

**Bill No. 127 of 2018**

THE INSOLVENCY AND BANKRUPTCY CODE  
(SECOND AMENDMENT) BILL, 2018

A

BILL

*further to amend the Insolvency and Bankruptcy Code, 2016.*

BE it enacted by Parliament in the Sixty-ninth Year of the Republic of India as follows:—

**1.** (1) This Act may be called the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018.

Short title and commencement.

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(2) It shall be deemed to have come into force on the 6th day of June, 2018.

31 of 2016.

**2.** In the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principal Act), in section 3, in clause (12), for the word "repaid", the word "paid" shall be substituted.

Amendment of section 3.

## 3. In section 5 of the principal Act,—

(i) after clause (5), the following clause shall be inserted, namely:—

'(5A) "corporate guarantor" means a corporate person who is the surety in a contract of guarantee to a corporate debtor;';

(ii) in clause (8), in sub-clause (f), the following *Explanation* shall be inserted, namely:—

*Explanation.*—For the purposes of this sub-clause,—

(i) any amount raised from an allottee under a real estate project shall be deemed to be an amount having the commercial effect of a borrowing; and

(ii) the expressions, "allottee" and "real estate project" shall have the meanings respectively assigned to them in clauses (d) and (zn) of section 2 of the Real Estate (Regulation and Development) Act, 2016;'

(iii) in clause (12), the following proviso shall be inserted, namely:

"Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;";

(iv) in clause (21), for the word "repayment", the word "payment" shall be substituted;

(v) after clause (24), the following clause shall be inserted, namely:—

'(24A) "related party", in relation to an individual, means—

(a) a person who is a relative of the individual or a relative of the spouse of the individual;

(b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;

(c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;

(d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;

(e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;

(f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;

(g) a limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;

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16 of 2016.

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(h) a person on whose advice, directions or instructions, the individual is accustomed to act;

5 (i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

*Explanation.*—For the purposes of this clause,—

(a) "relative", with reference to any person, means anyone who is related to another, in the following manner, namely:—

- 10 (i) members of a Hindu Undivided Family,  
(ii) husband,  
(iii) wife,  
(iv) father,  
(v) mother,  
15 (vi) son,  
(vii) daughter,  
(viii) son's daughter and son,  
(ix) daughter's daughter and son,  
(x) grandson's daughter and son,  
20 (xi) granddaughter's daughter and son,  
(xii) brother,  
(xiii) sister,  
(xiv) brother's son and daughter,  
(xv) sister's son and daughter,  
25 (xvi) father's father and mother,  
(xvii) mother's father and mother,  
(xviii) father's brother and sister,  
(xix) mother's brother and sister, and

30 (b) wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included;'

4. In section 7 of the principal Act, in sub-section (1), for the words "other financial creditors", the words "other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government," shall be substituted.

Amendment of section 7.

35 5. In section 8 of the principal Act,—

Amendment of section 8.

(a) in sub-section (2),—

(i) in clause (a), for the words "if any, and", the words "if any, or" shall be substituted;

40 (ii) in clause (b), for the word "repayment", the word "payment" shall be substituted;

(b) in the *Explanation*, for the word "repayment", the word "payment" shall be substituted.

Amendment  
of section 9.

**6.** In section 9 of the principal Act,—

(a) in sub-section (3),—

(i) in clause (c), for the words "by the corporate debtor; and", the words "by the corporate debtor, if available;" shall be substituted; 5

(ii) for clause (d), the following clauses shall be substituted, namely:—

"(d) a copy of any record with information utility confirming that there is no payment of an unpaid operational debt by the corporate debtor, if available; and 10

(e) any other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information, as may be prescribed.";

(b) in sub-section (5),— 15

(A) in clause (i), in sub-clause (b), for the word "repayment", the word "payment" shall be substituted;

(B) in clause (ii), in sub-clause (b), for the word "repayment", the word "payment" shall be substituted.

Amendment  
of section 10.

**7.** In section 10 of the principal Act,— 20

(a) for sub-section (3), the following sub-section shall be substituted, namely:—

"(3) The corporate applicant shall, along with the application, furnish—

(a) the information relating to its books of account and such other documents for such period as may be specified; 25

(b) the information relating to the resolution professional proposed to be appointed as an interim resolution professional; and

(c) the special resolution passed by shareholders of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, approving filing of the application."; 30

(b) in sub-section (4),—

(i) in clause (a), after the words "if it is complete", the words "and no disciplinary proceeding is pending against the proposed resolution professional" shall be inserted; 35

(ii) in clause (b), after the words "if it is incomplete", the words "or any disciplinary proceeding is pending against the proposed resolution professional" shall be inserted.

Amendment  
of section 12.

**8.** In section 12 of the principal Act, in sub-section (2), for the word "seventy-five", the word "sixty-six" shall be substituted. 40

Insertion of  
new section  
12A.

**9.** After section 12 of the principal Act, the following section shall be inserted, namely:—

Withdrawal of  
application  
admitted  
under sections  
7, 9 or 10.

"12A. The Adjudicating Authority may allow the withdrawal of application admitted under section 7 or section 9 or section 10, on an application made by the applicant with the approval of ninety per cent. voting share of the committee of creditors, in such manner as may be specified." 45

10. In section 14 of the principal Act, for sub-section (3), the following sub-section shall be substituted, namely:— Amendment of section 14.
- "(3) The provisions of sub-section (1) shall not apply to—
- (a) such transaction as may be notified by the Central Government in consultation with any financial regulator;
- (b) a surety in a contract of guarantee to a corporate debtor."
11. In section 15 of the principal Act, in sub-section (1), in clause (c), for the word "claims", the words "claims, as may be specified" shall be substituted. Amendment of section 15.
12. In section 16 of the principal Act, in sub-section (5), for the words "shall not exceed thirty days from date of his appointment", the words and figures "shall continue till the date of appointment of the resolution professional under section 22" shall be substituted. Amendment of section 16.
13. In section 17 of the principal Act, in sub-section (2),— Amendment of section 17.
- (i) in clause (d), for the words "may be specified.", the words "may be specified; and" shall be substituted;
- (ii) after clause (d), the following clause shall be inserted, namely:—
- "(e) be responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor."
14. In section 18 of the principal Act, in the *Explanation*, for the word "sub-section", the word "section" shall be substituted. Amendment of section 18.
15. In section 21 of the principal Act,— Amendment of section 21.
- (i) in sub-section (2),—
- (a) in the proviso, for the words "related party to whom a corporate debtor owes a financial debt", the words, brackets, figures and letter "financial creditor or the authorised representative of the financial creditor referred to in sub-section (6) or sub-section (6A) or sub-section (5) of section 24, if it is a related party of the corporate debtor," shall be substituted;
- (b) after the proviso, the following proviso shall be inserted, namely:—
- "Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.";
- (ii) in sub-section (3), for the word "Where", the words, brackets, figures and letter "Subject to sub-sections (6) and (6A), where" shall be substituted;
- (iii) in sub-section (6), in the opening portion, the words "or issued as securities" shall be omitted;
- (iv) after sub-section (6), the following sub-sections shall be inserted, namely:—
- "(6A) Where a financial debt—
- (a) is in the form of securities or deposits and the terms of the financial debt provide for appointment of a trustee or agent to act as authorised representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is represented by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorised representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

(6B) The remuneration payable to the authorised representative—

(i) under clauses (a) and (c) of sub-section (6A), if any, shall be as per the terms of the financial debt or the relevant documentation; and

(ii) under clause (b) of sub-section (6A) shall be as specified which shall form part of the insolvency resolution process costs.";

(v) for sub-sections (7) and (8), the following sub-sections shall be substituted, namely:—

"(7) The Board may specify the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).

(8) Save as otherwise provided in this Code, all decisions of the committee of creditors shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and shall comprise of such persons to exercise such functions in such manner as may be specified."

Amendment of section 22.

16. In section 22 of the principal Act,—

(a) in sub-section (2), for the word, "seventy-five", the word "sixty-six" shall be substituted;

(b) in sub-section (3),—

(i) in clause (a), after the words "resolution professional", the words "subject to a written consent from the interim resolution professional in the specified form" shall be inserted;

(ii) in clause (b), after the words "appointment of the proposed resolution professional", the words "along with a written consent from the proposed resolution professional in the specified form" shall be inserted.

Amendment of section 23.

17. In section 23 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:—

"Provided that the resolution professional shall, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the

operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31."

**18.** In section 24 of the principal Act, —

Amendment  
of section 24.

5 (i) in sub-section (3), in clause (a), for the words "Committee of creditors", the words, brackets, figures and letter "committee of creditors, including the authorised representatives referred to in sub-sections (6) and (6A) of section 21 and sub-section (5)" shall be substituted;

10 (ii) in sub-section (5), for the words "Any creditor", the words, brackets, figures and letters "Subject to sub-sections (6), (6A) and (6B) of section 21, any creditor" shall be substituted.

**19.** After section 25 of the principal Act, the following section shall be inserted, namely:—

Insertion of  
new section  
25A.

15 '25A. (1) The authorised representative under sub-section (6) or sub-section (6A) of section 21 or sub-section (5) of section 24 shall have the right to participate and vote in meetings of the committee of creditors on behalf of the financial creditor he represents in accordance with the prior voting instructions of such creditors obtained through physical or electronic means.

Rights and  
duties of  
authorised  
representative  
of financial  
creditors.

20 (2) It shall be the duty of the authorised representative to circulate the agenda and minutes of the meeting of the committee of creditors to the financial creditor he represents.

(3) The authorised representative shall not act against the interest of the financial creditor he represents and shall always act in accordance with their prior instructions:

25 Provided that if the authorised representative represents several financial creditors, then he shall cast his vote in respect of each financial creditor in accordance with instructions received from each financial creditor, to the extent of his voting share:

30 Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorised representative shall abstain from voting on behalf of such creditor.

35 (4) The authorised representative shall file with the committee of creditors any instructions received by way of physical or electronic means, from the financial creditor he represents, for voting in accordance therewith, to ensure that the appropriate voting instructions of the financial creditor he represents is correctly recorded by the interim resolution professional or resolution professional, as the case may be.

*Explanation.*—For the purposes of this section, the "electronic means" shall be such as may be specified.'

40 **20.** In section 27 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—

Amendment  
of section 27.

45 "(2) The committee of creditors may, at a meeting, by a vote of sixty-six per cent. of voting shares, resolve to replace the resolution professional appointed under section 22 with another resolution professional, subject to a written consent from the proposed resolution professional in the specified form."

**21.** In section 28 of the principal Act, in sub-section (3), for the word, "seventy-five", the word "sixty-six" shall be substituted.

Amendment  
of section 28.

**22.** In section 29A of the principal Act,—

(i) in clause (c),—

(A) for the words "has an account," the words "at the time of submission of the resolution plan has an account," shall be substituted;

(B) after the words and figures "the Banking Regulation Act, 1949", the words "or the guidelines of a financial sector regulator issued under any other law for the time being in force," shall be inserted;

(C) after the proviso, the following shall be inserted, namely:—

'Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

*Explanation I.*—For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

*Explanation II.*—For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;';

(ii) for clause (d), the following clause shall be substituted, namely:—

"(d) has been convicted for any offence punishable with imprisonment—

(i) for two years or more under any Act specified under the Twelfth Schedule; or

(ii) for seven years or more under any other law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of *Explanation I*;"

(iii) in clause (e), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of *Explanation I*;"

(iv) in clause (g), the following proviso shall be inserted, namely:—

"Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or

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plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;";

5 (v) in clause (h),—

(A) for the words "an enforceable guarantee", the words "a guarantee" shall be substituted;

10 (B) after the words "under this Code", the words "and such guarantee has been invoked by the creditor and remains unpaid in full or part" shall be inserted;

(vi) in clause (i), for the words "has been", the word "is" shall be substituted;

(vii) the *Explanation* occurring after clause (j) shall be numbered as *Explanation I*, and in *Explanation I* as so numbered, for the proviso, the following provisos shall be substituted, namely:—

15 'Provided that nothing in clause (iii) of *Explanation I* shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

20 Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;'

25 (viii) after *Explanation I* as so numbered, the following *Explanation* shall be inserted, namely:—

'*Explanation II*.—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely:—

30 (a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organisation of Securities Commissions Multilateral Memorandum of Understanding;

40 (c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999;

42 of 1999.

54 of 2002. 45

(d) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(e) an Alternate Investment Fund registered with the Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.'

Amendment  
of section 30.

**23.** In section 30 of the principal Act,—

(i) in sub-section (1), after the words "resolution plan", the words, figures and letter "along with an affidavit stating that he is eligible under section 29A" shall be inserted;

(ii) in sub-section (2),—

(A) in clauses (a) and (b), for the word "repayment" at both the places where it occurs, the word "payment" shall be substituted;

(B) after clause (f), the following *Explanation* shall be inserted, namely:—

*"Explanation.*—For the purposes of clause (e), if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law."

(iii) in sub-section (4),—

(a) for the word "seventy-five", the word "sixty-six" shall be substituted;

(b) after the third proviso, the following proviso shall be inserted, namely:—

"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."

Amendment  
of section 31.

**24.** In section 31 of the principal Act,—

(a) in sub-section (1), the following proviso shall be inserted, namely:—

"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.";

(b) after sub-section (3), the following sub-section shall be inserted, namely:—

"(4) The resolution applicant shall, pursuant to the resolution plan approved under sub-section (1), obtain the necessary approval required under any law for the time being in force within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority under sub-section (1) or within such period as provided for in such law, whichever is later:

Provided that where the resolution plan contains a provision for combination as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors."

Amendment  
of section 33.

**25.** In section 33 of the principal Act, in sub-section (2), after the words "decision of the committee of creditors", the words "approved by not less than sixty-six per cent. of the voting share" shall be inserted.

26. In section 34 of the principal Act,— Amendment  
of section 34.
- (a) in sub-section (1), for the words and figures "Chapter II shall", the words and figures "Chapter II shall, subject to submission of a written consent by the resolution professional to the Adjudicatory Authority in specified form," shall be substituted;
- (b) in sub-section (4),—
- (i) in clause (b), for the words "in writing", the words "in writing; or" shall be substituted;
- (ii) after clause (b), the following clause shall be inserted, namely:—
- "(c) the resolution professional fails to submit written consent under sub-section (1).";
- (c) in sub-section (5), for the word, brackets and letter "clause (a)", the words, brackets and letters "clauses (a) and (c)" shall be substituted;
- (d) in sub-section (6), after the words "another insolvency professional", the words "along with written consent from the insolvency professional in the specified form," shall be inserted.
27. In section 42 of the principal Act, after the words "of the liquidator", the words "accepting or" shall be inserted. Amendment  
of section 42.
28. In section 45 of the principal Act, in sub-section (1), the words and figures "of section 43" shall be omitted. Amendment  
of section 45.
29. In section 60 of the principal Act,— Amendment  
of section 60.
- (a) in sub-section (2), for the words "bankruptcy of a personal guarantor of such corporate debtor", the words "liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor" shall be substituted;
- (b) in sub-section (3), for the words "bankruptcy proceeding of a personal guarantor of the corporate debtor", the words "liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor" shall be substituted.
30. In section 69 of the principal Act, for the words "On or after the insolvency commencement date, if", the word "If" shall be substituted. Amendment  
of section 69.
31. In section 76 of the principal Act,— Amendment  
of section 76.
- (a) in the marginal heading, for the word "repayment", the word "payment" shall be substituted;
- (b) in clause (a), for the word "repayment", the word "payment" shall be substituted.
32. In section 196 of the principal Act, in sub-section (1),— Amendment  
of section  
196.
- (i) after clause (a), the following clause shall be inserted namely:—
- "(aa) promote the development of, and regulate, the working and practices of, insolvency professionals, insolvency professional agencies and information utilities and other institutions, in furtherance of the purposes of this Code;";
- (ii) in clause (c), for the words "for the registration", the words "for carrying out the purposes of this Code, including fee for registration and renewal" shall be substituted.

Amendment of section 231.	<b>33.</b> In section 231 of the principal Act, for the words "Adjudicating Authority" at both the places where they occur, the words "Adjudicating Authority or the Board" shall be substituted.	
Insertion of new section 238A.	<b>34.</b> After section 238 of the principal Act, the following section shall be inserted, namely:—	5
Limitation.	"238A. The provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority, the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be."	36 of 1963.
Amendment of section 239.	<b>35.</b> In section 239 of the principal Act, in sub-section (2), after clause (e), the following clause shall be inserted, namely:—	10
	"(ea) other proof confirming that there is no payment of an unpaid operational debt by the corporate debtor or such other information under clause (e) of sub-section (3) of section 9;"	
Amendment of section 240.	<b>36.</b> In section 240 of the principal Act, in sub-section (2),—	15
	(i) clause (g) shall be omitted;	
	(ii) after clause (j), the following clause shall be inserted, namely:—	
	(ja) the last date for submission of claims under clause (c) of sub-section (1) of section 15;"	
	(iii) after clause (n), the following clauses shall be inserted, namely:—	20
	(na) the number of creditors within a class of creditors under clause (b) of sub-section (6A) of section 21;	
	(nb) the remuneration payable to authorised representative under clause (ii) of the proviso to sub-section (6B) of section 21;	
	(nc) the manner of voting and determining the voting share in respect of financial debts under sub-section (7) of section 21;"	25
Insertion of new section 240A.	<b>37.</b> After section 240 of the principal Act, the following section shall be inserted, namely:—	
Application of this Code to micro, small and medium enterprises.	'240A. (1) Notwithstanding anything to the contrary contained in this Code, the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises.	30
	(2) Subject to sub-section (1), the Central Government may, in the public interest, by notification, direct that any of the provisions of this Code shall—	
	(a) not apply to micro, small and medium enterprises; or	35
	(b) apply to micro, small and medium enterprises, with such modifications as may be specified in the notification.	
	(3) A draft of every notification proposed to be issued under sub-section (2), shall be laid before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions.	40
	(4) If both Houses agree in disapproving the issue of notification or both Houses agree in making any modification in the notification, the notification shall not be issued or shall be issued only in such modified form as may be agreed upon by both the Houses, as the case may be.	

(5) The period of thirty days referred to in sub-section (3) shall not include any period during which the House referred to in sub-section (4) is prorogued or adjourned for more than four consecutive days.

5 (6) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament.

27 of 2006. *Explanation.*—For the purposes of this section, the expression "micro, small and medium enterprises" means any class or classes of enterprises classified as such under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006.'

10 **38.** After the Eleventh Schedule to the principal Act, the following Schedule shall be inserted, namely:— Insertion of new Schedule.

"THE TWELFTH SCHEDULE

(See clause (d) of section 29A)

ACTS FOR THE PURPOSES OF CLAUSE (d) OF SECTION 29A

- 15 (1) The Foreign Trade (Development and Regulation) Act, 1922 (22 of 1922);  
 (2) The Reserve Bank of India Act, 1934 (2 of 1934);  
 (3) The Central Excise Act, 1944 (1 of 1944);  
 (4) The Prevention of Food Adulteration Act, 1954 (37 of 1954);  
 (5) The Essential Commodities Act, 1955 (10 of 1955);  
 20 (6) The Securities Contracts (Regulation) Act, 1956 (42 of 1956);  
 (7) The Income-tax Act, 1961 (43 of 1961);  
 (8) The Customs Act, 1962 (52 of 1962);  
 (9) The Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974);  
 25 (10) The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (52 of 1974);  
 (11) The Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981);  
 (12) The Sick Industrial Companies (Special Provisions) Act, 1985 (1 of 1986);  
 (13) The Environment (Protection) Act, 1986 (29 of 1986);  
 (14) The Prohibition of Benami Property Transactions Act, 1988 (45 of 1988);  
 30 (15) The Prevention of Corruption Act, 1988 (49 of 1988);  
 (16) The Securities and Exchange Board of India Act, 1992 (15 of 1992);  
 (17) The Foreign Exchange Management Act, 1999 (42 of 1999);  
 (18) The Competition Act, 2002 (12 of 2003);  
 (19) The Prevention of Money-laundering Act, 2002 (15 of 2003);  
 35 (20) The Limited Liability Partnership Act, 2008 (6 of 2009);  
 (21) The Foreign Contribution (Regulation) Act, 2010 (42 of 2010);  
 (22) The Companies Act, 2013 (18 of 2013) or any previous company law;

(23) The Black Money (Undisclosed Foreign Income and Assets) and Imposition of Tax Act, 2015 (22 of 2015);

(24) The Insolvency and Bankruptcy Code, 2016 (31 of 2016);

(25) The Central Goods and Services Tax Act, 2017 (12 of 2017) and respective State Acts imposing State goods and services tax; 5

(26) such other Acts as may be notified by the Central Government.

Every notification issued under this Schedule shall be laid, as soon as may be after it is issued, before each House of Parliament."

Amendment  
of section  
434 of Act 18  
of 2013.

**39.** In section 434 of the Companies Act, 2013, [as substituted by paragraph 34 of the Eleventh Schedule to the Insolvency and Bankruptcy Code, 2016], in sub-section (1), in clause (c), after the proviso, the following proviso shall be inserted, namely:— 10

"Provided further that any party or parties to any proceedings relating to the winding up of companies pending before the any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment Ordinance), 2018, may file an application for transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016." 15

Repeal and  
savings.

**40.** (1) The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 is hereby repealed. 20 31 of 2016  
Ord. 6 of  
2018.

(2) Notwithstanding such repeal, anything done or any action taken under the Insolvency and Bankruptcy Code, 2016, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Code, as amended by this Act. 25 31 of 2016.

## STATEMENT OF OBJECTS AND REASONS

The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted, *inter alia*, to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. The provisions relating to insolvency resolution for corporate persons (Part II of the Code), regulation of insolvency professionals, agencies, information utilities and establishment of the Insolvency and Bankruptcy Board of India (the Board) (Part IV of the Code) and Miscellaneous provisions (Part V of the Code) have been brought into force, in phases. Part III of the Code, which deals with insolvency resolution and bankruptcy for individuals and partnership firms is yet to be commenced.

2. During the consideration and passing of the Insolvency and Bankruptcy Code (Amendment) Act, 2018 in Parliament, a consensus had emerged that further fine tuning of the Code would be required. The Government constituted an Insolvency Law Committee (the Committee) to review the functioning and implementation of the Code. The recommendations of the Committee has been examined by the Government and it was accordingly decided to amend the Insolvency and Bankruptcy Code, 2016.

3. Since Parliament was not in session and immediate action was required to be taken, the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 was promulgated by the President on the 6th day of June, 2018.

4. The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2018 which seeks to replace the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, *inter alia*, provide for the followings, namely:—

(a) insertion of an explanation under clause (8) of section 5 clarifying that any amount raised from an allottee under a real estate project shall be deemed to be an amount having a commercial effect of borrowing;

(b) substitution of sub-section (3) of section 10 requiring the corporate debtor to furnish along with application for initiation of corporate insolvency resolution process a special resolution passed by the shareholder of the corporate debtor or the resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be;

(c) insertion of new section 12A for permitting withdrawal of application admitted for initiation of insolvency resolution process by Adjudicating Authority, on an application made by the applicant with the approval of ninety per cent. of voting share of committee of creditors;

(d) amendment of section 14 to clarify that the moratorium shall not apply to a personal guarantor or a corporate guarantor to a corporate debtor;

(e) amendment of section 21 to provide for appointment of authorised representative by financial creditors and to provide for rights and duties of such authorised representative;

(f) amendment of section 29A, *inter alia*, to provide—

(i) that clause (c) relating to non-performing asset shall not apply to a financial entity and to a resolution applicant who has acquired a distressed asset with a non-performing asset account for a period of three years from the date of such acquisition;

(ii) for disqualification of person convicted for any offence specified under the Twelfth Schedule and also to provide that such disqualification shall not apply to a person after the expiry of two years from the date of his release from the imprisonment;

(iii) for exemption from disqualification where any preferential, undervalued, extortionate credit or fraudulent transactions had taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant;

(g) amendment of section 31 to provide that the resolution applicant shall obtain necessary approval required under any law for the time being in force within the period specified therein;

(h) reduction of voting threshold for various decisions of the committee of creditors to sixty-six per cent. for important decisions and fifty-one per cent. for routine decisions;

(i) amendment of section 196 to widen the scope of functions of the Board to promote the development of, and regulate the working and practices of, certain professionals under the Code;

(j) insertion of new section 238A to provide that the Limitation Act, 1963 shall apply to the proceedings or appeals under the Code;

(k) insertion of a new section 240A by which the application of clauses (c) and (h) of section 29A is exempted for the resolution applicants in respect of corporate insolvency resolution process of micro, small and medium enterprises. It also confers power upon the Central Government to exempt micro, small and medium enterprises in public interest from application of any other provisions of the Code.

5. The notes on clauses explain in detail the various provisions of the Bill.

6. The Bill seeks to achieve the above objectives.

NEW DELHI;  
*The 18th July, 2018.*

PIYUSHGOYAL.



### *Notes on Clauses*

*Clause 1* of the Bill provides for the short title and commencement.

*Clause 2* of the Bill seeks to amend clause (12) of section 3 of the Code which provides for the definition of default by substituting the word "repaid" with "paid" to have a wider and more relevant meaning.

*Clause 3* of the Bill seeks to insert a new clause (5A) in section 5 of the Code to define "corporate guarantor" so as to mean a corporate person who is the surety in a contract of guarantee to a corporate debtor.

It further seeks to insert an *Explanation* in sub-clause (f) of clause (8) to the effect that any amount raised from an allottee under a real estate project shall be deemed to an amount having the commercial effect of a debt and to define the expression "allottee" and "real estate project".

It also seeks to insert a proviso in clause (12) to clarify that where the interim resolution professional is not appointed in the order admitting application for initiation of insolvency resolution process, the insolvency commencement date shall be date on which the interim resolution professional is appointed.

It also seeks to substitute the word "repayment" with "payment" to have a wider and more relevant meaning.

It also seeks to insert new clause (24A) to define "related party" in relation to an individual as the same was not expressly defined in the Code.

*Clause 4* of the Bill seeks to amend sub-section (1) of section 7 to enable the Central Government to notify any other person to file an application on behalf of financial creditor to initiate corporate insolvency resolution process.

*Clause 5* of the Bill seeks to amend sub-section (2) of section 8 to include such disputes which are not pending in a suit or arbitration proceedings besides substituting the word "repayment" with "payment" to have a wider and more relevant meaning.

*Clause 6* of the Bill seeks to amend sub-section (3) of section 9 of the Code to make optional the present mandatory condition of filing certificate from financial institutions maintaining accounts of operational creditor to prove non-payment of operational debt, besides providing other means of proving non-payment of operational debt and in sub-section (5) seeks to substitute the word "repayment" with "payment".

*Clause 7* of the Bill seeks to substitute sub-section (3) of section 10 of the Code to provide for the requirement of special resolution passed by the shareholders of the corporate debtor or resolution passed by at least three-fourth of the total number of partners of the corporate debtor, as the case may be, for initiation of corporate insolvency resolution process by corporate applicant; and further seeks to amend sub-section (4) to provide that the presence or absence of pending disciplinary proceedings against the proposed resolution professional shall be a ground for acceptance or rejection of application for corporate insolvency resolution process filed by the corporate applicant.

*Clause 8* of the Bill seeks to amend sub-section (2) of section 12 of the Code to re-calibrate voting threshold from seventy-five per cent. to sixty-six per cent. for extension of corporate insolvency resolution process period by committee of creditors.

*Clause 9* of the Bill seeks to insert a new section 12A to allow the withdrawal of applications admitted under section 7, 9 or 10 with the approval of ninety per cent. voting share of the committee of creditors in the manner as specified.

*Clause 10* of the Bill seeks to substitute sub-section (3) of section 14 of the Code to provide that the moratorium shall not apply to a surety in a contract of guarantee to a corporate debtor.

*Clause 11* of the Bill seeks to amend section 15 of the Code to confer power upon the Board to specify the last date for submission of claims.

*Clause 12* of the Bill seeks to amend sub section (5) of section 16 of the Code to allow interim resolution professional to continue till the appointment of the resolution professional.

*Clause 13* of the Bill seeks to amend section 17 of the Code to provide that the interim resolution professional shall be responsible for complying with the statutory requirements under applicable laws while managing the affairs of the corporate debtor.

*Clause 14* of the Bill seeks to amend section 18 of the Code to substitute the word "sub-section" with "section" to correct an error.

*Clause 15* of the Bill seeks to amend section 21 of the Code to provide for a mechanism to allow participation of security holders, deposit holders and all other classes of financial creditors which exceed a certain number, in meetings of committee of creditors through an authorised representative and provides for remuneration payable to such authorised representative; and it further seeks to confer power upon the Board to specify the manner of voting and determining of voting share in respect of financial debts and to provide that all decisions of the committee of creditors, save as otherwise provided, shall be taken by a vote of not less than fifty-one per cent. of voting share of the financial creditors; it also provides that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted consisting of such persons and exercise such function in such manner as may be specified.

*Clause 16* of the Bill seeks to amend section 22 of the Code to provide for reduced voting threshold of sixty-six per cent. in place of seventy-five per cent. for obtaining the approval of the committee of creditors for appointment of resolution professional; and further seeks to amend sub-section (3) so as to require a written consent from the interim resolution professional in specified form before his appointment.

*Clause 17* of the Bill seeks to amend section 23 of the Code to provide that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of corporate insolvency resolution process period until an order has been passed by the Adjudicating Authority under section 31.

*Clause 18* of the Bill seeks to amend section 24 of the Code to provide for serving of notice of meeting by the resolution professional and voting share to authorised representative as provided in section 21.

*Clause 19* of the Bill seeks to insert a new section 25A to provide for rights and duties of authorised representative of financial creditors.

*Clause 20* of the Bill seeks to amend section 27 of the Code to substitute sub-section (2) for enabling the committee of creditors to replace the existing resolution professional with another resolution professional by a vote of sixty-six per cent. of voting share instead of seventy-five per cent., subject to a written consent from the latter.

*Clause 21* of the Bill seeks to amend sub-section (3) of section 28 of the Code to reduce the threshold for voting from seventy-five per cent. to sixty-six per cent. for approval of committee of creditors in respect certain actions provided in sub-section (1) thereof.

*Clause 22* of the Bill seeks to amend section 29A of the Code to provide a carve out for financial entities from being disqualified on account of non-performing asset, exemption for resolution applicant holding a non-performing asset account due to acquisition of a corporate debtor for a period of three years from the date of approval of the prior resolution plan by the Adjudicating Authority, restricting disqualification for conviction to offences

as prescribed in Schedule and disqualification period of two years from date of the release from imprisonment, disqualifications under clauses (d) and (e) shall not be apply to related parties of the resolution applicant, to extend the non-performing asset classification by including any other applicable laws, a carve out for the persons who acquired a corporate debtor under the Code in which preferential, undervalued, fraudulent or extortionate credit transactions had taken place prior to such acquisition provided such person has not contributed to such transaction and a clarification that only guarantors where guarantee has been invoked by the creditor and remains unpaid in full or part by the guarantor are ineligible.

*Clause 23* of the Bill seeks to amend section 30 of the Code to provide that a resolution applicant while submitting its resolution plan shall give an affidavit stating that it is eligible under section 29A. It further seeks to amend sub-section (2) to provide that the resolution plan shall not be in contravention of any law for the time being in force. The explanation is proposed to be inserted to provide that if any approval of shareholders is required under the Companies Act, 2013 or any other law for the time being in force for the implementation of actions under the resolution plan, such approval shall be deemed to have been given and it shall not be a contravention of that Act or law.

*Clause 24* of the Bill seeks to amend section 31 of the Code to provide that the Adjudicating Authority shall, before passing an order for approval of resolution plan satisfy that the resolution plan has provisions for its effective implementation and that the resolution applicant shall obtain the necessary approvals required within a period of one year from the date of approval of the resolution plan by the Adjudicating Authority or within such period as provided for in such law, whichever is later and where it contains a provisions for combination the approval of the Competition Commission of India shall be obtained prior to the approval of resolution plan by the committee of creditors.

*Clause 25* of the Bill seeks to amend section 33 of the Code to provide a reduced threshold from seventy-five per cent. to sixty-six per cent. of voting share for obtaining the approval of the committee of creditors for making an application to the Adjudicating Authority to pass a liquidation order.

*Clause 26* of the Bill seeks to amend section 34 of the Code so as to require a written consent of resolution professional in specified form for appointment as a liquidator.

*Clause 27* of the Bill seeks to amend section 42 of the Code to provide clarity that appeal against the decision of accepting or rejecting of claims by liquidator may be filed before Adjudicating Authority.

*Clause 28* of the Bill seeks to amend section 45 of the Code to omit certain words to bring clarity.

*Clause 29* of the Bill seeks to amend section 60 of the Code to provide that an application relating to the insolvency resolution or liquidation or bankruptcy of a corporate guarantor or personal guarantor, as the case may be, of such corporate debtor whose corporate insolvency resolution process or liquidation proceeding is pending before a National Company Law Tribunal shall be filed before such National Company Law Tribunal. It further provides that an insolvency resolution process or liquidation or bankruptcy proceeding of a corporate guarantor or personal guarantor, as the case may be, of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with corporate insolvency resolution process or liquidation proceeding of such corporate debtor.

*Clause 30* of the Bill seeks to amend section 69 of the Code to omit certain words to bring clarity.

*Clause 31* of the Bill seeks to amend section 76 of the Code so as to substitute the word "repayment" with "payment" in order to have a clarity.

*Clause 32* of the Bill seeks to amend section 196 of the Code so as to enable the Board to promote the development of and regulate the working and practices of certain professionals and also to levy fees for carrying out the purposes of the Code including the fee for registration and renewal of certain professionals.

*Clause 33* of the Bill seeks to amend section 231 of the Code to insert the word "Board" so as to include the Board within the scope of bar of jurisdiction against certain actions.

*Clause 34* of the Bill seeks to insert a new section 238A to provide that the provisions of the Limitation Act, 1963 shall, as far as may be, apply to the proceedings or appeals before the Adjudicating Authority or the National Company Law Appellate Tribunal, the Debt Recovery Tribunal or the Debt Recovery Appellate Tribunal, as the case may be.

*Clause 35* of the Bill seeks to amend section 239 of the Code so as to provide that the Central Government may make rules for matters relating to other proof confirming that there is no payment of an unpaid operational debt by the corporate or such other information under clause (e) of sub-section (3) of section 9.

*Clause 36* of the Bill seeks to amend section 240 of the Code so as to provide that the Board may make regulations on certain matter provided therein.

*Clause 37* of the Bill seeks to insert a new section 240A to provide that the provisions of clauses (c) and (h) of section 29A shall not apply to the resolution applicant in respect of corporate insolvency resolution process of any micro, small and medium enterprises. It further confers power upon the Central Government to direct by notification in the public interest that any provisions of the Code shall not apply to micro, small and medium enterprises or apply to micro, small and medium enterprises with such modifications as may be specified in the notification.

*Clause 38* of the Bill seeks to insert the Twelfth Schedule to the Code so as to provide a list of certain Acts for the purpose of clause (d) of section 29A, with power to notify other Act for the said purpose. It further requires that every notification issued under this Schedule shall be laid before each House of Parliament.

*Clause 39* of the Bill seeks to amend section 434 of the Companies Act, 2013 (as substituted by the paragraph 34 of the Eleventh Schedule to the Code) to provide that any party or parties to any proceedings relating to the winding up of companies pending before the any Court immediately before the commencement of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018, may file an application for transfer of such proceedings and the Court may by order transfer such proceedings to the Tribunal and the proceedings so transferred shall be dealt with by the Tribunal as an application for initiation of corporate insolvency resolution process under the Insolvency and Bankruptcy Code, 2016.

*Clause 40* of the Bill seeks to repeal the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 and provides for savings of action under the said Ordinance.

## FINANCIAL MEMORANDUM

The provisions of the Insolvency and Bankruptcy (Second Amendment) Bill, 2018 will not involve any expenditure of recurring or non-recurring nature, on its enactment.

## MEMORANDUM REGARDING DELEGATED LEGISLATION

*Clause 6* of the Bill seeks to amend section 9 of the Code which confers power upon the Central Government to prescribe the other proof of confirming that there is no payment of an unpaid operation debt by the corporate debtor or such other information under clause (e) of sub-section (1) of section 9.

*Clause 9* of the Bill seeks to insert section 12A of the Code to confer power upon the Insolvency and Bankruptcy Board of India (the Board) to specify the manner of withdrawal of application.

*Clause 11* of the Bill seeks to amend clause (c) of sub-section (1) of section 15 of the Code to confer power upon the Board to specify the last date for submission of claims.

*Clause 15* of the Bill seeks to amend section 21 which confers power upon the Board to specify under clause (b) of sub-section (6A) the number of creditors for making a class of creditors; under clause (ii) of sub-section (6B) the remuneration payable to the authorised representative under clause (b) of sub-section (6A); and (C) under sub-section (7) the manner of voting and the determining of the voting share in respect of financial debts covered under sub-sections (6) and (6A).

*Clause 16* of the Bill seeks to amend section 22 which confers power upon the Board to specify the form for obtaining written consent from the interim resolution professional and proposed resolution professional respectively.

*Clause 19* of the Bill seeks to insert section 25A of the Code which confers power upon the Board to specify the electronic means for participation and voting in meeting of committee of creditors by authorised representative on behalf of a financial creditor.

*Clause 20* of the Bill seeks to substitute sub-section (2) of section 27 of the Code to confer power upon the Board to specify the form for obtaining written consent from the proposed resolution professional.

*Clause 26* of the Bill seeks to amend section 34 of the Code to confer power upon the Board to specify the form for obtaining written consent from the resolution professional.

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

*Memorandum explaining the modifications contained in the Bill to replace the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018*

The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2018, which seeks to repeal and replace the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 (the Ordinance), proposes to make the following modifications apart from modifications of consequential and drafting nature in the provisions contained in the Ordinance, namely:—

(a) in clause 3 of the Bill, in section 5 of the Insolvency and Bankruptcy Code, 2016 (the Code), in clause (12), a proviso is inserted to the effect that where the interim resolution professional is not appointed in the order admitting application under sections 7,9 or 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;

(b) in clause 9 of the Bill, in section 12A of the Code, the words "in such manner as may be prescribed" has been substituted by "in such manner as may be specified" enabling the Board to frame regulations for specifying the manner of withdrawal of application admitted under sections 7, 9 or 10;

(c) in clause 15 of the Bill, in item (ii) of sub-section (6B) of section 21 of the Code, the words "which shall be jointly borne by the financial creditors" has been substituted by "shall form part of the insolvency resolution process costs" to simplify the process as there would be huge number of creditors belonging to a class of creditors and unburden the class of creditors from further paying for the cost of interim resolution professional appointed as their authorised representative;

(d) in clause 24 of the Bill, in sub-section (4) of section 31 of the Code, a new proviso is inserted "Provided that where the resolution plan contains a provision for combination as referred to in section 5 of the Competition Act, 2002, the resolution applicant shall obtain the approval of the Competition Commission of India under that Act prior to the approval of such resolution plan by the committee of creditors" so as to clarify that the approval for the combinations from Competition Commission of India has to be obtained prior to the approval of resolution plan by the Adjudicating Authority;

(e) in clause 35 of the Bill, relating to amendment of section 239, clause (fa) of sub-section (1) has been deleted;

(f) in clause 38 of the Bill, relating to the Twelfth Schedule to the Code, after paragraph (26), the words "Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament" has been inserted so as to require the Government to lay before Parliament every notification made under the said Schedule.

ANNEXURE

EXTRACTS FROM THE INSOLVENCY AND BANKRUPTCY CODE, 2016

(31 OF 2016)

	*		*		*		*		*
Definitions.		<b>3.</b>	In this Code, unless the context otherwise requires,—						
	*	*		*		*		*	
			(12) "default" means non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not repaid by the debtor or the corporate debtor, as the case may be;						
	*	*		*		*		*	
Definitions.		<b>5.</b>	In this Part, unless the context otherwise requires, —						
	*	*		*		*		*	
			(8) "financial debt" means a debt along with interest, if any, which is disbursed against the consideration for the time value of money and includes—						
	*	*		*		*		*	
			(f) any amount raised under any other transaction, including any forward sale or purchase agreement, having the commercial effect of a borrowing;						
	*	*		*		*		*	
			(21) "operational debt" means a claim in respect of the provision of goods or services including employment or a debt in respect of the repayment of dues arising under any law for the time being in force and payable to the Central Government, any State Government or any local authority;						
	*	*		*		*		*	
Initiation of corporate insolvency resolution process by financial creditor.		<b>7. (1)</b>	A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.						
			<i>Explanation.</i> —For the purposes of this sub-section, a default includes a default in respect of a financial debt owed not only to the applicant financial creditor but to any other financial creditor of the corporate debtor.						
	*	*		*		*		*	
Insolvency resolution by operational creditor.		<b>8. (1)</b>							
			(2) The corporate debtor shall, within a period of ten days of the receipt of the demand notice or copy of the invoice mentioned in sub-section (1) bring to the notice of the operational creditor—						
			(a) existence of a dispute, if any, and record of the pendency of the suit or arbitration proceedings filed before the receipt of such notice or invoice in relation to such dispute;						
			(b) the repayment of unpaid operational debt—						
			(i) by sending an attested copy of the record of electronic transfer of the unpaid amount from the bank account of the corporate debtor; or						



(ii) by sending an attested copy of record that the operational creditor has encashed a cheque issued by the corporate debtor.

*Explanation.* —For the purposes of this section, a "demand notice" means a notice served by an operational creditor to the corporate debtor demanding repayment of the operational debt in respect of which the default has occurred.

**9. (1)** \* \* \* \* \*

(3) The operational creditor shall, along with the application furnish—

\* \* \* \* \*

(c) a copy of the certificate from the financial institutions maintaining accounts of the operational creditor confirming that there is no payment of an unpaid operational debt by the corporate debtor; and

(d) such other information as may be specified.

\* \* \* \* \*

(5) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), by an order—

(i) admit the application and communicate such decision to the operational creditor and the corporate debtor if,—

\* \* \* \* \*

(b) there is no repayment of the unpaid operational debt;

\* \* \* \* \*

(ii) reject the application and communicate such decision to the operational creditor and the corporate debtor, if—

\* \* \* \* \*

(b) there has been repayment of the unpaid operational debt;

\* \* \* \* \*

**10. (1)** \* \* \* \* \*

(3) The corporate applicant shall, along with the application furnish the information relating to—

(a) its books of account and such other documents relating to such period as may be specified; and

(b) the resolution professional proposed to be appointed as an interim resolution professional.

(4) The Adjudicating Authority shall, within a period of fourteen days of the receipt of the application, by an order—

(a) admit the application, if it is complete; or

(b) reject the application, if it is incomplete:

Provided that Adjudicating Authority shall, before rejecting an application, give a notice to the applicant to rectify the defects in his application within seven days from the date of receipt of such notice from the Adjudicating Authority.

\* \* \* \* \*

Application for initiation of corporate insolvency resolution process by operational creditor.

Initiation of corporate insolvency resolution process by financial creditor.



(6) Where the terms of the financial debt extended as part of a consortium arrangement or syndicated facility or issued as securities provide for a single trustee or agent to act for all financial creditors, each financial creditor may—

\* \* \* \* \*

(7) The Board may specify the manner of determining the voting share in respect of financial debts issued as securities under sub-section (6).

(8) All decisions of the committee of creditors shall be taken by a vote of not less than seventy-five per cent. of voting share of the financial creditors:

Provided that where a corporate debtor does not have any financial creditors, the committee of creditors shall be constituted and comprise of such persons to exercise such functions in such manner as may be specified by the Board.

\* \* \* \* \*

**22. (1)** \* \* \* \* \*

Appointment of resolution professional.

(2) The committee of creditors, may, in the first meeting, by a majority vote of not less than seventy-five per cent. of the voting share of the financial creditors, either resolve to appoint the interim resolution professional as a resolution professional or to replace the interim resolution professional by another resolution professional.

(3) Where the committee of creditors resolves under sub-section (2)—

(a) to continue the interim resolution professional as resolution professional, it shall communicate its decision to the interim resolution professional, the corporate debtor and the Adjudicating Authority; or

\* \* \* \* \*

(b) to replace the interim resolution professional, it shall file an application before the Adjudicating Authority for the appointment of the proposed resolution professional.

\* \* \* \* \*

**24. (1)** \* \* \* \* \*

Meeting of committee of creditors.

(3) The resolution professional shall give notice of each meeting of the committee of creditors to—

(a) members of committee of creditors;

\* \* \* \* \*

(5) Any creditor who is a member of the committee of creditors may appoint an insolvency professional other than the resolution professional to represent such creditor in a meeting of the committee of creditors:

Provided that the fees payable to such insolvency professional representing any individual creditor will be borne by such creditor.

\* \* \* \* \*

**27. (1)** \* \* \* \* \*

Replacement of resolution professional by committee of creditors.

(2) The committee of creditors may, at a meeting, by a vote of seventy-five per cent. of voting shares, propose to replace the resolution professional appointed under section 22 with another resolution professional.

\* \* \* \* \*

Approval of committee of creditors for certain actions. **28. (1)** \* \* \* \* \*

(3) No action under sub-section (1) shall be approved by the committee of creditors unless approved by a vote of seventy-five per cent. of the voting shares.

\* \* \* \* \*

Persons not eligible to be resolution applicant. **29A.** A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

\* \* \* \* \*

(c) has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

10 of 1949.

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to non-performing asset accounts before submission of resolution plan;

(d) has been convicted for any offence punishable with imprisonment for two years or more;

\* \* \* \* \*

(h) has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;

(i) has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

(j) has a connected person not eligible under clauses (a) to (i).

*Explanation.*—For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of this *Explanation* shall apply to—

(A) a scheduled bank; or

(B) an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or

54 of 2002.

(C) an Alternate Investment Fund registered with the Securities and Exchange Board of India.

\* \* \* \* \*

Submission of resolution plan. **30. (1)** A resolution applicant may submit a resolution plan to the resolution professional prepared on the basis of the information memorandum.

(2) The resolution professional shall examine each resolution plan received by him to confirm that each resolution plan—

(a) provides for the payment of insolvency resolution process costs in a manner specified by the Board in priority to the repayment of other debts of the corporate debtor;

(b) provides for the repayment 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;

\* \* \* \* \*

(f) conforms to such other requirements as may be specified by the Board.

\* \* \* \* \*

(4) The committee of creditors may approve a resolution plan by a vote of not less than seventy-five 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 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.

\* \* \* \* \*

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 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).

\* \* \* \* \*

**34.(1)** Where the Adjudicating Authority passes an order for liquidation of the corporate debtor under section 33, the resolution professional appointed for the corporate insolvency resolution process under Chapter II shall act as the liquidator for the purposes of liquidation unless replaced by the Adjudicating Authority under sub-section (4).

Appointment of liquidator and fee to be paid.

\* \* \* \* \*

(4) The Adjudicating Authority shall by order replace the resolution professional, if—

\* \* \* \* \*

(b) the Board recommends the replacement of a resolution professional to the Adjudicating Authority for reasons to be recorded in writing.

\* \* \* \* \*

(5) For the purposes of clause (a) of sub-section (4), the Adjudicating Authority may direct the Board to propose the name of another insolvency professional to be appointed as a liquidator.

(6) The Board shall propose the name of another insolvency professional within ten days of the direction issued by the Adjudicating Authority under sub-section (5).

\* \* \* \* \*

Appeal against the decision of liquidator.

**42.** A creditor may appeal to the Adjudicating Authority against the decision of the liquidator rejecting the claims within fourteen days of the receipt of such decision.

\* \* \* \* \*

Avoidance of undervalued transactions.

**45. (1)** If the liquidator or the resolution professional, as the case may be, on an examination of the transactions of the corporate debtor referred to in sub-section (2) of section 43 determines that certain transactions were made during the relevant period under section 46, which were undervalued, he shall make an application to the Adjudicating Authority to declare such transactions as void and reverse the effect of such transaction in accordance with this Chapter.

\* \* \* \* \*

CHAPTER VI

ADJUDICATING AUTHORITY FOR CORPORATE PERSONS

Adjudicating authority for corporate persons.

**60. (1)** \* \* \* \* \*

(2) Without prejudice to sub-section (1) and notwithstanding anything to the contrary contained in this Code, where a corporate insolvency resolution process or liquidation proceeding of a corporate debtor is pending before a National Company Law Tribunal, an application relating to the insolvency resolution or bankruptcy of a personal guarantor of such corporate debtor shall be filed before such National Company Law Tribunal.

(3) An insolvency resolution process or bankruptcy proceeding of a personal guarantor of the corporate debtor pending in any court or tribunal shall stand transferred to the Adjudicating Authority dealing with insolvency resolution process or liquidation proceeding of such corporate debtor.

\* \* \* \* \*

Punishment for transactions defrauding creditors.

**69.** On or after the insolvency commencement date, if an officer of the corporate debtor or the corporate debtor—

(a) has made or caused to be made any gift or transfer of, or charge on, or has caused or connived in the execution of a decree or order against, the property of the corporate debtor;

(b) has concealed or removed any part of the property of the corporate debtor within two months before the date of any unsatisfied judgment, decree or order for payment of money obtained against the corporate debtor,

such officer of the corporate debtor or the corporate debtor, as the case may be, shall be punishable with imprisonment for a term which shall not be less than one year, but which may extend to five years, or with fine, which shall not be less than one lakh rupees, but may extend to one crore rupees, or with both:

Provided that a person shall not be punishable under this section if the acts mentioned in clause (a) were committed more than five years before the insolvency commencement date; or if he proves that, at the time of commission of those acts, he had no intent to defraud the creditors of the corporate debtor.

\* \* \* \* \*

**76. Where—**

(a) an operational creditor has wilfully or knowingly concealed in an application under section 9 the fact that the corporate debtor had notified him of a dispute in respect of the unpaid operational debt or the full and final repayment of the unpaid operational debt; or

Punishment for non-disclosure of dispute or repayment of debt by operational creditor.

\* \* \* \* \*

**CHAPTER II**

**POWERS AND FUNCTIONS OF THE BOARD**

**196. (1)** The Board shall, subject to the general direction of the Central Government, perform all or any of the following functions, namely:—

Powers and functions of Board.

(a) register insolvency professional agencies, insolvency professionals and information utilities and renew, withdraw, suspend or cancel such registrations;

\* \* \* \* \*

(c) levy fee or other charges for the registration of insolvency professional agencies, insolvency professionals and information utilities;

\* \* \* \* \*

**231.** No civil court shall have jurisdiction in respect of any matter in which the Adjudicating Authority is empowered by, or under, this Code to pass any order and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any order passed by such Adjudicating Authority under this Code.

Bar of Jurisdiction.

\* \* \* \* \*

**239. (1)**

\* \* \* \* \*

Power to make rules.

(2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for any of the following matters, namely:—

\* \* \* \* \*

(e) the form, the manner and the fee for making application before the Adjudicating Authority for initiating corporate insolvency resolution process by operational creditor under sub-section (2) of section 9;

\* \* \* \* \*

**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:—

\* \* \* \* \*

(g) the other information under clause (d) of sub-section (3) of section 9;

\* \* \* \* \*

(j) the manner of making public announcement under sub-section (2) of section 15;

\* \* \* \* \*

(n) the other matters under sub-clause (iv) of clause (a), and the other duties to be performed by the interim resolution professional under clause (g), of section 18;

\* \* \* \* \*

EXTRACT FROM THE COMPANIES ACT, 2013

(18 OF 2013)

\* \* \* \* \*

Transfer of  
certain  
pending  
proceedings.

**434.** (1) On such date as may be notified by the Central Government in this behalf,—

\* \* \* \* \*

(c) all proceedings under the Companies Act, 1956, including proceedings relating to arbitration, compromise, arrangements and reconstruction and winding up of companies, pending immediately before such date before any District Court or High Court, shall stand transferred to the Tribunal and the Tribunal may proceed to deal with such proceedings from the stage before their transfer. 1 of 1956.

\* \* \* \* \*



LOK SABHA

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BILL

further to amend the Insolvency and Bankruptcy Code, 2016.

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*(Shri Piyush Goyal, Minister of Railways, Coal, Finance and Corporate Affairs)*

MGIPMRND—797LS(S3)—19-07-2018.