

## Transcript of Justice Ashok Bhushan's Introductory Remarks

Introductory Remarks by Justice Ashok Bhushan

Respected Brother Justice Rohinton Nariman, Justice Nageswara Rao, Justice Prasad, Judges of the Hon'ble Supreme Court present in the hall, my former colleagues at the Supreme Court, Judges of the Delhi High Court, Ld. Attorney-General, senior members of the Bar, other members of the Bar, family members of Justice Nageswara Rao, members of the NCLAT, Ms. Sreasha Merla and other members of the NCLT present, Ladies and Gentlemen, a very Good Morning to all of you!

Esteemed colleagues, it is a great honour and privilege for me to stand before you today to introduce the seminal work of Justice L. Nageswara Rao and Shri Avinash Krishnan Ravi's commentary, '*Corporate Insolvency Resolution Process and Liquidation under the Insolvency and Bankruptcy Code, 2016*'. I commend them for their meticulous research and deep understanding of the law, insightful analysis and their effort in presenting a comprehensive commentary on the Insolvency and Bankruptcy Code.

The Insolvency and Bankruptcy Code, 2016, has brought a sea of change in the way corporate insolvencies and liquidation were handled in India. It has provided a much-needed structure and streamlined the approach facilitating the timely and efficient resolution of insolvency and liquidation cases. This comprehensive commentary is an invaluable resource that delves deep into the intricacies of the Insolvency and Bankruptcy Code and provides a thorough analysis of the various provisions. This Commentary provides a meticulous analysis of the Code encompassing its various provisions, regulations, judicial pronouncements making it an indispensable guide for professionals navigating the complex terrain of corporate insolvency.

Structured in 38 Chapters, this Commentary covers a wide array of topics related to the IBC, including definitions, threshold for corporate insolvency, admission of corporates into Corporate Insolvency Resolution Process, timelines, limitation, moratorium, liquidation of corporate debtors, schemes under sections 230-232 under the Companies Act, 2013 in liquidation, voluntary liquidation and dissolution of corporate persons. The depth and detail of this work truly set it apart making it an essential read for anyone practicing in the field of insolvency law. The Authors' mastery of the subject is evident throughout the book. Their ability to articulate complex legal concepts with clarity and precision is truly commendable.

For instance, in Chapter 7, titled 'Limitation and Insolvency and Bankruptcy Code', the Authors have lucidly explained issues ranging from applicability of the Limitation Act to the Insolvency proceedings and thereafter, to the limitation period. Also, divergent views about the applicability of the provisions pertaining to exclusion of limitation period that is pertaining to acknowledgement, bona fide prosecution of other proceedings, etc., have been discussed by citing case laws. Furthermore, the book provides practical guidance on issues that the insolvency professionals and legal practitioners face daily.

An important aspect of the IBC, as discussed in Chapter 12, of the Commentary, titled '*Constitution, Meeting and Voting of the Committee of Creditors*', addresses the issues of disqualification based on the related party status. However, if a related party financial creditors divests itself of the shareholding or ceases itself to be a related party, with the sole intention of participating in the CoC and sabotaging the corporate insolvency resolution process by diluting the votes of others or otherwise, it would be in line with object and purpose of the first proviso

to section 21(2) to consider the former related party creditor as debarred under the *first proviso*. In conclusion, Chapter 12 delves deep into the complexities of the Committee of Creditors and the disqualification of the related parties. The Chapter provides valuable insight and guidance to legal practitioners, insolvency professionals and other stakeholders navigating the intricacies of the IBC.

Furthermore, in Chapter 12, the Authors examine disqualification based on related party and state that it is person-centric and not transaction centric. They argue that, often a debt, at inception, may be a related party transaction, but may not continue to be so. A subsidiary company may have lent to its holding company. At the time of lending, the transaction is clearly a related party transaction. In such circumstances, a question may arise as to whether an erstwhile subsidiary would be a related party in the CoC of the corporate debtor, owing to the fact that the transaction at its inception was a related party transaction. The answer to this has been given in the negative as the disqualification for a related party is person specific and not transaction specific.

The book provides practical guidance to insolvency professionals and legal practitioners face daily. The authors have examined the imposition of moratorium during CIRP. They state that moratorium under section 14 of the Code is intended to maintain the status quo and preserve the debtor's assets during the CIRP. It is a critical tool that enables the Resolution Professional to carry out the resolution process effectively without the threat of creditors or other parties taking actions that could potentially jeopardise the debtors' business or assets.

The Commentary's practical suggestions and real-world examples make it a valuable resource for legal practitioners. For instance, in Chapter 22, '*List of Stakeholders, Constitution of Stakeholders' Consultation Committee, Its Meetings and Powers*', the authors analyse the definition of the term, 'stakeholder'. "*The term "stakeholder" is of a wide import and covers any person, who has a financial interest with the corporate debtor.... All stakeholders are required to file their claims before the liquidator, who shall admit or reject the same, in accordance with the law. After such decision, on the claims filed, the liquidator, in terms of regulation 31 of the Liquidation Process Regulations, is required to prepare a list of stakeholders.*" This analysis demonstrates how the Book's insights can be applied to real life scenarios faced by insolvency professionals and legal practitioners.

In a field where the legal landscape is constantly evolving, the Commentary fills a crucial gap in the current literature in insolvency and bankruptcy law. The Authors have meticulously researched and analysed various judgments and case laws offering critical insight into the interpretation and application of the IBC. As a result, the Book will undoubtedly serve as a valuable resource for years to come!

One of the key strands of the Committee is to provide a holistic understanding of the IBC and in doing so, it sheds light on the interplay between various provisions and their practical implication. For example, in Chapter 27, '*Sale in Liquidation*', the Authors discuss voluntary liquidation and its significance within the broader framework of the IBC. They highlight how this process enables the corporate debtors to take more pro-active steps to initiate liquidation proceedings when they believe that the business is no longer viable. This does not only empower the debtor to manage their financial distress, but also ensures orderly winding up of the company's affairs, thereby safeguarding the interests of the stakeholders.

Moreover, the Authors have also taken great care to ensure that their Commentary remains relevant in the context of evolving legal ecosystem. They have thoroughly examined the recent amendments to the IBC and pertinent case laws, offering valuable insight to their implication for insolvency professionals and legal practitioners. For instance, in Chapter 29, titled, '*Completion of Liquidation and Dissolution*', the Authors discuss completion of liquidation and dissolution highlighting the importance of time-bound nature of the liquidation process. They note that liquidator must complete the liquidation process within one year from the liquidation commencement date as stated in Regulation 44(1) of the Liquidation Process Regulations. In cases where an application for avoidance of transaction is pending before the NCLT, the liquidation process must still be completed within the stipulated period of one year. This demonstrated the Authors' in-depth understanding of the Regulations and their practical implication for insolvency professionals.

In Chapter 31, '*Fast Track Corporate Insolvency Resolution Process*', the Authors discuss the recent amendment pertaining to the time period for completion of Fast Track Corporate Insolvency Resolution Process. They provide an insightful analysis of its impact on the resolution process and highlight the need for striking the balance between protecting the interests of creditors and ensuring the viability of the resolution process. As per Chapter 31(2) of the Commentary, the time period for the completion of the Fast Track CIRP is said forth in section 56(1) of the IBC. According to this provision, subject to section 56(3), the Fast Track CIRP must be completed within 90 days from the insolvency commencement date. However, section 56(2) allows for an extension for a period of ninety days, if approved by the Committee of Creditors through a vote of at least seventy-five percent of the voting share. Moreover, section 56(3) of the IBC empowers the NCLT to approve an extension of the Fast Track CIRP by up to forty-five days, upon the application by Resolution Professional. However, such an extension can only be granted once. The procedure for seeking an extension is outlined in Regulation 39(1) of the Fast Track CIRP Regulations, 2017. According to this Regulation, if the CoC believes that the Fast Track Insolvency process cannot be completed within the ninety days, it may instruct the resolution professional to apply to the NCLT for the extension under section 56 of the IBC. Regulation 39(2) further states that upon receiving instructions from the CoC, the Resolution Professional must apply to the Adjudicating Authority for such an extension. Therefore, the maximum duration for the completion of the Fast Track Corporate Insolvency Resolution Process is 145 days.

This book is more than just a mere Commentary on the Insolvency and Bankruptcy Code! It is the testament to the Authors' passion for the subject, their diligence and their unwavering commitment into enhancing the understanding the insolvency laws in India. It is a treasure trove of knowledge and I firmly believe that it will play a pivotal role in shaping the future of insolvency laws in our country.

Introduced in 2021, through an amendment into the IBC, the pre-pack CIRP is an unique insolvency resolution process specifically tailored for micro, small and medium enterprises. This process is incorporated under the Chapter III – A of the IBC, reflecting the growing recognition of the distinct challenges faced by MSMEs during the insolvency proceedings. The rationale of introduction of pre-pack can be traced back to the Report of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process, 2021. The Report acknowledges the vital role which the MSME play in the economy and the unique difficulties they face in surviving the financial crisis. The pre-pack was conceived as a targeted response to conceive

these challenges, offering a mechanism tailored to the need of MSMEs. In the words of the Authors in Chapter 37, titled, '*Pre-pack Insolvency Resolution Process under the IBC*' I quote: "*The raison d'etre for providing such a process, exclusively for MSMEs facing insolvency can be traced back to the Report of the Insolvency Law Committee on Pre-packaged Insolvency Resolution Process, which observed as follows: "... access to an effective insolvency law is crucial for MSMEs to survive financial crises.*"

By focussing on pre-CIRP, the Authors demonstrate their commitment to offering a well-round understanding of the IBC, addressing both the general and specific measures designed to cater to the unique need of different sectors. The in-depth analysis of the pre-pack, in their Commentary highlights the significance of this process for MSMEs and offers valuable guidance to legal professionals and insolvency professionals working with these enterprises.

Additionally, the Authors offer valuable insights to the NCLT's discretion in extending the time limit for completing the liquidation process, as there is no outer time limit for completion of the liquidation process, unlike the 330-day limit for CIRP. They highlight that NCLT would determine on a case-to-case basis, the necessity for such an extension and the conduct of the liquidation during the liquidation process, as to whether the liquidator has performed their functions in a different and sincere manner, keeping in mind the method and model timeline for the liquidation process set out in regulation 47 of the Liquidation Process Regulations. The Authors also draw attention to the challenge faced in liquidation in completing the liquidation process due to the pendency of application for avoidance transaction, fraudulent trading. Regulation 44A of the Liquidation Process Regulations provides a mechanism for the assignment of avoidance application which the liquidator can utilise to expediate the liquidation process.

The depth and detail of this work, as demonstrated by insightful excerpts mentioned above truly set it apart in the field of insolvency law. The Authors' mastery of this subject-matter is evident throughout the Book. Their ability to articulate complex legal concepts with clarity and precision is truly commendable.

In conclusion, this Book, '*Corporate Insolvency Resolution Process and Liquidation under the Insolvency and Bankruptcy Code, 2016*', is a master-piece which offers a comprehensive, insightful and practical analysis of the IBC. It is an indispensable resource for insolvency professionals and legal practitioners. I whole-heartedly recommend this Book to anyone seeking expertise in the vital areas of this law. With this I would like to express my heartiest congratulations to Justice Rao and Mr. Ravi for their outstanding accomplishment in creating this exceptional Commentary. I am confident that their work would inspire and empower countless professionals in the field of Insolvency and Bankruptcy Law. I am honoured to have been invited to introduce to you this remarkable Book and I wish you all an engaging discussion as we delve into the publication.