**Corporate Brief: Amendments to Insolvency and Bankruptcy Code, 2016**

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The Insolvency and Bankruptcy Code, 2016 (the **“Code”**) was enacted, *inter alia*, to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. The provisions for insolvency resolution and liquidation of a corporate person in the Code did not restrict or bar any person from submitting a resolution plan or participating in the acquisition process of the assets of a company at the time of liquidation. Therefore, it was point of concern that defaulting promoters/ wilful defaulters may misuse this situation and gain or regain control of the corporate debtor. To address the issue of unscrupulous person being rewarded at the expense of creditors an amendment to the Code was proposed.

Accordingly, Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 was promulgated by the President on November 23, 2017 as the Parliament was not in session. Since, an ordinance ceases to operate at the expiration of six weeks from the reassembly of the both Houses of the Parliament, the Government introduced the Insolvency and Bankruptcy Code (Amendment) Bill, 2017. This Bill was passed by Lok Sabha on December 29, 2017 and Rajya Sabha on January 2, 2018 as well as Presidential assent was received on January 18, 2018 and The Insolvency and Bankruptcy Code (Amendment) Bill, 2017came into force from November 23, 2017 (the **“Amendment Act”**).

We have provided a brief description of the key changes that the Amendment Act makes under various section heads as under:

1. **Widening the scope of Insolvency and Bankruptcy Code, 2016 (“Code”):**

The Code would also apply to the following:

1. personal guarantors to corporate debtors;
2. partnership firms and proprietorship firms; and
3. individuals (other than personal guarantors)

However, till date regulations in relation to partnership firms, proprietorship firms and individuals have not been released.

1. **Definition of resolution applicant**

Definition of resolution applicant has been amended to include 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 (h) of section 25(2) of the Code. This is a specific amendment brought about to ensure that a resolution plan can be submitted only by those who are specifically invited to submit a resolution plan by the resolution professional.

1. **Duties of resolution professional**

Duties of the resolution professional under Section 25(2)(h) of the Code to include inviting prospective resolution applicants, who fulfil such criteria as may be laid down by the resolution professional. Such criteria would be imposed in accordance with the following:

1. approval of committee of creditors (“**CoC**”);
2. complexity and scale of operations of the business of the corporate debtor; and
3. other conditions as may be specified by the Insolvency and Bankruptcy Board of India (**“IBBI”**).

This amendment seeks to ensure that the resolution applicant is capable of understanding, appreciating and if needed assisting in the operations of the business of the corporate debtor as a going concern during a corporate insolvency resolution process (“**CIRP**”).

1. **Person not eligible to be resolution applicant**

The Amendment Act provides that a person shall not be eligible to submit a resolution plan if such person or any other person acting jointly or in concertwith such person falls under the following categories:

1. an undischarged insolvent;
2. a wilful defaulter in accordance with the guidelines of the Reserve Bank of India (“**RBI”**) issued under the Banking Regulation Act, 1949 (“**BR Act, 1949”)**;
3. has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing assets (“**NPA”**) in accordance with the guidelines of the RBI issued under the BR Act 1949 and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to NPA accounts before submission of resolution plan;

1. has been convicted for any offence punishable with imprisonment for two years or more;
2. is qualified to act as a director under the Companies Act, 2013
3. prohibited by the Securities and Exchange Board of India (“**SEBI”**) from trading in securities or accessing the securities markets;
4. has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code;
5. has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code;
6. has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or
7. has a connected person not eligible under clauses (a) to (i).

Explanation- “Connected Person” means the following

1. any person who is the promoter or in the management or control of the resolution applicant; or
2. 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
3. the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii).

However, point (iii) above shall not be applicable to:

1. a scheduled bank; or
2. an asset reconstruction company registered with the RBI under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or
3. an Alternate Investment Fund (**AIF**) registered with SEBI
4. **Submission of resolution plan**
5. The CoC would approve a resolution plan by vote of not less than seventy-five percent of voting share of the financial creditors, after considering its feasibility and viability, and such other requirements as may be specified by the IBBI.
6. CoC would not approve a resolution plan submitted before the IBC (Amendment) Ordinance, 2017 if the resolution applicant is ineligible under section 29A and the resolution professional would be required to invite fresh plan if no other resolution plan is available.
7. If the resolution applicant is ineligible to submit a resolution plan due to being classified as an NPA, then resolution applicant would be allowed by CoC for a period of maximum 30 days to make payments of the overdue amounts – and thereafter be eligible to submit a resolution plan. However, such extension shall not be construed as extension of period of resolution process beyond prescribed period.
8. **Powers and duties of liquidator**

Section 35 of the Code is amended to bar any person who is not eligible to be a resolution applicant from purchasing any property or actionable claim of the corporate debtor.

1. **Punishment where no specific penalty or punishment is provided.**

Section 235A provides for punishment with fine not less than one lakh rupees, extendable to two crore rupees in cases where no specific penalty or punishment is provided.

1. **Power to make regulations**

IBBI is provided power for making regulations under Section 25(2)(h) and Section 30(4) of the Code.

Basis the above mentioned provisions it appears that the objective of the Amendment Act is to facilitate phased implementation of the provisions of the Code to corporate persons, individuals and partnership firms, provide clarity as to the persons who can submit a resolution plan in response to an invitation made by the resolution professional, enable the resolution professional to specify the eligibility conditions while inviting resolution plans from prospective resolution applicants and provide for making certain persons ineligible for being a resolution applicant.