CHALLENGES IN THE IMPLEMENTATION OF INSOLVENCY CODE AND THE INSOLVENCY AMENDMENT ORDINANCE

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ABSTRACT

The advent of the Insolvency and Bankruptcy Code, 2016 ("Code") was much awaited and has been highly appreciated by the investors. It has proved to be fruitful in facilitating the ease of doing business in India by empowering creditors and making certain essential changes in the priority list.

However, the implementation of the Code has not been entirely smooth and requires amends in order to make the structure work with its entire efficiency. The article deals with these points and lays down the issues regarding the same. While doing so, the article also mentions the changes brought about by the recent bankruptcy code amendment ordinance.

The first issue that the article talks about is the lack of adequate manpower and infrastructure. With only 11 benches of the National Company Law Tribunal and combined strength of 26 judges, handling more than 2500 cases under the Code is a difficult task.

The article proceeds to look into the issue under section 29A which provides for disqualification of certain persons from becoming resolution

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applicants but fails to define the term 'person acting jointly or in concert' mentioned therein which has led to fierce litigation in this short span.

Another issue is the role of the guarantors under the Code and whether a creditor can proceed against a guarantor of corporate debtor after institution of corporate insolvency resolution process while under the moratorium.

The article further analyses the status of homebuyers as financial creditors under the Code and the recently released draft intending to introduce a chapter on cross-border Insolvency in the Code.

The article concludes with the authors summarising the abovementioned issues and laying down the current status of the effectiveness of the Code.

1. INTRODUCTION

One of the landmark changes of the present government includes a robust and codified Insolvency and Bankruptcy Code, 2016. The bankruptcy code was introduced in the backdrop of ever rising Non-Performing-Assets of banks which were sky-rocketing with bad-loans forming 8.4% of India's GDP,[1] and there was no effective law to deal with the situation except for piece-meal approach adopted by the Reserve Bank of India in form of various notifications which was largely unfruitful. The process of corporate bad loan recoveries in India has been very long and

[1] *NPA Problem: India Ranked 5th in Bad loans in the World, EUs 4 Tumbling Economies top list*, BUSINESS TODAY, https://www.businesstoday.in/current/policy/npa-problem-india-ranking-bad-loans-economies-with-huge-npa-bank-recapitalisation/story/266898.html (last visited Dec. 28, 2017).

often extending up to 15 years, as historical data suggests. According to World Bank, India takes over 4 years to declare a promoter or a company insolvent which is more than twice the time taken in China and USA. Consequently, Indian banks have been observed to recover only 25 cents to a dollar compared to 36 cents in China and as much as up to 80 cents in USA. In this scenario banks had become extremely conservative in their lending wisdom and were ever more reluctant to lend anything which had created problems for Indian corporates.[2]

Ever since it's coming into force, the Bankruptcy Code has caught the imagination of the creditors and the investors alike as it fills up a long existing void present in the Indian Law in providing a mechanism for recovery from a debt ridden corporate. This can be demonstrated from the fact that cases are being filed under the Bankruptcy Code at a breakneck speed. In one year, Bankruptcy Code has come a long way with 2,434 fresh cases being referred to NCLT. These numbers clearly show that IBC has become the preferred route to resolution for the creditors. Also, the rate at which NCLT is either accepting or rejecting applications is commendable as it encourages more and more creditors to take this route for efficient NPA resolution. As on 30th November, 2017, 830 NCLT orders disposed of insolvency petitions of which about 87 percent of the petitions were filed by creditors.[3]

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[2] Sankar Chakraborti, *Insolvency and Bankruptcy: Will the Recovery Game Change in India?*, FICCI'S FINANCIAL FORESIGHTS, http://blog.ficci.com/insolvency-bankruptcy-recovery-india/7970/ (last visited Mar. 28, 2018).

[3] Sreyan Chatterjee et al., *Watching India's Insolvency Reforms: A New Dataset of Insolvency Cases,* BLOOMBERG QUINT,

Early positives have been seen in World Bank's ranking where India's position in ability to handle insolvency cases improved by 33 places to 103rd position.[4] This jump contributed significantly in India's ease of doing business ranking by 30 places to join the top 100 countries club. This demonstrates that through its short existence the code has been able to instil confidence in itself however, numerous bottlenecks have appeared in the implementation of the bankruptcy code which relates to the very fundamentals on which the Bankruptcy Code is based. The present article attempts to bring into light some of the recent issues that have emerged with respect to the implementation of code. The article also attempts to discuss the effect of the recent amendments.

2. LACK OF ADEQUATE MANPOWER AND INFRASTRUCTURE

Currently there are only 11 benches of National Company Law Tribunals with a combined strength of 26 judges handling more than 2500 bankruptcy related cases. This strength is grossly inadequate to handle the number of cases that are being currently filed for the resolution process. In addition to the cases under the Bankruptcy Code these tribunals are also required to deal with cases and proceedings filed under the various

https://www.bloombergquint.com/insolvency/2018/05/16/insolvency-and-bankruptcy-code-one-year-report-card#gs.55sgDLs (last visited May 16, 2018).

[4] Ministry of Finance: Govt. of India, *Coordinated Action between Government and Judiciary to Boost Economic Activity- Ease of Doing Business*, PRESS BUREAU OF INDIA, http://pib.nic.in/newsite/PrintRelease.aspx?relid=175975 (last visited Jan. 29, 2018).

provisions of the Companies Act, 2013. This has put NCLT under tremendous pressure.[5]

Similarly, there is a marked shortage of resolution professionals who form one of the bedrocks of the Insolvency Resolution Process. Resolution professionals are entrusted with two important duties under the code, firstly, to run the company as a going concern to ensure least value erosion and secondly, to facilitate a resolution by coordinating with a committee of creditors. In this regard it should be noticed that there is a big question on the expertise of the resolution professional in being able to discharge any of the responsibilities entrusted under the bankruptcy code since the resolution professionals are mainly company secretaries, lawyers, chartered accountants etc. with exorbitant fees and little experience of running a business.

3. SECTION 29A: RIGHTS OF PROMOTERS

There has been a lot of controversy since the induction of this provision in November 2017.[6] Further, the issues surrounding this provision are multi-faceted and has seen some fierce litigation in the short history of the Bankruptcy Code.

Section 29A of the Code provides for such disqualifications which render certain persons and any other 'person acting jointly or in concert' with such persons from becoming resolution applicant. The term 'person

[5] *2018 crucial for insolvency code, says AZB's Bahram Vakil*, LIVEMINT, https://www.livemint.com/Companies/zadNomW4LNxkRKKn4KLSJO/2018-crucial-for-insolvency-code-says-AZBs-Bahram-Vakil.html (last visited June 12, 2018).
[6] *See* No. 8, Acts of Parliament, 2018, § 5.

acting jointly or in concert' has not been defined. However, Bankruptcy Code provides that words/expressions not defined under the Bankruptcy Code shall have the meaning assigned to them under other acts identified under the Bankruptcy Code[7] and if reliance is placed on such definition as provided in SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011[8] then it would include wide range of persons within its ambit which cannot be the real intention of this provision. If this definition is relied on the inclusion of "persons acting in concert" will have a far wider net than what may be required for the purposes of Bankruptcy Code. In this regard Insolvency Amendment Ordinance 2018 has brought in two changes with the intention of providing clarity on this aspect wherein it has excluded purely financial entities, like asset reconstruction companies and scheduled commercial banks, from the ambit of the disqualifications which is a major respite in the sense that under previous 'corporate debt restructuring' regime which was headed by the RBI, upon a default by a debtor banks were given the option to convert loans into equity of the corporate-debtor. This was a handicap under the unamended provision as these financial entities would be debarred from being a resolution applicant since it could be in 'control' or be classified as promoters of a corporate debtor classified as an NPA account.

Section 29A (c) further disqualifies a person or a person acting jointly or in concert with such person who-

- has an account classified as NPA;

[7] Insolvency and Bankruptcy Code, 2016, § 3(37).
[8] RBL Bank Ltd. v. MBL Infra. Ltd., CA (IB) No. 543/KB/2017.

- is a promoter of a corporate debtor the account of which has been classified as NPA;
- is in the management of a corporate debtor the account of which has been classified as NPA;
- is in control of a corporate debtor the account of which has been classified as NPA.

At least a period of 1 (One) year should have elapsed from the date of classification till the insolvency commencement date.

It should be noted that the provision is stringent as it disqualifies the promoter group for bidding for the corporate debtor in *toto*. This has been a subject of fierce litigation. Promoters worldwide are allowed to bid for the asset based on the principle of value maximisation. Though under the working of Insolvency Code the same has been rejected in spite of being the largest bid. For example, in the case of Essar Steel, The eligibility of bidders – Arcelor Mittal and Numetal Mauritius - is the contentious issue as one of the promoters of the special purpose vehicle is Rewant Ruia, the son of one of the original promoters of Essar Steel.[9] Similarly, the Binani Cement case also involves the promoter-disability angle and Dalmia Bharat NSE has written to the lenders and the resolution professional of Binani Cement, alleging that UltraTech 'seemingly' is ineligible to bid for the stressed asset for acting "in concert" with the promoters Binani Industries. As loan defaulters, the Binani promoters are themselves barred

[9] *Lenders reject bids by Numetal, ArcelorMittal for Essar Steel*, THE TIMES OF INDIA, https://timesofindia.indiatimes.com/business/india-business/lenders-reject-bids-by-numetal-arcelormittal-for-essar-steel/articleshow/63398532.cms (last visited Mar 21, 2018.

from bidding under the clause.[10] However, with regard to Micro, Small and Medium Enterprises ("MSMEs"), since usually only promoters of an MSME are likely to be interested in acquiring it, applicability of section 29A has been restricted only to disqualify promoters who were wilful defaulters from bidding for them.

This provision has been termed as a game changer in terms of bench-marking new corporate governance standards by the bankruptcy code. This provision might prove to be the impetus for a wider promoter-shareholding which has been a constant sore in Indian corporate governance standards. Further, Indian corporate governance has historically suffered from the promoter-manager collusion. It has also been observed that when the insolvency is imminent the promoter-managers indulge in desperate tactics like asset stripping, creation of fresh encumbrances where external creditors like banks have little to no control.[11] In this regard it is necessary to quote observation made in *RBL Bank Ltd. v. MBL Infrastructures Ltd.*,[12] by the NCLT, considering the objective of the Ordinance, 2017, it opined that section 29A is not to disqualify the promoters as a class for submitting a resolution plan. The intent is to exclude such class of persons from offering a resolution plan,

[10] Vatsala Gaur, *Dalmia Bharat alleges Ultratech acting 'in concert' with promoters of Binani*, THE ECON. TIMES, https://economictimes.indiatimes.com/news/company/corporate-trends/dalmia-bharat-alleges-ultratech-acting-in-concert-with-promoters-of-binani/articleshow/64103754.cms (last visited May 10, 2018).

[11] Suharsh Sinha, *A Wake-Up Call for Promoters*, BUSINESS STANDARD, https://www.business-standard.com/article/opinion/a-wake-up-call-for-promoters-118060900745_1.html (last visited Nov. 25, 2018).

[12] *Id.*

who on account of their antecedents, may adversely impact the credibility of the processes under the Code.

Viewed from this background the imposition of ban under section 29A is not unfounded. This reason alone has been cited by experts as providing the necessary "moral thrust" for tightening the noose around promoters.[13] As far as the recent litigation on this provision and principle of value-maximisation is concerned the same should be achieved within the ambit of the provisions of Bankruptcy Code so as to preserve the spirit and sanctity of the process.

4. ACTION AGAINST GUARANTORS

Over the short existence of the Bankruptcy Code various questions have cropped up in relation to role of guarantors. One of the hot topic being whether a creditor can proceed against a guarantor of corporate debtor after institution of corporate insolvency resolution process while under the moratorium. This question cropped up before the Supreme Court in *State Bank of India v. V. Ramakrishnan*,[14] where the Court cleared the air on the fact that Section 14 of the Act is not to apply to a personal guarantor of the corporate debtor. In this case, while the proceedings against the corporate debtor were pending, the personal guarantor took the plea that section 14 shall apply to him as well and thus, the proceedings

[13] Sandeep Parekh, *Insolvency process: How punishing promoters will ensure stemming the rot early*, THE FINANCIAL EXPRESS, https://www.financialexpress.com/opinion/insolvency-process-how-punishing-promoters-will-ensure-stemming-the-rot-early/950201/ (last visited Nov. 28, 2017).

[14] State of Bank of India v. V. Ramakrishnan, Civil Appeal No. 3595 of 2018, *available at* http://ibbi.gov.in/webadmin/pdf/whatsnew/2018/Aug/SBI-v.-V-Ramakrishnan_2018-08-14%2021:59:42.pdf.

against him and his property would have to be stayed. With regard to section 31, the Court observed:

> *Section 31(1), in fact, makes it clear that the guarantor cannot escape payment as the Resolution Plan, which has been approved, may well include provisions as to payments to be made by such guarantor. This is perhaps the reason that Annexure VI(e) to Form 6 contained in the Rules and Regulation 36(2) referred to above, require information as to personal guarantees that have been given in relation to the debts of the corporate 23 debtor. Far from supporting the stand of the Respondents, it is clear that on point of fact, Section 31 is one more factor in favour of a personal guarantor having to pay for debts due without any moratorium applying to save him.*

Further, the Court ruled that the amendment to the Code, which states that the provisions of section 14(1) shall not apply to a surety in a contract of guarantee for corporate debtor, is retrospective and that the objective of the amendment was to clarify the interpretation of the section and such clarificatory amendment is retrospective.

It is worth noting here that the guarantor's liability is co-extensive with that of the principal debtor.

The choice is left entirely with the decree-holder. The Hon'ble Supreme Court of India in its judgement dated 18th August, 2009 *in Re: Industrial Investment Bank of India v. Biswanath Jhunjhunwala*, also analysed the term ‘co-extensive’ and referred to the celebrated book of Pollock and Mulla on Indian Contract and Specific Relief Act which read as under:

> *“Co-extensive" – Surety's liability is co-extensive with that of the principal debtor.*

> *A surety's liability to pay the debt is not removed by reason of the creditor's omission to sue the principal debtor. The creditor is not bound to exhaust his remedy against the principal before suing the surety, and a suit may be maintained against the surety though the principal has not been sued.*

In this context, it is pertinent to refer to the judgement dated 10th July, 2017 passed by the National Company Law Tribunal, Mumbai Bench, in *Alpha and Omega Diagnostics (India) Ltd. v.. Asset Reconstruction Company of India Ltd*.,[15] wherein the NCLT Mumbai declined to order moratorium in respect of the security held by the lender bank since it was the personal property of the guarantor and it was not the property of the corporate debtor. The NCLT Mumbai held that the word 'its' used in the opening line of Section 14 of the Code indicates that it refers to the properties owned by the corporate debtor and that moratorium shall be declared prohibiting any action to recover or enforce any security interest created by the corporate debtor in respect of 'its' property and that the property not owned by the corporate debtor, therefore, does not fall within the ambit of moratorium. On an appeal filed by the corporate debtor against the said decision of NCLT Mumbai, the National Company Law Appellate Tribunal ('NCLAT') vide its judgement dated 31st July, 2017,[16] upheld the order of NCLT Mumbai on its interpretation of the provisions of section 14 of the Code with regard to the coverage of the

[15] Alpha & Omega Diagnostics (India) v. Asset Reconstruction Co. of India, C.A. (A.T.) (Insol.) No. 116 of 2017.
[16] *Id.*

protection under moratorium in respect of the assets/properties of the corporate debtor.

The Insolvency Amendment Ordinance, 2018 and the recent Supreme Court judgment have brought in a much-needed clarity in this respect in as much as it has inserted a definition of "corporate guarantor"[17] in the definition clause to mean a "corporate person who is the surety in a contract of guarantee to a corporate debtor." Under Section 14 it has inserted a sub-clause 3[18] by virtue of which a surety in a contract of guarantee to a corporate debtor has been excluded from the effect of moratorium. Thus, the right to action against a surety remains even after imposition of moratorium.

5. HOMEBUYERS AS FINANCIAL CREDITORS

The status of flat-buyers or homebuyers was a contentious one since the introduction of the Code. The Code classifies creditors into two kinds: financial creditors and operational creditors. Financial creditors are the ones who are said to have forwarded cash to the corporate debtor as consideration for the time value of money or what is most popularly known as "interest payment". On the other hand, operational creditors are those who have rendered any kind of goods or services to the corporate debtor. At the time of enactment of the Code home-buyers were not included under any of its provisions. Apart from the ensuing litigation in this regard, steps were taken to address the issue through other modes, for example, Insolvency and Bankruptcy Board of India (IBBI) created a third

[17] Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, § 3(i).
[18] *Id.*, § 10.

category of creditors and introduced a new Form 'F', which was perceived to be meant for home or flat buyers but the same was without any such indication in the regulations or otherwise. Thus, amendment in this regard is the most significant and anticipated change that has been brought about in the form of elevation of the home-buyers to the status of "financial creditors." This has been done by introduction of a legal fiction through an explanation[19] to Section 5, which defines "financial debt", so as to deem the amount paid by the allottees to have the effect of commercial borrowing.

The logic behind this change is simple in as much as homebuyers give an advance to the developers and fund the cost of the project in return for a house and thus play a role equivalent to a financial creditor. It is not infrequent that amounts raised from homebuyers are used as primary capital to finance a real-estate project, and similarly, in some cases the amounts advanced by homebuyers could be more than the debt availed from the banks. This reasoning has been criticised on the ground that it pays overt emphasis on the utilisation of fund for financing the real-estate project in as much as utility of the funds is by itself insufficient to define the relationship between the parties.[20] Looked from this angle the amendment seems to be equitable. However, from a commercial point of view, this may result in the escalation of the cost of real-estate projects whose ultimate costs may be passed on to the homebuyers. The said the escalation of the cost may be owing to the fact that due to change in status

[19] *Id.* § 3(ii).

[20] Umakanth Varottil, *Homebuyers As Financial Creditors: An Inelegant Solution?*, BLOOMBERG QUINT, https://www.bloombergquint.com/insolvency/2018/06/07/homebuyers-as-financial-creditors-an-inelegant-solution (last visited June 7, 2018).

of the homebuyers the real-estate market players are reluctant to finance their projects from homebuyers' money, and an increased dependency on other creditors increased the cost of credit. Further a dilution of rights of the Committee of Creditors may lead to reprising of the credit yield by the creditors which is likely to result in such upward trends in costs.[21]

Apart from the business constraint that might follow this amendment, it has also not been very well received in terms of procedural outcomes of this elevation.[22] Firstly, it is not clear that how will the homebuyers, who are financial creditors now, be represented in the CoC, since in a given case their numbers will be large and this may prevent the whole CoC from engaging in any meaningful and informed decision-making. In this respect, the IBBI is expected to come out with a mechanism for homebuyers' representation in the Committee of Creditors. Secondly, the amendment has left a big lacuna in not clarifying whether the homebuyers are "secured" or "unsecured" financial creditors. This bifurcation is important as it affects the order of priority in the "waterfall list" in case of a final liquidation of the company. In view of the government, the same is a conscious omission as it will provide the

[21] Andy Mukherjee, *Bankruptcy Code Amendment: The Problem with Treating Homebuyers as Financial Creditors*, THE ECON. TIMES, https://economictimes.indiatimes.com/news/economy/policy/bankruptcy-code-the-problem-with-treating-homebuyers-as-financial-creditors/articleshow/64536958.cms (last visited June 11, 2018).

[22] *Will homebuyers really benefit if they are financial creditors?*, LIVEMINT, https://www.livemint.com/Money/FpxvRx0JZiZkiBwa9D17lL/Will-homebuyers-really-benefit-if-they-are-financial-credito.html (last visited May 28, 2018); *Treating homebuyers as financial creditors could impact real estate lenders negatively: Ind-Ra*, MONEY CONTROL, https://www.moneycontrol.com/news/business/real-estate/treating-homebuyers-as-financial-creditors-could-impact-real-estate-lenders-negatively-ind-ra-2574487.html (last visited May 23, 2018).

flexibility to the corporate debtor and the homebuyer to decide the same in their agreement to purchase or any other similar instrument.[23]

The amendments have been touted as providing major relief to home-buyers which is, to say the least, preposterous. Apart from speculation surrounding their status as a secured or as an unsecured creditor with its consequences, another aspect which needs a look is whether the changes are effective enough in affording the remedy sought by the home-buyers. On triggering of bankruptcy proceeding under IBC, the IRP along with the CoC take over the assets of the corporate debtor and ensure that the same are preserved till the time of liquidation. In real-estate projects, more often than not, the land on which the project is being developed might not belong to the developer or corporate debtor. The same is made available to him in form of a lease or with development rights under a 'joint development agreement' or a 'memorandum of understanding' with the owner of land. In such a scenario, such a land might not qualify as an 'asset' of the corporate debtor and thus the CoC will not be in a position to take over the same for recovering the outstanding debts payable to the home-buyer. In this regard, reference can be made to a recent decision by NCLT[24] wherein an application was filed

[23] K.R. Srivats, *Why the Centre has not classified home buyers as 'secured' or 'unsecured' creditors under IBC*, THE HINDU: BUSINESS LINE, https://www.thehindubusinessline.com/economy/why-the-centre-has-kept-away-from-classifying-home-buyers-as-secured-and-unsecured-creditors-under-ibc/article24138323.ece (last visited June 11, 2018); *Not all homebuyers to get first claim on liquidation proceeds*, LIVEMINT, https://www.livemint.com/Companies/DqWRsIMBkyRf3nEBoB6A5H/Not-all-homebuyers-to-get-first-claim-on-liquidation-proceed.html (last visited June 14, 2018).

[24] Rajendra Bhutia v. Maharashtra Housing & Area Dev. Authority [2018] 92 taxmann.com 376 (NCLT - Mum.).

by the Resolution Professional (RP) through corporate debtor to ascertain his entitlement to the exclusive possession of the property. The documents disclosed that a license was granted to the corporate debtor for joint development and not for exclusive development by the corporate debtor. The NCLT held that where corporate debtor had possession of a land as developer under Joint Development Agreement (JDA) and subsequent to initiation of insolvency resolution process against corporate debtor, the owner of land sought for cancellation of said agreement and claimed the possession of the land, RP of corporate debtor could not claim any right upon said land under Section 14(1)(d) as possession of land under JDA could not be called as ownership. Thus, in the factual matrix where the home-buyer initiates a bankruptcy proceeding against developer who merely holds the land under a license, the picture will be bleaker for as far as question of the buyer being able to recover the amounts paid is concerned. It should also be noted that, by their very nature real-estate projects are thinly-capitalised, which should be another consideration the home-buyer willing to take upon the developer must have in mind, as it can directly affect his chances of recovering the amounts due.

6. CROSS-BORDER INSOLVENCY

The current legal framework fails to provide any extensive solution to the problem which arises in certain cases with relation to use of overseas assets of the defaulters in the proceedings. The provisions existing are as follows:

- The IBC provides for Sections 234 and 235 pertaining to cross border insolvency. Section 234 provides for entering into bilateral agreements with other countries and Section 235 provides for issue of a letter of request by the Adjudicating Authority to a court in the country with which the bilateral agreement has been entered into to deal with the required assets. These agreements are applicable in cases where proceedings in India would require recognition abroad as well as where foreign proceedings require recognition or assistance in India.
- For foreign proceedings to be recognised and enforced in India, the Civil Procedure Code, 1908 has to be applied along with the principles developed in English Common Law.
- For Indian proceedings to be recognized abroad, the law of that country will apply or if the country has adopted the Model Law, the Model law shall apply, irrespective of whether India has adopted the same or not.

This need for entering in bilateral treaties with the foreign governments is aimed to be removed by Government as it has released a draft of a chapter on cross-border insolvency in the Code, based on the UNCITRAL Model. The idea behind this is to allow access of overseas assets of the stressed companies to the lenders. Implementation of this will ensure cooperation of the respective foreign country to bring those assets under consideration for the insolvency proceedings. The Ministry of Corporate Affairs has invited suggestions and comments from the

stakeholders on the released draft by the end of June which might be included in the final proposal to be placed before the Cabinet.

Enactment of effective cross-border insolvency regime will make India an attractive investment destination for foreign creditors given the increased predictability and certainty of the insolvency framework for the foreigners. This will result in reduction in time for exchanging necessary information between countries and will increase the credit recovery efficiency.[25]

The draft chapter provides that a resolution professional or a liquidator shall be provided similar authority to act in the foreign state as well, or such person shall assist a foreign representative, subjected to the Indian law and the applicable foreign law. Sections 7 and 8 provide rights to a foreign representative to exercise his power and function, and to commence a proceeding if the conditions under the provisions of the Code are satisfied. However, the Adjudicating Authority may refuse to take an action if it would be "manifestly contrary to the public policy of India".

Further, an application can be made to the Adjudicating Authority to recognise a foreign proceeding but it has to be accompanied by certain documents related to that proceeding. Section 18 provides for reliefs that may be granted upon recognition of a foreign proceeding. Chapter IV of the draft talks about cooperation and communication with foreign courts and representatives.

[25] Ministry of Corporate Affairs: Govt. of India, *Insolvency Section File No. 30/27/2018: Public Notice* (June 20, 2018), *available at* http://www.mca.gov.in/Ministry/pdf/PublicNoiceCrossBorder_20062018.pdf.

7. CONCLUSION

It is undeniable that the implementation of the Insolvency and Bankruptcy Code, 2016 has brought some relief to the creditors and has eased the process of insolvency with the introduction of a single law and adjudicating authority. The 'Ease of Doing Business' rankings issued by the World Bank have also shown an 8% improvement by India with respect to the 'resolving insolvency' factor.

However, as the article lays down, certain lacunae can be seen in the statute which the legislature is trying to fill. The article has discussed such rectifications in the form of the bankruptcy code amendment ordinance and the draft chapter on cross-border insolvency. Further, the issue of immunity to a guarantor during the moratorium has also been dealt with by the Ordinance which provided the definition of the term 'corporate guarantor' and introduced a clause wherein a guarantor has been excluded from the effect of moratorium.

There is still a requirement of better implementation of the Code by increasing the number of National Company Law Tribunals available in order to divide the burden and achieve the aim of speedy justice.