

INSOLVENCY AND BANKRUPTCY CODE

CA. Pravin Navandar, CA. Mukund Mall

(IBBI) issued a circular on 15-11- 2021. This circular clarified that there is no requirement to obtain a 'no objection' or 'no dues' certificate from the Income Tax department during the voluntary liquidation process under the IBC.

Regulation 14 of, insolvency professional to make a public announcement within five days, calling for submission of claims by stakeholders within 30 days. Obligate all financial creditors, operational creditors (including government), and other stakeholders to submit their claims within the specified period. If the claims are not submitted in time, the corporate person may get dissolved without dealing with such claims, and the claims will stand extinguished.

The IBBI noticed that liquidators sought to obtain a 'no objection' or 'no dues' from the Income Tax department even after providing an opportunity for filing claims. In contrast, the Code does not envisage the same. In that regard, the IBBI invited attention to Section 178 of the Income Tax Act, which requires liquidators to fulfill certain tax-related requirements, and explicitly states that provisions of the Code will override effects from Section 178 in case of any inconsistency between them.

Therefore, the IBBI clarified that there is no need to obtain 'no objection' or 'no dues' from the Income Tax department in the voluntary liquidation process.

Our Comments :

The IBBI rightly clarified that the Code and the Regulations do not envisage obtaining a 'no objection' or 'no dues' certificate from the Income Tax department in the voluntary liquidation process. What the Code expressly expects from creditors is to submit their claim in a time-bound manner. If the claim is not submitted, it shall stand extinguished.

We believe that the whole crux of the Code is a time-bound process it was witnessed that the process of applying and obtaining a 'no objection' or 'no dues' certificate from the Income Tax department consumes substantial time, in spite of repeated reminders and request NOC was not issued. However, in case of foreign subsidiaries, at the time of final remittance to shareholder's, the banks may insist for Income Tax No Dues.