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# **ARRANGEMENT AND** **COMPROMISES UNDER THE** **COMPANIES ACT: IS LIQUIDATION** **IRREVERSIBLE**

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## **INTRODUCTION**

A comprehensive and detailed plan for the revival of a corporation subject to liquidation is contained in the Insolvency and Bankruptcy Code, 2016. However, if the procedure is unsuccessful, a firm that is about to go bankrupt can be saved by using Section 230 of the 2013 Companies Act.

## **STATEMENT OF PROBLEM**

A successful insolvency legislation should balance liquidation and rehabilitation. It should present a chance for sincere exploration of restructuring and rehabilitation of potentially viable firms with a reasonable consensus among stakeholders. When resurrection or rehabilitation are shown to be impractical, winding up should be used as a last resort. When necessary, the technique should make it simple to switch between different modes of operation. This will provide businesses who are under liquidation the chance to turn things around where they can. Similarly, if a rehabilitation plan was obtained through fraud or it can no longer be carried out, conversion to liquidation may be necessary even after the plan has been approved.

The IBC does not include any provisions for the conversion of liquidation proceedings into restructuring/rehabilitation procedures because liquidation is the last option. By using Section 230

of the 2013 Companies Act, liquidation processes are currently transitioning into restructuring/rehabilitation proceedings (Companies Act). Similar rules are present in other countries as well, most notably in Singapore's Companies Act, 1967 and the United Kingdom's Companies Act, 2006 (UK Act) (Singapore Act).

The Corporate Insolvency and Governance Act, 2020 is a provision of UK law that temporarily suspends some insolvency-related regulations in order to support companies during the pandemic. The Act significantly altered the corporate environment in the UK by giving businesses more time to stabilise their finances and reorganise their operations.

## **HYPOTHESES**

It is impossible for a company undergoing liquidation to be revived under the Companies Act.

## **RESEARCH OBJECTIVES**

1. To critically analyse whether it is possible to suspend the liquidation proceedings faced by a corporation as per the Companies Act, 2013.
2. To study the significance of the Corporate Insolvency and Governance Act, 2020 of the United Kingdom and the permanent measure of moratorium under it.

## **DESCRIPTION AND ANALYSIS**

### **The role IBC plays in bringing a company facing liquidation back to life**

The IBC, 2016 is a comprehensive law in India that offers a strategy for an effective implementation of insolvency and in India. The IBC plays a significant role in bringing back to life of a corporation undergoing liquidation. The resolution process involves identifying a resolution plan that would allow the company to continue its business operations and settle its debts. The resolution process is monitored by the NCLT and overseen by a resolution professional. If a resolution plan is approved, the company can be revived, and its liquidation proceedings can be discontinued. The IBC provides a time-bound and transparent process for the revival of companies under liquidation, thereby promoting the efficient resolution of insolvency and bankruptcy in India.

### **Failure of a CIRP**

A Corporate Insolvency Resolution Process (CIRP) under the IBC can fail when it is not completed within the prescribed timeframe, or if the resolution plan is not approved or implemented. Section 33 of the IBC provides for the termination of a CIRP if it is not completed within the timeframe specified in the code and consequently, the NCLT may order the liquidation of the corporation and the assets of the corporation will be sold to pay off its creditors. This timeframe is usually 330 days from the initiation of the CIRP, but it can be extended by a maximum of 90 days in exceptional circumstances.

### **Compromise procedure in accordance with Section 230 of the Companies Act**

Section 230 of the Companies Act offers a recourse to compromise and make settlement and arrangements between a corporation and the creditors of the corporation. This section lets a company to offer settlements to its members for the settlement of its debts or for the adjustment of its obligations. The purpose of this provision is to provide a mechanism for a company to reach a settlement with its creditors or members in order to avoid liquidation and preserve its business operations.

The NCLAT instructed the liquidator appointed pursuant to the IBC in *S.C. Sekaran v. Amit Gupta & Ors*<sup>1</sup> to "take actions in terms of Section 230" for the revival of the corporate debtor. According to Section 230, the liquidator chosen in accordance with Section 34 of the IBC may submit an application to the NCLT outlining a compromise or arrangement between the firm and its creditors, as well as, if appropriate, its members.

### **In accordance with Section 230 who may and may not put up a scheme?**

Under Section 230 a compromise or arrangement can be proposed by a company, its creditors, or members. The proposal for a compromise or arrangement is made to the National Company Law Tribunal (NCLT) for approval. The NCLT must ensure that the proposed compromise or arrangement is fair and reasonable and in the interest of the creditors or members as a whole. All parties involved in the compromise or arrangement must abide by the NCLT's decision.

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<sup>1</sup>S.C. Sekaran v. Amit Gupta & Ors Company Appeal (AT) (Insolvency) No. 495 & 496 of 2018

### **Section 29A of the IBC**

Section 29A of the Insolvency and Bankruptcy Code (IBC) outlines the eligibility criteria for individuals or entities to participate in a corporate insolvency resolution process (CIRP). It lays out the disqualifications for individuals or entities who are not eligible to participate in the CIRP. These disqualifications include individuals or entities who have been convicted of certain crimes, have a history of fraud or mismanagement, or have been associated with any other company that is undergoing a CIRP.

### **Section 29A versus Section 230**

Section 29-A of the Insolvency and Bankruptcy Code and Section 230 of the Companies Act deal with different aspects of the insolvency resolution process in India. While Section 29A outlines the eligibility criteria for individuals or entities to participate in a corporate insolvency resolution process (CIRP), Section 230 provides for recourse to compromise and arrangements between a company and its creditors or members.

The conflict between these two sections arises when a company that is undergoing a CIRP under the IBC seeks to compromise or arrange its debts with its creditors or members under Section 230 of the Companies Act. Section 29A of the IBC sets strict eligibility criteria for individuals and entities to participate in the CIRP, which may exclude some creditors or members from participating in the compromise or arrangement.

This conflict creates a challenge for companies seeking to restructure their debts through a compromise or arrangement, as they must navigate the eligibility criteria set out in Section 29A while also complying with the requirements of Section 230.

A scheme of settlement is not admissible when offered by a person who is ineligible under Section 29 of the IBC, the NCLAT said in *Jindal Steel and Power Ltd v. Arun Kumar Jagatramka & Gujarat NRE Coke Ltd.*<sup>2</sup> A creditor or member who is qualified under Section 29 is thus prohibited, it was decided.

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<sup>2</sup>Jindal Steel and Power Ltd v. Arun Kumar Jagatramka & Gujarat NRE Coke Ltd, Civil Appeal No. 9664 of 2019

### **Can a liquidation order be reversed?**

The Companies Act provides for the liquidation of companies in India and outlines the procedures for the liquidation process. However, the question of whether liquidation is irreversible under the Companies Act is a complex one and depends on several factors.

According to the provisions of the Companies Act, once a company has been liquidated, it cannot be revived or restored. The liquidation process is considered to be a final step in the life of a company, and it results in the dissolution of the company. Once a company has been liquidated, it no longer exists as a legal entity and its assets are distributed among its creditors and shareholders.

However, in certain circumstances, it may be possible to reverse the liquidation of a company. For example, if a company has been liquidated due to a technical error or an administrative mistake, it may be possible to reverse the liquidation process. In such cases, the company may make an application to the court for the reversal of the liquidation process. The court will review the application and decide whether the liquidation process can be reversed.

Another instance in which the liquidation process may be reversible is if the company has been liquidated as a result of fraudulent activities. In such cases, the liquidators may be required to return the assets of the company to its creditors and shareholders. This process is known as "clawback" and is typically carried out under the supervision of the court.

### **Can the Supreme Court reverse a liquidation order?**

Yes, the Supreme Court can reverse a liquidation order if it is satisfied that there is sufficient cause to do so but it uses this power very sparingly. In India, the Supreme Court has the power to hear appeals against decisions made by lower courts and can reverse a liquidation order if it finds that the original decision was based on an error of law or was unjust. However, reversing a liquidation order is a complex process and requires strong evidence to support the claim. The Supreme Court will consider factors such as the interests of the creditors, the company's ability to pay its debts, and any other relevant circumstances before making a decision.

The Supreme Court supported the NCLAT's ruling in Kamineni Steel & Power India Pvt. Ltd and Innoventive Industries Ltd. and emphasised the committee of creditors' authority in approving or rejecting resolution plans based on their commercial judgement. The resolution plans in both cases were not approved by the necessary majority of the committee of creditors, hence the NCLAT ordered liquidation in both instances. The Supreme Court declined to employ the authority granted to it by Article 142. The Supreme Court will rarely exercise its ability to overturn a liquidation order, despite the fact that it does have that power.

### **The Corporate Insolvency and Governance Act, 2020**

The Corporate Insolvency and Governance Act, 2020 is a UK legislation aimed at providing support to companies during the COVID-19 pandemic by temporarily suspending certain insolvency-related measures. The Act has had a significant impact on the UK corporate landscape by providing companies with additional breathing space to stabilize their finances and restructure their operations. The measures introduced by the Act include suspension of wrongful trading provisions, moratorium on winding-up petitions, and restructuring plans. However this measure was deemed to be a temporary one.

#### **The sustainable solution (moratorium)**

The Corporate Insolvency and Governance Act, 2020 (CIGA) introduced a permanent measure of moratorium in the UK. A moratorium is a temporary pause on certain legal proceedings, such as winding-up petitions and enforcement action that provides companies with breathing space to restructure their operations and finances.

The permanent measure of moratorium introduced by the CIGA allows companies to apply for a moratorium of up to 20 business days, during which time they are protected from certain legal proceedings. This moratorium can be extended by the court for up to a maximum of one year, subject to certain conditions.

The permanent measure of moratorium under the CIGA is designed to provide companies with the time and space they need to restructure their operations and secure their future. By providing a

temporary pause on legal proceedings, companies are able to focus on stabilizing their finances and finding a solution to their financial difficulties.

The permanent measure of moratorium is an important tool for companies facing financial difficulties and provides them with an alternative to formal insolvency proceedings. It is a positive step for the UK corporate landscape and provides companies with the support they need to secure their future, and a similar legal initiative is highly recommended for India as well because India does not have enough legal provisions addressing the problem of liquidation of companies.

## **CONCLUSION**

The hypothesis does stand true as a liquidation once passed cannot in any case be reversed. A measure that can help a company survive a liquidation action is the scheme of arrangement and compromise. It's impossible to say whether a strategy like this returns the corporate debtor to its pre-insolvency state. This is so that the company has a chance of survival through negotiation and compromise since the liquidation order, once made, cannot be changed. Aspects like the voting process and plan approval process should be made clearer. This will lessen any problems that may occur as a result of the lengthy process involved in the plan under Section 230 of the Companies Act, which would eventually benefit the businesses who are facing liquidation. A law similar to UK's Corporate Insolvency and Governance Act, 2020 which came during the COVID pandemic needs to be enacted in India as well.

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