IBC, 2016: A Comprehensive Legal Framework

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Though the provision for establishing NCLT & NCLAT were incorporated under sections 408 & 410 of the Companies Act, 2013 respectively, these quasi-judicial courts were created only after drafting of the Insolvency and Bankruptcy Code, 2016. Idea behind establishment of these specialized authorities was to reduce the burden of enormous backlog in the Indian judiciary. However, owing to powers granted by the Constitution of India, High Courts may exercise their supervisory power and review their decisions in exceptional circumstances. These overlapping jurisdictions sometimes lead to avoidable litigation and aggrieved parties invoke the intervention of the Supreme Court. This article attempts to highlight the fine line which may define what can be regarded as exceptional circumstances in view of a recent judgements of the Supreme Court in this regard. ***Read on to know more…***

1. Introduction

Insolvency and Bankruptcy Code, 2016 (IBC/ the Code) has been a subject of litigation on various grounds before the Apex Court of the country ever since its inception. During the initial phase, the constitutionality of Part II of the IBC, i.e. the Insolvency Resolution and Liquidation for Corporate Persons, [substantial provisions of which were brought into force with effect from December 1, 2016, vide Notification S.O. 3594(E) dated November 30, 2016], as well as the constitutional validity of National Company Law Tribunal (NCLT), were challenged before various High Courts. The clouds of doubt floating over the Code were finally settled by the Hon'ble Supreme Court, vide its decision in the matter of *Swiss Ribbons Pvt. Ltd. v. Union of India*[1]., dated January 25, 2019.

Also, when Section 29A was introduced in the Code, through the IBC (Amendment) Ordinance, 2017 and then the IBC (Amendment) Act, 2018, to prescribe eligibility

[1] [Writ Petition (Civil) No. 99 of 2018, decided on January 25, 2019 (SC)], AIR 2019 SUPREME COURT 739

criteria for resolution applicants, in order to prevent defaulting promoters and related parties from regaining control of distressed companies, it opened Pandora's box of litigation. In *Swiss Ribbons v. Union of India* (2019) the Hon'ble Supreme Court upheld the constitutional validity of Section 29A too, while narrowing the scope of the "related parties" subject to disqualification.

Later when Part III of the IBC was notified on November 15, 2019 by the Ministry of Corporate Affairs (MCA), bringing into effect the provisions related to individual and partnership firm insolvency, including personal guarantors to corporate debtors, it was challenged in a series of 384 writ petitions filed under Article 32 of the Constitution of India, claiming that Sections 95 to 100 of the IBC were against the principles of natural justice. Again, the Supreme Court upheld the constitutional validity of the impugned provisions of the Code and dismissed the writ petitions vide a common judgment delivered in the lead case of *Dilip B Jiwrajka v. Union of India and Others* on 9th November, 2023[2].

> **The Supreme Court in the case of *Dilip B Jiwrajka v. Union of India and Ors. (2023) upheld the validity of Part III of the IBC and dismissed over 384 petitions against it.***

Very recently, in a significant judgement the Supreme Court ruled on the completeness and comprehensibility of the Code. In *Mohammed Enterprises (Tanzania) Ltd. (METL) Vs. Farooq Ali Khan & Ors*[3]., the Supreme Court delivered an important judgment reinforcing that the Insolvency and Bankruptcy Code, 2016 is a comprehensive legal framework for resolving corporate insolvencies. It is a complete code in itself, having sufficient checks and balances, remedial avenues and appeals. Before looking at the fineries of the judgement, it would be pertinent to comprehend the very genesis of this Code.

(a) Why is it called a Code?

It is important to understand why this legislation is referred to as a 'Code' and not as an 'Act', as most other legislations in India. In legal terms, an act is a specific law passed by a legislature, while a code is a collection of laws, rules, and regulations. "Insolvency and Bankruptcy Code," is considered a "code" because it is a comprehensive set of legal rules and procedures designed to streamline the process of resolving insolvency issues for both individuals and companies in India, essentially acting as a single, unified law on the matter, consolidating various previous laws related to bankruptcy and insolvency under one umbrella. The preamble states that it has been formulated to consolidate various laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals. Further, Section 238 of the Code says that the provisions of the Code override anything contained in any other law in force or any instrument having effect by virtue of such law. This provision accords supremacy to the Code over any other law, if it is inconsistent with the Code. This law is a complete code on matters relating to insolvency and bankruptcy, even though other applicable laws will continue to apply for all other matters.

(b) Provisions for Appeal and Appellate under the Code

As the IBC contains appeal and appellate provisions within the Code, any party who feels aggrieved by the decision of National Company Law Tribunal (NCLT) under Part II of the Code, which pertains to the insolvency resolution and liquidation for corporate persons, may file an appeal with the National Company Law Appellate Tribunal (NCLAT) under Section 61 of the Code. Correspondingly, under Part III of the Code that governs bankruptcy and insolvency for individuals and partnership firms, Section 181 contains a provision for appeal before Debt Recovery Appellate Tribunal (DRAT). It must be noted here that Part III has been notified only by a class of individuals and firms, those who are Personal Guarantors (PG) to a Corporate Debtor (CD).

Further, Section 63 of the Code states that any person aggrieved by an order of the NCLAT may file an appeal to the Supreme Court on a question of law arising out of such order under this Code. Similarly, Section 182 of the Code allows a person aggrieved by the order of the DRAT to appeal before the Supreme Court on a question of law,

[2] Writ Petition (Civil) No. 1281 of 2021 decided on 09.11.2023
[3] In Writ Petition No. 483 of 2023 (GM-RES) dated 22.04.2024

within forty-five days of the order. It should be noted that, unlike many other legislatures, the Code nowhere contains a provision to move to the High Court in matters relating to the Code. The idea was to resolve the issues in a timely manner, without going through multiple layers of judicial proceedings, timeliness being one of the prime objectives for which this Code was enacted.

2. Intervention of the High Courts

Despite the fact that the Code contains no provisions to enable aggrieved parties to knock on the doors of High Courts or any other Civil Courts, it has been a matter of fact that, time and again, various High Courts have intervened in the judicial process established by the Code. This is by invocation of Article 226 or 227 of the Constitution. Article 226 of the Indian Constitution gives High Courts the power to issue writs to enforce fundamental rights. These writs can be issued to any person or authority, including the government. Article 227 of the Constitution of India gives the High Court the superintendence power to oversee all courts and tribunals within its jurisdiction. Using this, the High Court can exercise its power of superintendence in exceptional cases when there has been a miscarriage of justice. These powers should be used carefully under extraordinary circumstances.

In order to put a judicious end to unjustified interference into the proceedings initiated under the Code, the Supreme Court reemphasized that the IBC is a complete and exhaustive Code with sufficient checks, balances, and remedial mechanisms by way of appellate provisions contained in the Code itself. Earlier, in *Anthony Raphael Kallarakkal v. National Company Law Tribunal, Mumbai Bench & Others*[4] too, Hon'ble Bombay High Court had held that High Courts cannot have the luxury to entertain the petition by enforcing Article 226 of the Constitution, when the petitioner has not only alternate but equally efficacious remedy in law.

In the case of *Mohammed Enterprises (Tanzania) Ltd. (METL) Vs. Farooq Ali Khan (2024),* the Supreme Court, held that High Courts must be extremely cautious while accepting any writ petitions under Article 226 of the Constitution when it relates to the Code. It is now well established that the mechanism prescribed under the Code has been examined by the Supreme Court more than once and found to be constitutional and comprehensive. This judicial pronouncement is of immense significance, as it is expected to reduce the delays in Corporate Insolvency Resolution Processes (CIRP) caused due to misplaced and unnecessary judicial interventions by various High Courts. Various other issues were addressed in this judgement of the Apex Court. Therefore, let's get into the details of the case referred to above.

(a) Why was the appeal made before the Apex Court?

Oriental Bank of Commerce initiated CIRP against Associate Decor Ltd, which was admitted by the Adjudicating Authority (AA) on October 26, 2018. During CIRP in February 2020, Mohammed Enterprises (Tanzania) Ltd. (METL), the Appellant before the Supreme Court, submitted a resolution plan which was accepted by the Committee of Creditors (CoC) unanimously. However, a suspended director of Corporate Debtor (i.e. Associate Décor Ltd), filed a writ petition before the High Court of Karnataka against the Resolution Plan so approved. The suspended director invoked Article 226 of the Constitution, and claimed that he has been denied Natural Justice, as a 24-hour notice was not served in respect to CoC meeting in which the resolution was approved. This writ petition before the High Court to quash the Resolution Plan was made in January 2023, i.e. almost three years after the resolution was approved by the CoC. The Hon'ble Karnataka High Court, citing violations of natural justice, annulled the Resolution Plan of METL which had already been approved by the CoC and accepted by NCLT. Aggrieved by the order, the resolution applicant, i.e. METL, moved the Supreme Court on the grounds that the invention of the Karnataka High Court was unwarranted.

(b) Issues before the Apex Court

The proceedings in the Supreme Court revolved around three significant issues.

- Firstly, the question raised was whether High Courts have jurisdiction under Article 226 to interfere in a CIRP under the IBC, despite the availability of statutory remedies under the Code.

[4] Writ Petition (Civil) No. 1281 of 2021 decided on 09.11.2023

- Secondly, since the writ was filed almost three years after the approval of resolution plan, was the invocation of extraordinary jurisdiction under Article 226 justified in a situation where statutory remedies under the IBC were available and had been pursued.
- Finally, the Apex Court also deliberated on whether the procedural irregularities, such as inadequate notice for CoC meetings, constitute sufficient ground for judicial intervention by the High Court in CIRP proceedings under the Code.

> **The most significant outcome of this litigation was reaffirmation by the Apex Court that the IBC is a complete and exhaustive code with sufficient checks, balances, and remedial mechanisms.**

(c) Highlights of the Order

(i) **Comprehensiveness of the Code:** The most significant outcome of this litigation was reaffirmation by the Apex Court that the IBC is a complete and exhaustive code with sufficient checks, balances, and remedial mechanisms. It reiterated and reaffirmed that the appeal and appellate mechanism provided under the Code is exhaustive, and any interference by the High Courts evoking Article 226 or 227 should be rare and in very exceptional scenarios. This decision of the Apex Court is in line with various judgements rendered even before this case. For instance, in *the Committee of Creditors of KSK Mahanadi Power Company Ltd. Vs. Uttar Pradesh Power Corporation Ltd. and Ors*[5], where a matter related to consolidation of CIRPs of three related entities was raised, the Hon'ble Telangana High Court directed the petitioner to file an appropriate application before the NCLT and raise all grounds available under law. However, it also directed that until such time, the CIRP should be deferred. The Supreme Court held that though the High Court rightly declined to grant the main relief sought in the petition for the consolidation of the CIRP of three corporate entities, it erred when it exercised its jurisdiction under Article 226 by directing the deferment of the CIRP, as such a direction under Article 226 breaches the discipline of the law laid down in the provisions of the IBC.

(ii) **Delayed Petition:** The Supreme Court noted that the alleged procedural lapses (i.e. non issuance of 24-hour notice for CoC meeting) occurred in February 2020, but the High Court's jurisdiction was invoked after nearly three years in January 2023. The suspended director's justification for the delay precluding of the writ petition was rejected by the court, which observed that the respondent had actively pursued remedies under the Code during this period, precluding him from seeking relief through a writ petition.

(iii) **Reliance on Wisdom of the CoC:** The Court upheld that the CoC has the ultimate autonomy and emphasized that its decisions should not be inferred casually, as they are based on commercial considerations. Therefore, the Resolution Plan approved unanimously by the CoC demonstrated its credibility and adherence to statutory requirements and should be taken forward. Consequently, it directed the AA to resume proceedings from the stage at which they were disrupted by the High Court's ruling.

(iv) **Timely Resolution:** In line with the objective of the IBC, the Supreme Court once again accentuated the need to prioritize timely resolution to enable the maximization of the asset value and equitable treatment of stakeholders.

(v) **Rationalizing High Court's Intervention in IBC proceedings:** The Supreme Court came down heavily on Karnataka High Court for allowing the writ petition despite the availability of statutory remedies under the Code. It emphasized that the judicial intervention in CIRP proceedings must be limited to exceptional circumstances and admitting writ petition on procedural irregularities, such as inadequate notice, cannot be regarded as sufficient ground to warrant interference of High Court. It should be noted that in similar lines, in *Anthony Raphael Kallarakkal v. National Company Law Tribunal, Mumbai,* the Bombay High Court held that

[5] Civil Appeal No 11086 of 2024

"No doubt, this Court is not powerless to entertain the petition under Article 226 of the Constitution of India even if the party has an alternate remedy. Non-exercise of the jurisdiction of this Court under Article 226 on the grounds of availability of an alternate remedy is a self-imposed restraint. This Court entertains the petition under Article 226 of the Constitution of India when the petitioner has no alternate efficacious remedy provided to him by a Statute".

"High Court of Bombay in the case of Anthony Raphael held that Non-exercise of jurisdiction under Article 226 on the grounds of availability of an alternate remedy is a self-imposed restraint."

3. Instances when Admission of Writ under Article 226 was upheld

(a) In the matter of *Embassy Property Developments Pvt Ltd v. State of Karnataka*[6] one of the issues raised before the Supreme Court was whether the High Courts should have interfered under Article 226 or 227 of the Constitution with an order passed by the NCLT in a proceeding under the Code. Here, the NCLT had set aside an order of the Government of Karnataka with respect to the deemed renewal of a lease under the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act 1957). It was held by the Supreme Court that though NCLT and NCLAT would have jurisdiction to enquire into questions of fraud, they would not have jurisdiction to adjudicate upon disputes particularly in relation to disputes involving decisions of statutory authority which can be reviewed only by higher judicial authority and hence in such a case, the High Court was justified in entertaining the writ petition.

(b) In the case of *Kamal K Singh v. Union of India (UOI)*[7], a writ petition was filed before the Mumbai High Court challenging the admission order under Section 7 of the Code passed by NCLT Mumbai. Rules 150, 151, 152 of the NCLT Rules, 2016 make it clear that pronouncement must be published as soon as possible with a maximum waiting of 30 days. However, The NCLT had not followed the Rules given in the NCLT Rules, 2016 for the publication and communication of the order. Thus, the order was regarded as bad in law and the Bombay High Court issued writ of Certiorari for quashing and setting aside the impugned NCLT order and observed that since the defect in the above-mentioned case was not curable, it rendered the entire proceedings void and thus the NCLT was directed to hear afresh the entire application filed under Section 7 of IBC without being affected by its earlier order. This judgement of the Bombay High Court emphasized that if the applicant can establish that the facts and circumstances of the case are of an exceptional nature, the High Courts can exercise jurisdiction under Article 226 despite the existence of an alternative remedy.

4. Conclusion

The Apex Court's judgment in *Mohammed Enterprises (Tanzania) Ltd. Vs. Farooq Ali Khan & Ors. (2023)* is hailed as a landmark decision that reiterates the procedural sanctity, comprehensiveness, and intent of the Code. However, the said judgement does not entirely erode the powers of the High Court to interdict the processes under the Code. High Courts continues to hold constitutional powers of review and intervention in cases where statutory obligations, public law matters or fundamental rights are at stake. By allowing the appeal against the High Court's intervention, the Supreme Court has taken a significant step towards imposing judicial discipline among the lower courts in matters related to the insolvency proceedings. This decision reinforces the structured adjudicatory mechanism established under the Code and aims to prevent unwarranted interference that could disrupt the insolvency resolution process. It underscored the importance of timely resolution and minimal judicial interference in insolvency proceedings, ensuring that the Code continues to function as an efficient and effective framework for resolving corporate insolvencies and individual bankruptcies.

6. [2020] ibclaw.in 12 SC,

7. [2019] ibclaw.in 10 HC