E-Notes

Article – 9/2022

Economic Survey 2021-22 and Budget 2022 on Insolvency and Bankruptcy Code

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➢ Economic Survey 2021-22

The Economic Survey 2021-22 has projected that the Indian Economy to grow 8-8.5% in the Financial Year 2022-23. As per the survey India's banks are well capitalized and overhang of Non-Performing Assets seems to be significantly declined, even allowing for some lagged impact of the pandemic.

The survey calls for various measures, inter-alia modifying the Insolvency and Bankruptcy Code for an easy process by launching a fresh round of bold policy and legislative reforms including easing rules of the Code. The survey made the observations on the need for a smooth and less time consuming process.

It mentions about the simplification of the procedure of voluntary exit of business. It has been observed by the survey that the key issue in the process is delay in obtaining 'No objection Certificate' (NOC) from the departments including Central Board of Direct Taxes, Central Board of Indirect Taxes, Customs, Employees Provident Fund Organization and other sectoral regulators. The NOCs are implied to be taken, although not specifically mentioned in the Code. This leads to the confusion regarding the procedures to be followed."

Further it has been observed that there are no well defined 'Standard Operating Procedures' (SOPs) available in the process. The current practice is that the liquidators write a letter to the head of the departments asking for any claims that the department has on the company and to grant NOC. The department then assesses the application and responds. Since there are no SOPs, the claims raised by the departments come with a lag and are not within the stipulated period.

Another problem leading to delays in certain cases is that there are no standard guidelines on requirements by NCLT bench, creating lags in the processes as the company has to contact various departments to take the specified clearances as required by NCLT.

The hesitancy in the banks for closure of existing bank accounts and also for the opening of the new liquidation bank account by the liquidator, which is a mandatory step in the liquidation proceedings leads to the procedural delays observed by the survey.

The survey stipulates for the need of creation of a single window for the entire process. A portal that combines all the steps of the liquidation process altogether, starting from the applications made by the companies to processing by all departments.

Other observation made in the survey is to call for a standarised framework for 'Cross-Border Insolvency' as the Code at present does not have a standard instrument to restructure the firms involving cross-border jurisdiction. And this leads to several issues.

The proposal to frame a robust Cross-Border Insolvency framework has already been highlighted in the report of Insolvency Law Committee. The Committee recommended for the adoption of UNCITRAL with certain modification to make it suitable on Indian context.

➢ Budget 2022

The Economic Survey serves as a policy guide. In line with the survey, the Hon'ble Finance Minister, while presenting the Budget 2022 said that necessary amendments will be made in the Insolvency and Bankruptcy Code for more efficient and quicker dispute resolution and to enable seamless cross-border insolvency resolution.

The followings are the excerpts from the speech made by the Hon'ble Finance Minister while presenting the Budget 2022.

Insolvency and Bankruptcy Code

Necessary amendments in the Code will be carried out to enhance the efficacy of the resolution process and facilitate cross border insolvency resolution.

Accelerated Corporate Exit

Several IT-based systems have been established for accelerated registration of new companies. Now the Centre for Processing Accelerated Corporate Exit (C-PACE) with process re-engineering, will be established to facilitate and speed up the voluntary winding-up of these companies from the currently required 2 years to less than 6 months.

➢ Evaluation

Adoption of cross-border insolvency framework is a welcome announcement made in the Budget 2022. In the present economic scenario, world supply-chains stretch across geographies and assets can be move and dissipate across jurisdictions. Access to foreign courts, recognition of proceedings therein, subsequent grant of relief to protect assets of debtor or interest of creditors, communication and coordination amongst the jurisdictions will facilitate successful resolution of the cross-border cases.

Secondly, introduction of a quicker voluntary winding-up process is also a long time need in order to have immediate release of capital and resources from dead entities.

Voluntary liquidations are primarily carried out either under section 248 of the Companies Act, 2013 or under section 59 of Insolvency and Bankruptcy Code 2016 together with the IBBI (Voluntary Liquidation Process) Regulations, 2017.

As observed in the Economic Survey 2021-22, there were huge pendencies in the voluntary winding up process filed under section 248 of the Companies Act 2013. It is reported in the survey that as of 13th June 2021, out of the 28,536 pending cases, nearly 10 per cent were pending from more than 1000 days and 54 per cent cases were pending for more than one year. Thereafter, efforts were made by government to clear the backlog of applications. Consequently, the number of pending cases has come down drastically to 9,768 as on 10th January 2022, out of which only about 16.3 per cent are pending for more than a year. Yet this process can be simplified further.

The survey observed that in case of voluntary liquidations filed under Section 59 of the Code together with IBBI Regulations, as on September 2021, 1042 cases have been filed and out of them, final reports have been received for 483 cases, and the final order of dissolution has been passed in 257 cases. Out of the ongoing cases, nearly 32 per cent of the cases are pending over 2 years and 19 per cent for between 1 and 2 years.

As such the procedure of voluntary exit of business still needs to be simplified significantly, on top of recent progress.

The ease of exit through a quick voluntary liquidation procedure is as important as ease of entry, for the ease of doing business.

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