

Legal Update- Insolvency and Bankruptcy Code, 2016

Introduction

The Cabinet ministers of the Indian Government on 17 July 2019 said it would again amend the Insolvency and Bankruptcy Code, 2016, a signature reform of Prime Minister Narendra Modi's first term.

The legislation was getting mired in frustrating legal delays and bizarre judgments, threatening to scare off global investors from a USD 200-billion-plus bad-debt clean-up. The proposed amendments are aimed to fill critical gaps in the corporate insolvency resolution process and will explicitly hand power over distribution of proceeds to creditors' committees. That should return some common sense to a process that would have required financial creditors to share the money from any new buyer of a bankrupt business equally with sundry suppliers and other unsecured lenders.

The proposed amendments will lead to further promotion of ease of doing business, de-clogging of National Company Law Tribunal and Special Courts. The focus would be on serious cases of violations of the Act and ensuring enhanced compliance by corporates.

Proposed Amendments

- To include alternative restructuring schemes such as mergers, demergers and amalgamations as part of the resolution plan.
- Extending the deadline taken for completion of corporate insolvency resolution process from 270 days to 330 days but this period of 330 days shall also include the time spent in litigation or any other judicial process after a resolution plan is admitted under the Code.
- Restructure voting by trustees/agents appointed as representatives by financial creditors of the same class under section 21 (6A) of the Code. Such trustees/ agents of financial creditors of the same class shall cast vote in accordance with the decision approved by the highest voting share (more than 50 %) of financial creditors on present and voting basis.
- To provide a specific provision for financial creditors who have not voted in favour of the resolution plan and operational creditors for receiving at least the amount that would have been received by them if the amount to be distributed under the resolution plan had been distributed in accordance with Section 30 read with Section 53 of the Code or the amount that would have been received if the liquidation value of the corporate debtor had been distributed in accordance with Section 53 of the Code, whichever is higher.
- To grant powers to the Committee of Creditors by permitting it to decide how claims will be dispersed based on commercial consideration.
- To clarify that the resolution plan shall be binding on all stakeholders, including the Central Government, any State Government or local authority who have claims against a corporate debtor.
- To provide that a Committee of Creditors may take the decision to liquidate the corporate debtor, at any time after the constitution of Committee of Creditors and before the preparation of Information Memorandum (a document prepared by a resolution professional with details and information about the formulation of a resolution plan).

Analysis:

The Central Government by introducing this Amendment Bill intends to speed up the bankruptcy resolution process which has been delayed in various ongoing cases due to the involvement of courts and rectification of irregularities, thereby affecting the efficiency and intention of the Code since the law came into force in 2016. Also, this Amendment Bill after getting the approval of the Union Cabinet will resolve the concerns all secured creditors who were worried after the interpretation of the Code by NCLAT in the Essar Steel case.

Alternative restructuring schemes: The amendment seeks clarity on inclusion of alternative restructuring schemes like mergers, demergers and amalgamations as part of the resolution plan. The existing provisions in IBC do not have any provisions for alternative restructuring plans.

Strict timeline for resolution: The current timeline for resolution is 270 days, however, in several cases, this period has been prolonged due to exclusion of time taken for litigation. According to the amendments, however, the resolution will now need to be completed within 330 days, which includes the time spent for litigation. Further, companies will be sent for liquidation if the resolution process goes beyond this limit.

More power to Committee of Creditors: The Committee of Creditors will now have the power to make decisions on the distribution of funds to various creditor categories. Further, operational and unsecured financial creditors will not necessarily be treated on par with secured financial creditors.

Majority voting threshold reduced in Committee of Creditors: The decision of financial creditors will be approved if 50% of those 'present and voting' vote in favour of the decision vs. the 66% threshold earlier.

More power to homebuyers: In the case of homebuyers who file cases against builders for non-delivery of houses, the proposed change ensures that a majority vote, i.e., more than 50% of those present and voting, from homebuyers will be counted as a 100% vote from that class of creditors in favour of or against a resolution plan.

IBC decisions to be binding on all govts: The resolution or liquidation decision under IBC will be binding on central, state, and local governments to whom the firm may owe dues.

Reducing delays at the admission stage: The NCLT benches will need to explain an application which has not been admitted or rejected within 14 days.

The changes are expected to lead to timely admission of applications and timely completion of the Corporate Insolvency Resolution Process, greater clarity on permissibility of corporate restructuring schemes, manner of distribution of amounts amongst financial and operational creditors, clarity on rights and duties of authorized representatives of voters and applicability of the resolution plan on all statutory authorities. Overall, this has the makings of a significant positive step to re-energize the resolution process in India and invite foreign capital.

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