, its enforceability against the corporate debtor then certainly shall be covered by moratorium of section 14(1)(a).

#### 4.1.4. Moratorium will not affect any suit pending before the - Supreme Court under Article 32 or pending before the High Court under Article 226 of the Constitution of India

In the matter of *Canara Bank Vs. Deccan Chronicle*

<sup>4</sup> OMP(COMM.) 397/2016 dated 11th December, 2017

<sup>5</sup> Civil Appeal Nos. 8337-8338 of 2017, dated 31st August, 2017

<sup>6</sup> Civil Appeal No. 16229 of 2017 dated 23rd October, 2017.

<sup>7</sup> O.M.P. (COMM)397/2016 dated 11th December, 2017.

<sup>8</sup> Company Appeal (AT)(Insolvency No. 147 of 2017 dated 14th September, 2017.

*Holdings Limited*<sup>8</sup>, the NCLAT ordered that 'moratorium' will not affect any suit or case pending before the Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of Constitution of India. 'Moratorium' will also not affect the power of the High Court under Article 226 of Constitution of India. However, so far as suit, if filed before any High Court under original jurisdiction which is a money suit or suit for recovery, against the 'corporate debtor' such suit cannot be proceeded after declaration of 'moratorium', under Section 14 of the I&B Code.

#### 4.1.5. Whether adjudication of a counter claim would be liable to be stayed by moratorium

In the matter of *SSMP Industries Ltd Vs. Perkan Food Processors Pvt. Ltd.*<sup>9</sup>, the High Court of Delhi opined that under Section 14(1)(a) of the Code, a counter claim would be covered by the moratorium which bars 'the institution of suits or continuation of pending suits or proceedings against the corporate debtor'. A counter claim would be a proceeding against the corporate debtor. However, the counter claim raised in the present case against the corporate debtor i.e., the Plaintiff, is integral to the recovery sought by the Plaintiff and is related to the same transaction. Section 14 has created a piquant situation i.e., that the corporate debtor undergoing insolvency proceedings can continue to pursue its claims, but the counter claim would be barred under Section 14(1)(a). When such situations arise, the Court has to see whether the purpose and intent behind the imposition of moratorium is being satisfied or defeated. A blinkered approach cannot be followed, and the Court cannot blindly stay the counter claim and refer the defendant to the NCLT/RP for filing its claims.

#### 4.1.6. Moratorium prohibits proceedings, but such proceedings do not include prosecution

In the matter of *Mr. Ajay Kumar Bishnoi, Former Managing Director M/s. Tecpro Systems Ltd Vs. M/s. Tap Engineering*,<sup>10</sup> the CD underwent insolvency resolution while a complaint was pending under section 138 of the Negotiable Instruments Act, 1881. Further, during this time, a resolution plan for the CD was approved with a change in management and control. The MD of the erstwhile CD sought to quash the prosecution under section 138 in view of the approval of the resolution plan. The High Court confirmed that the moratorium under section 14 of the IBC prohibits proceedings, but such proceedings do not include prosecution.

#### 4.1.7. Moratorium is not applicable to criminal proceedings under the Prevention of Money Laundering Act, 2002

In the matter of *Varrsana Ispat Limited through the Resolution Professional Mr. Anil Goel Vs. Deputy Director, Directorate of Enforcement*<sup>11</sup>, the NCLAT opined that Section 14 is not applicable to the criminal proceeding or any penal action taken pursuant to the criminal proceeding or any act having essence of crime or crime proceeds. The object of the 'Prevention of Money Laundering Act, 2002' (PMLA) is to prevent the money laundering and to provide confiscation of property derived from, or involved in, money-laundering and for matters connected therewith or incidental thereto. Since the PMLA or provisions therein relates to 'proceeds of crime', Section 14 of the Code is not applicable to such proceeding.

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#### 4.1.8. Quasi-judicial proceedings are not barred

In the matter of *M/s Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors*<sup>12</sup>, the Supreme Court held that though NCLT and NCLAT would have jurisdiction to enquire into questions of fraud, however, they would not have jurisdiction to adjudicate upon disputes, specifically when the disputes revolve around decisions of statutory or quasi-judicial authorities, which can be corrected only by way of judicial review of administrative action. The Apex Court clarified that many statutes provides for a detailed mechanism for the assessment of the statutory dues (viz: Section 144 to 148 of the Income Tax Act, 1961) and such quasi-judicial proceedings are not barred by the moratorium declared under section 14(1)(a) of the IBC.

#### 4.2. Prohibition of transferring of assets by the corporate debtor [Section 14(1)(b)]

On the insolvency commencement date the Adjudicating Authority shall by order declare for prohibition of:

- Transferring
- Encumbering
- Alienating
- Disposing off

<sup>8</sup> CS(COMM) 470/2016 & CC(COMM) 73/2017, dated 18th July, 2019.

<sup>10</sup> CRLP (MD) Nos. 34996 of 2019, dated 9th January, 2020.

<sup>11</sup> Company Appeal (AT) (Insolvency) No. 493 of 2018, dated 2nd May, 2019.

<sup>12</sup> Civil Appeal No. 9170 of 2019 dated 3rd December, 2019

by the corporate debtor any of its assets or any legal right or beneficial interest therein.

### 4.3. Prohibition of enforcement of security interest under SARFAESI [Section 14(1)(c)]

On the insolvency commencement date the Adjudicating Authority shall by order declare for prohibition of:

- Any action to foreclose
- Recover
- Enforce any security interest

created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI).

#### 4.3.1. High Court not to proceed with the auction of the CD

In the matter of *Mr. Anand Rao Korada, Resolution Professional Vs. M/s Varsh Fabrics (P) Ltd. and Ors.*<sup>13</sup> the Supreme Court held that in view of the provisions of the IBC, the High Court ought not to have proceeded with the auction of the corporate debtor Respondent No. 4 herein, once an order declaring moratorium was passed by the NCLT. The High Court passed the impugned order dated 14.08.2019 and 05.09.2019 after the CIRP had commenced in this case. If the assets of the Respondent No. 4 – Company are alienated during the pendency of the proceedings under the IBC, it will seriously jeopardise the interest of all the stakeholders.

#### 4.3.2. After commencement of CIRP, the IRP/RP can take possession of the assets of the CD from the Commissioners appointed by the DRAT

In the matter of *Amira Pure Foods Pvt Ltd Vs. Canara Bank & Ors*<sup>14</sup>, the High Court of Delhi observed that the Debt Recovery Appellate Tribunal (DRAT) appointed two joint court commissioners to take over the properties of the CD. Soon after CIRP of the CD commenced, the IRP approached DRAT for taking over the properties of the CD. The DRAT took the view that given the moratorium under section 14 of the IBC, the continuation of proceedings against the CD is prohibited and therefore the relief sought by the IRP cannot be granted. The IRP approached the High Court on the same issue. The High Court observed that the DRAT was not powerless to modify

**In the matter of *Amira Pure Foods Pvt Ltd Vs. Canara Bank & Ors*, the High Court of Delhi set aside the order of the DRAT, recalled the appointment of two court commissioners, and permitted the IRP/RP to act under the IBC.**

its own order whereby the two court commissioners had been appointed to take over control of the assets of the CD. In the facts of the case, the DRAT should have recalled its order so that the IRP/RP could take over the assets of the CD in exercising its mandate under the IBC. The High Court set aside the order of the DRAT, recalled the appointment of two court commissioners, and permitted the IRP/RP to act under the IBC.

### 4.4. Prohibition of recovery of property by an owner occupied by the corporate debtor [Section 14(1)(d)]

On the insolvency commencement date the Adjudicating Authority shall by order declare for prohibition of the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

#### 4.4.1. Corporate Debtor cannot be ejected from the premises during the moratorium

In the matter of *Srei Infrastructure Finance Ltd. Vs. Sundresh Bhatt, Resolution Professional Sterling Biotech Ltd.*,<sup>15</sup> the NCLAT observed that although 'A' and 'B' Wings premises of Lakshmi Towers do not belong to the 'Corporate Debtor', in view of Section 14(1) (d), the 'Corporate Debtor' cannot be ejected or disturbed from the premises, in question, during the 'Moratorium'.

#### 4.4.2. What is prohibited under moratorium is only the right not to be disposed, but not the right to have renewal of the lease of such property

In the matter of *M/s Embassy Property Developments Pvt. Ltd. Vs. State of Karnataka & Ors.*<sup>16</sup> the Supreme Court held that the purpose of moratorium is only to preserve the status quo and not to create a new right. Even Section 14(1)(d) of the IBC, which prohibits, during the period of moratorium, the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor, will not go to the rescue of the corporate debtor since what is prohibited therein is only the right not to be disposed, but not the right to have renewal of the lease of such property.

<sup>13</sup> Civil Appeal Nos. 88008801 of 2019, dated 18th November, 2019.

<sup>14</sup> WP(C) 5467/ 2019 dated 20th May, 2019.

<sup>15</sup> Company Appeal (AT) (Insolvency) No. 781 of 2018, dated 31st July, 2019.

<sup>16</sup> Civil Appeal No. 9170 of 2019, dated 3rd December, 2019.



#### 4.4.3. The term “occupied”, does not refer to rights or interests created in property but only actual physical occupation of the property.

In the matter of *Rajendra K. Bhutta Vs. Maharashtra Housing and Area Development Authority (MHADA) and Another*<sup>17</sup> the Supreme Court opined that when recovery of property is to be made by an owner under Section 14(1)(d), such recovery would be of property that is “occupied by” a corporate debtor. The expression “occupied by” would mean or be synonymous with being in actual physical possession of or being actually used by, in contradistinction to the expression “possession”, which would connote possession being either constructive or actual and which, in turn, would include legally being in possession, though factually not being in physical possession. Since it is clear that the Joint Development Agreement read with the Deed of Modification has granted a license to the developer (Corporate Debtor) to enter upon the property, with a view to do all the things that are mentioned in it, there can be no gain saying that after such entry, the property would be “occupied by” the developer.

It is clear that Section 14(1)(d) of the IBC, when it speaks about recovery of property “occupied”, does not refer to rights or interests created in property but only actual physical occupation of the property.

#### 4.5. Corporate Debtor undergoing CIRP cannot be used as a ground to cancel licence, etc. - Explanation to Section 14(1)

The explanation to section 14(1) clarifies that notwithstanding anything contained in any other law for the time being in force, a licence, permit, registration, quota, concession, clearance or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law for the time being in force, shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of current dues arising for the use or continuation of the license or a similar grant or right during moratorium period.

**If the CD is undergoing CIRP any Authority shall not cancel any license etc., if the CD is paying the current dues during the moratorium period.**

It means that while where the CD is undergoing CIRP any Authority shall not cancel any license etc. if the CD is

paying the current dues during the moratorium period. However, as regards the pre-CIRP dues are concerned, such authority cannot insist for the same during the continuance of the moratorium period.

#### 4.5.1. Declaration of Moratorium by AA shall not give right of termination of agreement by the creditor

In the matter of *Tata Consultancy Services Limited Vs. Vishal Ghisulal Jain, Resolution Professional, S.K. Wheels Private Limited* the NCLAT held that once the moratorium was imposed by the Adjudicating Authority and appointment of Interim Resolution Professional (IRP) is made, the IRP will be at the helm of affairs of the company in view of the suspension of the Board of Directors of the 'Corporate Debtor'. As on the date of the imposition of moratorium the business and activities of the 'Corporate Debtor' will have to be carried out for smooth functioning of the company and the company shall remain as a going concern. The Resolution Professional shall perform the duties as per Section 25 of the I&B Code. Pursuant to these duties and to maintaining the CD as a going concern, which is the main object of the IBC, the application was filed seeking stay of the termination notice and direction to the appellant to continue the facilities of Agreement.

#### 4.5.2. Moratorium applies on the pre-CIRP dues, even if demand is from Government

In the matter of *Union of India & Anr. Vs. Videocon Industries Ltd. & Ors.*<sup>18</sup>, the NCLAT upheld the decision of the AA that during the period of 'Moratorium', Union of India, Ministry of Petroleum & Natural Gas, cannot recover any amount nor can issue demand notice to the Corporate Debtor through 'Interim Resolution Professional' to pay any amount.

#### 4.5.3. Moratorium also applies on the Regulatory Authorities

In the matter of *Ms. Anju Agarwal Resolution Professional For Shree Bhawani Paper Mills Ltd. Vs Bombay Stock Exchange & Ors.*<sup>19</sup>, the NCLAT observed that Section 28A of the SEBI Act, 1992 being inconsistent with Section 14 of IBC, it held that Section 14 of IBC will prevail over Section 28A of the SEBI Act, 1992 and SEBI cannot recover any amount including the penalty from the CD. The 'Bombay Stock Exchange' for the same very reason cannot take any coercive steps against the 'Corporate Debtor' nor can threaten the 'Corporate Debtor' for suspension of trading of shares.

<sup>17</sup> Civil Appeal No. 12248 of 2018, dated 19th February, 2020.

<sup>18</sup> Company Appeal (AT) (Insolvency) No. 408 of 2019, dated 30th August, 2019.

<sup>19</sup> Company Appeal (AT) (Insolvency) No. 734 of 2018, dated 23rd April, 2019.

#### 4.5.4. Penalty imposed by Regulator may be claimed as Operational Creditor but cannot be recovered during the Resolution Process

In the matter of *Maharashtra Seamless Ltd. Vs. Shri Padmanabhan Venkatesh & Ors.*<sup>20</sup>, the NCLAT held that the statutory dues i.e. the dues to Central Government or the State Government arising under any law for the time being in force and payable come within the meaning of 'Operational Debt'. If penalty is imposed or amount is payable to the 'Securities Exchange Board of India' in such case, it may claim as an 'Operational Creditor' but cannot recover the same during the 'Resolution Process'.

#### 4.6. Supply of essential goods or services to the corporate debtor [Section 14(2) & (2A)]

The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

**The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.**

This sub-section states that essential supply of goods or services shall be continued since the IRP/RP has to run the company as a going concern. What is meant by 'essential supplies' has been defined under Regulation 32 of the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016. It states that the essential goods and services as referred to in section 14(2) shall mean:

- electricity;
- water;
- telecommunication services; and
- information technology services,

to the extent these are not a direct input to the output produced or supplied by the corporate debtor.

*Illustration:* Water supplied to a corporate debtor will be essential supplies for drinking and sanitation purposes, and not for generation of hydro-electricity.

#### Discretion of IRP/RP to decide the essentiality of supply of goods or services

Sub-section (2A) of Section 14 provides that where the IRP/RP considers the supply of goods or services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a

going concern, then the supply of such goods or services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.

#### 4.6.1. There is no bar in the IBC/ its Regulations, towards the payment of current charges of essential services.

In the matter of *Dakshin Gujarat VIJ Company Ltd. Vs. M/s. ABG Shipyard Ltd. & Anr.*<sup>21</sup> the NCLAT held that from the provisions of IBC, no prohibition has been made or bar imposed towards payment of current charges of essential services. Such payment is not covered by the order of 'Moratorium'. Regulation 31 cannot override the substantive provisions of Section 14; therefore, if any cost is incurred towards supply of the essential services during the period of 'Moratorium', it may be accounted towards 'Insolvency Resolution Process Costs', but law does not stipulate that the suppliers of essential goods including, the electricity or water to be supplied free of cost, till completion of the period of 'Moratorium'.

#### 4.6.2. Insurer to continue with insurance of the CD

In the matter of *Shyam Pradhan & Anr. Vs. Anand Chandra Swain*<sup>22</sup>, the NCLAT held that merely, because the CIRP has been initiated against 'M/s. Kei-Rsos Maritime Limited'- by an Agent or Insurer- 'Ship Owners Protection Limited, London' (who has not moved any appeal) and as during the 'Corporate Insolvency Resolution Process', the 'Corporate Debtor' is to continue as a going concern, the NCLT, rightly passed the impugned order directing the Insurer to continue with the Insurance. If any amount is payable during the CIRP towards the instalment to the Insurer, the IRP will take care of the same.

#### 4.6.3. The electricity generated by the CD which is undergoing CIRP, the Power Purchase Agreement cannot be terminated by the recipient of the electricity.

In the matter of *Gujarat Urja Vikas Nigam Ltd. Vs. Mr. Amit Gupta*,<sup>23</sup> the NCLAT held that to keep the 'Corporate Debtor' a going concern, which is generating electricity and supplying only to 'Gujarat Urja Vikas Nigam Ltd.', the Adjudicating Authority rightly asked 'Gujarat Urja Vikas Nigam Ltd.' not to terminate the 'Power Purchase Agreement' dated 30th April, 2010.

<sup>21</sup> Company Appeal (AT) (Insolvency) No. 734 of 2018, dated 23rd April, 2019.

<sup>22</sup> Company Appeal (AT) (Insolvency) No. 15 of 2020, dated 21st January, 2020.

<sup>23</sup> Company Appeal (AT) (Insolvency) No. 1045 of 2019, dated 15th October, 2019.

<sup>20</sup> Company Appeal (AT) (Insolvency) No. 220 of 2019, dated 8th April, 2019.

#### 4.7. Moratorium is not applicable on certain transactions and on surety [Section 14(3)]

The provisions of sub-section (1) shall not apply to:

- such transactions, agreements or other arrangement as may be notified by the Central Government in consultation with any financial sector regulator or any other authority.
- a surety in a contract of guarantee to a corporate debtor.

##### 4.7.1. Moratorium do not apply on the personal guarantor of CD

In the matter of *SBI Vs. V. Ramakrishnan & Anr*<sup>24</sup>, the Supreme Court held that section 14 did not apply to the personal guarantor of the CD but only to the CD. The court held that in a contract of guarantee, the liability of surety and that of principal debtor is coextensive and hence, the creditor can proceed against assets of either the principal debtor or the surety, or both, in no particular order.

**In the matter of *SBI Vs. V. Ramakrishnan & Anr*, the Supreme Court held that section 14 did not apply to the personal guarantor of the CD but only to the CD.**

Further, in the matter of *Lalit Kumar Jain Vs. Union of India and Others*<sup>25</sup>, the Supreme Court opined that that approval of a resolution plan does not ipso facto discharge a personal guarantor's (of a corporate debtor) liabilities under the contract of guarantee. The release or discharge of a principal borrower from the debt owed by it to its creditor, by an involuntary process, i.e. by operation of law, or due to liquidation or insolvency proceeding, does not absolve the guarantor's liability, which arises out of an independent contract.

#### 4.8. Moratorium - When starts and ceases [Section 14(4)]

The order of moratorium shall have effect from the date of such order till the completion of the corporate insolvency resolution process: Provided that where at any time during the corporate insolvency resolution process period, if the Adjudicating Authority approves the resolution plan under sub-section (1) of section 31 or passes an order for liquidation of corporate debtor under section 33, the moratorium shall cease to have effect from the date of such approval or liquidation order, as the case may be.

#### 5. Punishment for Contravention of Moratorium

##### Contravention on the part of the CD or its official [Section 74(1)]

Where the corporate debtor or any of its officer violates the provisions of section 14, any such officer who knowingly or wilfully committed or authorised or permitted such contravention shall be punishable:

Punishment	Minimum	Maximum
(a) With Imprisonment	Three years	Five years
OR		
(b) With Fine	Rs. One Lakh	Rs. Five Lakh
Or with both of (a) and (b)		

##### Contravention on the part of the Creditor [Section 74(2)]

Where any creditor violates the provisions of section 14, any person who knowingly and wilfully authorised or permitted such contravention by a creditor shall be punishable:

Punishment	Minimum	Maximum
(a) With Imprisonment	1 years	5 years
OR		
(b) With Fine	Rs. One Lakh	Rs. One Crore
Or with both of (a) and (b)		

#### 6. Summing up

Moratorium is a temporary suspension of the legal recourse of recovering the dues from the Corporate Debtor. In other words, it is a 'cooling period' which starts from the day, when an order of Adjudicating Authority of commencement of the CIRP against the Corporate Debtor is accepted and ends on the day, when the Resolution Plan is accepted or rejected by the Adjudicating Authority. The provision of moratorium as specified in the IBC is for a limited period while the period of moratorium under the erstwhile SICA regime, was not specified.

<sup>24</sup> Civil Appeal No. 3595 of 2018, dated 14th August, 2018.

<sup>25</sup> Transferred Case (Civil) No. 245/2020 dated 21st May, 2021