

Report Summary

Insolvency Law Committee

- The Insolvency Law Committee (Chair: Mr. Injeti Srinivas) submitted its report to the Ministry of Corporate Affairs on March 26, 2018. The Committee was constituted to examine issues arising from the implementation of the Insolvency and Bankruptcy Code. The Code provides a time-bound 180-day process to resolve insolvency of companies and individuals. All decisions related to resolution or liquidation of an insolvent firm are to be taken by a committee of creditors (COC).
- **Non-inclusion of home buyers:** The Committee noted that there were several court judgments where buyers of under-construction apartments were neither considered to be financial creditors nor operational creditors. Financial creditors include entities who advance loans, while operational creditors include entities who are owed dues under a transaction for provision of goods and services. The Committee noted that the amounts raised under housing contracts are a means of raising finance and therefore, home buyers are financial creditors. It recommended that an explanation be added under the Code to clarify that home buyers would constitute financial creditors.
- **Initiation of CIRP:** The Committee noted that under the Code, an application to initiate corporate insolvency resolution process (CIRP) may be made by individuals who manage, control, or supervise the affairs of the firm, without the approval of shareholders or partners. The Committee recommended that the Code be amended to provide for approval of application by special majority of shareholders or partners (three-fourth majority).
- **Voting share for CoC decisions:** The Committee observed that the Code mandates that all decisions of the CoC need be taken with a majority of not less than 75% of the voting share of the financial creditors. The Committee noted stakeholder concerns that the high threshold might prove to be a roadblock in the resolution process. The Committee recommended that the voting share be reduced from 75% to 66% in certain critical matters, such as approval of the resolution plan. For routine decisions (such as appointment of an insolvency professional), the voting threshold may be reduced to 51%.
- **Eligibility to submit a resolution plan:** The Code contains provisions prohibiting certain persons from submitting a resolution plan. The Committee noted that certain financial entities (such as asset reconstruction companies) are likely to be related to companies whose assets are classified as non-performing assets (NPAs). Such entities would be barred from participating in the resolution process. The Committee recommended that such financial entities be allowed to participate in the process.
- The Code disqualifies persons, who have been convicted of an offence for two or more years of imprisonment, from submitting a resolution plan. The Committee observed that the Representation of People Act, 1951 contains a similar disqualification provision for persons who have been convicted of certain offences and run to become members of Parliament/assemblies. However, the 1951 Act extends the disqualification period only to six years from the date of release. The Committee suggested that the ambit of disqualification under the Code be similarly narrowed down to six years.
- **Default amount for triggering CIRP:** CIRP may be initiated if the amount of default is over one lakh rupees. The Committee recommended that this threshold be increased to ten lakh rupees. Further, the threshold for personal insolvency resolution be increased from one thousand rupees to ten thousand rupees. These adjustments have been recommended to keep frivolous applications at bay.
- **Exemption for MSMEs:** The Committee noted that MSMEs are subject to the provisions prohibiting certain persons from submitting a resolution plan. It recommended that the promoters of medium, micro and small enterprises (MSMEs) should be exempted from ineligibility criteria to bid, as long as they are not wilful defaulters. The rationale is that a business of an MSME attracts interest primarily from promoters of an MSME.

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