



# Newsletter



## LEGISLATIVE UPDATES ON INSOLVENCY & BANKRUPTCY CODE, 2016

Due to the Coronavirus outbreak, the IBBI on Central Government's direction made the following amendments for Insolvency and Bankruptcy Code, 2016 on 24.04.2020:

- **Insolvency and Bankruptcy Board of India (Liquidation Process) (Second Amendment) Regulations, 2020**

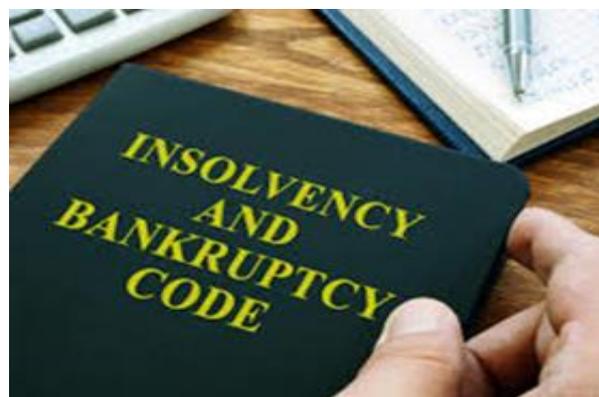
(Notification No. IBBI/2020-21/GN /REG060)

Key Change:

Insertion of special regulation namely **47A** relating to the time-line with respect to the liquidation process. The said regulation states that the period of lockdown imposed by the Central Government due to the Covid-19 pandemic, shall not be counted for the purposes of computation of the time-line

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for any task that could not be completed due to such lockdown, in relation to any liquidation process. The said regulation has been enforced from 17<sup>th</sup> April, 2020.

- **Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020**

(Notification No. IBBI/2020-21/ GN/REG059)

Key Change:

Insertion of special regulation namely **40C** relating to time-line with respect to any activity relating to a Corporate Insolvency Resolution Process. Any activity that could not be completed qua the Corporate Insolvency Resolution Process due to the Covid-19 lockdown period imposed by the Central Government shall not be counted. The

said amendment has been enforced from 29th March, 2020.

## Union Cabinet Proposes Relief from Insolvency for Six Months, Presidential Nod Awaited

The Union Cabinet on April 22 gave a nod to the proposal from the Corporate Affairs Ministry to give companies relief from insolvency for the next six months via amendment to Insolvency and Bankruptcy Code (IBC), 2016.

This is a one-time measure that seeks to propose a window of six months during which, lenders or creditors under the impact of COVID-19, cannot drag a fresh case of default for bankruptcy.

The law comprises of a new clause- Section 10A, which will suspend Sections 7, 9 and 10 for the next six months or until further notice. This clause will however, not extend over a year, as per reports. This is in tandem with Finance and Corporate Minister, Nirmala Sitharaman's stance on March 24, when she announced that If the situation does not improve until April 30, we can suspend Sections 7, 9 and 10 of the IBC for six months.



The Cabinet is awaiting presidential approval for the addition of new clause after which, the move will be formally announced with a comprehensive economic package.

Further amendments made by our FM Nirmala Sitharaman:

- Default threshold hiked from Rs. 1 lakh to Rs. 1 crore.
- No additional fees to be charged for late filing of any document related to MCA-21 registry during a moratorium period from April 1 to September 30

This move is an attempt to save companies at large from being pushed into insolvency due to force majeure causes of default. It will not only reduce the compliance burden of companies and LLPs, but will also enable long-standing non-compliant companies and LLPs to make a fresh start.

## AMENDMENT UNDER EPIDEMIC DISEASE ACT, 1897

The Union Cabinet, during this precarious times and witnessing the commendable sincerity of our doctors, police officials, army personnel and all other combatants

have passed an ordinance for protection of these frontline warriors.

On 22<sup>nd</sup> April, the Union Cabinet approved the promulgation of an ordinance to amend the Epidemic Diseases Act 1897 in order to issue stricter punishments for attacks against our frontline health workers.

Prakash Javadekar, Union Minister for Information and Broadcasting, said that in light of attacks and harassment reported against the health workers fighting against COVID-19 including doctors, nurses, paramedics and Asha workers, this amendment was necessary.



## THE ENACTMENT PROPOSES:

- Offences against health workers made **cognizable and non-bailable**.
- Police investigation of crimes against medical workers should be completed within **30 days and trial should be completed within 1 year**.
- Imprisonment upto **7 years** & fine upto **Rs. 5 Lakhs** in case of grievous injuries.
- **Accused to pay compensation twice** the market value of damaged property.

## SCOPE OF REMAND UNDER ORDER XLI RULE 23A CPC

The Hon'ble Supreme Court on 24<sup>th</sup> April, 2020 in an appeal *Shivakumar and others vs Sharanabasappa and others Civil Appeal No. 6076 of 2009* articulated on the scope of Remand under order XLI Rule 23A CPC. The Order XLI Rule 23A CPC states as under:-

- Where the Court from whose decree an appeal is preferred has disposed of the case otherwise than on a preliminary point, and the decree is reversed in appeal and a re-trial is considered necessary, the Appellate Court shall have the same powers as it has under rule 23.



*such non-compliance without undue delay or, if a time limit is provided for stating that objection, within that period of time, shall be deemed to have waived his right to so object.*

In the present case, the appellant and the respondent entered into 4 contracts and out of which three of the contracts designated New Delhi as the venue for the arbitration proceedings and one of them designated Kolkata as the venue of Arbitration Proceedings.

Therefore, when the disputes arose between the parties the appellant considered to conduct arbitration proceedings in New Delhi while appointing a Sole arbitrator for the proceedings whereas the respondent considered to approach the Civil Courts for the dispute.

The respondent in reply to the notice of arbitration, denied the existence of any agreement between the parties. Thereafter, an ex-parte awards was passed as the respondent did not attended the proceedings and the proceedings continued without the presence of the respondent.

The arbitral award passed was a common award covering the claims in respect of all four agreements between the two parties. The respondents approached the District Court Alipore, claiming that one of the four agreements designated Kolkata as the venue of arbitration. The plea of the respondent was bluntly dismissed by the District Court.



Thereafter, the respondent approached the Calcutta High Court, in which the respondent got a favorable ruling from the Calcutta High Court. Thereafter the ruling of Calcutta High Court was challenged by the appellant in the present appeal.

The Supreme Court after Considering all the facts and circumstance of the present appeal observed that *“Considering the facts that the respondent failed to participate in the proceedings before the Arbitrator and did not raise any submission that the Arbitrator did not have jurisdiction or that he was exceeding the scope of his authority, the respondent must be deemed to have waived all such objections”*. Moreover, while considering authenticity the “place of arbitration” in an arbitration clause the court emphasized that **“The specification of 'place of arbitration' may have special significance in an International Commercial Arbitration, where the 'place of arbitration' may determine which curial law would apply. However, in the present case, the applicable substantive as well as curial law would be the same.”**

## **ASSESSMENT OF LAW OF DAMAGES FOR BREACH AMID COVID-19 PANDEMIC**

COVID-19 outbreak is impacting the obligations of the parties under their respective contracts making it impossible for parties to perform their contracts fully or partially.

Keeping the economic catastrophe post COVID-19 in mind, the Supreme Court has evolved Section 73 of the Contract Act.

1A) In the absence of a concluded contract, a claim under Section 73 would not be maintainable. The contract must be valid and not void nor should it have become impossible of performance. In case of void agreements under any provisions of The Contract Act, Section 65 of the Act stipulated compensation of any advantage gained thereunder.

1B) Only upon the breach of contract can there be any question of awarding damages under this provision. The plaintiff is required to prove that there is a breach of contract by the defendant. However, the plaintiff cannot claim damages if he/she has contributed to the breach. Certain cases, such as those complementing Sections 53, 54, 63, 67 of the Contract Act could be barred from claiming damages.

2) A contract cannot provide that one party will be the arbitrator to decide whether he/she committed the breach or no. This can only be decided by an adjudicatory forum, i.e. a court or an Arbitral Tribunal.

3) Compensation for breach is payable only where the damage or loss is caused by such breach. Damage or loss caused is a sine qua non for award of compensation. Where there has been no legal injury in consequence of the breach, there cannot be an award for compensation.

4) A casual connection between the breach and the loss is a prerequisite for an award of damages.

5) Usually, the party claiming damages has the burden of proving that it sustained damages. The proof that would be sufficient to claim would depend upon the facts and circumstances of the case.

6) The remote and indirect loss is not awardable by way of damages for breach of contract. The remote or indirect loss cannot be pre-determined by the court.

7) Section 73 imposes plaintiff with a duty to take all reasonable steps to mitigate the loss consequent upon the breach. The court debars him from claiming any part of the damage caused due to neglect.

8) Courts may deviate from the aforesaid rule of claim settlement and fix appropriate date in the facts and circumstances of a case. This is applicable if the aforesaid presumptions cannot be established.

10) The court must consider only strict legal obligations while assessing the damages.

11) There are no guidelines in the Contract Act which lays down the mode and manner of computation of damages. The method used for computing damages would depend upon the facts and circumstances of each case. Different formulae can be applied in different circumstances and the question regarding which formula to use would fall eminently within the domain of court/tribunal.

12) The Supreme Court approved the proposition that a claim for damages for breach of contract is not a claim for a sum presently due and payable. However, in the view of the definitions of 'claim' and 'debt' in the IBC, 2016, it is a liability or obligation in respect of a right to payment, even if it arises out of breach of contract.



## **EXTENTION OF LIMITATION PERIOD BY SUPREME COURT DURING COVID-19**

The Supreme Court comprising of three-Judge Bench of Chief Justice SA Bobde, Justices L Nageswara Rao and Justice Surya Kant invoked its special powers and took *suo-moto cognizance* under Article 142 of the Constitution of India and directed all High Courts, Subordinate Courts, and Tribunals for the suspension of the limitation period running under all general and special laws, with effect from March 15, 2020, in view of the difficulties faced by the litigants in approaching the courts amidst the Coronavirus pandemic which same shall be binding on all Courts/Tribunals as per Article 141.