

Moratorium on assets of Personal Guarantors

In a recent judgment dated February 28, 2018, the Hon'ble National Company Law Appellate Tribunal (NCLAT) has held that personal guarantors of a company undergoing corporate insolvency resolution process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC) could also have the benefit of a moratorium or stay on proceedings against such guarantor.

The IBC includes a provision calling for a 'moratorium' or a stay against enforcement actions against a corporate debtor undergoing CIRP under the IBC. Upon the adjudicating authority (i.e. the National Company Law Tribunal (NCLT)) admitting CIRP proceedings against a corporate debtor, the NCLT is also required to order a stay or a bar against, amongst other things, institution and continuation of suits, enforcement, foreclosure or recovery of security, and creation of encumbrance or alienation of assets with respect to the corporate debtor. The decision of the NCLAT in the case of State Bank of India v. Mr. V. Ramakrishnan and Veasons Energy System Private Limited has extended the scope of the abovementioned moratorium to assets of, and proceedings against, a personal guarantor to such a corporate debtor.

The decision of the NCLAT was issued in a matter, wherein the corporate debtor (Veasons Energy Systems Private Limited) itself had filed an application for going through the CIRP. This application was admitted by the Hon'ble NCLT (Chennai) and a moratorium was declared by that NCLT. Thereafter, State Bank of India (as the lender) continued to take measures under other Indian debt recovery laws against the properties of the personal guarantor i.e. Mr. V. Ramakrishnan. Aggrieved by the actions of the lender, Mr. V. Ramakrishnan filed an application before the NCLT seeking a stay of proceedings against him. This application of the personal guarantor was allowed by the NCLT, on September 18, 2017.

The decision of the NCLT was brought before the NCLAT in an appeal preferred by the lender. The NCLAT dismissed the appeal, upholding the decision of the NCLT and holding that the 'moratorium' under IBC would extend not only to the property of a corporate debtor, but also on the properties of the personal guarantor. In its decision, the NCLAT observed that the IBC provided that that the resolution plan arrived at pursuant to the CIRP would be binding not only on the 'corporate debtor' but also on other stakeholders including the personal guarantors; and that certain other provisions of the IBC permit taking of insolvency proceedings against personal guarantors of the corporate debtor under the IBC.

This recent judgment of the NCLAT is contra to its earlier judgement in the case of Alpha & Omega Diagnostics (India) Limited vs Asset Reconstructions Company of India Limited and others and the judgment of the NCLT, Mumbai in the case of Schweitzer Systemtek India Private Limited vs Phoenix ARC Private Limited, wherein it has been held that the 'moratorium' under the IBC, would apply only to the properties of a corporate debtor and would not have an effect on those properties beyond the ownership of a corporate debtor.

It will remain to be seen if this decision of NCLAT is referred to a higher court. In the meanwhile, initiation of CIRP against a company is likely to result in the delaying of proceedings against the corporate debtor and its guarantors.

If you have any questions, please contact:

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