

27th November, 2017

## THE INNOVENTIVE CASE (PART I)

This issue of the Knowledge Bank divides the Innoventive Case into two parts the first part dealing with the Proceedings before the Hon'ble National Company Law Tribunal (for short "NCLT") and Hon'ble National Company Law Appellate Tribunal (for short "NCLAT") and the second part dealing with the proceeding before the Apex Court.

The Apex Court on 31.08.2017 in the matter of "M/s. Innoventive Industries Ltd. - versus- ICICI Bank & Anr.[1]" (For short "Innoventive Case") delivered its first extensive/ detailed judgment on the operation and functioning of the newly enacted Insolvency and Bankruptcy Code, 2016 (for short "IBC"). The Judgment of the Apex Court dated 31.08.2017 in the Innoventive Case provides guidance on how the IBC is to be interpreted in case of conflict/reugnancy with the prior laws.

### BACKGROUND OF THE INNOVENTIVE CASE

Innoventive Industries Limited (for short "Innoventive") a multi-product company defaulted in repayment of facilities availed from ICICI Bank Limited (for short "ICICI"). The facilities availed by Innoventive were term loan facility, working capital facility and external borrowing facility from ICICI.

As the Innoventive was facing losses, a Master Restructuring Agreement was entered into on 09.09.2014 (for short "MRA"), by which funds were to be infused by the creditors, and certain obligations were to be met by the debtors.

ICICI filed an application titled as "ICICI Bank Ltd. - versus- M/s Innoventive Industries Limited"[2] (for short "ICICI Case") under section 7 of the IBC before the Hon'ble NCLT Mumbai Bench for initiation of Corporate Insolvency Resolution Process (for short "CIRP"), as the Innoventive committed default in making payments to ICICI.

### PROCEEDING BEFORE THE NCLT

ICICI filed an application under Section 7 of the IBC on 07.12.2016 against Innoventive before the Hon'ble NCLT and prayed that the CIRP ought to be initiated against the Innoventive, as the Innoventive was a defaulter under the IBC.

### Defence by Innoventive

The major defence by Innoventive were as follows:

- (1) That vide the application dated 17.12.2016, it was contended that the debts of Innoventive had been suspended vide two notifications dated 22.07.2015 and 18.07.2016 under Maharashtra Relief Undertaking (Special Provisions) Act (for short "MRU") for one year and hence, the ICICI could not invoke the CIRP under the IBC.
- (2) That Section 4 of the MRU provides for Non-obstante Clause and will have overriding effect over the operation of the IBC.
- (3) A second application was filed by Innoventive on 16.01.2017, wherein it was contended that funds had not been released under the MRA, thereby rendering Innoventive incapable of repaying its debts.

Before delving into the observation and the decision of the NCLT, it is important to understand the IBC and the MRU.

### IBC

As the existing framework for Insolvency and Bankruptcy was ineffective, inadequate and resulted in undue delays in resolution, therefore, the IBC was passed by the Parliament which received the assent of the President on 28.05.2016.

The main objective of the IBC is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner, to promote entrepreneurship and balance the interests of all stakeholders.

The object is to provide for an effective legal framework for timely resolution of insolvency and bankruptcy which would ensure/support the development of credit markets and encourage entrepreneurship.



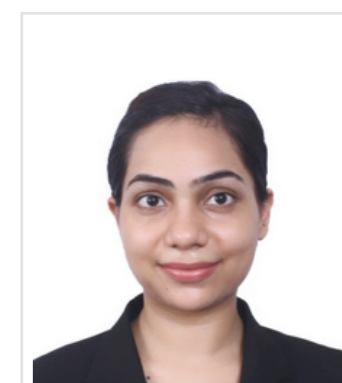
**Ayushi Gupta**

LLB (Hons.)  
Campus Law Centre  
Faculty of Law  
University of Delhi

### Expertise:

Corporate Due Diligence  
Transaction Documentations  
Third Party Diligence  
Compliances and  
Commercial Arbitrations.

✉ ayushi.g@mcolegals.in



**Pratibha**

B.A.LL.B from  
Campus Law Centre  
University of Delhi

### Expertise:

Corporate, Compliances  
and Litigation

✉ pratibha.p@mcolegals.in

[1] 2017 SCC OnLine SC 1025

[2] 2017 SCC OnLine NCLT 6

The IBC seeks to provide for designating the Hon'ble NCLT and Hon'ble DRT as the adjudicating authorities for corporate persons, firms and individuals respectively for resolution of insolvency, liquidation and bankruptcy.

#### Section 7 of the IBC

Section 7 of the IBC provides for initiation of CIRP by financial creditor in case a corporate debtor commits a default in payment of the debt, by filing an application before the Adjudicating Authority.

#### MRU

The objectives of the MRU is to mitigate the hardship that may be caused to the workers who may be thrown out of employment by the closure of an undertaking, the Government may take over such undertaking either on lease or on such conditions as may be deemed suitable and run it as a measure of unemployment relief.

#### Observation of the Hon'ble NCLT

(1) The Hon'ble NCLT observed that both the IBC and MRU have non-obstante clause. That section 4 of the MRU provides for non-obstante clause similarly, non-obstante clause is contained in Section 238 of the IBC. The Hon'ble NCLT further observed that as the IBC has come into existence subsequent to MRU, therefore the IBC would prevail upon any other law for the time being in force, and the notification under MRU will not become a bar to passing the order under Section 7 of the IBC.

(2) The Hon'ble NCLT observed that the objectives under MRU is to prevent unemployment of the existing employees of an industry which is recognised as relief undertaking, but by passing an order under section 7 of the IBC, the rights of the employees are protected even if the company goes into liquidation to the extent mentioned under the IBC. Hence, the passing of an order under Section 7 of the IBC will not be against the interest of the employees.

(3) That the liability of the company has been dealt with in the MRU and also in the IBC but with different objectives. The objective under MRU is to protect the interest of employees and in the IBC it is to protect the creditors who have supplied fuel to the debtors.

(4) It was observed that Innoventive has defaulted in making payment of the debt and hence liable to be proceeded under section 7 of the IBC.

#### Decision (Order 17.01.2017)

The Hon'ble NCLT held:

(1) That the IBC would prevail against the MRU in view of the non-obstante clause in Section 238 of the IBC. It was further held that the parliamentary statute (the IBC) would prevail over the state statute (the MRU).

(2) The application of the ICICI was admitted by the Hon'ble NCLT and the Insolvency Resolution Professional (for short "IRP") was appointed by the Hon'ble NCLT to initiate the CIRP as per the provisions of the IBC.

#### Order dated 23.01.2017

The second application filed by the Innoventive was dismissed by the Hon'ble NCLT on the ground that the application was not maintainable because: a.) no audience has to be given to the Corporate Debtors by the Tribunal under the IBC; b.) the plea of funds not being available under MRA was not asserted in the earlier application by Innoventive.

#### PROCEEDING UNDER THE NCLAT

From the aforesaid orders of the Hon'ble NCLT dated 17.01.2017 and 23.01.2017, an appeal was carried by Innoventive titled as "M/S Innoventive Industries Ltd vs. ICICI Bank & Anr.<sup>[3]</sup>" to the Hon'ble NCLAT. Vide the order dated 15.05.2017 the Hon'ble NCLAT dismissed the appeal of the Innoventive and held that Innoventive cannot derive any advantage from the MRU to stall the CIRP under Section 7 of the IBC.

The following issues were addressed by Hon'ble Tribunal:

**Issue:** Whether a notice is required to be given to the Corporate Debtor for initiation of CIRP under the IBC and if so, at what stage and for what purpose?

The Hon'ble NCLAT reviewed various decision of the Apex Court and came to the conclusion that as the initiation of the CIRP under Section 7 of the IBC results in adverse consequences therefore, the Tribunals should ensure a cautious approach and adhere to the principles of natural justice. The Hon'ble NCLAT held that the adjudicating authority is bound to issue limited notice to corporate debtor before admitting a case under Section 7 and 9 of the IBC.

**Issue:** Whether MRU shall prevail over the IBC?

Regarding the above issue the IBC held that the MRU is a state legislation and IBC is a union Act and legislated later, therefore the non-obstante Clause in Section 238 of the IBC will prevail over MRU. However, the Hon'ble NCLAT held that the IBC and the MRU operate in different fields, and therefore, are not repugnant to each other.

**Issue:** What will be the effect of MRA dated 08.09.2014 on the proceeding under Section 7 of the IBC?

Regarding the above issue the Hon'ble NCLAT held that the Innoventive cannot take the advantage of the MRA dated 08.09.2014 to absolve from paying the previous debts which were due to financial creditors (like ICICI).

The adjudicating authority is required to satisfy the following conditions before admitting the application of the financial creditor under sub-section (4) of Section 7 of the IBC for initiation of CIRP:

- (1) Whether a default has occurred?
- (2) Where an application is complete, and
- (3) Whether any disciplinary proceeding is against the proposed IRP.

#### CONCLUSION

The IBC brings a paradigm shift in law including a need to remove the management of a corporate debtor which defaults on its debts. Thus, entrenched management are no longer allowed to continue in management if they cannot pay their debts.

[3] 2017 SCC OnLine NCLAT 70