

**ALL ONGOING LEGAL PROCEEDINGS AND INITIATION
OF FRESH LEGAL ACTION IN RESPECT OF ANY DEBT TO
REMAIN STAYED DURING THE INTERIM MORATORIUM
PERIOD**

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NCLT – ALL ONGOING LEGAL PROCEEDINGS AND INITIATION OF FRESH LEGAL ACTION IN RESPECT OF ANY DEBT TO REMAIN STAYED DURING THE INTERIM MORATORIUM PERIOD

In **IFCI Limited v. Manoj Toshniwal (C.P. No. 319/KB/2021)**, the National Company Law Tribunal, Kolkata Bench (“**NCLT**”) stayed the application filed by IFCI Limited (“**IFCI**”) under Section 95 of the Insolvency and Bankruptcy Code, 2016 (“**Code**”) against the personal guarantor of the corporate debtor on the ground that as per Section 96 of the Code, all pending legal action or initiation of fresh legal proceedings against all the debts, including personal debts, shall remain stayed during the interim moratorium period which commences from the date of filing of the application under Section 95 till its admission or rejection by the Adjudicating Authority.

In the present case, State Bank of India (“**SBI**”) and IFCI filed two separate applications under Section 95 of the Code for initiation of insolvency against the personal guarantor of EMC Limited, i.e., Mr. Manoj Toshniwal on 9 July 2021 and 29 September 2021 respectively. In the application filed by SBI, a coordinate bench of the NCLT appointed a resolution professional (“**RP**”) and directed him to

file a report under Section 99 of the Code by order of 14 January 2022 (“**SBI Order**”). Later this order was modified, and a new RP was appointed on 21 February 2022. Meanwhile, the NCLT heard the application filed by IFCI and appointed a different RP with a direction to submit the report vide order dated 17 February 2022 (“**IFCI Order**”).

In this backdrop, Mr. Manoj Toshniwal approached the NCLT for setting aside of the IFCI Order basis the contention that by virtue of SBI Order, an interim moratorium already stood commenced against the creditors precluding them from initiating any legal action against the personal guarantor with respect to any debt. Therefore, the proceedings initiated by IFCI must be stayed. Therefore, the NCLT carefully perused and interpreted Section 96 of the Code. For convenience, it has been reproduced below:

“96. Interim- moratorium. –

(1) When an application is filed under section 94 or section 95 -

- (a) an interim-moratorium shall commence on the date of the application in relation to all the debts and shall cease to have effect on the date of admission of such application; and*
- (b) during the interim-moratorium period –*
 - (i) any pending legal action or proceeding in respect of any debt shall be deemed to have been stayed; and*

(ii) the creditors of the debtor shall not initiate any legal action or proceedings in respect of any debt.

(2) Where the application has been made in relation to a firm, the interim moratorium under sub-section (1) shall operate against all the partners of the firm as on the date of the application.

(3) The provisions of sub-section (1) shall not apply to such transactions as may be notified by the Central Government in consultation with any financial sector regulator.”

The NCLT made two-fold observations pertaining to Section 96 of the Code, viz.:

- Interim moratorium in relation to all debts commences on the date of application under Section 95 of the Code and ceases to have effect on admission/rejection of such application. During the interim moratorium period, all legal actions pending in respect of any debt shall remain stayed and creditors shall not initiate any legal action in respect of any debt.

- The term 'and' in Section 96(1)(a) should be read as a conjunctive clause joining clause (1)(a) with clause (1)(b) which means that interim moratorium commences against all debts (including his personal debt) and creditors are barred from initiating any legal proceedings in respect of any debt.

Hence, the NCLT recalled its order of 17 February 2022 and stayed IFCI's application as the interim moratorium qua the personal guarantor stood commenced on the date on which SBI's application was filed, i.e., 9 July 2021.

The effect of this order is that once an application under Section 95 has been filed against a personal guarantor by a creditor, it marks the commencement of interim moratorium against the debt. Therefore, all remaining creditors shall be barred from initiating any legal action against any debt and all pending legal proceedings shall also remain stayed during operation of such interim moratorium.



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