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Promoters Under Scrutiny: A Case Study For Examining The Criminal Liability In Insolvency Proceedings

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Abstract
This article analyses the fallout of promoter liability in insolvency cases, focusing on Delhi NCR to highlight that promoters need to bear accountability and transparency in corporate governance. Case studies: Lalit Mishra & Ors v/s Government of NCT Delhi In the matter of Sharon Bio Medicine Ltd. and Angel Promoters Pvt, In the shadow of Bhushan Steel Ltd., the article demonstrates, how promoters are really in between this puzzle before IBC. While this case is concentrated in the real estate industry, parties on both sides of deals are aware that fraudulent activity and undervalued transactions can be prohibited if due diligence requirements to prevent mishandled closings have system controls for properly preventing widely material overpay statements. The results imply that bolstering the enforcement aspect of promoter liability, in conjunction with setting up dedicated NCLT benches, can help speeding the resolution process and safeguard economist interests. The article ends by providing some future outlook on the forthcoming restructuring of Indian insolvency law and suggests coming reforms to hold promoters more accountable through a mechanism that would bolster ease in India's IBC framework.
Keywords: Promoter liability, insolvency proceedings, Delhi NCR, Insolvency and Bankruptcy Code, National Company Law Tribunal.

Introduction

In the real estate, corporate insolvency cases have been surged over last few years in Delhi's National Capital Region (NCR). In Noida and Gurgaon alone, over 50 insolvency cases had been filed against developers before the National Company Law Tribunal (NCLT) as of this year. The high-stakes, big-ticket names which have now fallen off are: Jaypee's Wish Town, Supertech and the its controversial twin towers in Noida (where construction was stalled late last year); Amrapali across various projects. Promoters' role and liability in these insolvency cases have been under scanner. Sometimes the founders become promoters. That accountability must extend to when their actions and inactions take down a company. The IBC also has in place a mechanism to investigate the conduct of promoters and if found guilty, they can be held responsible with stiff penalties both civil or criminal. But promoter liability is difficult to implement in practice. Promoters are frequently known to absolve themselves of accountability by taking advantage of grey areas in the law or dilly-dallying on proceedings. The max impact stakeholders who have little representation in the resolution process are homebuyers. Amendments to the IBC are being weighed in, that empower homebuyers and while the specific legal frameworks vary across jurisdictions, the common theme is the recognition of the need to hold promoters and directors accountable for their actions or inactions that contribute to a company's insolvency. By imposing civil and criminal liability, these laws aim to deter directors from engaging in misconduct and ensure that they prioritize the interests of creditors when a company is in financial distress. To summarize, the study and analysis of promoter liability in insolvencies cases within the Delhi NCR region indicates a vortexes nexus amidst corporate governance regulations legal frameworks stakeholder interests. A study of notable case Laws and Case Studies for example: Lalit Mishra & Ors. vs Sanjay Verma, sharon bio medicine ltd. & ors vs angei promoters pvt.continue; Limited has once again highlighted the intrinsic importance of promoters to their corporate entities financially. The results underscore not only the strength of such a resolution process but also capability to put it through, using insolvency and bankruptcy proceedings (IBC), for holding promoters accountable. The article highlights the significance of blocking fraudulent and underpriced transactions especially in the area of real estate where there is a lot at stake for property buyers as well as creditors. After the experience so far, it is expected that NCLT will evolve into an adjudicatory body and by way of establishing special benches for insolvency matters be able to expedite the resolution process in a more effective manner. It may enable faster adjudication and hopefully make promoters more accountable in the conduct of their business, resulting in a cleaner process. The road to come looks good for promoter liability in Delhi NCR insolvency and with requisite changes being proposed under the IBC from time-to-time, it appears only enhancing further owing to clear demarcation of duties whilst giving protection robust enough creditors. While this transition is being affected, the regulators; creditors and promoters must participate in a healthy discourse to ensure that insolvency framework does not end up becoming a regret on failures but serves as an instrument of promoting ethical corporate governance by disbarring reemergence of flawed economic practices legislate sustainability. Promotion of a culture based on accountability and transparency can go in long way to achieve the purpose insolvency resolution law is intended for, thereby contributing towards economic well-being within the region.

Objective

The research intends to address the nitty-gritties of Promoter liability in bankruptcy cases specifically in Delhi NCR Region and trace legal precepts enshrined under insolvency & Bankruptcy Code (IBC). It would try to examine certain pivotal case laws such as Lalit Mishra & Ors. M/s Sharon Bio Medicine Ltd. And M/ S Angel Promoters Pvt. Ltd., case which sets an example on how promoter actions can have use in insolvency proceedings. This article also aims to throw some light on curbing fraudulent and undervalued transactions, evaluating the role played by NCLT benches thereby cogitating over forthcoming trends in accountability for promoters in ever-evolving IBC regime

Research Methodology

For this case study, the research methodology is comprehensive analysis of promoter liability in insolvency cases in Delhi NCR. The research is mainly based on secondary data that is collected from various sources like legal documents, case law, and the reports of institutions such as Insolvency Bankruptcy Board of India (IBBI), National Company Law Tribunal (NCLT). This will incorporate a review of past case studies and future judicial pronouncements or legislative frameworks for insolvency. Qualitative analysis: By investigating into research articles, legal journals and news reports on IBC promoter liability implications for a general approach to arrive qualitative data. This analysis will further in understanding the background of insolvency proceedings and issues faced by stakeholders.

Legal Framework

Promoter Liability in Insolvency Cases The law governing promoter liability in insolvency cases is defined primarily by the Insolvency and Bankruptcy Code (IBC) that was enacted on May 28, 2016. The Bill includes a number of important provisions that are relevant to the duties and liabilities, if any.

Section 29A is one of the major provisions which bars some persons including promoters form submitting resolution plans. This is to avoid promoters who caused the financial distress of companies from regaining control over their entities through the resolution process. Further, the IBC bars transactions under Sections 43 to 51 that means a transaction which if not concluded is voidable as per section given earlier but once insolvency resolution process has commenced - no such conclusion shall be allowed and procurement professional can challenge any preferential or undervalued transaction made by corporate debtor before commencement of Insolvency Proceedings. This is important particularly where promoters have committed actions that involves siphoning specific assets available to the creditors.

Key provisions of the Insolvency and Bankruptcy Code (IBC) related to promoter liabilitySection 29A: It debar those persons which are expressly mentioned under this section (which includes promoters of defaulting companies) from submitting resolution plans. This is aimed at ensuring that the promoters who have caused financial distress to a company

do not come back through resolution process. This prevents the culprits of insolvency from benefiting by proposing a resolution plan at reduced rates.
Sections 43 to 51: It allows resolution professionals can challenge preferential, undervalued or fraudulent transactions. Especially when this promoter has indulged in further enriching himself, thereby scribing the enterprises asset value down even before insolvency proceedings. Rules of that kind secure the interests of creditors by making it possible for assets which were disposed without legal cause to be demanded back.
Section 32A: It is clarified that the corporate debtor shall not be prosecuted against certain offenses after approval of a resolution plan, but such immunity does not extend to promoters or persons in charge of an corporate debtor. Even during the period of insolvency, they are not absolved from any offense under other laws which can be dealt with by such related enforcement agencies further enforcing accountability on part of promoters.

Doctrine of attribution and its application in insolvency cases. sga-mhgw-ixc
The doctrine of attribution is a common law legal principle that allows the acts and declarations - but not merely these by themselves alone, which such are also hearsay if provided to prove those circumstances - of an individual or organization with control over a corporation to be attributed to the corporate entity. After insolvency, this allows to personally recover funds from promoters in case of fraud or misconduct leading to the same. The principle has been laid that the promoters cannot shy away from their liabilities by taking cover under the veil of corporate structure, hence they would be responsible for all decisions which have a bearing on departmental finance. To sum it up, IBC is a stringent and serious law to check the extent of promoter accountability in insolvency cases with necessary checks and balances so that not only malaise behavior can be curbed but also creditors interest shall prevail. Attribution doctrine adds strength to this accountability, which ensures that promoters cannot escape the liability associated with their inconsiderate actions.

Case Studies
The resolution plan as approved by National Company Law Tribunal (NCLT). The promoters submitted that under the resolution plan, which relieved corporate debtor from payment of dues on account or offered to pay in reduced amount than what was due and payable towards their personal guarantee debts, they were discharged by way of writedown/benami. They argued that their exclusion from the resolution plan was discriminatory and a violation of their rights. This case therefore once again underlines the push and pull between creditors' interests versus promoter's rights, more so while considering the liabilities of corporate guarantors in resolution plans.

Lalit Mishra & Ors. vs. Sharon Bio Medicine Ltd. (2018)
Facts of the case: In the case of Lalit Mishra & Ors. In Sharon Bio Medicine Ltd., the dispute arose in relation to insolvency proceedings of Sharon Bio Medicine, where promoters challenged the resolution plan as approved by National Company Law Tribunal (NCLT). The promoters submitted that under the resolution plan, which relieved corporate debtor from payment of dues on account or offered to pay in reduced amount than what was due and payable towards their personal guarantee debts, they were discharged by way of write down/benami. They argued that their exclusion from the resolution plan was discriminatory and a violation of their rights. This case therefore once again underlines the push and pull between creditors' interests versus promoter's rights, more so while considering the liabilities of corporate guarantors in resolution plans.
NCLAT's ruling on promoter liability
The National Company Law Appellate Tribunal (NCLAT) has also approved the NCLT's decision saying that the resolution plan did not unfairly prejudge a group of assenting financial creditors being promoters. Pronouncing its final order, the NCLAT had said that since it was found in the investigation report of SFIO probing alleged financial irregularities by Bhushan Steel and Power Ltd (BSPL), Usha Martin company too could not be given any preferential treatment for resolution. The court clarified that the personal guarantees were co-extensive with the obligations of the borrower and therefore held valid terms under a resolution plan. Such a verdict echoed the policy which subjects promoters to actions for putting companies into insolvency, not permitting them to derive any economic benefit from the resolution while creditors end up suffering.

Angel Promoters Pvt. Ltd. (2019)
Angel Promoters Pvt Ltdin 2019 when financial creditors filed an application. Ltd., invoking the provisions of Section 7 of the Insolvency and Bankruptcy Code (IBC), on account default in a one-time settlement policy with respect to significant

loans amounting over ₹3.34 crores due from this corporate debtor. Creditors originally provided the loan with an understanding that it had to be repaid within a month on demand but claimed they did not receive their money. Although creditors tried to negotiate a resolution and an earlier, settlement agreement was even reached between the company (and its ultimate parent) but not actioned in accordance with it. This in turn resulted in the creditors hitting out with insolvency petitions on the ground that gross mismanagement had been committed by all stakeholders to fulfil their liabilities and it was time for NCLT (National Company Law Tribunal) intervention so they are not shortchanged any further

NCLT's emphasis on promoter responsibilities

The National Company Law Tribunal (NCLT)stressed the onus of promoters in insolvency process involving Angel Promoters Pvt. Ltd. Pointing out that promoters are meant to work for the financial health of a company and in the interest of creditors, it further said. The promoters are equally responsible for the defaults of the company, and they cannot escape from answering to this default in any manner…they have brought issues over some loan's due diligence or oversight on their part leading to financial distress. The ruling by the tribunal upheld that promoters cannot be justified over creditors and they need to stick to their mandate, thereby setting as a reference point an appropriate measure of accountability for Promoters in case of such insolvencies. The focus on promoter accountability is being seen as a way of discouraging ill practices and ensuring cleaner governance in the corporate sector.

Implications of Promoter Liability

Promoter liability in insolvency cases: Impact on India Incerts The Business Landscape It sets out plainly for the first time that promoters will be responsible for actions and decisions by them, which lead to a company landing in financial difficulties. That accountability is a check on incompetence and promotes the primacy of promoters to think long term sustenance of their businesses. Second, the fear of insolvency proceedings against them has forced many promoters to clear their dues and not default. The promoters are also getting the message, leading to a surge in out-of-court settlements by promoters who realise what insolvency can lead for their firms.

Challenges in enforcing promoter liability

Though there is a legal framework and several court judgements, the enforcement with regard to promoter liability in insolvency cases remains onerous. Exhibit A - the promoters exploiting legal loopholes and processes to successfully delay proceedings through appeals, litigation is one of the main hurdles in getting anything done. Corporate structures create complexity, and shell companies are commonplace in hiding assets that have been skimmed or siphoned off at less than their true value. Further, the non-availability of homebuyers and retail investors largely within the Committee of Creditors (CoC), Mankame noted that many times their interest may take a back-seat in this resolution process. To tackle these challenges a threefold approach is required - legislative reforms, stronger investigative agencies and wider participation of all stakeholders in insolvency proceedings.

Special Benches Needed for Insolvency Cases

In view of the enormous increase in complexity and volume of insolvency cases, there has been a constant demand for creation of special NCLT benches which would deal with nothing but insolvencies. With existing benches handling multiple corporate matters at the same time, delays set in and this not only leads to efficiency but could also defeat the purpose of a swift resolution. More specialized benches would provide for specialization and allow judges and members to better develop an expertise in the law of insolvency, as well as related financial matters. This specialization has the potential to improve the quality of decisions and efficiencies, which in turn might be for the creditors or debtors as well as economy at large. In addition, specialized benches would act as a panacea to the need of addressing sector-specific issues - like in case of real estate industry - and provide solicited apportionment ensuring that all stakeholders receive timely relief with effective conclusions.

Role of NCLT Benches

Current status of NCLT benches in Delhi NCR Multiple benches have been set up throughout India by the National Company Law Tribunal (NCLT), with a major part in Delhi NCR itself. The region houses the Principal Bench and other benches specialized in insolvency and corporate matters. At present, the Delhi bench of NCLT has six benches - besides one main at CGO Complex on Lodhi Road. All of these benches are equipped with the members being a blend of judicial as well as technical each specialized in corporate law and insolvency proceeding. The presence of NCLT in Delhi NCR is all the more important considering large number of insolvency cases and particularly as real estate sector faced problems whereby many corporate are suffering financial distress. The introduction of this cluster of benches is expected to help expedite resolutions and enhance the ease of access to justice for creditors and stakeholders in insolvency cases.

Need for specialized benches for insolvency cases

In view of the enormous increase in complexity and volume of insolvency cases, there has been a constant demand for creation of special NCLT benches which would deal with nothing but insolvencies. With existing benches handling multiple corporate matters at the same time, delays set in and this not only leads to efficiency but could also defeat the purpose of a swift resolution. More specialized benches would provide for specialization and allow judges and members to better develop an expertise in the law of insolvency, as well as related financial matters. This specialization has the potential to improve the quality of decisions and efficiencies, which in turn might be for the creditors or debtors as well as economy at large. In addition, specialized benches would act as a panacea to the need of addressing sector-specific issues - like in case of real estate industry - and provide solicited apportionment ensuring that all stakeholders receive timely relief with effective conclusions.

Expediting the resolution process through dedicated benches

Having dedicated benches should lessen the delays that are being currently witnessed in resolution timelines of these insolvency proceedings. These admission benches will be set up in National Company Law Tribunal (NCLT) which the Indian government is to plan soon for making easy at the time of initiation process of Corporate Insolvency Resolution Process or CIRP. These benches will decide whether to admit or reject applications in 14 days, as stipulated by the Insolvency and Bankruptcy Code (IBC). This step is intended to clear the pendency of cases as early possible and get on with the process, thus reducing asset erosion due to delay. It is expected that establishment of dedicated admission benches will bring more efficiency to the NCLT as members can give exclusive attention only on matters relating to admission. This specialization will ensure that the trial of CIRP is started timely & SOPs are kept up substantially, for all partners to be specific financial and operational creditors. Furthermore, an expedited resolution process can act as a safeguard to prevent loan defaulters from using the judiciary system to stay their obligations. All in all, a positive development to reinforce the ease of doing business here as attempt is made towards fastening insolvency resolution framework in India.

Preventing Fraudulent and Undervalued Transactions

Having dedicated benches should lessen the delays that are being currently witnessed in resolution timelines of these insolvency proceedings. These admission benches will be set up in National Company Law Tribunal (NCLT) which the Indian government is to plan soon for making easy at the time of initiation process of Corporate Insolvency Resolution Process or CIRP. These benches will decide whether to admit or reject applications in 14 days, as stipulated by the Insolvency and Bankruptcy Code (IBC). This step is intended to clear the pendency of cases as early possible and get on with the process, thus reducing asset erosion due to delay. It is expected that establishment of dedicated admission benches will bring more efficiency to the NCLT as members can give exclusive attention only on matters relating to admission. This specialization will ensure that the trial of CIRP is started timely & SOPs are kept up substantially, for all partners to be specific financial and operational creditors. Furthermore, an expedited resolution process can act as a safeguard to prevent loan defaulters from using the judiciary system to stay their obligations. All in all, a positive development to reinforce the ease of doing business here as attempt is made towards fastening insolvency resolution framework in India.

Measures to identify and avoid fraudulent transactions by promoters

Stringent due diligence processes: All transactions must be above board before insolvency, meaning that clear records of all financial dealings should have taken place and value is billed an atma market rate.

Stronger Regulatory Presence- frequent inspections and investigations of companies hinting financial distress by regulatory entities. Allow creditors to dispute suspicious transactions: Enable creditors to fight irregular digital transactions with a decree through the Insolvency and Bankruptcy Code (IBC) in order to prevent scammers. Building accountability and transparency, Build an institution- wide culture of transparency, where fraud does not get a chance to sustain.

Importance of preventing undervalued transactions in real estate insolvency cases

Numerous actions may be taken to check fraud transactions by the promoters in order to increase transparency and accountability. Whilst there is much that can be done to improve the reporting and regulation in this area, one obviously effective route would be by introducing more robust due diligence processes which must pass regulatory scrutiny before insolvency. This wide spectrum includes anything from keeping detailed logs and records of monetary transactions to handling all such dealings at the average market value. Moreover, regulatory bodies can step up their oversight by performing regular audits and investigations in the case of financially distressed companies. Meanwhile, the Insolvency and Bankruptcy Code (IBC) can be used by creditors to question suspicious transactions which will serve as a deterrent for fraudulent activities. However, a culture of accountability and transparency is an effective way to help diminish the probability that fraudulent transactions will take place.

Prevent Undervalued Transactions in Real Estate Insolvency Cases More Efficiently

Protection of Creditors and Distribution Rules in Real Estate Insolvency Cases: It is no less important to avoid undervalued transactions committed by the debtor under normal conditions so that shareholders receive their shares. This involves getting around the shareholder value, by stripping those assets of companies and make them recovery process. In the case of real estate, where properties often are worth so much money to homeowners and lenders-financial institutions such as banks could lose vast amounts of moneys due actions like these. Identifying & recovering under-valued transactions: All these stakeholder can take necessary corrective actions to discover any kind of undervaluation which eventually will help in maintaining the underlying real-value, thus ensuring proportional distribution among all creditors:- By restraining transaction-at-undue price,! This protects the interests of creditors and enhances investor confidence in, and respect for our insolvency regime that benefits a sound business environment

Conclusion

While the specific legal frameworks vary across jurisdictions, the common theme is the recognition of the need to hold promoters and directors accountable for their actions or inactions that contribute to a company's insolvency. By imposing civil and criminal liability, these laws aim to deter directors from engaging in misconduct and ensure that they prioritize the interests of creditors when a company is in financial distress. To summarize, the study and analysis of promoter liability in insolvencies cases within the Delhi NCR region indicates a vortexes nexus amidst corporate governance regulations legal frameworks stakeholder interests. A study of notable case Laws and Case Studies (for example: lalit mishra & ors. vs sanjay verma,(common) sharon bio medicine ltd. & ors vs angei promoters pvt.continue); Limited has once again highlighted the intrinsic importance of promoters to their corporate entities financially. The results underscore not only the strength of such a resolution process but also capability to put it through, using insolvency and bankruptcy proceedings (IBC), for holding promoters accountable. The article highlights the significance of blocking fraudulent and under-priced transactions especially in the area of real estate where there is a lot at stake for property buyers as well as creditors. After the experience so far, it is expected that NCLT will evolve into an adjudicatory body and by way of establishing special benches for insolvency matters be able to expedite the resolution process in a more effective manner. It may enable faster adjudication and hopefully make promoters more accountable in the conduct of their business, resulting in a cleaner process. The road to come looks good for promoter liability in Delhi NCR insolvency and with the requisite changes being proposed under the IBC from time-to-time, it appears only enhancing further owing to clear demarcation of duties whilst giving protection robust enough creditors. While this transition is being affected, the regulators; creditors and promoters must participate in a healthy discourse to ensure that insolvency framework does not end up becoming a regret on failures but serves as an instrument of promoting ethical corporate governance by disbarring reemergence of flawed economic practices legislate sustainability. Promotion of a culture based on accountability and transparency can go in long way to achieve the purpose insolvency resolution law is intended for, thereby contributing towards economic well-being within the region.

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