

**SALIENT FEATURES OF THE INSOLVENCY AND BANKRUPTCY CODE**  
**(AMENDMENT) ACT, 2020**

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**Introduction:**

On March 13, 2020, the Insolvency and Bankruptcy Code (Amendment) Bill, 2020, which was passed by both the houses of the Parliament, received the President's assent to become a law in the form of the Insolvency and Bankruptcy Code (Amendment) Act, 2020 ("Amendment Act"). The Amendment Act aims to streamline the Corporate Insolvency Resolution Process ("CIRP") and provide protection to new owners of a loan defaulter company against prosecution for misdeeds of previous owners. By way of the Act, The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 was also repealed.

**Salient Features:**

- **Insolvency commencement date:**  
The proviso to Section 5(12) of the Insolvency and Bankruptcy Code ("Code") has been deleted thereby making it clear that the insolvency commencement date would be the date of admission of an application for initiating CIRP by the National Company Law Tribunal ("NCLT") under Sections 7/ 9 or 10, as the case may be.  
Earlier, the proviso to Section 5(12) (which was inserted in the Code with effect from 6<sup>th</sup> June 2018) states that where the interim resolution professional ("IRP") is not appointed in the admission order, the insolvency commencement date shall be the date on which such IRP is appointed by the Adjudicating Authority.
- **Prescribing a threshold for initiating Resolution Process:**  
Section 7 of the Code has been amended to the extent that a threshold for initiating Resolution Process for a certain category of financial creditors has been put in place. The Proviso's 1 and 2 to this section elucidates that the financial creditors who are allottees under a real estate project; and financial creditors falling in the category of creditors referred to in Section 21(6A) (a) and (b), may initiate CIRP against the corporate debtor before the adjudicating authority by filing a joint application comprising of not less than 100 such allottees under the same real estate project or not less than 10% of the total number of such allottees under the same real estate project, whichever is less.
- **Corporate debtors allowed to initiate CIRP against other Corporate debtors**  
By way of the Amendment Act, explanation II has been added to Section 11 of the Code which states that corporate debtor as referred to in clauses (a) to (d) of Section 11 of the Code will now be permitted to initiate CIRP against other corporate debtor's, which was not allowed earlier.
- **No suspension/ termination of licenses, permits etc. issued by the Government, during moratorium**  
An explanation to Section 14 of the Code has been inserted in order to clarify that a license, permit, registration, etc. given by the Central Government or any other authority shall not be suspended or terminated on the grounds of insolvency, subject to there being no default in payment of current dues arising for the use or continuation of the license, permit, etc. during the moratorium period.

The changes have been made again for keeping the thrust of going concern and to maximise the value of a corporate debtor.

- Continuance of supply of goods/ serviced critical to Corporate Debtor

It is common knowledge that as per Section 14(2) of the Code, the supply of essential goods or services to the corporate debtor could not be terminated or interrupted during moratorium. With the new amendment, sub-section (2A) has been inserted which states that where the IRP/ IRP considers the supply of goods/ services critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or services shall not be terminated or interrupted during moratorium, except where the corporate debtor has not paid dues arising from supply during moratorium.

- Appointment and tenure of IRP

Earlier, the Adjudicating Authority had to appoint an IRP within 14 days from insolvency commencement date. In light of the amended Section 16(1), the IRP must be appointed on the date which the insolvency has commenced, itself.

- Liability for prior offences

A new section namely, Section 32A has been inserted by way of the Act which provides that the corporate debtor will not be liable for an offence committed prior to the commencement of CIRP from the date the resolution plan is approved by the Adjudicating Authority. However, the approved resolution plan must result in change in the management or control of the corporate debtor as prescribed in Section 32A. The said Section further discharges the corporate debtor from any prosecution that has been instituted against it during the CIRP on the approval of the resolution plan, however, the officer who is default in case of a company and a designated partner in case of an LLP shall continue to be liable for any such offence committed by the corporate debtor. In respect to such scenario, this Section also safeguards the property of the corporate debtor from actions such as attachment, seizure, retention or confiscation of such property.

### **Conclusion**

In the years since the act came into force and with the changing times and scenario there has been a need felt to give priority in repayment to last mile funding to corporate debtors to prevent insolvency i.e in case the company goes into corporate insolvency resolution process or liquidation. The amendment was necessary in order to prevent potential abuse of the Code by certain classes of financial creditors. The amendment also provides immunity against prosecution of the corporate debtor, action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions. The amended act was needed in order to fill the critical gaps in the corporate insolvency framework. The act seeks to remove bottlenecks and streamline the corporate insolvency resolution process.