

The Novel Coronavirus and its Aftermath on the Insolvency system

Alok Kumar Kuchhal*, and Dr. Kshamta Chauhan

Research Scholar and Assistant Professor, Amity International Business School, Amity University
Noida- 201301 (Uttar Pradesh)

Abstract

It's been more than one year since the nation experienced the distressing phase of the coronavirus pandemic which has produced havoc worldwide and its impact in India has been hugely disruptive. The pandemic has engendered a crushing blow to the economy as a whole and has placed businesses in almost all jurisdictions under severe financial struggle. Even the World Bank and credit rating agencies have denigrated India's growth for the fiscal year 2021 with the lowest figures that India has seen in three decades since its economic liberalization in the 1990s. To revamp the Indian Insolvency and Restructuring laws, the government came up with various steps to combat the Covid-19 pandemic, wherein the Indian Insolvency and Bankruptcy Code, 2016 experienced certain developments. In this paper, the author has described the state of the Insolvency system in the pre-Covid-19 period, assessed the potential impact of the Covid-19 pandemic on the Insolvency laws in India, analysed the policies that have been announced so far by the Central Government, the Insolvency and Bankruptcy Board of India as well as the Reserve Bank of India to ameliorate the economic shock and lastly the author has thrown light on the present scenario of how the Indian Insolvency Law has responded to the Covid-19 pandemic.

*Corresponding author's e-mail: akkuchhal@hotmail.com

+Research Scholar, Amity International Business School, Noida. Research for this paper was assisted by my Professor Dr Kshamta Chauhan who I am grateful to.

1. Introduction

As daunting as it sounds, almost two years have elapsed since the government was compelled to enter into a phase of "Lockdown", complete closure of all the activities except the healthcare and food sector. Everything came to a standstill, economic cycles were disrupted, people lost their jobs, businesses went bankrupt and every person who survived through the pandemic feared for his or her survival. The importance of surviving this pandemic was placed above all else. Nevertheless, the spread of the nerve-racking Coronavirus pandemic did not cease which resulted in the lockdown continued unabated. However, people have now embraced the shift and are moving forward by wearing masks and using hand sanitizers, as bread must be earned at the end of the day. As a result, when a nation of 1.3 billion people was encircled, individuals found it difficult to earn a meagre living.

The unprecedented spread of the Covid-19 pandemic has undoubtedly created a state of hue and cry in almost all parts of the globe. It has affected almost 17 crore people and has marred the death of almost 35 lakhs of people all across the globe. However, the most striking sufferers of this lockdown have been

the Micro, Small and Medium Enterprises (MSME), which have been more prone to facing the imminent menace of going out of business. Considering the nature of these enterprises, they majorly feared Insolvency. Therefore to curtail their fear, the government came up with certain steps to boost them and in the same process the Code underwent various developments¹. To contain the pandemic, the Government of India along with various States has come up with varying strategies and restrictions. One such strategy was the 21 days complete lockdown in India and future extension till 03.05.2020. Subsequently, to contain the impact of the widespread pandemic, the Legislature, Executive and Judiciary have joined hands and have been constantly trying to come up with amendments in laws, notifications, regulations and orders to control the situation.

Before discussing the government's reforms inculcated in the insolvency and bankruptcy regime to assist businesses in overcoming this daunting situation, it's vital to grasp the Code's goal and purpose. The Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as IBC/ IB Code/ Code) is exhaustive legislation that is enacted with the primary objective to consolidate the insolvency and bankruptcy laws in the country and make the process smooth to procure the most out of a dire situation. The Code further gives an opportunity of revival to the insolvent corporates and considers liquidation as the last resort to keep the Corporate as a going concern². The IB Code deals with distressed entities which aim to complete the insolvency resolution process in a time-bound manner to recover/sustain the company. Efficient re-allocation of capital and balancing the various rights/interests of the stakeholders in a company is the foundational goal of bankruptcy and insolvency laws³.

Therefore after examining the objective of the Code, it is evident that the government enacted it to encourage business growth in India by discouraging company liquidation. Liquidation should always be the last resort for stakeholders, and they should try to save the company in the majority of circumstances. The Indian government has implemented numerous modifications to protect small and medium businesses, keeping in mind the Code's mission and purpose. After numerous countries including the United Kingdom, Australia, and the United States launched legal action, India's government adopted a variety of legal steps to initiate recourse for insolvency.

2. Objective

The study has been undertaken to contribute towards the following broad objectives:

- To study the aftermath of the Novel COVID-19 pandemic on the mechanism of the Insolvency and Bankruptcy Code and the corporate performance of various sectors of the Indian Economy.
- To study the consequential ramifications embraced/ incorporated/ brought about as a result of the pandemic.
- To study the consequential fallout due to the outburst of the Covid-19 pandemic.

¹ Rahul Kumar, 'Impact of COVID-19 on Insolvency and Bankruptcy Code, 2016: Relief(s) & Implication(s)' [2021] *IBC Laws* <<https://ibclaw.in/impact-of-covid-19-on-insolvency-and-bankruptcy-code-2016-reliefs-implications-by-rahul-kumar/>>

² Anandaday Misshra, 'COVID-19 Impact on Insolvency Laws in India' [2020] *Taxguru* <<https://taxguru.in/corporate-law/covid-19-impact-insolvency-laws-india.html>>

³ Saket Hishikar, 'A Concise History of Bankruptcy, Insolvency, and Debt Restructuring Laws' [2020] 45(2), 17. *VIKALPA: The Journal for Decision Makers*. Retrieved from <https://doi.org/10.1177/0256090920953988>

3. Analysis

3.1. Impact of Covid-19 Pandemic on the performance of various sectors in the Indian Economy

The Covid-19 pandemic has not only taken a toll on the healthy being of people but has also painted a significant impact on world economies with people locked in their homes. Before addressing the impact of the pandemic on the IB Code, let's take a glance at its influence on various sectors of the Indian economy. Though the COVID-19 pandemic has haunted the economy of every country in the world, almost all the sectors have severely been affected because of nationwide lockdown. The deadly coronavirus has thrown everyone's life into disarray and caused irreparable harm to countless enterprises. While the severity of the damage varies by sector, there are a few sectors that have been impacted the most and may continue to suffer until things return to normal. These sectors include:

- a. Tourism Sector,
- b. Hospitality Sector,
- c. Automobile Sectors,
- d. Real Estate & Construction Sector and
- e. Aviation Sector,

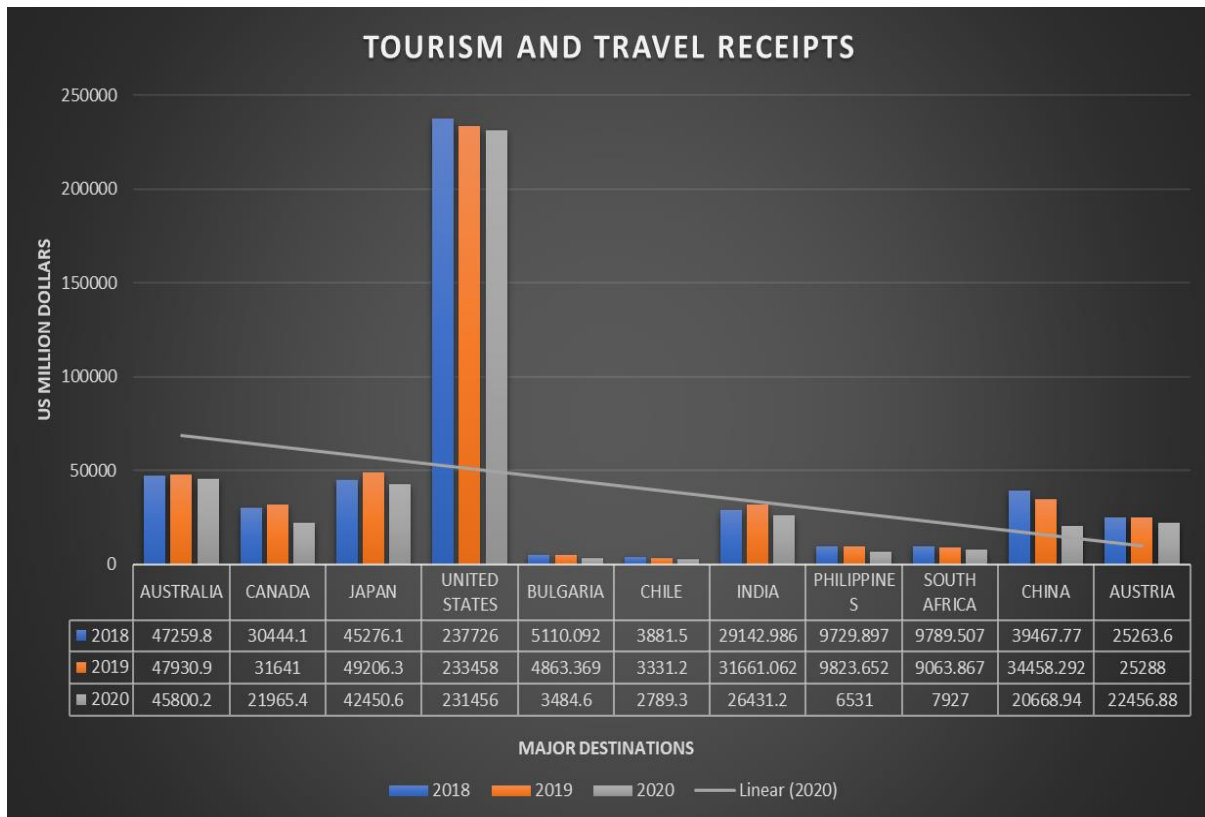
According to the World Travel and Tourism Council, the Tourism Sector contributes almost 10% of the total GDP of the world and is perhaps one of the most important sectors for the nation's growth and development⁴. However, the restrictions imposed in the second wave of the pandemic have further harmed the tourism industry which was already battling to recover from the prior losses it experienced in 2020. The World Travel and Tourism Council's annual Economic Impact Report (EIR) issued on 25 March 2021 has disclosed the disastrous impact which the pandemic has scarred on the Travel and Tourism sector in the year 2020 with a gigantic loss of roughly €3,8 trillion⁵. It is estimated that more than 62 million jobs were taken away during the year 2020 in the Tourism sector all across the world. The majority of losses incurred during the year 2020 solely represent the struggle of the sector hit by the imposition of travel restrictions and quarantine phase during the lockdown. Furthermore, the figure mentioned below provides a detailed comparative study undertaken by OECD pertaining to the International travel and tourism receipts of various countries over the years 2018 to 2020⁶.

Figure 1. Travel and Tourism Receipts in US Million Dollars

⁴ Amin Ali, 'In our past lies our future: Indian tourism hasn't marketed the precious assets embedded in our heritage to full potential' [2021] *Times of India* <<https://timesofindia.indiatimes.com/blogs/toi-edit-page/in-our-past-lies-our-future-indian-tourism-hasnt-marketed-the-precious-assets-embedded-in-our-heritage-to-full-potential/>>

⁵ 'WTTC: Global Travel & Tourism Sector Lost Around €3,8 trillion in 2020 Due to Covid-19' [2021] *Schengenvisainfo News* <<https://www.schengenvisainfo.com/news/wttc-global-travel-tourism-sector-lost-around-e38-trillion-in-2020-due-to-covid-19/>>

⁶ Tourism receipts of various countries in the years 2018 to 2020 as compared by the Organization for Economic Co-operation and Development (OECD). *OECD Receipts and Expenditure*. Retrieved from <<https://data.oecd.org/industry/tourism-receipts-and-spending.htm>> & <<https://data.oecd.org/chart/6pgz>>



Source: OECD (International Receipts, US dollars, 2018–2020)

Even the Hospitality industry (which includes Hotels and Restaurants) is facing a rerun of the year 2020 as many States have increased localised lockdown restrictions. While laying out the scenario, the Chairman of Federation of Associations in Indian Tourism and Hospitality Mr Nakul Anand stated that “The eruption of the pandemic has marred all areas of business, the worst affected being the tourism and hospitality industry which happens to be one area of business where India has intrinsic competitive advantages and procures a large number of job seekers”. The Industry has suffered a loss of up to INR 15 lakh crore amid the pandemic⁷. In such a stressed situation it is pertinent to note that the government will have to pay special attention to the Hospitality sector. The Tourism and Hospitality sector go hand in hand and thus a wider strategy is required to tackle problems of both industries simultaneously. COVID- 19 now classified as a pandemic worldwide, has sparked a global catastrophe with potential consequences for the hospitality industry far worse than 9/11, SARS, or the 2008 financial crisis. With the government permitting to open hotels and restaurants with utmost precaution, the damage inflicted by the COVID-19 still calls for government reforms to ease out the hospitality and tourism business for small enterprises.

The pandemic has certainly caused a swift and drastic impact on the altogether integrated Automobile industry. With the advent of lockdown, there was practically no use of automobiles for months after March 2020. The Federation of Automobile Dealers Association stated that there might be a 45% drop

⁷ Ajay Tyagi, ‘For hospitality and tourism sector, 2021 is all about survival, recovery’ [2020] *Livemint* <<https://www.livemint.com/industry/human-resource/for-hospitality-and-tourism-sector-2021-is-all-about-survival-recovery-11608544204065.html>>

in footfalls to car showroom amid COVID-19 pandemic⁸. Now with the second wave at our door steps, India's carmakers are once again under pressure as sales have plummeted. According to a research by Emkay Global Financial Services, the vehicle sector in India is projected to continue under pressure in the near term as a result of the Covid-19 crisis⁹. The automobile is one sector which requires careful planning by the government to help them rise out of this stress. This is so because those people who were saving and planning to purchase a car in 2020 prior to march 2020 had probably spent their savings to meet the expenses during the lockdown. Despite the re-opening of business in the last quarter of 2020, it will still take ample time for people to think of purchasing a new vehicle, considering the fact that vehicles are a Liability and not an Asset.

Talking about the Real Estate sector, the construction activities have disrupted as a huge number of migrant workers left urban regions. In metropolitan regions, a scarcity of labourers has hampered both housing and building projects. States where the virus is rapidly spreading are likely to experience considerable delays in completing pending projects. Construction sites are forced to operate at half their normal capacity in such a situation. Due to the constraints, not only is there a shortage of labour, but there is also a shortage of materials. While the situation is not as dire as it would be in 2020, the real estate and construction industries could be severely impacted if the Covid-19 limits last longer than a month.

3.2. Statistical analysis of repercussions of the pandemic on the Code

The Covid-19 pandemic has indeed brought forward an unprecedented economic diminution across the globe. The drastic economic measures taken by the Government are always a double-edged sword, having their own merits and demerits. The below-mentioned figure¹⁰ summarises the impact which the novel pandemic has left behind on the statistics of the Insolvency and Bankruptcy Code.

Figure 2: Details of the statistics monitored by IBBI on the ongoing processes of the Code considering the Covid-19 pandemic

Process	2016-2017	2017-2018	2018-2019	2019-2020	2020-2021
Corporate Insolvency Resolution Process					
CIRPs at the beginning of the year	0	36	540	1071	1966
Commenced	37	705	1152	1953	161
Closed by:					
Appeal/Review/Settled	01	90	41	224	17
Withdrawal under Section 12A	0	0	95	163	33
Approval of Resolution Plan	0	20	80	135	42
Commencement of Liquidation	0	91	305	536	93

⁸ Sumant Banerji, 'Coronavirus impact: 45% drop in footfalls to car showrooms in a week, says FADA' [2020] *Business Today* < <https://www.businesstoday.in/sectors/auto/coronavirus-impact-45-drop-in-footfalls-to-car-showrooms-in-a-week-says-fada/story/398122.html>>

⁹ 'Covid derails economy: 5 sectors that have been hit hard' [2021] *India Today* Retrieved from <<https://www.indiatoday.in/business/story/5-sectors-hit-hard-as-covid-19-derails-economic-recovery-1796662-2021-04-30>>

¹⁰ 'Know about IBBI as on 30th September, 2020' [2020] IBBI <<https://ibbi.gov.in/uploads/publication/f3bbc84057f6bfc3d332c8971f0c19f5.pdf>>

Ongoing at the end of the Year	36	540	1071	1966	1942
Liquidation Process					
Liquidations at the beginning of the Year	0	0	90	375	823
Commenced	0	91	305	536	93
Final Report Submitted	0	01	20	88	23
Ongoing	0	90	375	823	893
Voluntary Liquidation Process					
Voluntary Liquidations at the beginning of the Year	0	0	173	305	453
Commenced	0	184	229	269	65
Final Report Submitted	0	11	97	121	66
Ongoing	0	173	305	453	452

Source: Insolvency and Bankruptcy Board of India (IBBI)

4. Key Developments and Its Impact on the Code

4.1. Increasing the monetary threshold limit

The COVID-19 pandemic has proved to be a nightmare for the corporation (especially for small and medium enterprises). It was on March 24, 2020 when the Government of India during a media briefing announced relaxation regarding the threshold limit to file an application of Insolvency from the previous monetary threshold amount being 1 lakh rupees now increased to INR 1 crore through the powers conferred to them under section 4 of Insolvency and Bankruptcy Code. As per Section 4 of the IB Code, a case is accepted if there exists a default of INR 1 lakh.

Section 4 of the Code reads as:

“Section 4: Application of this Part-II (INSOLVENCY RESOLUTION AND LIQUIDATION FOR CORPORATE PERSONS):

(1“This Part shall apply to matters relating to the insolvency and liquidation of Corporate debtors where the minimum amount of the default is one lakh rupees: Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees¹¹.”

Therefore, while exercising its power as stated in the proviso to Section 4(1) of the Code, the above-mentioned announcement was immediately brought into effect by the Central Government and notified by the Ministry of Corporate Affairs vide Notification No. REGD.NO.D.L- 33004/99 dated 24.03.2020 itself. The notification read as:

“In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specifies One Crore rupees as the minimum amount of default for the purposes of the said Section¹².”

By virtue of the above notification, now an application under Section 7, 8 and 10 of the Code can only be filed if the default amount tantamount to INR 1 crore or more instead of the earlier threshold amount

¹¹ Insolvency and Bankruptcy Code 2016, s 4(1).

¹² Notification issued by the Ministry of Corporate Affairs in The Gazette of India dated as on March 24, 2020. *IBBI*. Retrieved from <https://www.ibbi.gov.in/uploads/legalframework/48bf32150f5d6b30477b74f652964edc.pdf>

of INR 1 lakh or more. In a normal economic state INR 1 lakh is a meagre amount for the corporations wherein it is possible for companies to pay back the existing loans in a stable economic state. But with the advent of the pandemic, corporations have been haunted right from March 2020 when the National Lockdown was imposed. The increase in threshold limit has several advantages; firstly such increment caters to safeguard the MSME enterprises which on the contrary would have otherwise hit IBC during the pandemic because of lockdown in the country. Many small businesses that resumed their business operation from November will have a decent amount of time to earn an adequate sum of money to stabilize their defaults. Another rationale for increasing the threshold limit is to maintain stability in the market considering that every Creditor is also a Debtor to someone else.

Thus in some way or the other, the Financial Creditor is dependent on the money lent to the Debtor. The Creditor is of the view that he/she can lend loan with an interest to earn money and to pay off the debts. But with no business operation working, the Corporate Debtor is unable to pay off the existing debt leading the Financial Creditor to be in a position not able to pay off his/her personal debt. Thus the only remedy the Creditor will be left with is to move an application of Insolvency before the NCLT. This will create a great burden on the Tribunal to adjudicate the matter and also on the Financial Creditor. Therefore the increase will also help the judiciary by reducing the burden of Insolvency applications which was anticipated to be filed after the Lockdown. Another way to reduce the burden on the judiciary is to establish more benches for NCLT and if possible NCLAT as well. This will seek to distribute the matters to different benches of the NCLT thereby reducing the number of matters per bench/court/judge. It will also result in adjudicating the matter smoothly and expediently. Nonetheless, it will restrict those Creditors who wish to file frivolous insolvency applications amid such stressed economic systems.

4.2. Exclusion of lockdown period from the timeline period of 330 days

The ongoing proceedings under the Code have undoubtedly been impacted by the lockdown imposed in the Country. Therefore considering the situation prevalent in the country, the Insolvency and Bankruptcy Board of India (IBBI) brought about an amendment to the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 by insertion of regulation 40C vide Notification No. IBBI/2019-20/GN/REG059 dated 29.03.2020. The notification reads as:

“40-C. Special provision relating to time-line: Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process¹³”.

The amendment so brought in has made it clear that the period for which the Government has imposed nationwide lockdown will not be taken into consideration for determining the time limit as prescribed under provisions of the Insolvency and Bankruptcy Code. This step is implemented by the Supreme Court for all the other laws as well. The limitation period given in accordance with the Limitation Act, Civil Procedure Code and Criminal Procedure Code was also exempted till the lockdown has been imposed. It will ensure that unnecessary defaults do not occur in the future. This move will also ensure that the NCLT is not flooded with procedural applications seeking extensions and or condonation of

¹³ Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020. Notification issued by the IBBI as on 29 March 2020
<<https://ibbi.gov.in/uploads/whatsnew/be2e7697e91a349bc55033b58d249cef.pdf>>

delay in meeting timelines. It is a major relief provided to corporate. Hence, it was an important step towards safeguarding the overall Indian Corporate Sector.

4.3. Suspension of insolvency proceedings

In the wake of the Covid-19 pandemic, the announcement made by the Finance Minister concerning the suspension of any initiation of corporate insolvency under the Code has certainly given rise to various market speculations concerning the nature and extent of the proposed suspension along with its forthcoming implications. Therefore with the promulgation of the Insolvency and Bankruptcy Code (Amendment) Ordinance 2020¹⁴ as of June 05, 2020, majority of the speculations have been put to rest¹⁵. The said Ordinance provided for the insertion of Section 10A a 'non-obstante provision' to Sections 7, 9 and 10 of the Code, which in turn resulted in the suspension of Section 7, Section 9 and Section 10 that dealt with initiation of Corporate Insolvency Resolution Process (hereinafter referred as CIRP). As a result of such suspension, the financial & operational creditor along with the corporate applicant was barred from filing an application for initiation of CIRP for a period of 6 months from March 25, 2020 which should not exceed 12 months as per the earlier notification so termed as the exemption period. The amendment Ordinance to the IB Code is promulgated with the intent of protecting the companies and promoters from the instant of no-fault liability.

Various markets such as FMCG, automobiles, and clothing have observed a steep decline in their consumer base due to the unforeseen pandemic. Hence it becomes difficult for small companies to continue with operations in the same fashion as before. There was a need to give some sort of relief to corporate debtors. The purpose behind the said regulations was to facilitate and promote an environment to boost the confidence of various stakeholders essentially the directors, partners and other executives to continue working in exceptional market situations, without the fear of facing any problem in case the company goes insolvent. Companies working on a small scale often face liquidity, cash flow, supply chain issues and the pandemic has surely added to the burden. In such a situation the regulation passed by the parliament has brought such companies at ease. However, this rationale will only hold true if the market condition improves and the companies are able to increase the financial liquidity.

The primary thinking behind suspension of Insolvency Proceedings was to protect firms which were making decent profits from their enterprises. The Code seeks to minimise the chances of the enterprise getting liquidated. In COVID-19 pandemic all the enterprises that are severely affected due to lockdown will eventually face the Insolvency Proceedings because of non-repayment of the loans. Nonetheless, with no business operations being carried out during the pandemic, the enterprises won't have enough funds and assets to structure the resolution plan in such a way so as to rescue themselves from winding up. It was thus, a great step by the Government to suspend all the Insolvency Proceeding during the novel COVID-19. However, it has to be noted that such suspension does not safeguard those enterprises which were facing insolvency proceedings prior to nationwide lockdown.

¹⁴ The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 published by the Ministry of Corporate Affairs in the Gazette of India as on 05 June, 2020. Retrieved from <https://www.mca.gov.in/Ministry/pdf/IBCAmendBill_05062020.pdf>

¹⁵ Siddharth Srivastava, Harshit Khare & Mohit Kishore, 'Insolvency And Bankruptcy Amendment Ordinance: June 2020' *Mondaq* (12 June 2020) <<https://www.mondaq.com/india/insolvencybankruptcy/952306/insolvency-and-bankruptcy-amendment-ordinance-june-2020>>

4.4. Imposing of Moratorium by RBI

The initial wave of the COVID-19 pandemic, as well as the national and worldwide lockdowns that followed, caused enormous economic devastation in 2020. India's GDP is expected to decrease 7.7% in the fiscal year 2020-2021. In order to deal with this disruption, the Reserve Bank of India took cognizance of the financial conditions and imposed moratorium on 25th March 2020 for the initial period of 3 months. It was also extended till August 2020 but subsequently, RBI released a statement stating that moratorium beyond a certain time won't be viable for the banking system. According to RBI's Report on Trends and Progress of Banking in India, as of August 31st, 2020, consumers accounted for 40% of outstanding bank loans, with the number of Micro, Small and Medium Enterprises ("MSMEs") taking advantage of the moratorium reaching 78%¹⁶. Imposing moratorium for a couple of months after the lockdown was indeed a great step towards safeguarding the financial conditions of those borrowers whose financial creditors were different banks and Non-banking financial companies. In my opinion, this could have greatly reduced the pressure on the companies to discharge their liabilities. A company when in business operation has to maintain a cycle where it takes loans and credit from the bank, NBFCs and personal finance, which create liability and the company, seeks to grow and carry out its business operation with the funds they raise.

With the advent of the pandemic, the business operation came to a sudden halt. No one expected such a sudden hindrance. This led to the disruption of the business cycle in the economy and thus RBI needed to protect micro and small finances from the disruption. Looking at the current scenario, where firms have started to carry out their business operations with utmost precautions it can be anticipated that the suspension of Insolvency Application till 25th March 2021 will help the corporation to discharge their loans at least till the first week of April. Thus the suspension of Insolvency Proceedings and a little help from RBI on imposing moratorium for a couple of months after lockdown might have saved some enterprises.

5. Pre-Pack Insolvency: A tool to reduce the burden on NCLT

It is well settled that the IB Code has proved to boost the industry in terms of either reviving a stressed company or ensuring quicker liquidation of the same without letting the company deteriorate. It has indeed brought down the timeline for recovery as compared to the phase when the Code did not exist. However, the process involved under the Code certainly requires more time and money to fructify, taking into consideration the direct and indirect costs involved¹⁷. On the other hand, RBI has also prescribed certain out of court debt restructuring mechanisms which generally require a creditor consortium that try and resolve the stressed debtor but which lack the legal sanctity as enjoyed under IBC. So, to shorten the timelines even further while maintaining the legal sanctity, this was sought through the introduction of a Pre-packaged insolvency scheme. The term 'Pre-pack' means a restructuring plan agreed by the creditors and debtor to revive the company before filing the insolvency application before the court for approval. This scheme was anticipated to provide an even faster method of resolution of the distressed assets, through its timely detection¹⁸. Furthermore, the Government of

¹⁶ 'Report on Trend and Progress of Banking in India' [2019-20] RBI. Retrieved from https://rbidocs.rbi.org.in/rdocs/Publications/PDFs/0RTP2020_F3D078985540A4179B62B7734C7B445C9.PDF

¹⁷ Shriraj Khanbete, 'India: What Is Pre-Pack Insolvency Or Bankruptcy?' *Mondaq*, p. 1. (11 January 2021) <https://www.mondaq.com/india/insolvencybankruptcy/1023948/what-is-pre-pack-insolvency-or-bankruptcy>

¹⁸ *ibid*

India established a committee which gave its report on the implementation of Pre-pack insolvency amid the pandemic.

The pre-pack will indirectly result in speedy resolution of a company without complying with the lengthy proceedings involved in the otherwise formal process. Quickly passing a resolution plan will also yield maximum value for the assets. The value of assets decreases with time and thus it is important for the creditors and debtors to pass a resolution plan as soon as possible. This step will, in turn, maximise the chances of the company being revived to normal stage and the objective of Insolvency and Bankruptcy Code will stay protected. Had this been the other way around, where no informal options were available to the Creditors and Debtors, it would have been difficult for the creditors to revive the company thus pushing the company to undergo Liquidation. The liquidation process should always be the last resort as it puts a burden on the Creditors and Debtors along with the Tribunal who is responsible to adjudicate the matter.

Proper implementation of Pre-Packaged Insolvency will not only help the small and medium enterprises who are perhaps the most affected sector due to COVID-19, to rejuvenate and possibly grow after things get down to normal but it will also provide Creditors and Debtors to settle most of the Insolvency Proceedings outside of the court. However pre-pack required investor support as compared to the CIRP and because of its very nature, the pre-pack scheme is preferred a very high level of support from its stakeholders thereby ensuring the highest chances of comeback of the company. This support is necessary as, without cooperation from the promoter, it would be nearly impractical to work out a pre-pack. To support the above discussion, the below-given figure collocates pre-packs vis-a-vis CIRP in terms of advantages¹⁹.

Figure 3. CIRP vis-a-vis a Typical Pre-pack

Parameter	CIRP	Typical Pre-pack#
Objective	Going Concern Resolution, failing which, Liquidation	Going Concern Resolution
Transparency*	More	Less
Flexibility	Less	More
Cost Effectiveness	Less	More
Time Effectiveness	Less	More
Disruption to Business	More	Less
Conducive for Group Insolvency	Less	More
Value Maximisation **	Yes	Yes
Possibility of Resolving Stress	Less	More
Supremacy of Stakeholders	Yes	Yes
Regulatory Benefits	Yes	Generally, No
Role of Court and IP	More	Less
Binding Outcome	Yes	Generally, Yes

#' More' or 'less', as compared to the other option.

¹⁹ Report of the Sub-Committee of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process [2020] *IBBI* < <https://www.ibbi.gov.in/uploads/resources/24c7fc03cdfff69960ce374416fa646.pdf>>

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* Different models of pre-packs in different jurisdictions have varying levels of transparency, but usually less than CIRP. However, it can be designed to enhance transparency.

** CIRP maximises the value of assets through a full public process. Pre-pack maximises value by concluding the process early with less cost. It can be designed to build elements of a public process to maximise value further.

The Chairman of the Insolvency and Bankruptcy board while giving an interview to the BL Research Bureau stated that, while the business operations are getting back on track it is anticipated that the Creditors (Financial and Operational) along with the Corporate Debtor will sit together to decide how to structure the business so as to meet the default²⁰. The Chairman while discussing the COVID-19 effects on IBC also emphasised that the Insolvency and Bankruptcy Code does not seek to recover money from the Debtor like other acts and regulations. Apart from IBC, the creditor is at the liberty to go for civil suit under The SARFAESI Act or to the Debt Recovery Tribunal. It will also tackle the scarcities of Interim Insolvency Professionals as no formal options have opted in Pre-Pack.

Working on this thought, the government has earlier this year successfully developed a special pre-packaged insolvency resolution process (PPIRP) to deal exclusively with the distress of MSMEs²¹. MSME debtors who have defaulted by at least INR 10 lakh are eligible for the PPIRP and may negotiate a "base plan" with their creditors under this new system. The MSME may approach the NCLT for initiating the process after 75% of its members and 66% of its unrelated financial creditors support the proposal to launch PPIRP. A brief moratorium is proclaimed after PPIRP is initiated, and a Resolution Professional is chosen to monitor the process. During PPIRP, the present management retains control of the company, but under the supervision of the Committee of Creditors ("CoC"). The CoC is built around a list of claims submitted by the debtor. Additionally, the debtor must also give a 'Preliminary Information Memorandum', which includes all important information for establishing a resolution plan as well as the negotiated base plan. The CoC retains the option of either approving the base plan or inviting alternative plans to contest it. Any plan that achieves at least 66% support from the CoC is considered authorised and sent to the NCLT for consideration. A PPIRP must be completed in 120 days from the date of commencement. If the PPIRP does not end within the specified time frame, or if the CoC does not approve any plan, an application for termination of the PPIRP may be made with the NCLT. The PPIRP would not normally result in the debtor's liquidation, but it could in exceptional cases if management is obstinate or an approved resolution plan is broken. This however has sparked anticipations that IBC activity in the MSME sector would expand as a result.

6. Will Digital along with Hybrid Hearings be the New Normal?

The Covid-19 pandemic has pushed each and every one of us to switch to the online mode of communication and working. It has opened gates for a Virtual world which we were not used to before 2020. Even the Indian Judicial System is now moving more and more towards Virtual Court hearing.

²⁰ Dr. M.S. Sahoo, 'Covid impact will not derail IBC' [2020] T. B. Interview, *IBBI*
<<https://ibbi.gov.in/uploads/resources/d710f5e800ca901b7ce129e861316fce.pdf>>

²¹ IBBI notifies the Insolvency and Bankruptcy Board of India (Pre-packaged Insolvency Resolution Process) Regulations, 2021 as on 09 April, 2021. Retrieved from
<<https://pib.gov.in/PressReleaseIframePage.aspx?PRID=1710738>>

The Gujarat High Court was the first court to live-stream its court proceedings virtually²². The initiative served much appreciation from people of the legal fraternity which in turn implies that Courts can substitute Physical Hearing cases with Virtual Hearing with ease. The Hon'ble Supreme Court while hearing a plea for resuming physical hearing stated that Virtual Hearing is as good as Physical Hearing indicating the importance of Virtual Hearing. The Supreme Court also heard 7144 cases in merely 57 days after imposition of the nationwide lockdown in the country²³.

The above-mentioned facts indicate that the Digital world has definitely become the new normal. It's been almost 2 years since the Lockdown was imposed on and off because of which more and more people in the legal fraternity have now become accustomed to the innovative method of conducting Virtual Hearings. The primary benefit of virtual hearings is that they reduce or eliminate the need for travel, which is important not only in light of COVID-19's potential short-term travel limits, but also more widely in order to lessen litigation's environmental impact. In addition to cost savings, courts and parties may be able to be more flexible in scheduling hearings. For example, hearing can be divided into multiple sections considerably more easily when arbitrators and lawyers are not required to meet in a single location²⁴. With the second wave of Covid-19 sweeping the country, the pandemic appears to be far from over. With this in mind, the Apex Court has very recently rolled out the Standard Operating Procedures (SOPs) for 'Hybrid Method' of hearing²⁵. According to the Hon'ble Supreme Court's most recent SOP, the Court will hear matters virtually on Mondays and Fridays, but will hold physical hearings on Tuesdays, Wednesdays, and Thursdays. In light of the foregoing, the Hon'ble Delhi High Court, in an office order dated March 19, 2021²⁶, asked the High Court itself along with the District Courts in Delhi to hold hybrid hearings whenever possible and feasible, in order to reduce needless crowding in the Courts. The District Bar Associations have also been reminded that, in order to avoid overcrowding in Lawyers' Chamber Blocks, appropriate warnings may be issued from time to time. However, as per the words of Justice D.Y. Chandrachud, who chairs the Supreme Court's e-Committee, virtual court sessions will not replace or substitute actual court hearings in the future, and that court digitization, including e-filing, must be uniform across the country. With the upcoming implementation of a new e-filing module, the submission of cases to the Supreme Court is set to undergo a significant change.²⁷

²² Mahesh Langa, 'Gujarat High Court the first to live stream proceedings' [2020] *The Hindu* <<https://www.thehindu.com/news/national/other-states/gujarat-high-court-begins-live-streaming-of-proceedings-on-trial-basis/article32944091.ece>>

²³ 'Supreme Court Heard 7144 Cases In 57 Days Via Virtual Hearing During Lockdown' [2020] *LiveLaw* <<https://www.livelaw.in/top-stories/supreme-court-heard-7144-cases-in-57-days-via-virtual-hearing-during-lockdown-158627>>

²⁴ Pramod Kumar Dubey, 'Virtual Courts: A Sustainable Option?' [2020] *Bar and Bench*. <<https://www.barandbench.com/columns/virtual-courts-a-sustainable-option>>

²⁵ Standard Operating Procedure for Hybrid Physical Hearing before the Hon'ble Supreme Court issued by the Supreme Court of India as on 05 March, 2021. Retrieved from <https://main.sci.gov.in/pdf/LU/06032021_084812.pdf>

²⁶ Office Order No. 157/RG/DHC/2021 dated 19 March, 2021 issued by the High Court of Delhi. Retrieved from <https://delhihighcourt.nic.in/writereaddata/Upload/PublicNotices/PublicNotice_YZ1V40N8F2T.PDF>

²⁷ Murali Krishnan, 'Virtual courts not a substitute to physical courts: Justice D.Y. Chandrachud' [2020] *Hindustan Times* <<https://www.hindustantimes.com/india-news/virtual-courts-not-a-substitute-to-physical-courts-justice-dy-chandrachud/story-8YrTg4dmP2IKzFJMnDrdqK.html>>

7. Is the Novel Covid-19 Pandemic a Boon for the NCLT Structure?

The repercussions of the pandemic on the Indian Corporate Sector have already been discussed above. But every coin has two sides to it. The COVID-19 pandemic has opened gates for a completely new virtual world. This will save a lot of valuable time for Advocates, Charter Accountants and Company Secretaries, as they don't have to go from one court to another or from their office to courts multiple times. With the increase in usage of technology in the 21st Century, COVID-19 has made us realise one thing, that is, it is possible for even the courts to operate virtually. With the proper implementation of digital courtrooms, one can bring small-small reforms, which if done at a large scale would make a difference.

The former CIC Shaliesh Gandhi in a letter to the Hon'ble Chief Justice of India stated that the implementation of Virtual Hearing in all the courts will reduce the paperwork drastically. According to their estimates, this step would lead to saving 6000 trees per year and INR 6000 crore worth of paper. He also stated that implementing virtual court hearings will serve better rule of law in the near future²⁸. One of the advantages of a Virtual hearing is that it will tackle the ongoing debate of 'not having access to court proceedings is a violation of Fundamental Rights. Taking the example of Gujarat High Court which live-streamed all its proceedings on its official YouTube channel is considered to be one of the biggest accomplishments for the Judicial System of this country. Everyone was at the liberty to witness the live proceedings of a High Court through the medium of YouTube. Apart from the ongoing virtual hearing of courts, if such an innovative reform is implemented in every court, it will ensure transparency and will also give a chance to students to grab as much knowledge as they can through the proceedings.

Another major change that can be implemented in the Insolvency regime is making the meetings of Committees of Creditors online. Prior to 2020, when meetings of the Committee of Creditors (CoCs) were usually held physically, no one had probably thought of a virtual meeting of CoC to pass a resolution plan. The said structure will have certain good implications. One can adopt a hybrid system for CoC meetings where those who are able to come for the meeting physically can be present and others might go with the virtual mode to attend the meeting. This will make the Insolvency Proceeding function even more smoothly as it will seek maximum participation of the stakeholders. Another prominent implication of the said reform is putting a hold on the abuse of power carried by the Resolution Professional. The proceedings to pass a resolution plan will be transparent wherein the Resolution Professional won't be able to interfere with the proceedings as the reform seeks to achieve maximum participation from the shareholders. This will make the whole process of Insolvency Proceedings genuine, less time consuming and cost-effective.

8. Implications Arising Out of the Developments

It is pertinent to observe that the Third Annual Insolvency Law Committee Report that was released on February 20, 2020 had already suggested for increase in the monetary threshold amount from INR 1 lakh to INR 50 lakhs²⁹. The rationale with which the committee had placed this suggestion forward was

²⁸ Sparsh Upadhyay, "If Courts Adopt Virtual Court System, It May Lead To A Better Rule Of Law": Former CIC Shailesh Gandhi Writes To Chief Justice Of India' [2021] *LiveLaw* <<https://www.livelaw.in/news-updates/if-courts-adopt-virtual-court-system-it-may-lead-to-a-better-rule-of-law-former-cic-shailesh-gandhi-writes-to-chief-justice-of-india-168525>>

²⁹ Report of the Third Insolvency Law Committee [2020] *IBBI*. Retrieved from <<https://ibbi.gov.in/uploads/resources/c6cb71c9f69f66858830630da08e45b4.pdf>>

the intent to reduce the pressure before the NCLT as increasing the threshold would reduce the number of cases. But herein the increase of the threshold to INR 1 crore could impact the INC regime. Furthermore, it is to be noted that in most cases the operational creditors of the corporate debtors are companies themselves and they, in turn, become gullible in becoming the proposed corporate debtor if their outstanding dues are not recovered as a result of such increase in threshold. Therefore in such a situation, this amendment may prove to be inefficacious and contra to the objective of IBC. Talking about the concept of virtual hearings, undoubtedly there is an opportunity for the Indian judiciary to promote and adopt the virtual framework for hearing cases and to continue even after the pandemic subsides. However, the use of video conferencing in court sessions should be limited to the duration of the current crisis. Automated courtrooms will never be able to take the place of open court hearings in the administration of justice³⁰. All those who have appeared in virtual courtrooms have witnessed the inadequate technology and flaws of the virtual justice system. Technical advancements in the administration of justice must be incorporated in a progressive, organized, and staggered manner, with safeguards in place to ensure that the concept of open court hearings is realised holistically and that it does not conflict with the administration of justice, the honesty and dignity of open court hearings, or interfere with the litigants' or the public's interests. Further on, notification no- REGD.NO.D.L-33004/99 dated March 24, 2020³¹ does not imply retrospective effect which means that the earlier threshold of INR 1 lakh would continue to apply to the pending cases.

9. Conclusion

Looking at the current market sentiments, the enterprises are bouncing back to normalcy. The market cycle has again started moving and firms have considerably started earning pretty decent revenue. Thus the firms could be in a position to pay off their debt till 25th March 2021. If the suspension proceedings and other proposed regulations had not been implemented immediately after the lockdown, many Financial Creditors and Operation Creditors might have moved various insolvency applications before the NCLT thereby putting great stress on the enterprises to liquidate. This however would have eventually hampered the objective of the IB Code. Suspension of insolvency proceedings will also give chance to the corporations to come up with new ideas to cut down their expenditure and to meet the expenses. Even Microsoft released a statement stating that it was after the COVID-19 pandemic that they realised that it is possible for their employees to work from home permanently³². For the small corporates, this will, in turn, cut down their expenses by not having to pay the additional costs which include paying office rent, electricity, Transport fees etc. Given the situation, the pandemic will eventually push all the enterprises to bring out reforms and innovative ideas in order to save their companies from this nightmare.

Last but not least after addressing the major parameters along with the changes brought in by the government as a result of COVID-19 pandemic in the Insolvency Proceedings, it should be taken into

³⁰ Ibid 25

³¹ Notification published by the Ministry of Corporate Affairs in the Official Gazette of India as on 24 March 2020 Retrieved from
<<https://www.ibbi.gov.in/uploads/legalframework/48bf32150f5d6b30477b74f652964edc.pdf>>

³² Tom Warren, 'Microsoft is letting more employees work from home permanently' [2020] *The Verge*, p. 3.
<<https://www.theverge.com/2020/10/9/21508964/microsoft-remote-work-from-home-covid-19-coronavirus>>

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consideration that all the steps which are mentioned above were taken to safeguard the interest of both the Corporate Debtor along with the Financial & Operational Creditor. The lockdown forced the economy of the country to move towards recession but because of a few positive steps taken by the government, most of the enterprises were able to survive and sail through the lockdown. Though the pandemic has paralyzed economies and companies to a large extent, the initiatives taken by the Government will enable them to build their financial muscle to stir through the uncertain environment³³. Nonetheless, the Covid-19 crisis is not the first crisis that has hit the world. The world has fought and overcome many battles in the past and this too shall pass, preparing mankind for even bigger challenges in the near future.

³³ Dr. Quazi Md. Kamran, 'The Global Pandemic: A Critical Study on the impact of Covid-19 on Indian Businesses' [2020] *RJPSS*, *XLV No. 2* available at <<https://anubooks.com/wp-content/uploads/2020/10/RJPSS-Vol.-XLV-No.2-Sept-2020-3.pdf> >