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A DIGITAL INDIA SPECIAL ISSUE

A Comparative Analysis of Settlement Procedure under IBC and Global Insolvency Regimes

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The protracted debate surrounding the withdrawal and settlement mechanisms available to financial creditors and companies undergoing insolvency proceedings has been decisively addressed by the Hon'ble Supreme Court of India in its landmark judgment in ***GLAS Trust Company LLP v. Byju Raveendran & Ors. (Civil Appeal No. 9986 of 2024 with Special Leave Petition (C) No. 21023 of 2024)***[1]. In this pivotal ruling, the Apex Court has established a robust framework of guidelines to govern such withdrawals or settlements, striking a crucial balance between protecting solvent companies capable of repaying their debts and ensuring the integrity of insolvency proceedings.

This article undertakes a comparative analysis of settlement procedures within the insolvency frameworks across various jurisdictions, with a particular focus on the regimes in Singapore and the United Kingdom. Before going forward, it is crucial to examine the essence of the guidelines laid down by the Hon'ble Supreme Court in the ***Byju Raveendran (Supra)***, which now serves as a cornerstone for managing such critical scenarios in India's insolvency landscape.

DEVELOPMENT OF WITHDRAWAL AND SETTLEMENT PROCEDURE IN INDIAN INSOLVENCY REGIME

The Hon'ble Apex Court in Byju Raveendran (Supra) distinguished "initiation date" and "insolvency commencement date" under Sections 5(11) and 5(12) of the Insolvency and Bankruptcy Code, 2016 respectively. It clarified that insolvency proceedings are initially in personam, involving the Applicant Creditor and the Corporate Debtor, but become in rem upon admission by the Adjudicating Authority, engaging all the stakeholders. Section 12A, introduced in 2018, allowed the withdrawal of insolvency applications but was silent on scenarios where the Committee of Creditors (CoC) is yet to be constituted, this gap was addressed by the introduction of Regulation 30A in the CIRP Regulations. The Supreme Court further prescribed four stages for withdrawing insolvency applications against a company, the same are detailed as below:

a) Before the admission of an application filed under Section 7, 9 of 10 is admitted by the NCLT: The Hon'ble Supreme Court held that such situations are covered by Rule 8 of the

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Insolvency and Bankruptcy (Application to Adjudicating Authority) Rules, 2016, wherein the applicant directly approach the Hon'ble NCLT and seek withdrawal. At this stage, the proceedings are still "in personam" in nature i.e. the said proceedings are still between the Applicant Creditor and the Corporate Debtor.

b) When an application filed under Sections 7, 9 or 10 is admitted by the NCLT, but CoC is yet not formed: Regulation 30A was amended to address withdrawal applications before the constitution of CoC, though Section 12A remains silent on such aspects. The Applicant may pursue withdrawal through the IRP, who can present it to the Adjudicating Authority for approval or rejection. At this stage, the proceedings shift from being in personam to in rem, involving all the stakeholders.

c) When an application filed under Sections 7, 9 or 10 is admitted by the NCLT, but CoC is formed: Section 12A of the Code read with Regulation 30A of the CIRP Regulations, provide exhaustively for such scenarios. In such cases the agenda pertaining to the withdrawal of the insolvency proceedings against the Corporate Debtor is first put forth before the CoC which then has to be approved by a ninety percent voting share of the CoC, the IRP can then subsequently file an application for withdrawal of CoC before the Adjudicating Authority.

d) When an application under Sections 7, 9 or 10 is admitted by the NCLT, the CoC is formed and the invitation for expression of interest has been issued by the IRP: In the above-mentioned scenarios, the withdrawal procedure largely mirrors the process outlined in (c). However, in such cases, as stipulated under the proviso to the Regulation 30A of the CIRP Regulations, the applicant is required to explicitly state the reasons for seeking withdrawal at this advanced stage of the insolvency process.

Now, it is imperative to discuss the settlement procedure as prescribed in various insolvency regimes across the globe and the key differences with the settlement procedure in the Indian Insolvency regime.

A COMPARATIVE INSIGHT OF THE SETTLEMENT PROCEDURE OF THE SINGAPORE INSOLVENCY REGIME WITH THAT OF THE INDIAN INSOLVENCY REGIME

The Singapore insolvency regime is guided by the Insolvency, Restructuring and Dissolution Act, 2018 (hereinafter referred to as "IRDA")[2], the closest equivalent to withdrawal procedure post settlement as prescribed under Section 12A of the Code read with Regulation 30A of the CIRP Regulations under IRDA is the Part 5 i.e. Scheme or Arrangement (Section 63 to 72 of the IRDA). Under the said provision of IRDA, 2018, if a company proposes or intends to propose an arrangement between the Company and its creditor, the Court, may on an application made by the Company, can restrain the insolvency or winding up proceedings against the Company. Key differences between the settlement procedure in the two insolvency regimes viz. Singapore and India are as follows:

- **Withdrawal vs. Restructuring:** Section 12A of the Code focuses on withdrawing an initiated insolvency application after a settlement is reached between the Company and Creditor. While the Scheme of Arrangement under IRDA are more proactive, allowing companies to propose restructuring plans before formal insolvency proceedings commence.

- **Nature of Proceedings:** As prescribed by the Hon'ble Supreme Court in ***Byju Raveendra (Supra)***, under the IBC proceedings transition from in personam (between applicant and debtor) to in rem (affecting all creditors) post-admission by the NCLT and the withdrawal becomes more complex as the process progresses and involves more stakeholders, reflecting a collective insolvency approach. While the proceedings under IRDA are inherently collective and supervised by the Court from the outset. The role of the creditors and stakeholders is significant but channelled through judicial mechanisms.

- **Role of Creditors:** Under IBC, withdrawal after the constitution of the CoC demands 90% approval, safeguarding collective interests but complicating the process. In contrast, the IRDA allows creditor approval as part of the arrangement scheme, with the Court evaluating fairness to all, including dissenting creditors under Section 70's "cram down" provisions. Meanwhile, under the Indian insolvency regime, if the threshold of 90% is not met, the Adjudicating Authority has no power to reject a withdrawal application filed by IRP.

A meticulous analysis of the foregoing reveals that the IBC emphasizes structured, stage-specific withdrawals with creditor autonomy at its core, particularly through the high voting thresholds imposed by the CoC. In contrast, the IRDA, while offering flexibility and judicial discretion, risks undermining creditor participation by placing excessive reliance on court-driven decision-making. With this foundation established, we now proceed to a comparative examination of the settlement mechanisms delineated under the United Kingdom's Insolvency Regime vis-à-vis those embedded within the Indian Insolvency Regime.

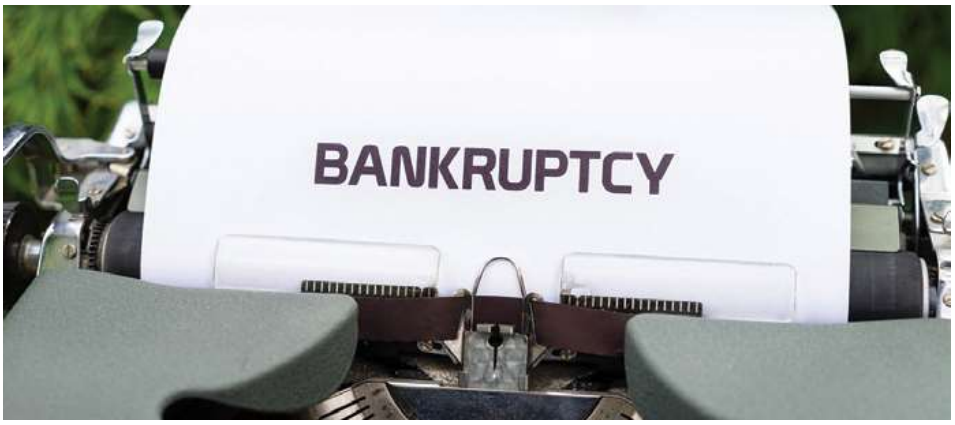
COMPARATIVE ANALYSIS OF SETTLEMENT MECHANISMS: UNITED KINGDOM VS. INDIAN INSOLVENCY REGIMES

The UK insolvency regime, governed by the Insolvency Act 1986 (IA 1986)[3], features the Company Voluntary Arrangement (CVA), akin to Section 12A of the Indian Insolvency and Bankruptcy Code (IBC). The CVA allows a company to propose a debt restructuring plan to creditors, avoiding formal insolvency. Key differences between the CVA under the UK insolvency framework and the withdrawal procedure under the Indian insolvency regime are as follows:

- **Nature of the Process:** The CVA is primarily a debt restructuring mechanism initiated voluntarily by a Company, the CVA remains largely "in rem" in nature i.e. the restructuring process is largely between the Company and all its creditors. Meanwhile, the withdrawal process under the Indian Insolvency Regime transitions from being "in personam" (i.e. Applicant Creditor and the Corporate Debtor/Company) to "in rem" in nature i.e. including all the stakeholders of the Corporate Debtor depending on the stage of proceedings.

- **Timing and Applicability:** The CVA can be proposed by the Company anytime before administration (insolvency resolution under IA 1986) or Liquidation concludes. The CVA is available as a proactive measure for financial distress but not designed for cessation or withdrawal of the insolvency proceedings. In contrast, under the Indian Insolvency Regime, the insolvency proceedings against a company can be withdrawn at any 4(four) stages as described above in the present article.

- **Stakeholder Involvement:** The approval of restructuring as proposed by the debtor Company under CVA requires approval by creditors representing more than 75% in the value of debts, moreover, the rights of the Secured Creditor under the UK insolvency regime cannot be modified without their explicit consent. Although initially the application for initiation of insolvency proceedings against the Corporate Debtor can be withdrawn by the Applicant Creditor, the threshold (i.e. 90% of the voting share of the creditors) becomes



cumbersome once the Application for initiation of insolvency proceedings is admitted by the Adjudicating Authority.

• **Roles of Courts:** In case, the Company proposed an arrangement under CVA in the UK Insolvency regime, the role of courts is limited to ensuring procedural compliances and resolving disputes over implementation. Meanwhile, under IBC, the Adjudicating Authority has a pivotal role in adjudicating withdrawal applications, especially at advanced stages of insolvency proceedings.

The comparative analysis of the UK and Indian insolvency regimes highlights distinct approaches to debt restructuring and withdrawal mechanisms, reflecting unique legal and economic contexts. Both frameworks aim to balance stakeholder interests while enabling financial recovery.

CONCLUSION AND THE WAY FORWARD

In conclusion, the Byju Raveendran judgment provides a key framework for withdrawal and settlement in India's insolvency regime. Comparatively, Singapore emphasizes court-driven restructuring with tools like "cram-down" powers to resolve deadlocks, while the UK promotes voluntary arrangements led by company initiatives and creditor collaboration. These international approaches offer valuable insights for improving India's insolvency framework. By integrating best practices such as flexible creditor engagement, enhanced judicial oversight in complex cases, and court-supervised mediation, India can foster proactive restructuring, minimize the need for formal insolvency proceedings, and achieve a balanced approach that caters to creditors, debtors, and the broader economic landscape. The wider applicability of the provisions of Pre-Packed Schemes at the debtor's initiative as provided under IBC can align the insolvency regime in India to the best available global best practice approach.

However, till the time there is any amendment in the IBC, it remains imperative for distressed entities to adopt a proactive approach towards alleviating the financial distress and to make diligent efforts to avert the initiation of the insolvency proceedings.

[1] *2024 SCC OnLine SC 3032*
[2] *Insolvency, Restructuring and Dissolution Act, 2018*
[3] *Insolvency Act 1986*

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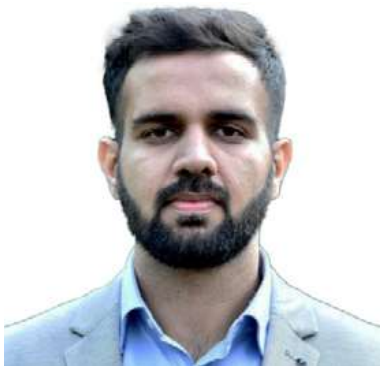

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