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## COVID-19: EXTENSION OF CIRP TIMELINES

COVID-19 and the attendant lockdown has not only impacted the operations of the corporate debtors but also severely disrupted the resolution process (such as holding of COC meetings, valuation, issuance of EOI invitation, submission and evaluation of resolution plans etc.).

Two steps have been taken to mitigate the impact of the lockdown on the resolution process:

- **Amendment to CIRP Regulations**

On 29 March 2020, the Insolvency and Bankruptcy Board of India (“IBBI”) published a notification, amending the IBBI (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020 (“**Amendment**”)<sup>1</sup>. By way of the said Amendment, Regulation 40C was inserted in the IBBI (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (“**CIRP Regulations**”). This amendment came into force from 29 March 2020.

The newly inserted Regulation 40C states: **“40C. 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 COVID-19 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 process.”**

The CIRP Regulations provide for time-lines for completion of various steps in the CIRP of the corporate debtor. The Amendment excludes the lockdown period imposed by the Central Government (“**lockdown period**”) for counting timelines for any activity that could not be completed due to such lockdown. It may be noted that the lockdown was imposed by the Central Government for a period of 21 days from 25 March 2020.

The Amendment is a welcome step as it provides a breather to the resolution professional in respect of completion of various activities under the CIRP Regulations. However, Regulation 40C is “*subject to the Code*” and states that lockdown period shall not be counted for the purposes of the time-line for “*any activity that could not be completed due to such lockdown*”. Since IBBI cannot amend the overall timelines under Section 12 of the Insolvency and Bankruptcy Code, 2016 Code (“**Code**”), the language provides for exclusion of lockdown period from timelines prescribed by IBBI under the CIRP Regulations for completing an activity that could not be completed.

Hence, the Amendment to CIRP Regulations does not seem to be a general exclusion of time period from the overall time-period of 180/270/330 days specified in the Code.

Further, it is noticed that exclusion is given only for period of lockdown notified by the Central Government (as opposed to the time when the relevant State government issued lockdown orders or Section 144 orders).

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<sup>1</sup> <https://ibbi.gov.in/uploads/whatsnew/be2e7697e91a349bc55033b58d249cef.pdf>

It is also noticed that no corresponding amendments have been made to the IBBI regulations dealing with liquidations.

- **Exclusion of time by NCLAT**

A day after IBBI issued its notification, on 30 March 2020, the National Company Law Appellate Tribunal, New Delhi (“NCLAT”) took *suo-moto*<sup>2</sup> cognizance of hardships faced by resolution professionals to conduct the CIRP of the corporate debtors amid COVID-19 concerns. While exercising its inherent powers provided under Rule 11 of the National Company Law Appellate Tribunal Rules, 2016 read with *Quinn Logistics India Pvt. Ltd. v. Mack Soft Tech Pvt. Ltd.*<sup>3</sup> the NCLAT has ordered that:

1. The period of lockdown ordered by Central Government and State Governments<sup>4</sup> shall be excluded from the period for completing the CIRP of a Corporate Debtor<sup>5</sup> prescribed under Section 12 of the Code; and
2. Any interim order/ stay order passed by NCLAT under the Code will continue till the next date of hearing.

Hence, unlike the Notification, which excludes lockdown period for any activity that could not be completed due to such lockdown and which was subject to overall timelines under the Code, the NCLAT order provides a complete exclusion from overall timelines (180/270/330 days) specified in the Code.

Further, the exclusion provided by NCLAT also covers time period when State Governments, had issued lockdown orders in the states where the registered address of the Corporate Debtor is located (many of which were issued prior to the order by the Central Government and which may be extended after the period of lockdown imposed by the Central Government).

The order provides an automatic exclusion and hence the resolution professional may not need to approach various Adjudicating Authorities for specific exclusion of lockdown period.

Extension of interim orders till the next dates of hearing, have also been granted *vide* this order of NCLAT.

For any clarification, please contact:



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<sup>2</sup> *Suo Moto - Company Appeal (AT) (Insolvency) No. 01 of 2020.*

<sup>3</sup> *Company Appeal (AT)(Insolvency) No. 185 of 2018.*

<sup>4</sup> This includes any period which may be extended in the area where the registered office of the Corporate Debtor is located.

<sup>5</sup> This is applicable to all cases where the CIRP has been initiated and pending before any bench of NCLT or in appeal before NCLAT.