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WILL MORATORIUM UNDER IBC STAY PROCEEDINGS AGAINST GUARANTORS?

Ever since the bringing into force of Insolvency and Bankruptcy Code [IBC], India has witnessed several actions on the part of financial creditors, operational creditors and corporate debtors. Some of those actions have undergone judicial scrutiny too. Various benches of the National Company Law Tribunal [NCLT] across the country have handed down several decisions.

Once Corporate Insolvency Resolution Process [CIRP] gets initiated, by virtue of Section 14 of the IBC, a moratorium sets in. As a result of the moratorium, suits and proceedings against the Corporate Debtors get frozen during the period of CIRP. Fresh suits and proceedings too are barred during such period.

However, no such insulation ring protects assets of guarantors of the borrowings of the Corporate Debtor. One view is that it is not fair to put their assets on mat while expecting them to come up with any resolution plan as part of CIRP. Since the guarantors are mostly promoters and directors of the Corporate Debtor, they too need peace of mind to work out a resolution plan. Another view is that such proceedings would put pressure on the guarantors too forcing them to aid actively in bringing up a resolution plan.

It would be useful to note that an interesting question came up recently before the NCLT, Mumbai in Schweitzer Systemtek India Private Limited v Phoenix ARC Private Limited. Admitting the Petition filed by the Corporate Debtor under Section 10 of IBC, NCLT held that moratorium under Section 14 of IBC protects only assets in the balance sheet of the Corporate Debtor. It has no application to the properties beyond the ownership of the Corporate Debtor.

What if the Guarantor is a Body Corporate and if it moves NCLT to initiate a CIRP on its own?

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