

RIPPLE EFFECT OF CIRP ON PERSONAL INSOLVENCY

The term 'entrepreneur' often confers up images of experienced, successful individuals who have arrived at that point in life where they are ready to take challenges.

Once upon a time in a small city of Khandwa, there was a man named Hasmukh Patel who had big dreams of being a successful entrepreneur. Hasmukh belonged to a small family and was first in the family to start his own business. He started a small company called "NuShell Hardware Pvt. Ltd." ('*NuShell Hardware*') selling nuts and bolts and was a director of a company. Hasmukh worked hard, offered great products, and treated his customers well. Hasmukh was a graduate and had a decent knowledge about the market.

He started his business at local level and built his own networking showing the quality of work. His business did really well, and soon a big company called Praniti Engineering Ltd. asked him to supply his products for their manufacturing. It was a big opportunity for Hasmukh as the tenure of deal was five years.

Hasmukh was happy about growing his business and signed a good deal with Praniti Engineering Ltd. for supply of tools for their projects. This agreement meant more money and the chance to take NuShell Hardware to new levels.

In the beginning, things seemed promising. Praniti Engineering Ltd. flourished, attracting investors and expanding its operations. Hasmukh took pride in the role he played in helping Praniti Engineering Ltd. achieve his entrepreneurial dreams and formed a very cordial bond with the people in the management of the Praniti Engineering Ltd. However, the winds of fortune changed, and soon Praniti Engineering Ltd. faced unforeseen challenges, the pandemic spread rapidly as the novel coronavirus, known as COVID-19, made its way across the globe, affecting millions of lives. The market shifted, competition intensified, and the company found itself struggling to meet its financial obligations.

As the financial troubles deepened, Praniti Engineering Ltd. defaulted in making payment to Hasmukh for the goods supplied by his company. The news came as a shock to Hasmukh, who never imagined that the venture he had supported so eagerly would face such a fate. Eventually Praniti Engineering Ltd. entered into Corporate Insolvency Resolution Process (CIRP) under the Insolvency and Bankruptcy Code, 2016 (IBC).

Things went wrong when Praniti Engineering Ltd. faced financial difficulties and went into CIRP which resulted in default on their payments to NuShell Hardware. Hasmukh, who had put a lot of money into his business expecting a steady income from the contract, now faced a difficult situation.

Due to non-payment by Praniti Engineering Ltd., it became harder for him to manage his finances. He had borrowed money for expanding NuShells Hardware, also he had taken home loan and a car loan. He was guarantor in some of the loans taken by NuShells and therefore the impact was huge upon him.

With Praniti Engineering Ltd. going under CIRP, the money expected to receive stopped coming in, and Hasmukh started to default his loan payments. Banks started sending him

notices, asking him to pay EMIs and clear the overdue amounts. Hasmukh tried his best to explain the tough situation he was in, but nobody was there to listen his voice.

As the process of CIRP progressed, IRP sought for claims from the creditors of Praniti Engineering Limited ('Corporate Debtor'). Hasmukh Patel being one of the operational creditors falling under the definition of operational debt as prescribed under Section 5(21) of IB Code, 2016 filed its claim under Form-B. Hasmukh Patel being unaware of the process of CIRP met with an advisor who further explained the process of CIRP. Hasmukh Patel had hopes of receiving the debt amount under CIRP as it was told to him that CIRP is a process to revive the Corporate Debtor and while reviving it takes care of interest of all the stakeholders. He was happy and decided to be patient while the process was going on.

As time passed, the situation with Hasmukh escalated when the bank, acting within its legal rights under the SARFAESI Act, 2002 (Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act), declared loan of Hasmukh as Non-Performing Assets (NPA). The NPA was not only limited to business loans but extended to car and home loans as well. The bank initiated the process of seizing and selling the assets to recover the outstanding amounts. He further received demand notice as guarantor of the loans taken by the Company.

Hasmukh was caught up in a huge legal fight, trying hard to save his business, home, and car. The once successful NuShell Hardware was now struggling with financial problems, and Hasmukh's dream of being a successful entrepreneur was slipping away. As the legal battle moved further, Hasmukh had a tough time with stress, lack of sleep, and constant pressure from creditors. Being a responsible father and a loving husband, Hasmukh tried everything so that his family lives happily without any burden coming on to their shoulders.

One day, he receives a news from the RP of Corporate Debtor that a resolution plan for Praniti Engineering Limited is approved by Committee of Creditors and thereby a new company shall takeover the business of Praniti Engineering Limited. Hasmukh felt happy and thought that he would get his money back and further continue his business relationship with the new company.

However, to the utter shock of Hasmukh, he came to know that operational creditors are paid 2% of entire resolution plan. The amount that Hasmukh was going to receive was peanuts in terms of monetary compensation. Hasmukh broke and thought that this entire process of CIRP has revived the company by paying less/haircut amounts to its creditors. Hasmukh thought that the process is only beneficial to the Company and other stakeholders get less/nil amount. Hasmukh's business was shut and he could not bear the loss from Praniti Engineering Ltd.

The 2% payout felt like peanuts and a cruel joke played by destiny on Hasmukh's aspirations and hard work. Anger and frustration welled up within him as he navigated the intricacies of the insolvency process, struggling with the harsh reality that the system, which was meant to provide resolution and fairness, had seemingly failed him. The financial crunch extended beyond the professional realm, affecting Hasmukh's personal life. He struggled to make ends meet, facing the painful decision of laying off loyal employees who had stood by him during the best and worst of times. Hasmukh's family, once protected from the hardships of the business world, now suffering the pain that they never imagined.

In the middle of all the financial problems and legal fights, Hasmukh didn't know what to do. He sought advice from a consultant who suggested exploring the option of personal insolvency

proceedings under Section 94 of the IB Code, 2016 as guarantor of Nushell. The consultant explained merits/demerits of the entire process which convinced Hasmukh as fruitful.

Hasmukh thought this might help him and decided to explore this option to find a way out of his financial woes, Hasmukh approached appropriate authority for initiating personal insolvency under the IB Code, 2016 and filed an application under Section 94 of IB Code, 2016. As soon as application was filed, interim moratorium was initiated during which all legal actions against Hasmukh including proceedings before debt recovery tribunal, were temporarily stayed. This gave him a sigh of relief and revived his hope to come out from financial stress.

And so, Hasmukh's journey through the personal insolvency process under the IBC became a turning point in his life, teaching him resilience, financial responsibility, and the importance of seeking legal avenues for a fresh start.

After hearing Hasmukh personal insolvency application authority admitted his petition and appointed an Resolution Professional (RP) under Section 100 of IB Code, 2016 to oversee Hasmukh's financial affairs during the insolvency process and on the request of the resolution professional, NCLT issued instructions for the purpose of conducting negotiations between the debtor and creditors and for arriving at a repayment plan. The appointed RP took control of Hasmukh's assets to prevent any further deterioration and moratorium period under Section 101 IB Code, 2016 was initiated, during which all legal actions against Hasmukh, and pending legal actions or proceedings in respect of Hasmukh's debts were stayed. Then appointed RP collected claims of Hasmukh's creditors and formed a Committee of Creditors (CoC) to negotiate and vote on repayment plans.

Appointed IRP in accordance with the moratorium period, froze all the assets of the Hasmukh's, excluding a few items specified under Section 79(14) of the IB Code, 2016, such as some family ornaments, his ancestral home in the village, a few essential items of furniture, and a limited amount of cash.

While all of Hasmukh's assets were frozen during this moratorium time, it caused more problems. He couldn't get money to pay for his daughter's wedding, making what should've been a happy time kind of sad. The financial problems and not knowing what would happen next really stressed out him. On top of that, the Creditors didn't really care about his tough situation and kept bothering him. All of this has affected Hasmukh's mental health, making things even harder for him.

The CoC consisted of representatives from financial institutions, each having a say in the decision-making process. Hasmukh, in consultation with the appointed resolution professional, prepared a repayment plan containing a proposal to the creditors for restructuring of his debts or affairs. The plans outlined how they intended to revive Hasmukh's financial situation and repay the creditors. The CoC diligently reviewed and discussed the proposed repayment plan, considering the best interests of all stakeholders. However, CoC faced difficulties reaching a consensus on a workable repayment plan. The diverse interests of creditors and the complexities of Hasmukh's financial situation made it challenging to the stakeholders to reach on a consensus repayment plan. Ultimately Hasmukh's repayment plan faced rejection due to financial impracticality and lack of creditor's approval. Hasmukh felt the weight of these failures as his hopes of a successful resolution slipping away.

As the personal insolvency resolution process of Hasmukh was failed, Hasmukh filed an application for bankruptcy and case transitioned from insolvency to bankruptcy. This meant that Hasmukh's assets would be liquidated to repay creditors to the extent possible.

The Bankruptcy Trustee assigned to Hasmukh's case, took charge of the situation. In accordance with the procedure provided under the IB Code, 2016, Bankruptcy Trustee initiated the process of assessing Hasmukh's assets to determine the extent of his liabilities. As the cold hands of financial scrutiny reached every corner of Hasmukh's life, the Bankruptcy Trustee made the grim decision to seize his personal assets to satisfy the creditors.

Hasmukh, who had worked tirelessly to build a life for himself and his family, found his world unraveling. His cherished home, a symbol of his hard work and dedication, was marked for seizure. The walls that echoed with the laughter of his children now bore the weight of an impending loss. As the news spread the people who were once claimed to be well-wishers, started behaving like strangers and started whispering among themselves, whispers turned into judgments. Friends and acquaintances who once admired Hasmukh now questioned his integrity, unaware of the storm that had affected his life entirely. Hasmukh, burdened not only by financial misery but also by the weight of public scrutiny, found himself isolated in his struggle.

With his assets seized, Hasmukh faced the intimidating task of starting everything afresh. The once vibrant entrepreneur now navigated a landscape of uncertainty, filled with the emotions of losing not just his business but also the very foundations of his personal life. Hasmukh's assets, including his business assets and personal belongings, were sold, and the proceeds were distributed among the creditors in accordance with the priority set by the IB Code, 2016. The NCLT issued a bankruptcy order, formally declaring Hasmukh bankrupt. While this marked the end of his insolvency journey, it also meant a challenging period of financial reconstruction and rebuilding for Hasmukh. Now, instead of being rich, Hasmukh had no money at all. It was tough for him and his family because they lost their house and everything they owned. Life became really hard to survive.

Due to moratorium kicking in, Hasmukh's problems escalated. He couldn't get money to pay for his daughter's wedding, making what should've been a happy time kind of sad. Hasmukh's state was known to entire market. His credibility in the market was marked as low and his CIBIL score was so poor that none of the banks/financial institutions extended any kind of loan facility. The financial problems and not knowing what would happen next really stressed Hasmukh out. His reputation in the market fell to the extent that vendors that were working with him stopped trusting him. Further, his own relatives were refraining from extending any help.

Hasmukh though believed the process to be beneficial for him turned out to be a failure which made him disappointed and heartbroken. The entire process from insolvency to bankruptcy took almost an year which further deteriorated the conditions of Hasmukh and his family. The only thing that Hasmukh achieved from entire process was relief from all the litigations and day to day calls from the financial institutions and banks.

As time passed, Hasmukh, though facing the consequences of bankruptcy, was determined to learn from his experiences. The bankruptcy process provided him with a clean slate, and he focused on rebuilding his life and financial stability with a newfound sense of resilience and caution. Hasmukh's story, though marked by the failure of personal insolvency, became a testament to the complexities of financial recovery under the IB Code, 2016. It highlighted the

importance of seeking professional advice, strategic planning, and adaptability in the face of unforeseen challenges.

In the midst of adversity, with the support of his family and friends Hasmukh discovered a reservoir of strength within himself and he determined to come out from such financial crunch. His family and friend not just offered empathy but also practical assistance to help him rebuild. As the days turned into weeks and weeks into months, Hasmukh embarked on a journey of rejuvenation. He explored new avenues, acquired new skills, and, with unwavering determination, emerged from the shadows of personal insolvency stronger than ever before.

Though Hasmukh journey from sailing the sea high to sinking of the ship was difficult, he didn't give up. He decided to start afresh. With his family's help and savings he could still manage the state of affairs. Hasmukh went back and started his journey from where it all began. The journey was tough, but Hasmukh did not give up. Though he faced challenges but made smart choices and learned from the past. As time passed, NuShell Hardware got back on its feet, and Hasmukh Patel, against all the tough times, rose from being bankrupt to build an empire.

After becoming successful businessman, Hasmukh was called in an interview by a TV channel where he iterated his story. He quoted one line for all the entrepreneurs who desired to become a successful/renowned businessman. He said;

“Sometimes we get frustrated, sometimes we get hurt, but if you see the outline of entire story, I never gave up. I always believed in a positive approach towards any condition which came across either during my life or either in my business. To all the entrepreneurs seeking to be successful, my advice would be to believe in carpe diem i.e seize the day because success can come at any age.”

In the end interest of all stakeholders were taken care of which is the ultimate objective of the Code.