



AZB & PARTNERS
ADVOCATES & SOLICITORS

IBC UPDATE

SHAREHOLDERS' APPROVAL NOT REQUIRED FOR A RESOLUTION PLAN

The Ministry of Corporate Affairs ('MCA') released a circular last evening, clarifying a significant issue under the Insolvency and Bankruptcy Code, 2016 ('IBC').

If a corporate action is contemplated in a resolution plan approved by the National Law Company Tribunal ('NCLT') stakeholders have queried whether the existing shareholders need to approve such corporate action (where required under the Companies Act, 2013 ('CA 2013') or any other law). Such corporate actions could include issuance of further shares, a merger/demerger or a slump sale.

Industry participants and stakeholders have considered this issue critical because a resolution plan approved by the committee of creditors and the NCLT could fail to obtain shareholders' approval. Such failure would raise difficult legal questions. This includes whether the relevant resolution plan can be implemented thereafter, whether the relevant company may fall into liquidation, and what consequences may ensue for the shareholders themselves for failure to approve a plan which is supposed to be binding on them. These unanswered questions caused significant unease for potential investors (who feared that a seemingly completed acquisition may unravel) and the committee of creditors (who feared that a seemingly completed restructuring may fall into liquidation), amongst other stakeholders.

Two provisions of the IBC seemed to be inconsistent and left room for divergent interpretation. Section 31(1) of the IBC provides that once the resolution plan is approved by the NCLT it shall be binding on the company and its shareholders, amongst others. However, Section 30(2)(e) of the IBC states that the resolution plan must not contravene any provisions of law for the time being in force. So does the approved resolution plan bind shareholders and therefore remove the need for their separate consent in a general meeting, or should the resolution plan contemplate the need for a shareholders' approval to ensure compliance with the CA 2013 and then proceed to obtain it post approval by the NCLT?

The MCA has now clarified that approval of shareholders of the company for any corporate action in the resolution plan (otherwise required under the CA 2013 or any other law) is deemed to have been given on its approval by the NCLT. As such, at no stage (whether before approval by the NCLT or indeed after), is shareholders' approval required for the implementation of an approved resolution plan.

The circular offers significant clarity to market participants and confirms a decisive shift in decision making power away from the shareholders in favour of the committee of creditors. However, this is a clarification and has been offered by way of a circular issued by the MCA and is not a legislative amendment.