

Overview of the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019



December 2019

The Insolvency and Bankruptcy Code, 2016 (“**the Code**”) was enacted with a view to consolidate and amend the laws relating to reorganisation and insolvency resolution in a time-bound manner for maximisation of value of assets, to promote entrepreneurship, availability of credit and balancing the interests of various stakeholders. The Code and its corresponding rules and regulations have been amended from time to time to address deficiencies and fine tune the Code for effectiveness and achieving its objectives.

On December 11, 2019, the Union Cabinet approved the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019 (“**the Amendment Bill**”). Subsequently, the Amendment Bill was introduced in the Lok Sabha. The Amendment Bill has not been approved as yet. The proposed amendments aim to remove certain difficulties faced during insolvency resolution process, boost investments in distressed companies and further ease doing of business in India. The key amendments to the Code proposed in the Amendment Bill are as follows:

(i) The Amendment Bill clarifies that the insolvency commencement date is the date of admission of an application for initiating corporate insolvency resolution process. (Omission of proviso to clause (12) of Section 5 of the Code)

(ii) The Amendment Bill contemplates providing priority for repayment to last mile funding by inserting an enabling provision in the definition of ‘interim finance’ to include ‘other debt’ (to be notified) which could qualify as last mile funds. As per the Code, ‘interim finance’ forms part of the ‘insolvency resolution process costs’ that enjoy highest priority status for repayment.

The amendment is aimed at boosting investments in financially distressed companies (that have either turned into non-performing assets or are facing insolvency but have not been liquidated as yet), as last mile funding will now have highest priority status for repayment. (Amendment of clause (15) of Section 5 of the Code)

(iii) A minimum threshold has been stipulated for certain classes of financial creditors for initiating insolvency resolution process. Under the proposed amendments, an application for initiating corporate insolvency resolution process needs to be filed jointly by at least hundred creditors in the same class or at least 10% of the total number of creditors in the same class, whichever is less. Such creditors include allottees under a real estate project. The need for a threshold for initiating corporate insolvency resolution process was quite evident in view of several instances of frivolous insolvency applications filed by disgruntled creditors. (Amendment of Section 7)

(iv) To protect and preserve the value of corporate debtor and ensuring management of the corporate debtor as a going concern during the moratorium period, it has been clarified that

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a license, permit, registration, quota, concession, clearances or a similar grant or right given by the Central Government, State Government, local authority, sectoral regulator or any other authority constituted under any other law cannot be terminated or suspended during the moratorium period. However, such privileges during the moratorium period are subject to the condition that there is no default in payment of current dues arising for the use or continuation of the privileges during the moratorium period.

Further, a new section has been inserted, to ensure that supply of goods and services, which the interim resolution professional or resolution professional considers critical to protect and preserve value of the corporate debtor and to manage the operations of the corporate debtor as a going concern, are not terminated, suspended or interrupted during moratorium period. However, such supply may be terminated, suspended or interrupted during moratorium period if dues arising from such supply are not paid during the moratorium period or in certain other circumstances as may be specified by the Insolvency and Bankruptcy Board of India (“**the Board**”). (Amendment of Section 14)

(v) The insolvency resolution professional will be appointed on the date of admission of the application for initiation of insolvency resolution process instead of within fourteen days from the insolvency commencement date. (Amendment of Section 16)

(vi) Resolution professional to manage the affairs of the corporate debtor after the expiry of corporate insolvency resolution process period until either an order approving the resolution plan is passed or a liquidator is appointed by the Adjudicating Authority. (Amendment of Section 23).

(vii) Liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process will now cease under certain circumstances. The aforesaid amendment envisages shielding corporate debtor (in hands of resolution applicant) from attachment/criminal proceedings against offences committed by previous management of the corporate debtor. (Insertion of Section 32A)

To access the Amendment Bill, click [here](#).

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