* The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019*

Ordinance Date: 28.12.2019

Total Amendments: 12 Amendments

Section Amended: Section 5, 7, 11, 14, 16, 21, 23, 29A, 227, 239, 240

* Major Amendments *

Section-7(1): Initiation of Corporate Insolvency Resolution process by Financial Creditor.

1. A financial creditor either-

   (a) itself or

   (b) jointly with other financial creditors

May file an application before NCLT when a default has occurred.

Provided that an application for initiating corporate insolvency resolution process the corporate debtor shall be filed Jointly by

(a) not less than 100 of the such creditors in the same class, or

(b) not less than 10% of the total no. of such creditors in the same class,

Whichever is less.

Provided further that for financial creditors who are allottees under a real estate project-

An application for initiating corporate insolvency resolution process against the corporate debtor shall be filed jointly be-

(a) not less than 100 of such allottees under the same real estate project, or

(b) not less than 10% of the total number of such allottees under the same real estate project,

Whichever is less.

Provided also that where an application for initiating the corporate insolvency resolution process the a corporate debtor has been filed by financial creditors referred to in the 1st & 2nd provisos and has not been admitted by the NCLT before the Commencement of the Ordinance, such application shall be modify to comply with the requirements of the above provisos as the case may be within 30 days of commencement of the said ordinance, otherwise application shall be deemed to be withdraw before its admission.

By: CS Vikram Sirohi

Explanation. —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.

Section-11: Person not entitled to make application

The following persons shall not be entitled to make an application to initiate corporate insolvency resolution process under this Chapter, namely: —

(a) a corporate debtor undergoing a corporate insolvency resolution process; or

(b) a corporate debtor having completed corporate insolvency resolution process 12 Months preceding the date of making of the application; or

(c) a corporate debtor or a financial creditor who has violated any of the terms of resolution plan which was approved 12 months before the date of making of an application under this Chapter; or

(d) a corporate debtor in respect of whom a liquidation order has been made.

Explanation I -For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

Explanation II- For the purpose of this section, it is hereby clarified that nothing in this section prevent a Corporate debtor referred to in clauses (a) to (d) initiating Corporate Insolvency resolution process against another Corporate debtor.

Section-14 Moratorium

(1) Subject to provisions of sub-sections (2) and (3), the Adjudicating Authority shall by order declare moratorium for prohibiting all of the following, namely: —

(a) the institution of suits or continuation of pending suits or proceedings against the corporate debtor including execution of any judgment, decree or order in any court of law, tribunal, arbitration panel or other authority;

(b) transferring, encumbering, alienating or disposing of by the corporate debtor any of its assets or any legal right or beneficial interest therein;

(c) any action to foreclose, recover or enforce any security interest created by the corporate debtor in respect of its property including any action under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(d) the recovery of any property by an owner or lessor where such property is occupied by or in the possession of the corporate debtor.

Explanation: for the purpose of this sub-section, its hereby clarified that notwithstanding

Anything contained in any other law for the time being in force, a license, permit, registration quota, concession, clearances, or a similar grant or right given by-

(a) the Central Government,

(b)State Government, Local Authority,

(c) sectoral regulator or

(d) any other Authority constituted under any other law for the time being in force,

shall not be suspended or terminated on the grounds of insolvency, subject to the condition that there is no default in payment of the current dues arising for the use or continuation of the license, permit, registration, quota, concession, clearances or a similar grant or right during the moratorium period:

(2) The supply of essential goods or services to the corporate debtor as may be specified shall not be terminated or suspended or interrupted during moratorium period.

(2A) Where the interim resolution professional or resolution professional, as the case may be, considers-

(a) the supply of goods or services critical to the project

(b) and preserves the value of the Corporate debtor,

(c) and manage the operations of the such corporate debtor,

Then the supply of such goods or services shall not be terminated, suspended, or interrupted during the moratorium period or in such circumstances as the case may be.

3 (a) The provisions of sub-section (1) shall not apply to such transactions, agreements, or other agreements as may be notified by the Central Government in consultation with any financial sectoral regulator or any other authority.

Section-23 (1) Resolution Professional to Conduct corporate insolvency resolution process

(1) Subject to section 27, the resolution professional shall conduct the entire corporate insolvency resolution process and manage the operations of the corporate debtor during the corporate insolvency resolution process period.

Provided that the resolution professional shall continue to manage the operations of the Corporate debtor after the expiry of the Corporate insolvency resolution process period, until an order approving the resolution plan under sub section (1) of the section 31 or appointing the liquidator under section 34 is passed by the Adjudicating Authority.

Section-227 Power of CG to notify Financial Service provider

Notwithstanding anything to the contrary *contained* in this Code or any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed.

Explanation: for the removal of doubts, it is hereby clarified that the insolvency and liquidation proceedings for the financial services providers or categories of financial services providers may be conducted in such manner as may be prescribed.