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Fast Track Insolvency Resolution Process For
Corporates



The Ministry of Corporate Affairs ("**MCA**") has vide its Notification dated June 14, 2017 ("**Notification**") notified the provisions relating to Fast Track Corporate Insolvency Resolution Process i.e. Section 55 to 58 (both inclusive) of the Insolvency and Bankruptcy Code, 2016 ("**Code**"). Further, the Insolvency and Bankruptcy Board of India has issued the relevant regulations i.e. 'Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017' ("**Regulations**"), which essentially sets out the procedural aspects for carrying out such fast track process. The Regulations essentially provide for the roles and duties of the creditor (whether financial or operational), the resolution professional, registered valuer, the concerned corporate debtor and manner in conducting the meetings of the creditors.

A Fast Track Insolvency Process is a speedy way to achieve corporate insolvency in 90 days as compared to the standard 180 day procedure provided under the Code where such faster process is available only in specific cases. This fast track process can be extended beyond the 90 days for a period not extending 45 days, if approved by the NCLT on application by the resolution professional. In terms of the Notification, fast track insolvency process is applicable only in relation to following:-

1. A small company (defined under section 2 (85) of the Companies Act, 2013);
2. A Start-up (other than the Partnership Firm) as defined in the notification¹ of the Ministry of Commerce and Industry; and
3. An unlisted company with total assets, as reported in the financial statement of the immediately preceding financial year, not exceeding Rs.1,00,00,000 (Rupees One Crore).

A creditor or a corporate debtor may file an application, along with the proof of existence of default, to the NCLT for initiating fast track resolution process. After the application is admitted and the interim resolution professional (IRP) is appointed, if the IRP is of the opinion, based on the records of corporate debtor, that the fast track process is not applicable to the corporate debtor, he is to file an application before expiry of 21 days from the date of his appointment, to NCLT to pass an order to convert the fast track process into a normal corporate insolvency resolution process.

¹ G.S.R. 501 (E), dated dated May 23, 2017, published in the Gazette of India.

Our View

The promulgation of the Code was essentially with a view to address the long standing issues faced by the banks/ financial institutions/ creditors in recovering their dues from debtors and enforcement of the rights of the creditors, including liquidation of the assets of the borrowers/ debtors to settle their dues. Prior to the Code coming into effect, the laws dealing with insolvency/ bankruptcy and enforcement of rights of the creditors failed to yield desired results and the same can be understood from the various such cases pending at different judicial forums without much relief to the creditors. Needless to the state that the slow progress in this effect has cascading effect on the economy since the interests/ fate of various stakeholders such as creditors, employees, the debtor itself as well as the governmental agencies is kept hanging for a substantial period of time and which proves to be a drag on the economy in the final analysis.

Since, the Code intends to completely overhaul the resolution of the subject of bad debts and provide a timely resolution to the concerned parties, the implementation of the Code is been carried out in a staggered manner. Since its notification in May 2016, various sections of the Code has been made operational from time to time as this change shall require some time to digest (so that the stakeholders shall understand and appreciate the overall ramifications of the Code) as well as the building of the necessary infrastructure/ resources. Now, as part of such gradual progression, the provisions of the Code with respect to fast track insolvency process, as applicable to certain categories of debtors, have been made operational whereby the resolution process of such entities would take relatively lesser time period essentially owing to their size and nature of business. This is another step of the Government to introduce reforms with a view to address the issue of NPAs being faced by various creditors/ banks. This further highlights the efforts taken by the Government towards its agenda of ease of doing business as well as underlining India as a preferred destination for global investors and providing boost towards their confidence in the India growth story.

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