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Balancing Interests of Stakeholders under the Insolvency and Bankruptcy Code (2016): With Special Emphasis on Oppression of Stakeholders

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ABSTRACT

The short article is written to study and understand what is the working of the IBC in relation to the NCLT. The paper aims at outlining the major procedures that are incorporated while an insolvent/bankrupt company has to come to its resolution process. The paper talks of the importance of having a proper insolvency code, that can help companies that are in need of such laws because at the end the creditors are the ones who succumb to a lot of losses. This paper also focuses on the concept and reality of oppression of stakeholders. The minority stakeholders that do not contribute to a sizeable amount but are still important, have been facing a lot of problems. This paper promotes the need for corporate governance and good working environment. The readers through this paper will get an insight into the corporate laws and world that run the financial segment of our country.

I. INTRODUCTION

What is the code of Insolvency and Bankruptcy?

When in 1990, the foreign companies and investors were allowed to enter the country, it was a major reform of that time, liberalisation was at its peak, the concept of entry, allowances and making sure that many companies would be allowed to have a market here in our country was a major boost to the economy. This was the concept of entry into the markets which was the first major turn over in the economy, in this new world. This was called the right to entry. In 2002 the right to compete was given and in 2009 the Competition Commission of India was setup. This further established both the entry and competition. But now what if the company wanted to stop with competition and move out. How would the company liquidate due to bankruptcy. Therefore a code was made which was much bigger than an Act, which was made by collaborating various insolvency laws.

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What is the framework of IBC 2016?

The IBC has a very complex yet satisfying framework that deals with working of the entire code. It has two parts to it, first it has the regulators and second it has the adjudicators. The regulators have the Insolvency and bankruptcy board of India which encompasses the Insolvency regulating agencies, the insolvency professionals and lastly it comprises of the Information utilities. The adjudicator on the other hand are divided by the National Company Law tribunal and the Debt recovery law tribunal. One is corporate and the other is non corporate.

What is insolvency?

Insolvency is a term used in business and law to define a particular situation when an individual becomes insolvent, he or she is incapable of paying over the due date of the given time period. That is incapability of paying at that point of time.

What is Bankruptcy?

When the individual becomes totally incapable of paying due to unemployment and loss of revenue personally. This makes him totally incapable of repaying the debt amount back to the creditor to whomsoever it may concern.

II. NEED OF INSOLVENCY AND BANKRUPTCY CODE?

With due effect of the IBC a number of laws have been repealed in the constitution to form one important code, before the code laws like the Presidency town Insolvency Act, Provincial Insolvency Act and Sick Industrial Companies Act were prevalent. Even the Indian Partnership Act was amended with introduction of the IBC. The introduction of the IBC was to bring a holistic approach in the liquidation of companies. When the companies are about to wind up the creditors keeps looking to fold up their revenue. At the end the IBC regulates the cash collection and liquidation of the companies by providing resolution plans, the invested capital and asset are used as liquidation for creditors.

The world before and after IBC.

The world before IBC in India had lacked the efficiency of closing off a business. In the farce dream of trying to save capital and savings there was an unrelentless struggle to save the businesses. A separate code was a need of the hour considering that most of the client funds are very important to them personally. The fact that the insolvency and bankruptcy code gives equal importance to both secured and unsecured debts while liquidating market, shows that with such laws the bond market invariably is successful.

Benefits of IBC

With the IBC the ease of doing business is getting better day by day. With the inception of the NDA government the ease of doing business of our country was at 130th rank. With the inception of the IBC the ease of doing business rank of India has moved up to 63. With this inception of IBC, banks do easily get their money. With the IBC inception the locked up assets get an easier liquidation. Also with the right to exit the investments in the country start to invariably increase. Though the investment rates in the country are quite stagnant currently, still IBC proved to be a good catalyst. Lastly the bonds for the corporate market will increase at a very fast rate in the country.

III. PROCESS OF INSOLVENCY RESOLUTION

The process to a resolution is a very simple, that is to formulate a plan then to see how the company's fate is decided for its own stakeholders, so first the people asking for a resolution must approach the NCLT or the DRT, *they must revert back to the appellant within fourteen days of the report submitted*. Now the lender will make a committee of creditors who will then appoint an Insolvency professional to work upon the resolution process. This will run for an actual interim period. Between a period of 180 days the committee will make a debt recast plan. As the plan has been made and the recast strategy has been put forward, a proper voting will take place. If the lenders accept the recast strategy, well and good, if they do not, then the entire assets and savings will be liquidated.

Stakeholder

A stakeholder is usually a person who really makes a huge impact on the project, the people involved in the project, it can be a particular organization or a particular person. These are people who are within or outside the project who are willing to sponsor the project. Management of a stakeholder is not an abnormal anomaly in this country or any other country for that matter. Every stakeholder has his or her own needs as to why they would invest in the given project in any given way. Defining who those people are and identifying the people while understanding the actual problems is what matters, a person must never divulge in understanding the narrow definition of a stakeholder, we must understand that stakeholder is and will always be a person who is contributing to the company in anyway.

IV. OPPRESSION OF STAKEHOLDERS

The whole future of an organisation is completely dependent on the understanding and

relationship with its stakeholders. The more powerful the stakeholders are, the more an organisation is able to access growth and understanding on the outer world of business and in return the organisation holds particular duties towards its stakeholders. Although the latter one has ceased to exist over the years as even though stakeholders hold the power to make or break an organisation's future, they are more likely to be **marginalised or in other words are denied involvement.**

Within the past few years, it has been observed that with every decision made, their power of word is of lesser importance and their opinion has a lesser value as compared to other bodies of an organisation. The company often ceases to realise that avoiding or depriving one particular group from the mainstream business can ultimately impact the organisation as a whole. It is important to realise and recognize the role stakeholders perform, and how each and every stakeholder suffers a direct consequence of a company's success or failure.

In the era, where we speak highly of the term called 'business ethics', 'the need of a value driven management'. It is now time that we walk our talk by spreading awareness for the firms to realise the value of its stakeholders and adapt to certain methods and technologies which will help to facilitate the relationship between the two or else what seems to be the tip of an iceberg will eventually sink the whole ship. As the "ethics" we lay down today are going to serve as an example for the upcoming generations of business leaders. The more power and attention we give to the narrower parts, the wider the society grows.

Along with this, we also need to understand which part among the whole group of stakeholders are actually "marginalized" where the role of an efficient managerial structure comes in role, by differentiating the powerful from the suppressed as the powerful ones tend to make their way through. There can be various interactive sessions between the managers and the stakeholders for a better learning of their needs and interests.

Kamal Kumar Dutta & Anr V. Ruby General Hospital Ltd. & Ors³

The case mentioned above was brought into light when an appeal was made by Dr. Kamal Kumar Dutta along with his partner Dr. Binod Prasad Sinha under Section 397 & 398 of Companies Act, 1956 before the Company Law Board highlighting various issues of oppression and mis-management.

The Ruby Hospital was set up in 1991 by two NRI's Dr. Kamal Kumar Dutta, Dr. Binod Prasad Sinha along with Kamal Kumar's younger brother who acted as an Indian resident in

³ KAMAL KUMAR DUTTA AND OTHERS V RUBY GENERAL HOSPITAL LTD. & ORS 2006 129 CompCas 1 Cal, (2006) 5 CompLJ 546 Cal (2005)

the case. Out of the total cost of 11 crore rupees, the 88.88% of the capital was built up through NRI participation, and the rest through the participation of Indian residents. Along with the division of capital Dr. Kumar Dutta made an investment of 3 crore for second hand purchase of medical equipment imported from USA. He was later denied shares in the company for his contribution by his younger Indian resident brother.

The said issue was first taken up by Reserve Bank of India, which granted permission to issue shares in favour of Dr. K Dutta, after which another petition was filed in High Court of Calcutta by the company against the approval of RBI, the high court decided to give a personal meeting to the parties. Time and time again, appeals were made and are said to be still pending in the high courts. After the growing grievances, the issue was finally brought to Company Law Board (CLB), the company filed a plea, challenging the validity of Section 397& 398 of Companies Act, pleading that the NRI's since a long time had vacated the chair as directors and their act of disallowance of company's shares is justified.

The CLB went through the matter and later highlighted the acts of oppression and clear avoidance. It observed that the whole agenda was taken up by sheer avoidance, as vacating of the Director's office cannot be simply assumed, also no proper notice was delivered to their respective residents in USA as a result of which all the decisions which were a part of those board meetings were declared null and void, as they were the main promoters of the company, along with being the Directors as well as the holders of 88.88% capital of the company. Their absence was ignored on purpose as a result of the on going quarrel. It also sheds a light on the Section 397& 398 of the Companies Act and stated that its important to recognize oppression taking place in the name of 'limited companies'. Both the Sections have a purpose of saving public interest in the companies.

***Cyrus Investments v Tata Sons and others*⁴**

One of the most discussed cases in the ambit of shareholders and oppression of members was this case, the Cyrus investments had an equity share of around 18% in the company, Mr Mistry filed his first petition, where he challenged Mr Tata and his board members on grounds that his removal from chairman ship was illegal and also highlighting the issue of alleged mismanagement and oppression of minority stakeholders. The Plea also talks about the concept of shadow director and alleged misuse of power by Mr Ratan Tata, hence forth bringing the case under the articles 241 and 244 of the Companies law Act.

The NCLT after discussing the case and understanding its pros and cons of the case did not

⁴ CYRUS INVESTMENTS PVT LTD V TATA SONS AND OTHERS, SCC,(2020)

stay with the plea of Mr Mistry, on the matter of Ratan Tata being shadow director, this point was dismissed by the NCLT because this concept isn't prevalent in the Companies Act Tribunal. The NCLT then also dismissed the plea that Mistry was removed from the position of chairmanship. the NCLT concluded that if in case there was no accountability towards the shareholders of the Company then, it is Mr. Cyrus Mistry himself, who was the executive chairman of the Company, who can be held liable for such lapse of corporate governance. The NCLT did not find any merit in the allegation of the petitioners that the removal of Mr. Cyrus Mistry from the position of director falls within ambit of Section 241 of the Act and held that Mr. Cyrus Mistry was removed from his position as a director due to the fact that he had leaked the sensitive information of the Company to the media, he admittedly sent the Company's information to income tax authorities and openly came out against the board of directors and the trusts of the Company. The NCLT also said that petitioners failed to prove the matter of Mr Ratan Tata's information leak to TML and how it incurred losses to the company.

The NCLAT(National company law appellate tribunal) definition and stance was totally different on this case, they had a totally different purview and stayed with Mr Mistry, claiming all his rights and proving that he was vindicated because of the manner in which he was removed, as he insisted on the importance of cooperate governance and better treatment of minority stakeholders, in fact the whole case runs on the fact of Mr Mistry giving more importance to interests of minority stakeholders. The NCLAT stayed with idea that there must be a transparency in the governance especially in a company as big as TATA with so many public investors and shareholders. In the Supreme court the case again stayed with the decision of the NCLAT, the three judge bench including chief justice Bobde gave the decision in favour of Mr Mistry stressing on the fact of corporate governance and oppression of stakeholders, Mr Mistry however resigned from the post of chairmanship but keeps his bid for the seat in the board of directors.

V. CONCLUSION

As part of a well established company, guidelines have been laid out as to how individuals must embrace the importance of its stakeholders and the people working around them, working in a respectable environment and upholding the laws and rights prescribed to each individual must be the final aim of the company or else the basic structure and aim of the company will fall. If the stakeholders, employees etc of the company are not happy, the company can never flourish thus it all comes down to adhering to all norms and to finally

keep the company moving in the right direction.
