

Bill No. XXVI of 2019

THE INSOLVENCY AND BANKRUPTCY CODE
(AMENDMENT) BILL, 2019

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further to amend the Insolvency and Bankruptcy Code, 2016.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Insolvency and Bankruptcy Code (Amendment) Act, 2019. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

31 of 2016. 2. In section 5 of the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principal Act), in clause (26), the following *Explanation* shall be inserted, namely:— Amendment of section 5.

10 “*Explanation.*— For the removal of doubts, it is hereby clarified that a resolution plan may include provisions for the restructuring of the corporate debtor, including by way of merger, amalgamation and demerger;”.

- Amendment of section 7. **3.** In section 7 of the principal Act, in sub-section (4), the following proviso shall be inserted, namely:—
- “Provided that if the Adjudicating Authority has not ascertained the existence of default and passed an order under sub-section (5) within such time, it shall record its reasons in writing for the same.”. 5
- Amendment of section 12. **4.** In section 12 of the principal Act, in sub-section (3), after the proviso, the following provisos shall be inserted, namely:—
- “Provided further that the corporate insolvency resolution process shall mandatorily be completed within a period of three hundred and thirty days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted under this section and the time taken in legal proceedings in relation to such resolution process of the corporate debtor: 10
- Provided also that where the insolvency resolution process of a corporate debtor is pending and has not been completed within the period referred to in the second proviso, such resolution process shall be completed within a period of ninety days from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019.”. 15
- Amendment of section 25A. **5.** In section 25A of the principal Act, after sub-section (3), the following sub-section shall be inserted, namely:—
- “(3A) Notwithstanding anything to the contrary contained in sub-section (3), the authorised representative under sub-section (6A) of section 21 shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote: 20
- Provided that for a vote to be cast in respect of an application under section 12A, the authorised representative shall cast his vote in accordance with the provisions of sub-section (3).” 25
- Amendment of section 30. **6.** In section 30 of the principal Act,—
- (a) in sub-section (2), for clause (b), the following shall be substituted, namely:—
- “(b) provides for the payment of debts of operational creditors in such manner as may be specified by the Board which shall not be less than— 30
- (i) the amount to be paid to such creditors in the event of a liquidation of the corporate debtor under section 53; or
- (ii) the amount that would have been paid to such creditors, if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priority in sub-section (1) of section 53, 35
- whichever is higher, and provides for the payment of debts of financial creditors, who do not vote in favour of the resolution plan, in such manner as may be specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance with sub-section (1) of section 53 in the event of a liquidation of the corporate debtor. 40
- Explanation 1.*— For the removal of doubts, it is hereby clarified that a distribution in accordance with the provisions of this clause shall be fair and equitable to such creditors.
- Explanation 2.*— For the purposes of this clause, it is hereby declared that on and from the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Act, 2019, the provisions of this clause shall also apply to the corporate insolvency resolution process of a corporate debtor— 45

(i) where a resolution plan has not been approved or rejected by the Adjudicating Authority;

5 (ii) where an appeal has been preferred under section 61 or section 62 or such an appeal is not time barred under any provision of law for the time being in force; or

(iii) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;”;

10 (b) in sub-section (4), after the words “feasibility and viability,”, the words, brackets and figures “the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor” shall be inserted.

15 **7.** In section 31 of the principal Act, in sub-section (1), after the words “members, creditors,”, the words “including the Central Government, any State Government or any local authority to whom a debt in respect of the payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed,” shall be inserted. Amendment of section 31.

8. In section 33 of the principal Act, in sub-section (2), the following *Explanation* shall be inserted, namely:— Amendment of section 33.

20 “*Explanation.*— For the purposes of this sub-section, it is hereby declared that the committee of creditors may take the decision to liquidate the corporate debtor, any time after its constitution under sub-section (1) of section 21 and before the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.”.

25 **9.** In section 240 of the principal Act, in sub-section (2), in clause (w), for the words “repayment of debts of operational creditors”, the words “payment of debts” shall be substituted. Amendment of section 240.

STATEMENT OF OBJECTS AND REASONS

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 of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order or priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India.

2. The Preamble to the Code lays down the objects of the Code to include “the insolvency resolution” in a time bound manner for maximisation of value of assets in order to balance the interests of all the stakeholders. Concerns have been raised that in some cases extensive litigation is causing undue delays, which may hamper the value maximisation. There is a need to ensure that all creditors are treated fairly, without unduly burdening the Adjudicating Authority whose role is to ensure that the resolution plan complies with the provisions of the Code. Various stakeholders have suggested that if the creditors were treated on an equal footing, when they have different pre-insolvency entitlements, it would adversely impact the cost and availability of credit. Further, views have also been obtained so as to bring clarity on the voting pattern of financial creditors represented by the authorised representative.

3. In view of the aforesaid difficulties and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code. The Insolvency and Bankruptcy Code (Amendment) Bill, 2019, *inter alia*, provides for the following, namely:—

(a) to amend clause (26) of section 5 of the Code so as to insert an *Explanation* in the definition of “resolution plan” to clarify that a resolution plan proposing the insolvency resolution of corporate debtor as a going concern may include the provisions for corporate restructuring, including by way of merger, amalgamation and demerger to enable the market to come up with dynamic resolution plans in the interest of value maximisation;

(b) to amend sub-section (4) of section 7 of the Code to provide that if an application has not been admitted or rejected within fourteen days by the Adjudicating Authority, it shall provide the reasons in writing for the same;

(c) to amend sub-section (3) of section 12 of the Code to mandate that the insolvency resolution process of a corporate debtor shall not extend beyond three hundred and thirty days from the insolvency commencement date, which will include the time taken in legal proceedings, in order to prevent undue delays in the completion of the Corporate Insolvency Resolution Process. However, if the process, including time taken in legal proceedings, is not completed within the said period of three hundred and thirty days, an order requiring the corporate debtor to be liquidated under clause (a) of sub-section (1) of section 33 shall be passed. It is clarified that the time taken for the completion of the corporate insolvency resolution process shall include the time taken in legal proceedings;

(d) to insert sub-section (3A) in section 25A of the Code to provide that an authorised representative under sub-section (6A) of section 21 will cast the vote for all financial creditors he represents in accordance with the decision taken by a vote of more than fifty per cent. of the voting share of the financial creditors he represents, who have cast their vote, in order to facilitate decision making in the committee of creditors, especially when financial creditors are large and heterogeneous group;

(e) to amend sub-section (2) of section 30 of the Code to provide that–

(i) the operational creditors shall receive an amount that is not less than the liquidation value of their debt or the amount that would have been received if the amount to be distributed under the resolution plan had been distributed in accordance with the order of priorities in section 53 of the Code, whichever is higher;

(ii) the financial creditors who do not vote in favour of the resolution plan shall receive an amount that is not less than the liquidation value of their debt;

(iii) the provisions shall apply to the corporate insolvency resolution process of a corporate debtor–

(A) where a resolution plan has not been approved or rejected by the Adjudicating Authority; or

(B) an appeal is preferred under section 61 or 62 or such appeal is not time barred under any provision of law for the time being in force; or

(C) where a legal proceeding has been initiated in any court against the decision of the Adjudicating Authority in respect of a resolution plan;

(f) to amend sub-section (1) of section 31 of the Code to clarify that the resolution plan approved by the Adjudicating Authority shall also be binding on the Central Government, any State Government or any local authority to whom a debt in respect of payment of dues arising under any law for the time being in force, such as authorities to whom statutory dues are owed, including tax authorities;

(g) to amend sub-section (2) of section 33 of the Code to clarify that the committee of creditors may take the decision to liquidate the corporate debtor, in accordance with the requirements provided in sub-section (2) of section 33, any time after the constitution of the committee of creditors under sub-section (1) of section 21 until the confirmation of the resolution plan, including at any time before the preparation of the information memorandum.

4. The Bill seeks to achieve the above objectives.

NEW DELHI;
The 19th July, 2019.

NIRMALA SITHARAMAN.

FINANCIAL MEMORANDUM

The Bill if enacted, would not involve any expenditure either recurring or non recurring from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 6 of the Bill relating to amendment of section 30 of the Code empowers the Board to make regulations for specifying the manner of payment of debts.

2. The matters in respect of which the aforementioned regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE INSOLVENCY AND BANKRUPTCY CODE, 2016

(31 OF 2016)

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| | * | * | * | * | * |
| Definitions. | 5. In this Par, unless the context otherwise requires,— | | | | |
| | * | * | * | * | * |
| | (26) "resolution plan" means a plan proposed by resolution applicant for insolvency resolution of the corporate debtor as a going concern in accordance with part II; | | | | |
| | * | * | * | * | * |
| Initiation of corporate insolvency resolution process by financial creditor. | 7. (1) * | | | | |
| | (4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3). | | | | |
| | * | * | * | * | * |
| Time-limit for completion of insolvency resolution process. | 12. (1) * | | | | |
| | (3) On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days: | | | | |
| | Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once. | | | | |
| | * | * | * | * | * |
| Submission of resolution plan. | 30. (1) * | | | | |
| | (2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan— | | | | |
| | * | * | * | * | * |
| | (b) provides for the payment of the debts of operational creditors in such manner as may be specified by the Board which shall not be less than the amount to be paid to the operational creditors in the event of a liquidation of the corporate debtor under section 53; | | | | |
| | * | * | * | * | * |
| | (4) The committee of creditors may approve a resolution plan by a vote of not less than sixty-six per cent. of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the Board: | | | | |
| | Provided that the committee of creditors shall not approve a resolution plan, submitted before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, where the resolution applicant is ineligible under section 29A and may require the resolution professional to invite a fresh resolution plan where no other resolution plan is available with it: | | | | |

Ord. 7 of 2017.

Provided further that where the resolution applicant referred to in the first proviso is ineligible under clause (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days, to make payment of overdue amounts in accordance with the proviso to clause (c) of section 29A:

Provided also that nothing in the second proviso shall be construed as extension of period for the purposes of the proviso to sub-section (3) of section 12, and the corporate insolvency resolution process shall be completed within the period specified in that sub-section:

Ord. 6 of 2018. Provided also that the eligibility criteria in section 29A as amended by the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 shall apply to the resolution applicant who has not submitted resolution plan as on the date of commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018.

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31. (1) If the Adjudicating Authority is satisfied that the resolution plan as approved by the committee of creditors under sub-section (4) of section 30 meets the requirements as referred to in sub-section (2) of section 30, it shall by order approve the resolution plan which shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan: Approval of resolution plan.

Provided that the Adjudicating Authority shall, before passing an order for approval of resolution plan under this sub-section, satisfy that the resolution plan has provisions for its effective implementation.

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CHAPTER III

LIQUIDATION PROCESS

33. (1) * * * * * Initiation of liquidation.

(2) Where the resolution professional, at any time during the corporate insolvency resolution process but before confirmation of resolution plan, intimates the Adjudicating Authority of the decision of the committee of creditors approved by not less than sixty-six per cent. of the voting share to liquidate the corporate debtor, the Adjudicating Authority shall pass a liquidation order as referred to in sub-clauses (i), (ii) and (iii) of clause (b) of sub-section (1).

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240. (1) * * * * * Power to make regulations.

(2) In particular, and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:—

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(w) the manner of making payment of insolvency resolution process costs under clause (a), the manner of repayment of debts of operational creditors under clause (b), and the other requirements to which a resolution plan shall conform to under clause (d), of sub-section (2) of section 30;

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RAJYA SABHA

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further to amend the Insolvency and Bankruptcy Code, 2016.

(Shrimati Nirmala Sitharaman, Minister of Finance and Minister of Corporate Affairs)