

Bill No. 376 of 2019

THE INSOLVENCY AND BANKRUPTCY CODE
(SECOND AMENDMENT) BILL, 2019

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BILL

further to amend the Insolvency and Bankruptcy Code, 2016.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Insolvency and Bankruptcy Code (Second Amendment) Act, 2019. Short title and commencement.

(2) It shall come into force on such date as the Central Government may, by notification
5 in the Official Gazette, appoint:

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

Amendment
of section 5.

2. In section 5 of the principal Act,—

(i) in clause (12), the proviso shall be omitted;

(ii) in clause (15), after the words "during the insolvency resolution process period" occurring at the end, the words "and such other debt as may be notified" shall be inserted.

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Amendment
of section 7.

3. In section 7 of the principal Act, in sub-section (1), before the *Explanation*, the following provisos shall be inserted, namely:—

"Provided that for the financial creditors, referred to in clauses (a) and (b) of sub-section (6A) of section 21, an application for initiating corporate insolvency resolution process shall be filed jointly by not less than one hundred of such creditors in the same class or not less than ten per cent. of the total number of such creditors in the same class, whichever is less:

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Provided further that for financial creditors who are allottees under a real estate project, an application for initiating corporate insolvency resolution process shall be filed jointly by not less than one hundred of such allottees under the same real estate project or not less than ten per cent. of the total number of such allottees under the same real estate project, whichever is less:

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Provided also that where an application for initiating the corporate insolvency resolution process against a corporate debtor has been filed by a financial creditor referred to in the first and second provisos and has not been admitted by the Adjudicating Authority before the commencement of the Insolvency and Bankruptcy Code (Second Amendment) Act, 2019, such application shall be modified to comply with the requirements of the first and second provisos within thirty days of the commencement of the said Act, failing which the application shall be deemed to be withdrawn before its admission."

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Amendment
of section 11.

4. In section 11 of the principal Act, the *Explanation* shall be numbered as *Explanation I* and after *Explanation I* as so numbered, the following *Explanation* shall be inserted, namely:—

"*Explanation II.*—For the purposes of this section, it is hereby clarified that nothing in this section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor."

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Amendment
of section 14.

5. In section 14 of the principal Act,—

(a) in sub-section (1), the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the purposes of this sub-section, it is 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 the Central Government, State Government, local authority, sectoral regulator or 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 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;

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(b) after sub-section (2), the following sub-section shall be inserted, namely:—

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"(2A) The supply of goods or services that the interim resolution professional or resolution professional, as the case may be, considers critical to protect and preserve the value of the corporate debtor and manage the operations of such corporate debtor as a going concern, then the supply of such goods or

services shall not be terminated, suspended or interrupted during the period of moratorium, except if such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.";

5 (c) in sub-section (3), for clause (a), the following clause shall be substituted, namely:—

"(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;"

10 **6.** In section 16 of the principal Act, in sub-section (1), for the words "within fourteen days from the insolvency commencement date", the words "on the insolvency commencement date" shall be substituted. Amendment of section 16.

15 **7.** In section 21 of the principal Act, in sub-section (2), in the second proviso, after the words "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted. Amendment of section 21.

8. In section 23 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:— Amendment of section 23.

20 "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 section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority."

9. In section 29A of the principal Act,—

25 (i) in clause (c), in the second proviso, in the *Explanation I*, after the words, "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted; Amendment of section 29A.

(ii) in clause (j), in *Explanation I*, in the second proviso, after the words "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted.

30 **10.** After section 32 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 32A.

35 "32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

40 (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

45 Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner incharge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

"Explanation.—For the purposes of this sub-section, it is hereby clarified that,—

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

Amendment of section 227.

11. In section 227 of the principal Act,—

(i) for the words "examined in this Code", the words "contained in this Code" shall be substituted;

(ii) the following *Explanation* shall be inserted, namely:—

"Explanation.—For the removal of doubts, it is hereby clarified that the insolvency and liquidation proceedings for financial service providers or categories of financial service providers may be conducted with such modifications and in such manner as may be prescribed."

12. In section 239 of the principal Act, in sub-section (2), after clause (f), the following clauses shall be inserted, namely:— Amendment of section 239.

"(fa) the transactions under the second proviso to sub-section (2) of section 21;

(fb) the transactions under the *Explanation I* to clause (c) of section 29A;

5 (fc) the transactions under the second proviso to clause (j) of section 29A;"

13. In section 240 of the principal Act, in sub-section (2), after clause (i), the following clause shall be inserted, namely:— Amendment of section 240.

10 "(ia) circumstances in which supply of critical goods or services may be terminated, suspended or interrupted during the period of moratorium under sub-section (2A) of section 14;"

STATEMENT OF OBJECTS AND REASONS

The Insolvency and Bankruptcy Code, 2016 (the Code) was enacted with a view to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time-bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order or priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India.

2. A need was felt to give the highest priority in repayment to last mile funding to corporate debtors to prevent insolvency, in case the company goes into corporate insolvency resolution process or liquidation, to prevent potential abuse of the Code by certain classes of financial creditors, to provide immunity against prosecution of the corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfilment of certain conditions, and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016.

3. The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019, *inter alia*, provides for the following, namely:—

(i) to omit the proviso to clause (12) of section 5 of the Code so as to clarify that the insolvency commencement date is the date of admission of an application for initiating corporate insolvency resolution process;

(ii) to amend section 7 of the Code to insert certain provisos specifying a minimum threshold for certain classes of financial creditors for initiating insolvency resolution process;

(iii) to amend section 11 of the Code so as to clarify that a corporate debtor should not be prevented from filing an application for initiation of corporate insolvency resolution process against other corporate debtors;

(iv) to amend section 14 of the Code to clarify that a licence, permit, registration, quota, concession, clearances or a similar grant or right cannot be terminated or suspended during the Moratorium period;

(v) to amend section 16 of the Code so as to provide that an insolvency resolution professional should be appointed on the date of admission of the application for initiation of insolvency resolution process;

(vi) to amend section 23 of the Code to enable the "resolution professional" to manage the affairs of the corporate debtor during interim period between the expiry of corporate insolvency resolution process till the appointment of a liquidator;

(vii) to insert a new section 32A so as to provide that the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease under certain circumstances;

(viii) to amend section 227 of the Code so as to clarify that the insolvency and liquidation proceedings for financial service providers may be conducted with such modifications and in such manner as may be prescribed; and

(ix) the other amendments which are of consequential in nature.

4. The Bill seeks to achieve the above objectives.

NIRMALA SITHARAMAN.

NEW DELHI;

The 10th December, 2019.

FINANCIAL MEMORANDUM

The Bill if enacted, would not involve any expenditure either recurring or non- recurring from the Consolidated Fund of India.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 5 of the Bill seeks to insert sub-section (2A) in section 14 of the Code which confers power upon the Board to specify the circumstances in which supply of critical goods or services may be terminated, suspended or interrupted during the period of moratorium under sub-section (2A) of section 14.

Clause 7 of the Bill seeks to amend section 21 of the Code which confers power upon the Central Government to prescribe the transactions under the second proviso to sub-section (2) of section 21.

Clause 9 of the Bill seeks to amend section 29 of the Code which confers power upon the Central Government to prescribe the transactions under the *Explanation I* to clause (c) of section 29A and the transactions under the second proviso to clause (j) of section 29A.

2. The matters in respect of which the aforementioned rules and regulations may be made are matters of procedure and administrative detail, and as such, it is not practicable to provide for them in the proposed Bill itself. The delegation of legislative power is, therefore, of a normal character.

ANNEXURE

EXTRACTS FROM THE INSOLVENCY AND BANKRUPTCY CODE, 2016

(31 OF 2016)

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5. In this Part, unless the context otherwise requires,— Definitions.

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(12) "insolvency commencement date" means the date of admission of an application for initiating corporate insolvency resolution process by the Adjudicating Authority under sections 7, 9 or section 10, as the case may be:

Provided that where the interim resolution professional is not appointed in the order admitting application under section 7, 9 or section 10, the insolvency commencement date shall be the date on which such interim resolution professional is appointed by the Adjudicating Authority;

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(15) "interim finance" means any financial debt raised by the resolution professional during the insolvency resolution process period;

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7. (1) A financial creditor either by itself or jointly with other financial creditors, or any other person on behalf of the financial creditor, as may be notified by the Central Government, may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred. Initiation of corporate insolvency resolution process by financial creditor.

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.

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

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

(b) a corporate debtor having completed corporate insolvency resolution process twelve 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 twelve 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.—For the purposes of this section, a corporate debtor includes a corporate applicant in respect of such corporate debtor.

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Moratorium.

14. (1) Subject to provisions of sub-sections (2) and (3), on the insolvency commencement date, 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;

54 of 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.

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(3) The provisions of sub-section (1) shall not apply to—

(a) such transaction as may be notified by the Central Government in consultation with any financial regulator;

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Appointment and tenure of interim resolution professional.

16. (1) The Adjudicating Authority shall appoint an interim resolution professional within fourteen days from the insolvency commencement date.

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Committee of creditors.

21. (1) * * * *

(2) The committee of creditors shall comprise all financial creditors of the corporate debtor:

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Provided further that the first proviso shall not apply to a financial creditor, regulated by a financial sector regulator, if it is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.;

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Resolution professional to conduct corporate insolvency resolution process.

23. (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, if the resolution plan under sub-section (6) of section 30 has been submitted, continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period until an order is passed by the Adjudicating Authority under section 31.

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Person not eligible to be resolution applicant.

29A. A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person—

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10 of 1949.

(c) at the time of submission of the resolution plan 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 asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any other law for the time being in force, 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:

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Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I.—For the purposes of this proviso, the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

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(j) has a connected person not eligible under clauses (a) to (i).

Explanation I.—For the purposes of this clause, the expression "connected person" means—

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) 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):

Provided that nothing in clause (iii) of *Explanation I* shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

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227. Notwithstanding anything to the contrary examined 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.

Power of Central Government to notify financial service providers, etc.

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Power to
make rules.

239.(1) * * * * *

(2) Without prejudice to the generality of the provisions of sub-section (1), the Central Government may make rules for any of the following matters, namely:—

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(f) the form, the manner and the fee for making application before the Adjudicating Authority for initiating corporate insolvency resolution process by corporate applicant under sub-section (2) of section 10;

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Power to
make
regulations.

240.(1) * * * * *

(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:—

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(i) the supply of essential goods or services to the corporate debtor under sub-section (2) of section 14;

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further to amend the Insolvency and Bankruptcy Code, 2016.

(Smt. Nirmala Sitharaman, Minister of Finance and Corporate Affairs.)