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F.No. S/16-Misc-13/2020-21 NCLT(Exp)

Date: 29.01.2021

STANDING ORDER NO. 46/2021

Subject : Standard Operating Procedure (SOP) for NCLT (National Company Law Tribunal) Cell of Export Commissionerate of Mumbai Customs Zone I, New Custom House – Reg.

Attention of all Officers/ Staff posted in the Jurisdiction of Export Commissionerate, Mumbai Customs Zone-I, New Custom House is invited to formation of NCLT Cell w.e.f. 07.12.2020.

1. The Insolvency and Bankruptcy Code (IBC) was enacted with a view to consolidate the fragmented laws pertaining to insolvency. IBC, 2016 handles the insolvency proceedings cases through tribunals i.e. NCLT and appellate tribunal NCLAT. The code recognizes three different types of creditors : Financial Creditors, Operational Creditors and other Creditors. Each of these have been given different rights and powers. Financial Creditors are those “whose relationship with the entity is a pure financial contract, such as a loan or a debt security while Operational creditors are those whose liability from the entity comes from a transaction on operations.”

2. Section 5(20) of the Code defines an Operational debt as “a claim in respect of the provisions of goods or services including employment or a debt in respect of the payment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority”. Hence Operational creditors are those whose claims arise “from a transaction on operations”. An Operational creditor has the right to file an application to initiate the insolvency resolution process of a corporate debtor to file a claim in the insolvency resolution process and to participate, without voting rights, in a committee of creditors through their representatives.

3. The entire procedure has been designed to be completed in time bound manner as elaborated below:

(i) At the stage of admission of an application for initiating insolvency proceedings, the Code provides 14 days time to the NCLT to make a decision

regarding admission or rejection. Apart from the timeline given for admission of cases, the Code also provides a strict time line for the completion of the entire resolution process.

(ii) After admission of application the NCLT shall cause a public announcement of the initiation of corporate insolvency resolution process and call for submission of claims.

(iii) Section 12 of the Code states that the corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application to initiate such process. The Resolution professional shall file an application to the Adjudicating authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, if instructed to do so by a resolution passed at a meeting of the Committee of Creditors by a vote of sixty-six per cent of the voting shares. On receipt of an application if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within 180 days, it may by order extend the duration of such process beyond 180 days by such further period as it thinks fit, but not exceeding 90 days, provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once. After the expiry of 180 days (or 270 days as the case may be), in the event a resolution plan has not been submitted, or if submitted, and rejected under section 31 of the Code or even after the dismissal of an appeal filed under Section 61 contesting rejection of a plan, the Code directs that the debtor initiate liquidation process. The time period prescribed by the Code is the maximum time provided for the completion.

(iv) Each creditor shall vote in accordance with voting share assigned, if 66% of the creditors approve the resolution plan same needs to be implemented. When the corporate debtor has financial debt, operational creditors do not form part of the Committee of creditors.

(v) On presenting the resolution plan by IRP with approval by atleast 66% of voting by Committee of Creditors, NCLT adjudicates on the insolvency proceedings. If IRP and Committee of Creditors are not able to arrive at plan then adjudicating authority may order for liquidation in which case an official liquidator is appointed to value the assets of the company and divide the same as per the rules and law.

(vi) The commencement of liquidation process takes place on account of failure to submit the resolution plan within the prescribed period or contravention of the resolution plan. Consequently, public statement announcing that the corporate debtor is in liquidation is issued and claims from creditors is sought.

(vii) As per Section 12A of the Insolvency and Bankruptcy Code, 2016, the Adjudicating Authority may allow the withdrawal of application admitted under Sections 7, 9 or 10, with the approval of ninety per cent voting share of the committee of creditors. Considering that the proceedings are primarily carried on behalf of and for the benefit of stakeholders of the corporate debtor, the section stipulates two layers of consent. While it is understood that this is the sole requisite is consent of the majority of creditors, the ultimate authority to permit withdraw or not to permit vests with the Adjudicating Authority.

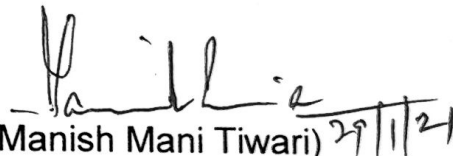
4. A special drive to check the insolvency status was conducted by DEEC and EPCG Cell. The exercise of preparation of proper data base of the total preparation of proper data base of the total pending licenses from the bond registers was initiated. It was seen that there are tentatively 1742 parties having 6613 licences in DEEC and 1100 parties having 1642 licences in EPCG. Online exercise to obtain license wise EODC status from www.eodc.online of DGFT was initiated. As a result, total 590 licences in DEEC and 232 licences in EPCG which are shown as redeemed by DGFT but the same information was not provided to Customs either by the importer or DGFT.

5. In the interest of protection of government and to make the entire process smooth and effective, a separate NCLT cell was formed. It will handle the insolvency proceedings cases under Insolvency and Bankruptcy Code (IBC), 2016 through tribunals i.e. NCLT and appellate tribunal NCLAT.

6. The following functions shall be performed by the NCLT Section:

- The Claims to be monitored and coordinated timely with the Insolvency Resolution Professional (IRP)/Official Liquidator for protection and garnering of Govt. Revenue.
- The manual exercise to check for any new parties going in to insolvency from the list of pending licenses (around 8261) to be conducted on a daily basis, to be verified from the www.ibbi.gov.in/public announcements website.
- Timely claims are to be filed against the corporate debtors, who have gone under Insolvency/ Liquidation under Insolvency and Bankruptcy Code, 2016 on the basis of the public announcements published on the IBBI.Gov.in website.
- Correspondences with Resolution Professional (RP) to be exchanged about the finalisation of Resolution/ Liquidation Plan. It is to be ensured that our claim is appropriately reflected with the report of CIRP.

- Timely Verification from the www.ibbi.gov.in/orders/nclt to check if any orders are issued by NCLT with respect to resolution, liquidation and withdrawal of application.
- A daily report of work done in terms of checking the public announcements, filing of claims, if any, liaising with CIRP for providing updates on cases, and certifying that in all the licenses pending with Mumbai customs, necessary action in terms of Para 6 has been taken.
- The concerned AC in charge will put up a weekly report on the work done by NCLT cell to the JC who shall review the performance and put up a consolidated report to the Commissioner every 15 days.


(Manish Mani Tiwari) 29/1/21

Commissioner of Customs
NCLT (Export)

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