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# **UNDERSTANDING THE GREY AREAS IN THE MORATORIUM IMPOSED UNDER THE INSOLVENCY AND BANKRUPTCY CODE (IBC), 2016**

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## **Abstract**

Since the enactment of the legislation, insolvency proceedings have become challenging and a growing need of the hour. Due to coded provisions, the entire process has been regulated yet there remains certain unexplored areas which the justice providers are required to interpret according to the demands of the case. Moratorium meaning the prohibition of certain activities on a temporary basis is a crucial aspect of IBC where the enforcement of insolvency proceedings is given a priority over other pending suits with respect to the parties. There exists various questions as to what is to be included or excluded from the ambit of moratorium which the law makers have left to be determined by the interpretation of the Judges. The IBC Code thus cannot be read barely on its own and have to be read along with the precedents set by the Tribunals and the Courts. Due consideration is to be provided to the demands and facts of the case pertaining to which the precedents are upheld or a dissenting view is given.

## **1. Introduction**

In order to avoid interruptions in the proceeding of insolvency, the Adjudicating Authority i.e., the National Company Law Tribunal or the Debt Recovery Tribunal imposes a temporary prohibition on certain acts by creditors or of corporate debtor, thus ensuring smooth proceedings. The moratorium imposed under section 14 of IBC which commences on the admission of the Corporate Insolvency Resolution Proceeding (CIRP) application differs from an interim moratorium under section 96 of the Code which commences on the receipt of an application of insolvency proceeding of an individual. Section 96 of the Code encompasses only specific debt for which an application under section 95 of the Code is filed thus narrowing the scope and leaving grey areas to be decided according to the needs of the case whereas section 14 has a wider scope where it enforces the stay of any pending proceeding or suits and also debars the corporate debtor from transferring, selling, or encumbering any of the assets.

There arises various question as to the inclusion of scope of moratorium which would be answered in this paper.

## **2. Scope of moratorium extends to proceedings before High Court and Supreme Court?**

The prohibition applies to all suits and proceedings with respect to the Corporate Debtor yet there are certain exclusions and exceptions to the same. A bare reading of Section 14(1)(a) does not exclude any court from its purview including the Hon'ble High Court or The Supreme court of India yet a contrasting perspective was observed by the National Company Law Appellate Tribunal (NCLAT) in the case of *Canara Bank vs Deccan Chronicle Holdings Limited*<sup>1</sup>. High Courts and Supreme Court are vested with certain powers to deal with the suit for recovery of money as conferred upon them by the Constitution of India which enables them to deal with original filings of cases enlarging their original jurisdiction. NCLAT while ruling on the case observed that such recovery suits which are filed before High Court or Supreme Court are included in the effect of moratorium and is thus stayed after the commencement of the same ensuring the enforcement of the clause of over-riding effect of IBC Code under section 238 of the Code. However, the Tribunal has a dissenting view when it came to filing of writ petition under Article 32 or 226 of the Constitution of India before Hon'ble Supreme Court and High Court respectively. Any writ petition pending under article 226 before the High Court or under article 32 of the Supreme Court and a Special Leave petition filed under article 136 of the Constitution before the Supreme Court cannot be stayed by any provision of law including but not limited to IBC. Hence, such petitions are explicitly excluded from the ambit of moratorium.

As we understand, to ensure the vital nature of a writ petition, the same has been excluded from the scope of moratorium yet there has been no clarification made in the amendments to the Code which leaves it open for the justice givers to upheld or not according to the needs of the case. Thus, the order does not yield in making the constitution of India have an over-riding effect over IBC as the suit filed under article 131 before Supreme Court is included in the ambit of moratorium and is stayed rendering IBC Code a self contained enactment having over riding effect over other laws including but not limited to the powers enumerated to Courts by the Constitution of India as well.

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<sup>1</sup> Canara Bank vs Deccan Chronicle Holdings Limited, 2017 SCC OnLine NCLAT 255

### **3. Criminal proceedings included in the expression “proceedings”?**

The question arises that whether the expression “proceedings” mentioned under section 14(1)(a) of the Code extends to prohibition of prosecution of the corporate debtor as well along with the stay of civil suits. Criminal proceedings are considered as a matter of urgency as it affects the interest of large public and hence the stay of such proceedings could not only affect the society at large but also yield in tampering of evidences and delay in rendering justice to a person. The words used in Section 14 is “*suits or proceedings*” which leaves space for the justice providers to decide as to whether the law makers deliberately and intendedly omitted to mention prosecution or not. In the case of *Mr. Ajay Kumar Bishnoi vs M/s Tap Engineering and Other*<sup>2</sup>, the Madras High Court while dealing with a cheque bounce case under section 138 of Negotiable Instruments Act, 1881 (NI) and a concurrent CIRP proceeding filed against the company, observed and renounced the fact that prosecution does not fall under the ambit of moratorium and hence cannot be stayed with the effect of moratorium. A suit filed for recovery of money under section 138 of the NI Act is considered a criminal suit as the person found guilty is punished with imprisonment and fine. When such an application was filed by the petitioner, the justice providers were bound to make a decision whether or not to stay 138 proceedings and include or exclude the prosecution from the ambit of moratorium. The judge was called out to use the rule of interpretation and step into the shoes of the law makers, thus to decide the scope of moratorium. After interpreting the intent of the law makers, the decision was ruled, excluding prosecution from the ambit of moratorium and thus the proceedings pending before the criminal court was not interrupted and continued simultaneously with CIRP proceedings going against the debtor.

Bombay High Court in the case of *Indorama Synthetics (I) Limited Nagpur vs State of Maharashtra and Ors*<sup>3</sup> also observed that a prosecution initiated under Section 138 read with 141 of Negotiable Instruments Act, 1881 does not fall under the ambit of moratorium thus renounced the individuality and importance of a criminal proceeding. A similar view was conferred by NCLAT in *Shah Brothers Ispat Pvt Ltd vs P.Mohanraj & Ors*<sup>4</sup>, wherein the tribunal re-iterated that no criminal proceeding is covered by section 14 of the IBC. The order of imposing fines under section 138 of NI Act, 1881 is not a money claim or recovery against corporate debtor rather it is a punitive measure for non-compliance of the provisions of law or

<sup>2</sup> Mr. Ajay Kumar Bishnoi vs M/s Tap Engineering and Other, 2020 SCC OnLine Mad 1474

<sup>3</sup> Indorama Synthetics (I) Limited Nagpur vs State of Maharashtra and Ors, 2016 (4) Mh.L.J. 249

<sup>4</sup> Shah Brothers Ispat Pvt Ltd vs P.Mohanraj & Ors, (2021) 6 SCC 258



violating such provisions. A difference needs to be created between debt recovery proceedings and punitive action and thus not all criminal liabilities can be excluded from the purview of IBC. Thus, a criminal proceeding including but not limited to prosecution and imposition of fines under section 138 of NI Act, 1881 falls out of the ambit of the moratorium imposed under IBC.

In the case of *Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Ltd*<sup>5</sup>, the National Consumer Dispute Redressal Commission (NCDRC) reaffirmed that criminal proceedings against directors or signatories of a company do not abate merely because the corporate debtor is undergoing insolvency resolution process indicating that the moratorium does not even extend to the stay of criminal proceedings of the company's officers and thus all such criminal proceedings will be in force even during the CIRP process.

NCLAT in the case of *Varrsana Ispat Limited Through the Resolution Professional Mr. Anil Goel vs. Deputy Director, Directorate of Enforcement*<sup>6</sup> also re-iterated the same view 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. However, the exclusion of criminal proceedings from the scope of moratorium is decided according to the needs and wants of the case and is a case to case basis decision where the general interpretation of the court is indeed considered as a precedent while ruling over such critical situations.

#### **4. Is there an exclusion of regulatory penalties from the scope of moratorium?**

Section 96 of the IBC imposes interim moratorium which commences as soon as the application under section 95 is filed and gives way to moratorium under section 101 of the IBC when the application of insolvency is admitted. The language of section 96 is restricted to the debts for which an application is filed, thus leaving areas for interpretation as to whether or not other debts of the corporate debtor would come under the ambit of moratorium imposed. In a recent 2025 case of *Saranga AnilKumar Aggarwal vs Bhavesh Dhirajlal Sheth & Ors*<sup>7</sup>, the Supreme Court of India clarified one of the issues raised regarding the scope of interim moratorium

<sup>5</sup> *Ajay Kumar Radheyshyam Goenka v. Tourism Finance Corporation of India Ltd*, (2023) 6 SCC 258

<sup>6</sup> *Varrsana Ispat Limited Through the Resolution Professional Mr. Anil Goel vs. Deputy Director, Directorate of Enforcement, Company Appeal (AT) (Insolvency) No. 493 of 2018*

<sup>7</sup> *Saranga AnilKumar Aggarwal vs Bhavesh Dhirajlal Sheth & Ors*, 2025 SCC OnLine SC 314

under section 96. The issue raised was whether the fine imposed by National Consumer Disputes Redressal Commission (NCDRC) on the applicant due to a default in the execution of the court's order would amount to debt and will be excluded from the scope from moratorium or not. The NCDRC was of the view that the fines imposed as a result of non-compliance of the order of the court is a safeguard measure to protect the consumers and to ensure the enforcement of interest of the public at large. The court also emphasized that the stay under Sections 96 and 101 extends only to proceedings concerning the debt and does not necessarily shield the guarantor from all legal actions. The court thus ruled that the interim moratorium under Section 96 of the IBC did not bar the continuation of proceedings under Section 27 of the Consumer Protection Act, against the applicant in her personal capacity as a guarantor and the same was upheld by the Supreme Court of India in the appeal decided in March 2025.

Section 79(15) of the Code lists out certain debts which are to be excluded from the purview of Section 96 of the Code which reads as “(a) liability to pay fine imposed by a court or tribunal; (b) liability to pay damages for negligence, nuisance or breach of a statutory, contractual or other legal obligation;” Thus, a bare perusal of section 79(15) read with section 96 also excludes the stay of all regulatory penalties from the ambit of moratorium thus ensuring that a person cannot escape from the penalties imposed by the court by hiding behind the curtains of insolvency proceedings.

As we understand, there is a clear distinction between debt recovery proceedings and the regulatory penalties and fines imposed by the courts. The former is about the recovery of money whereas the latter is charged for non-compliance of the provisions of law which if stayed because of the insolvency proceedings would result in defeating the objective of the statutes which is to protect the public interest and ensure regulation. If damages arising from legal violations, consumer protection claims, or penalties imposed by courts and tribunals were to be shielded under the moratorium, it would create an unfair advantage for errant entities and individuals, allowing them to evade their legal obligations under the guise of insolvency.

The Hon'ble Appellate Tribunal in the case of *Ms. Anju Agarwal, Resolution Professional for Shree Bhawani Paper Mills Ltd vs Bombay Stock Exchange & Ors*<sup>8</sup>. had a different view when it comes to inclusion of regulatory penalties with respect to moratorium imposed under section

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<sup>8</sup> Ms. Anju Agarwal, Resolution Professional for Shree Bhawani Paper Mills Ltd vs Bombay Stock Exchange & Ors, Company Appeal (AT) (Insolvency) No. 734 of 2018

14 of the Code. Section 238 of the Code demarcates the over-riding effect of the IBC Code over other provisions of law. NCLAT was of the view that non-compliance of the laws resulting in the payment of regulatory penalties would be covered under moratorium imposed under section 14 and will be stayed. The penalty imposed by the court due to non-compliance of SEBI (Listing Obligations and Disclosure Requirement) Regulation, 2015 would not be effected as the company was undergoing CIRP process and Bombay Stock Exchange (BSE) was withheld from debarring the Debtor from trading. Thus, the ambit of section 14 moratorium is wider in aspect than that of section 96 moratorium. While the former includes the stay of all the fines imposed by the court as a breach of any law, the latter excludes the same from its ambit. However, none of the clarifications has yet been added to the Code and is left as a open wound to be filled pertaining to the demands and facts of the cases.

### **5. Conclusion**

There remains certain unexplored areas in the context of moratorium which would only be answered as and when there is a unique case which questions the scope of the effect of moratorium. However, the judges have indeed filled some gaps in the ambit which still is yet to be re-affirmed by the law makers and is still not a part of the IBC Code, 2016. Thus, it is pertinent to note that the Code is still a new undiscovered arena that requires the attention and concern of the justice providers and law makers.