



MORATORIUM UNDER IBC TO COVER PERSONAL GUARANTEES OF PROMOTERS FURNISHED TO FINANCIAL CREDITORS

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Moratorium under IBC to cover personal guarantees of promoters furnished to financial creditors

Recently, NCLAT faced a situation in *State Bank of India v. Mr. V. Ramakrishnan and Ors.* [Company Appeal (AT) Insolvency no. 213 of 2017], where the State Bank of India had appealed against an order of the National Company Law Tribunal (“NCLT”), Chennai, which prevented it from invoking the personal guarantee of a promoter of a corporate debtor while the latter had declared bankruptcy under the IBC. The promoter had given such guarantee in order to obtain certain credit facilities for the corporate debtor. The NCLT held that once a moratorium has been declared under section 14 of the IBC, such guarantees cannot be invoked by a financial creditor. Further, NCLAT dismissed the appeal before it and reiterated the position enunciated by the NCLT, Chennai. It observed that a moratorium under IBC not only prohibited legal proceedings against assets of a corporate debtor, but reasoned that since a resolution plan approved by a committee of creditors under Section 31 of IBC is binding on the corporate debtor *and*, its employees, members, creditors, *guarantors*, and other stakeholders involved in the plan, a moratorium would also extend to the guarantor. In other words, NCLAT agreed with NCLT Chennai in holding that the moratorium will extend to the personal guarantor thereby preventing recourse to invocation of such guarantees by a financial creditor whilst the corporate debtor is in the midst of bankruptcy.

PSA view: NCLAT has, in effect, rejected the stand taken by the NCLT, Mumbai in *Schweitzer Systemtek India Private Limited v. Phoenix ARC Private Limited* [2017 140 CLA 121], which had instead allowed invocation of personal guarantees during a moratorium under IBC, and has held otherwise. Consequently, while on one hand the NCLAT ruling may come as a relief for personal guarantors such as promoters who furnish such guarantees to obtain credit facilities for their companies, and would perhaps, reduce litigation in this behalf against corporate debtors embroiled in bankruptcy, on the other, it will have an adverse affect on the use of personal guarantees as an acceptable form of securing debt by the creditors, since creditors will not be able to invoke a personal guarantee in the event it relates to an entity that is in bankruptcy under IBC and therefore, covered by the moratorium.

By:

Varun Kalsi & Janarth Visvanathan



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