



PROPOSED AMENDMENT TO INSOLVENCY AND BANKRUPTCY CODE –CABINET APPROVED

The following are the amendments proposed in The Insolvency and Bankruptcy Code Amendment Bill, 2019 as approved by the Cabinet on 17th July 2019: -

All Inclusive Extended Resolution Period of 330 days:

The maximum Corporate Insolvency Resolution Process period of 270 days is proposed to be extended to 330 days inclusive of any period lost in litigation before a Corporate Debtor is sent for liquidation process. The court discretion to exclude litigation period from CIRP Period would be restricted to an overall period of 330 days.

Timeline is Important for IBC

The overall all time for resolution is restricted to 330 days inclusive of all litigation period.

It is also proposed that the Resolution Plan would be binding on all stakeholders including the Centre, state governments and local authority to which dues may be owed. This clarification will mitigate potential litigations from



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all statutory authorities. The government officials would also direct tax officials not to suspect manipulations in such processes.

It is also learnt that Government will seek clarification from NCLT Benches in all those cases where the applications filed under section 7, 9 or 10 are not admitted or rejected within reasonable time.

It is proposed that Resolution Plan can also include restructuring programmes such as merges, demergers or amalgamations with the objective to provide a fast track to resolution.

Reiterating the Primacy of financial creditors & COC

The primacy of rights of financial creditors over

operational creditors as provided in the Code was getting diluted consequent to many judicial pronouncements.

The bank and Financial Institutions as financial creditors were losing interest in invoking IBC for resolving stress of any Corporate Debtor.

It is proposed now that the allocation of resources available in a Resolution Plan would be made by Committee of Creditors as per commercial prudence and commercial considerations while keeping in mind minimum allocation as per section 53 of the Code. Thus, the waterfall mechanism as provided under section 53 would remain the basis for allocation in a resolution plan. This contrasts with some judicial pronouncements where it was held that section 53 or its spirit is not applicable while allocating resources in a Resolution Plan.

This will provide relief to financial creditors from the recent National Company Law Appellate Tribunal order in the case of Arcelor Mittal resolution plan for Essar Steel and would be having retrospective effect.

It is also learnt that the Government will also explain the intent of the IBC before the Supreme Court and clarify that operational creditors and unsecured financial creditors need not be treated equal to secured financial creditors for a resolution plan to be considered fair and equitable.

The hierarchy of lenders in Corporate Insolvency Resolution Process would be respected, that means the allocation would be done considering the exclusive charge, first charge, subservient charge, secured or unsecured loans, value of security of each lender, etc.

Homebuyers Interest remain protected

It is also learnt that the Home Buyers will continue to avail the remedies available to them as financial creditors.

The difficulty faced in many cases where some home buyers are not able to vote is proposed to be solved in the following manner:-

“in case more than 50% of home buyers’ vote in favour of a resolution, the entire vote share of home buyers or that class of creditors would be considered as voted in favour of that resolution.”

Disclaimer: The text of the Bill is not available in public domain till the time this article was published. The contents are based on various reports in media and understanding of the issues and are personal views of the author.

