

## MORATORIUM: A CRITICAL ANALYSIS

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**Abstract:** In the world where money man finds different ways to digest the money of the creditors and of different institution & local sectors. The insolvency bankruptcy code play a very vital role as stop clock for the debtor in misrepresentation of money or hijacking the money of innocent creditors and institutions .Moratorium played a role as temporary suspension of all the proceeding related to court. In a legal context, it may refer to the temporary suspension of a law to allow a legal challenge to be carried out.

**Keyword's:** Digest Temporary suspension, Legal challenges & Moratorium

### Introduction

A moratorium is a temporary suspension of an activity or a law until future events warrants lifting the suspension or issues regarding the activity have been resolved. A moratorium may be imposed by a government or by a business. Moratoriums are often enacted in response to financial hardships. Financial moratoriums can include voluntarily imposed conditions set by a business designed to lower costs for a period. They may also be as well as legally mandated requirements to cease specific financial activities, such as attempts to collect a debt.

### Section 14 as Per Insolvency and Bankruptcy Code, 2016 (IBC, 2016)

*Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: –*

*(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgement, decree or order in any court of law, tribunal, arbitration panel or other authority;*

*(b) Transferring, encumbering, alienating or disposing off by the corporate debtor any of its assets or any legal right or beneficial interest therein;*

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(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 Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

### **Commencement of Moratorium**

The Moratorium, as envisaged in the Insolvency and Bankruptcy Code comes into effect immediately after the application under **section 7, 9 or 10** of the Code, as the case may be, is admitted by the adjudicating authority. The day the insolvency application is admitted and moratorium is applied is referred to as the ‘Insolvency Commencement Date’.

### ***Need of Moratorium***

*It is a period mention under insolvency bankruptcy code, 2016 that no judicial proceeding for recovery, enforcement of security interest, sale or transfer of assets, or termination of essential contracts can be instituted or continued against the Corporate Debtor. The main objective is to protect the corporate debtor from any distraction so that the corporate debtor fully focus on the existing proceeding and work for the revival of the company.*

### **UNDERSTANDING OF THE SECTION 14(1)(A) THROUGH JUDGEMENT**

In *Sanjeev Shriya’s* case<sup>2</sup>, proceedings were initiated by the lenders before the Debt Recovery Tribunal (“DRT”), arraying guarantors also as parties. Whilst the proceedings before the DRT were pending, the corporate debtor (“LML“), voluntarily filed an application before the National Company Law Tribunal (“NCLT”) for initiation of the corporate insolvency resolution process and thereby an order declaring moratorium under section 14 of the Code came to be passed. LML along with the guarantors immediately applied to the DRT seeking a stay of the proceedings. Although a stay in favour of LML was granted, a stay in favour of the guarantors was rejected, against which rejection a Writ Petition was filed by the guarantors before the Allahabad High Court. The Allahabad High Court held in favour of the guarantors.

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<sup>2</sup> *Sanjeev Shriya V. State Bank of India, Writ – C No. – 30285 of 2017*

Although the ambit of section 14 covers the initiation and continuation of any proceedings, the NCLAT has in its judgment of *Canara Bank v. Deccan Chronicle Holdings Limited*<sup>3</sup> categorically carved out an exception holding that the moratorium will not affect any proceedings initiated or pending before the Supreme Court under Article 32 of the Constitution of India or where an order is passed under Article 136 of the Constitution of India. The NCLAT also concluded that the moratorium will not affect the powers of any High Court under Article 226 of the Constitution of India.

With the coming into effect of the Code also, the Sick Industrial Companies Act, 1958 (“SICA”) has been repealed. Under section **22 of SICA**, the institution or continuation of suits or legal proceedings against a sick company were subject to liberty being obtained from the Board for Industrial and Financial Reconstruction (“BIFR”) (the Adjudicating Authority under SICA). No such provision for obtaining liberty is provided under section 14 of the Code.

### **MORATORIUM IN INSOLVENCY PROCEEDINGS**

The object of insolvency laws across the world is to protect to the troubled debtor from going into a tailspin and provide him some breathing space to revive his enterprise by protecting it from the claims of its creditors and other stakeholders. As soon as a Moratorium is placed, all proceedings against the Corporate Debtor for recovery of any debt or property come to a standstill for the duration of the moratorium. This provides the debtor the necessary protection from all claims, existing as well as future, for the duration of the moratorium and let the Corporate Debtor focus all his attention towards the revival of the core business. Any distraction in terms of claims and law suits and taken away for a limited period with the sole intent of helping the enterprise stand back on its feet which is not only in the interest of the creditors, promoters and employees but also for the well being of the entire economic system.

### **WHEN DOES IT COME INTO EFFECT?**

The Moratorium, as envisaged in the Insolvency and Bankruptcy Code ("the Code") comes into effect immediately after the application under **section 7, 9 or 10** of the Code, as the case may be, is admitted by the adjudicating authority. The day the insolvency application is admitted and

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<sup>3</sup> Canara Bank V. Deccan Chronicle Holdings Limited, Company Appeal (AT) (Insolvency) No. 147 of 2017

moratorium is applied is referred to as the 'Insolvency Commencement Date'. Though the moratorium starts from the Insolvency Commencement Date, the Interim Resolution Professional (IRP) maybe appointed at a later date vide a separate order.

### **WHEN DOES IT COME TO END?**

The Moratorium once applied remains in force till the completion of the Corporate Insolvency Resolution Process which has to complete in 180 days from Insolvency Commencement Date and can be extended to 270 days, with the leave of the adjudicating authority after showing sufficient cause. Once the resolution process comes to an end, either the resolution plan is approved by the adjudicating authority or a liquidation order is passed under section 33 and thereafter the moratorium applied ceases to have effect.

### **EXTENT OF MORATORIUM**

Moratorium extends to all suits and proceedings against the corporate debtor in any court of law and includes execution and arbitration proceedings. It also applies to any proceedings initiated by banks under the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act (**SARFAESI**) as well as any action to evict the corporate debtor from a property. However, the Moratorium only extends to the assets of the Corporate Debtor against whom the insolvency proceedings are initiated and not to the proceedings against its directors and guarantors. While there was little confusion on this aspect, directors and guarantors of the troubled enterprise were trying to find succor in the moratorium to escape from recovery proceedings against them pending before other courts. To settle any confusion and prevent any possible misuse of the moratorium the NCLT bench at Mumbai, in *Schweitzer Systemtek vs. Phoenix ARC limited*<sup>4</sup>, recently held that the Moratorium will have no application on the properties beyond the ownership of the Corporate Debtor and the same view was upheld by the Appellate Tribunal when deciding the appeal therein<sup>5</sup>

### **POWER TO MODIFY THE TERMS OF THE MORATORIUM**

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<sup>4</sup> T.C.P. No. 1059/I&BP/NCLT/MB/ MAH/2017

<sup>5</sup> (Company Appeal (AT) (Insolvency) No. 129 of 2017)

Though section 14 of the Code is clear about the terms of the moratorium and so far all the benches of tribunals across the country have been using the standard language and terms of the moratorium as provided in the Code, recently in two instances the benches have taken the liberty to modify the moratorium by adding riders. In *Canara Bank vs. Deccan Chronicle*<sup>6</sup>, the Hyderabad bench excluded proceedings pending before the Hon'ble Apex court and Hon'ble High Courts. In *Amit Spinning Industries*<sup>7</sup> matter the Principal Bench at Delhi reduced the moratorium period to 100 days in view the previous moratorium already enjoyed by the Debtor under the erstwhile Sick Industrial Companies Act. As we are witnessing with several other aspects, the Code being in its infancy, it is expected that varying interpretations regarding the extent and the manner of application of moratorium are bound to be taken by different benches. It is only over a period of time that the jurisprudence would crystallize and as officers of the court and followers of law the onus is on the legal practitioners to help the Tribunals in correctly interpreting the provisions of law.

In bankruptcy law, a moratorium refers to a legally binding halt of the right to collect a debt. The placement of a moratorium allows the individual or entity filing for bankruptcy an opportunity to review current standings. This time-out protects the debtor during the creation of a plan for recovery. A moratorium of this type is typical in Chapter 13 bankruptcy filings where the debtor is looking to restructure the repayments of any associated debt obligation. *The prohibition contained in section 14 of the Insolvency and Bankruptcy Code 2016, ("the Code") against the initiation and continuation of legal proceedings has recently been a topic of discussion in rulings of the National Company Law Appellate Tribunal ("NCLAT") and the High Court of Allahabad and has now become an open question of law. Based on an analysis of these judgments, it is apparent that the prohibition contained in section 14 of the Code also extends to guarantors and mortgagors, if the liability against the principal debtor has not been crystallized before the declaration of moratorium; and that writ petitions filed before the Supreme Court and the High Courts, and orders passed by the Supreme Court under article 136 of the Constitution are unaffected by section 14(1)(a) of the Code.*

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<sup>6</sup> ( CP No. IB/41/7/HDB/2017

<sup>7</sup> (IB-131(PB)/2017)

**Conclusion**

The language of section 14 of the Code also is wide enough to include legal proceedings of any nature within its ambit. The intention of the legislature in relation to section 14(1)(a) is to ensure that after the declaration of moratorium, there is a standstill period during which the creditors cannot resort to individual enforcement action which would frustrate the very object of the corporate insolvency resolution process. On the other hand, section 22 of SICA in terms provided that liberty could be obtained from the BIFR, which provision is absent from section 14 of the Code.