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Date : 30.09.2022

**STANDING ORDER NO. 12/2022**

**Subject: Standard Operating Procedure (SOP) for Nodal Officer for Monitoring National Company Law Tribunal (NCLT) cases of Import in JNCH, Nhava-Sheva –reg.**

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 different types of creditors:- Financial Creditors, Operational Creditors and Other Creditors. Each of these has 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(21) 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 timer 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 for the NCLT to make a decision regarding admission or rejection Apart from the timeline given for admission or cases, the Code also provides a strict timeline for the completion of the entire resolution process

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(ii) After the admission of application the NCLT shall cause a public announcement of the initiation of the 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 cut in a 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 percent 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 the corporate insolvency resolution process cannot be completed within 180 days by a 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 the 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 the 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 Interim Resolution Professional IRP with approval by at least 66% of voting by the Committee of Creditors, NCLT adjudicate on the insolvency proceedings. If IRP and Committee of Creditors are not able to arrive at a 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 the liquidation process takes place on account of failures to submit the resolution plan within the prescribed period or contravention of the resolution plan. Consequently, a public statement announcing that the corporate debtor is in liquidation is issued and claims from creditors are sought.

(vii) As per Section 12 A 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 percent voting share of the committee of creditors. Considering that the proceeding is 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 the consent of the majority of creditors, the ultimate authority

to permit to withdraw or not to permit vests with the Adjudicating Authority.

4. It has been observed that the cases pending at NCLT & NCLAT are not being monitored properly and timely action is not initiated in respect of new applications

filed with NCLT/NCLAT. Therefore, in the interest of protection of Government Revenue and to make the entire process smooth and effective, a NCLT/NCLAT cell is being created under the Centralized Legal Cell (CLC), NS-V Commissionerate, to monitor the insolvency proceedings cases under Insolvency and Bankruptcy Code(IBC) 2016 through tribunals i.e NCLT and appellate tribunal NCLAT pertaining to Mumbai Customs Zone-II.

5. NCLT/NCLAT Cell will perform the following functions:-

- l. It will be the responsibility of the NCLT/NCLAT Cell to monitor as well as represent the department in NCLT/NCLAT-related matters.
- m. NCLT/NCLAT Cell will have a database of pending arrears and pending adjudication (pending demand) to identify the cases going to NCLT or NCLAT. The cell should verify the list of new parties going for insolvency from the website <https://www.ibbi.gov.in/public-announcement> (public announcement) on daily basis without fail.
- n. The name of parties going to NCLT/NCLAT should be checked from the database of the pending arrears list and pending demand list. If any such name appears in the arrears list or pending demand list, Cell shall take necessary action to file timely claims against such parties as per Insolvency and Bankruptcy Code, 2016. The cell shall also mention the case number against the party in the database of pending arrears and demand list.
- o. Correspondence with Resolution Professional (RP) to be exchanged about the finalization of the Resolution Liquidation Plan. It is to be ensured that Revenue's claim is appropriately reflected with the report of Corporate Insolvency Resolution Process (CIRP).
- p. NCLT/NCLAT Cell shall take all necessary action to represent the department before Resolution Professional/NCLT/NCLAT to ensure the protection and realization of Government Revenue.
- q. The cell shall be responsible to take any further action if any orders are issued by NCLT/NCLAT with respect to resolution, liquidation and withdrawal of the application.
- r. The cell should verify from [www.ibbi.gov.in/orders/nclt](http://www.ibbi.gov.in/orders/nclt) to check if any orders are issued by NCLT with respect to resolution, liquidation and withdrawal of the application and the same should be updated in the database accordingly.
- s. A monthly list of all such cases is to be submitted by Commissioner, NS-V to the Chief Commissioner's Office.

6. The most important resource for this exercise is to have an updated database of all the pending arrears and pending demands. The said database needs to be updated regularly. It is the responsibility of the Centralized Revenue Recovery Cell (CRRC) to prepare the database of pending arrears. CRRC will share the database with NCLT/NCLAT Cell and it is the responsibility of CRRC as well as NCLT/NCLAT Cell to update the database regularly. In case, NCLT/NCLAT Cell find any party in the pending arrears list that has applied for insolvency under IBC, they will mention the same in the database and inform the AC/DC (CRRC) about the same. The said database needs to be prepared by CRRC within 1 month of issuance of this SO.

7. All the Commissionerates under Mumbai Customs Zone-II will prepare and maintain the database of the pending demands (cases where SCNs have been issued) and share the database with NCLT/NCLAT Cell. The database of pending demands

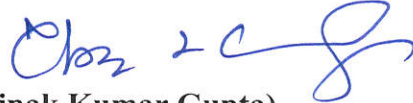
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will be updated by concerned Commissionerates and NCLT/NCLAT Cell regularly. The database of pending demands is to be maintained by each Commissionerates within 1 month from the date of issuance of this SO.

8. As a one-time exercise, every Commissionerate shall identify the pending demand cases pertaining to their respective Commissionerate which have gone to NCLT for resolution plan or cases where resolution have been initiated or finalized. Further, as a one-time exercise, CRRC should also identify cases from the pending arrears list which have gone to NCLT for a resolution plan or cases where resolution have been initiated or finalized. Such list should be submitted by concerned Commissionerates to NCLT/NCLAT cell within one month of issuance of SO for taking necessary action.

9. Any difficulties faced or doubts arising in the implementation of this Standing Order may please be brought to the notice to the undersigned.

10. This issues with the approval of the Chief Commissioner, Mumbai Customs Zone-II.



**(Dipak Kumar Gupta)**

COMMISSIONER OF CUSTOMS (NS-I)

JNCH, Nhava Sheva