CIRP Period of 270 days - mandatory or not?

Over the Period of time, the Insolvency and Bankruptcy Code, 2016(Code), has largely been settled for the questions related to admission of any CIRP application; however there are requirement for clarifications on the post-admission stage procedure of the Code. One of the debated matters in the Code is the stipulatedtime limit for concluding the Corporate Insolvency Resolution Process (CIRP)under section 12. In accordance with the same, the CIRP needs to be concluded within a period of 180 days from the date of admission of the application to initiate the CIRP by the Tribunal. The Code also empowers the Resolution Professional (RP) to apply for extension of for completion of CIRP, if such instruction is given by Committee of Creditors (COC), vide its COC Meeting by passing a resolution by at least 66 % vote(as amended by IBC Amendment Ordinance 2018).The Adjudicating Authority can consider such application made by RP and after being satisfied of the need for the extension of time limit may extend the time limit for completion of CIRP by such further period but not more than 90 days. The Code also provides that any extension of the period of CIRP shall not be granted by the Adjudicating Authority more than once.It is important to note that though the extension of 90 days are required to be given in necessary circumstances, the same is being followed as a routine as a part of the right of the Resolution Professional.

Further Section 33 of the Code, among other conditions, provides that if the Adjudicating Authority does not receive the resolution plan within the stipulated period or rejects the resolution plan then it shall pass an order for liquidating the corporate debtor. The same has been upheld in the recent case of **M/s J. K. Jute Mills Company Limited vs. M/s Surendra Trading Company** wherein the NCLAT, in the appeal filed against the order of Allahabad bench of NCLT, held that the time period of 180 days (or 270 days), within which the CIRP must be completed, is mandatory.

Further in the case of Quantum Limited vs. Indus Finance Corporation, the NCLAT set aside the order of NCLT Mumbai Bench wherein the NCLT rejected the application for extension on the ground that there is no provision to file an application for extension of time after the expiry of 180 days of CIRP. However NCLAT held that in accordance with section 12(2), RP can file an application for extension only after the instruction has been given by COC through a resolution passed at its meeting of COC even on the 180th day by a majority vote of 75 % of the voting shares. NCLAT further held that in the interest of justice and to ensure that resolution process is completed following all the procedures time should be allowed by the Adjudicating Authority who is empowered to extend such period up to 90 days beyond 180th day. The NCLAT further clarified that it was duty on the part of the Adjudicating Authority to extend the period to find out whether a suitable resolution plan is to be approved instead of going for liquidation, which is the last recourse on failure of resolution process.

In another case of Rave Scans Private Limited, the committee of creditors (by creditors representing 35% of the voting rights) rejected the resolution plan without assigning any reasons irrespective of the fact that the resolution plan provided for a sum of INR 51 Crore against the liquidation value of the Company which was merely INR 36 Crore. NCLT directed the committee to reconsider the plan even though the 270 days period had already expired in view of the larger public interest and the broad objectives of the Code.

Further it is also interesting to note that in the ongoing cases of Binani Cement,Essar Steel India Limited and Bhushan Power and Steel Limited the respective NCLT benches have also extended the time period. The Ahmedabad and New Delhi benches of the NCLT in the cases of Essar Steel and Bhushan Power respectively ordered that the period which is to be consumed in litigation would not prima facie be part of the period prescribed for CIRP under the Code. In the case of Binani Cement, the tribunal has extended the tenure of the resolution professional “till further orders”.

In the abovementioned cases, the tribunals have broadened the scope of its power and extended the time period for larger public interest which has led to lack of clarity in the mind of the creditors as to the limitation of time period to conclude the CIRP under the Code which was considered a path-breaking legislation because of strict timelines in case resolution of sick companies.

While on the one hand the plain book reading of the Code does not provide for any extension of the stipulated time period of 180 days other than extended time period of 90 days after 180 days as per the prescribed conditions. However the fact that it would not be in the interest of justice that the fate of such large companies along with their stakeholders are decided without giving fair chance to them to recover. The Code is still to be settled on various issues, it is too early to debate on the issue that how the same will have effect on the conduct of the debtor companies.

It cannot be ignored that the Code has been considered as the foreign stakeholders as a sincere step to curb defaults in payment by the Debtor Companies and worldwide India is on the watch list with respect to the performance of the Code.

The Legislators are now required to strike a balance between the justice to the interest of the Debtor Company along with its stakeholders and preservation of the sanctity of a time-bound process because repeated extensions may lead to erosion of time, the value of money and may incentivize the unscrupulous to prolong litigation to abuse the system.