Decoding the Conundrum of Interim Moratorium under Section 14 of IBC

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Introduction

The Hon'ble National Company Law Tribunal ("NCLT") admitted the application filed by Go Airlines (India) Limited ("Go Airways") under Section 10 of the Insolvency and Bankruptcy Code, 2016 ("IBC") for Voluntary Initiation of Corporate Insolvency Resolution Process ("**CIRP**") on 10 May 2023. Go Airways also filed an Interlocutory Application ("IA") praying for ad-interim reliefs through the interim moratorium and the application to initiate CIRP.

The NCLT, while deciding the IA, passed an oral remark that "*there is no provision in IBC which grants the NCLT the power to impose interim moratorium*". Since the NCLT had admitted the application for initiation of CIRP of Go Airways and imposed a moratorium under Section 14 (1) of IBC, it did not venture into the merits of IA. It left the question concerning the imposition of the interim moratorium in its detailed order unattended.

Although there is only a provision for the imposition of an absolute moratorium on the Corporate Debtor under Section 14 of IBC, the NCLT in the past has used its inherent powers under Rule 11 of National Company Law Tribunal Rules, 2016 ("NCLT Rules") to impose an interim moratorium on the Corporate Debtor. This article aims to analyze the above proposition and provide an answer to the question of whether the NCLT can use its inherent powers to impose an interim moratorium on the Corporate Debtor.

Concept of Interim Moratorium under CIRP

The term "**interim moratorium**" has been introduced under Section 96 in Part III of IBC, which provides an insolvency resolution process for individuals, including personal guarantors & partnership firms. As per Section 96, the interim moratorium shall commence on the date when the application has been filed to initiate the insolvency resolution process, irrespective of whether the application is numbered or listed for hearing. During the interim moratorium, any legal action or proceeding concerning any debt deemed to have been stayed and the debtor's creditors shall not initiate any legal action or proceeding for any of its debts.

Interim moratorium under Part II of IBC

While an interim moratorium is provided for in Part III of IBC, the same has not been inserted in Part II of IBC, which provides for an insolvency resolution process for corporate persons. For Part II, Section 14 speaks of invocation of **"moratorium"** only upon admission of the application, whereby vide order of the NCLT, CIRP is initiated, and the moratorium is declared prohibiting the following activities, namely: (a) the institution of suits or continuation of pending suits or proceedings against

the corporate; (b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein; (c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the SARFESI Act, 2002; (d) the recovery of any property by an owner or lessor where such property is occupied by or in possession of the corporate debtor.

The Insolvency Law Committee Report 2020 ("ILC Report") also recommended that the NCLT should have the discretionary power to impose an interim moratorium even if the proceedings are initiated under Part II of IBC. The discretion to impose an interim moratorium shall depend on the urgency of achieving the objectives of IBC. Further, the report recommended that interim moratorium may include any or all of the restrictions mentioned in Section 14 of IBC, depending on the facts and circumstances of the case.

Judicial Decisions

In the case of ***NUI Papers and Pulp and Paper Industries Pvt. Ltd. v. Roxel Trading GMBH [2019] ibclaw.in 01 NCLAT***, the Hon'ble National Company Law Appellate Tribunal ("NCLAT") upheld an interim order *("impugned order")* passed by the NCLT, Chennai Bench wherein the impugned order prohibited the Corporate Debtor from alienating, encumbering or creating any third-party interest on the assets of the Respondent Company. The Hon'ble NCLAT further held that it is always open for the NCLT to pass ad-interim orders before admitting any application under Sections 7, 9 and 10 of IBC under Rule 11 of NCLT Rules, 2016, to prevent the abuse of the process of law and to meet the ends of justice. An appeal was also filed against the order of NCLAT before the Hon'ble Supreme Court of India ("Supreme Court"). However, the Supreme Court ***refused*** to interfere with the order. Accordingly, the appeal was dismissed.

Similarly, in the case of ***M/s. F.M. Hammerle Textiles Limited***, an application under Section 10 of IBC, was filed to initiate voluntary CIRP by the Corporate Debtor. While the application was awaiting an admission hearing, the promoters of the Corporate Debtors received an email from the bank that it may initiate legal actions against them for the dues, which could have an adverse impact on the accounts of the parent company. The NCLT (Chandigarh Bench), after considering the facts and circumstances of the case, imposed an interim moratorium on the Corporate Debtor in terms of Section 14 of IBC.

Analysis

From the above judicial decisions, it can be inferred that the NCLT has exercised its power to impose an interim moratorium as an ad-interim relief under its inherent powers prescribed under Rule 11 of NCLT Rules, 2016. In the case of ***Manohar Lal v. Seth Hiralal***, the Supreme Court held that the court could not exercise the inherent powers in conflict with the provisions expressly provided in the Statute.

Further, in the case of ***SEBI v. Bharti Goyal***, the Securities Appellate Tribunal ("SAT") had converted a penalty of Rs. 5,00,000 imposed on the Respondent to a warning for the violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices), Regulations, 2003 ("PFTUP Regulations"). The Supreme Court stayed the order of SAT. It held that Section 15HA of the Securities Exchange Board of India Act, 1992 ("SEBI Act") prescribes a minimum penalty of Rs.

5,00,000 which can go up to Rs. 25 crores for violating PFTUP Regulations. Therefore, the direction of converting the penalty into a warning is contrary to the provision of Section 15HA. The Supreme Court in the case also observed that SAT does not exercise its jurisdiction under Article 226 of the Constitution of India, 1950 ("Constitution") and is a creature of the Statute. Even the jurisdiction under Article 226 of the Constitution must be exercised consistently with the law.

As stated above, under Part II of IBC, there is only the concept of absolute moratorium under Section 14 of IBC, which is imposed after an application filed under Section 7, 9 or 10 for CIRP of Corporate Debtor is admitted. Thus, the interim moratorium imposed by NCLT under the guise of its interim power is inconsistent with what is provided in the Statute.

Even if a presumption is drawn after referring to the ILC Report, the legislation intends to grant discretionary powers to the NCLT to impose an interim moratorium for the applications filed under Part II of IBC. In the case of ***Kalpana Mehta v. Union of India***, the Supreme Court discussed the evidentiary value of Parliamentary Committee Reports. It held that committee reports could be used as an external interpretation aid to resolve any ambiguity in the provision. It was further held that these reports should have only persuasive value, and the courts are not bound by the factual findings and the observations made in the committee reports. After referring to the above proposition of law laid down in the above case, it can be concluded that ILC should only be referred to as an external aid of interpretation when there is an ambiguity in the Statute. There is no ambiguity in Section 14 of IBC as it provides for a moratorium upon admission of an application filed under Part II of IBC. It can be inferred from the above discussion that NCLT, by imposing an interim moratorium, has acted beyond its power and jurisdiction provided by IBC.

Conclusion

The NCLT, in the judgments mentioned above, imposed an interim moratorium on the apprehension that the Corporate Debtor may alienate its assets and achieve the objectives of IBC. It is a well-settled legal principle that the judgments must be understood in their context. Therefore, the ratio in these judgements should not be applied to every case. If an interim moratorium is applied in every scenario or an amendment is carried out in IBC to incorporate a provision of interim moratorium. In that case, the Corporate Debtor may routinely file an application to initiate voluntary insolvency under Section 10 to escape legal proceedings. Although, the article concludes that NCLT, by imposing an interim moratorium, has exceeded its jurisdiction and powers contemplated by IBC. It is imperative that the Supreme Court steps in and clarifies its stance on the issue of interim moratorium. Suppose the Supreme Court holds that NCLT can impose an interim moratorium. In that case, it should also clarify in what circumstance the relief can be granted to avoid frivolous applications with malicious intent.

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