By: CS Vikram Sirohi

Part-1

The Insolvency and Bankruptcy Code (Amendment) Act, 2019

What is New?

Amendment No.-1

Section 5(26): Definition of 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;

Explanation: *for the removal of doubts, it is hereby clarified that a resolution plan may include provision for the restructuring of corporate debtor, including by way of merger, amalgamation and demerger*

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Amendment No.-2

Section 7: Initiation of Corporate Insolvency Resolution Process by Financial Creditor

(1) 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-

(2) The financial creditor shall make an application under sub-section (1) in such form and manner and accompanied with such fee as may be prescribed.

(3) The financial Creditor shall along with the Application furnished-

(a) record the default recorded with information utility or such other record or evidence of default as may be prescribed

(b) the name of the resolution professional proposed to act as an interim resolution professional,

(c) any other information as may be prescribed.

(4) The Adjudicating Authority shall, within fourteen days of the receipt of the application under sub-section (2), ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor under sub-section (3). "Provided that if the Adjudicating Authority has not ascertained the existence of default and passed and order under Sub-section (5) with in such time it shall record its reason in writing for the same."

Section 7: Initiation of Corporate Insolvency Resolution Process by Financial Creditor

(5) Where the Adjudicating Authority is satisfied that—

a default has occurred and the application under sub-section (*2*) is complete and there is no disciplinary proceedings pending against the proposed resolution professional it may by order, admit such application, or

default has not occurred or the application under sub-section (*2*) is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application:

Provided that the Adjudicating Authority shall, before rejecting the application under clause (b) of sub-section (5), give a notice to

(6) The corporate insolvency resolution process shall commence from the date of admission of the application under sub-section (*5*).

(7) The Adjudicating Authority shall communicate—

the order under clause (*a*) of sub-section (*5*) to the financial creditor and the Corporate Debtor

the order under clause (*b*) of sub-section (*5*) to the financial creditor,

within seven days of admission or rejection of such application, as the case may be.

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Amendment No.-3

Section 12: Time limit for completion insolvency resolution process

It shall be completed within 180 days from the date of admission of the application to initiate such process.

The resolution professional shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution process beyond one hundred and eighty days, , if instructed to do so by a resolution passed at a meeting of the committee of creditors by a vote of *seventy-five per cent. of the voting shares.*

On receipt of an application under sub-section (2), if the Adjudicating Authority is satisfied that the subject matter of the case is such that corporate insolvency resolution process cannot be completed within one hundred and eighty days, it may by order extend the duration of such process beyond one hundred and eighty days by such further period as it thinks fit, but not exceeding ninety days:

Provided that any extension of the period of corporate insolvency resolution process under this section shall not be granted more than once.

Provided further that the corporate insolvency resolution shall mandatorily be completed with in a period of 330 days from the insolvency commencement date, including any extension of the period of corporate insolvency resolution process granted and this section and time taken in legal proceeding in relation to such resolution process of the debtor.

Provided also that where the insolvency process of the corporate debtor is pending and has been completed within the period referred second proviso, such resolution process shall be completed within a period of 90 days from the commencement of the insolvency and bankruptcy Code (Amendment) Act' 2019.

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Amendment No.-4

Section 25A: Rights and duties of authorised representative of financial creditors

(1) 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.

(2) It the be the duty of the authorized representative to circulate the agenda and minute of the meeting of the Committee of creditors to the financial creditors he represents

(3) Shall not act against the interest of the financial creditors he represents and shall always act in accordance with their prior instructions.

Provided that if he represents several financial creditors, then he shall cast his vote in accordance with the instruction received from each financial creditor.

Provided that if he represents several financial creditors, then he shall cast his vote in accordance with the instruction received from each financial creditor.

Provided further that if any financial creditor does not give prior instructions through physical or electronic means, the authorized representative abstain from voting.

(3A) Notwithstanding anything to contrary contained in sub section 3 the authorized representative shall cast his vote on behalf of all the financial creditors he represents in accordance with the decision taken by by a vote of 50% of voting shares of the financial creditors he represents, who have cast their vote.

Provided that for a vote to be cast in respect of an application under section 12A, the authorized shall cast his vote in accordance with the provision of Sub-section (3).

(4) The authorized 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.