PREAMBLE:

Issued by: Ministry of Law and Justice. (Legislative Department) .

Date of Issue: 23rd November, 2017.

Nomenclature: Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017. No.7 of 2017.

The Need: The Ordinance has been issued to meet the dual criteria:

1. To strengthen the insolvency resolution process so as to prohibit certain persons on account of their antecedents from submitting a resolution plan, so as to preserve the credibility of the processes as envisaged under the Insolvency and Bankruptcy Code, 2016.

2. To strengthen the resolution plan process by certain additional requirements for submission and consideration by IRP (Insolvency Resolution Professional) to COC (Committee of Creditors).

3. Along with other steps towards improving compliances, actions against defaulting companies to prevent misuse of corporate structures for diversion of funds, reforms in the banking sector, weeding-out of unscrupulous elements from the resolution process is part of ongoing reforms initiated by the Government. These would help strengthen the formal economy and encourage honest businesses and budding entrepreneurs to work in a trustworthy, predictable regulatory environment.

INSERTION OF NEW SECTIONS AND AMENDMENT TO EXISTING SECTIONS :

The Ordinance amends Sections 2, 5, 25, 30, 35 and 240 of the Code, and inserts new Sections 29A and 235A in the Code.

Gist of the amendments is given below:

Relevant extract of the Sections from IBBC Code ,2016	Application. Section 2. The provisions of this Code shall apply to— (*d*) such other body incorporated under any law for the time being in force, as the Central Government may, by notification, specify in this behalf; and (*e*) partnership firms and individuals, in relation to their insolvency, liquidation, voluntary liquidation or bankruptcy, as the case may be
Ordinance,2017 amendments	Amendment in Section 2. In the Insolvency and Bankruptcy Code, 2016 (hereinafter referred to as the principal Act), in section 2,— (i) in clause (d), the word "and" shall be omitted; (ii) for clause *(e),* the following clauses shall be substituted, namely:— "(e) personal guarantors to corporate debtors; (f) partnership firms and proprietorship firms; and *(g)* individuals, other than persons referred to in clause *(e),"*
Outcome of Ordinance,2017	1. The substitution of above three clauses would help in commencement of Part III of the Code relating to individuals and partnership firms in phases. 2. By Law Partnership Firms & Proprietorship Firms are not separate legal entities. An individual may be Partner of Partnership Firm(s) and/or a Proprietor of a Proprietorship Firm(s). Simultaneously he may be a Personal Guarantor(s) to Corporate Debtor. The applicability of the code for this category of persons may be an interesting exercise.
Relevant extract of the Sections from IBBC Code ,2016	Definitions. **Section 5.** In this Part, unless the context otherwise requires,— (*25*) "resolution applicant" means any person who submits a resolution plan to the resolution professional; (*26*) "resolution plan" means a plan proposed by any person for insolvency resolution of the corporate debtor as a going concern in accordance with Part II;
Ordinance,2017 amendments	Amendment In section 5 of the principal Act,— *(a)* for clause (25), the following clause shall be substituted, namely:— '(25) "resolution applicant" means a person, who individually or jointly with any other person, submits a resolution plan to the resolution professional pursuant to the invitation made under clause (A) of sub-section *(2)* of section 25;'; *(b)* in clause *(26),* for the words "any person", the words "resolution applicant" shall be substituted.
Outcome of Ordinance,2017	1.Substitution of Clause (25) & (26) of Ordinance ,2017 has provided more clarity to resolution plan and resolution applicant. 2.Now a person individually or jointly with any other person can submit resolution plan to the resolution professional who invite resolution plan. Section 5(26): Now includes resolution plan submitted by resolution applicant under CIRP (Corporate Insolvency Resolution Plan).
Relevant extract of the Sections from IBBC Code ,2016	Duties of resolution professional. **Section 25.** (*1*) It shall be the duty of the resolution professional to preserve and protect the assets of the corporate debtor, including the continued business operations of the corporate debtor. (*2*) For the purposes of sub-section (*1*), the resolution professional shall undertake the following actions, namely:— (*h*) invite prospective lenders, investors, and any other persons to put forward resolution plans;

Ordinance,2017 amendments	Amendment In Section 25 of the principal Act, in sub-section (2), for clause *(h),* the following clause shall be substituted, namely:— (h) invite prospective resolution applicants, who fulfil such criteria as may be laid down by him with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board, to submit a resolution plan or plans.".
Outcome of Ordinance,2017	The criteria of the prospective resolution applicants who fulfills such criteria as may be laid down by Resolution Professional, with the approval of COC & who can participate in resolution plan or plans having regard to the complexity of and scale of operations of the business of the corporate debtor and such other conditions as may be specified by the Board i.e. IBBI.
Relevant extract of the Sections from IBBC Code ,2016	Insertion of new Section 29A
Ordinance,2017 amendments	Persons not eligible to be resolution applicant. Section 29A A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly with such person, or any person who is a promoter or in the management or control of such person,— ➢ is an undischarged insolvent; ➢ Willful Defaulters, ➢ Those who have their accounts classified as Non-Performing Assets (NPAs) for one year or more and are unable to settle their overdue amounts include interest thereon and charges relating to the account before submission of the Resolution Plan, ➢ Those who have executed an enforceable guarantee in favour of a creditor, in respect of a Corporate Debtor undergoing a Corporate Insolvency Resolution Process or Liquidation Process under the Code. ➢ *He has been convicted for any offence punishable with imprisonment for two years or more.* ➢ *He has been disqualified to act as a Director under the Companies Act, 2013.* ➢ *He has been prohibited by the SEBI from trading or accessing the capital market.* ➢ *Has indulged in preferential transaction or undervalued transaction or fraudulent transaction in respect of which an order has been passed by the AA (Adjudicating Authority).* ➢ *Has executed an enforceable guarantee in favour of a creditor, in respect of a corporate debtor under insolvency resolution process or liquidation under this Code.* ➢ where any connected person in respect of such person meets any of the criteria : the expression "connected person" means— (i) any person who is promoter or in the management or control of the resolution applicant; or (h) 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)* *(j)* has been subject to any disability, corresponding to clauses *(a)* to (i), under any law in a jurisdiction outside India.".
Outcome of Ordinance,2017	By virtue of insertion of Section 29A immediately after existing Section 29 the new category of Persons who are not eligible to act as Resolution Applicants has been introduced.

	The explanation **"connected person"** widens the scope of persons who are associated with "**non eligible Resolution Applicants"** to indirectly participate in **CIRP**.
Relevant extract of the Sections from IBBC Code ,2016	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. (*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.
Ordinance,2017 amendments	Amendment In Section 30 of the principal Act, for sub-section *(4},* the following Amendment of sub-section shall be substituted, namely:— (4) The Committee of Creditors (CoC) 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 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, where no other resolution plan is available with it require the resolution professional; to invite a fresh resolution plan.
Outcome of Ordinance,2017	Now, the criteria for approving the resolution plan has undergone a sea change. COC can approve a resolution plan by vote of not less than seventy five percent of voting share of financial creditors, after considering its feasibility & viability and such other requirements as may be laid down by the Board. Provided COC shall not approve a resolution plan before commencement of this Ordinance where the resolution applicant is ineligible under Section 29A & where no resolution plan is available with it & require RP (Resolution Professional) to invite a fresh resolution plan.
Relevant extract of the Sections from IBBC Code ,2016	Powers and duties of liquidator. Section 35. (*1*) Subject to the directions of the Adjudicating Authority, the liquidator shall have the following powers and duties, namely :— (*f*) subject to section 52 (Secured creditor in liquidation proceedings.), to sell the immovable and movable property and actionable claims of the corporate debtor in liquidation by public auction or private contract, with power to transfer such property to any person or body corporate, or to sell the same in parcels in such manner as may be specified;
Ordinance,2017 amendments	Amendment In Section 35 of the principal Act, in sub –section (*I*) , in clause (*f*) the following proviso shall be inserted, namely:- "Provided that the liquidator shall not sell the immovable and movable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.".
Outcome of Ordinance,2017	Now, a new Proviso is inserted regarding resolution applicant. By virtue of this proviso liquidator shall not be able to sell immoveable or moveable property or actionable claims of the corporate debtor in liquidation to any person who is not eligible to be a resolution applicant.
Relevant extract of the Section from IBBC Code,2016	Insertion of new Section 235A

Ordinance,2017 amendments	Punishment where no specific penalty or punishment is provided. After section 235 of the principal Act, the following section shall be inserted, namely:— "23 5A. If any person contravenes any of the provisions of this Code or the rules or regulations made there under for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees."
Outcome of Ordinance,2017	In order to ensure that the provisions of the Code and the Rules and Regulations prescribed there under are enforced effectively, the new Section 235A provides for punishment for contravention of the provisions where no specific penalty or punishment is provided. The punishment is fine which shall not be less than one lakh rupees but which may extend to two crore rupees.
Relevant extract of the Sections from IBBC Code ,2016	Power to make regulations. **240.** (*1*) The Board may, by notification, make regulations consistent with this Code and the rules made thereunder, to carry out the provisions of this Code. (*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:— (*s*) the manner of appointing accountants, lawyers and other advisors under clause (*d*) of sub-section (*2*) of section 25; (*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;
Ordinance,2017 amendments	Amendment In section 240 of the principal Act, in sub-section (2),— *(i)* after clause *(s),* the following clause shall be inserted, namely:— *"(sa)* other conditions under clause *(h)* of sub-section (2) of section 25;", (*ii*) after clause (w), the following clause shall be inserted, namely.— "(*wa*) other requirements under sub –section (4) of Section 30
Outcome of Ordinance,2017	BY virtue of insertion of clause (sa) & clause (wa) the Board has the power to make Regulations' regarding Resolution Applicant & regarding approval of Resolution Plan

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