



# THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT) ORDINANCE, 2019

**Promulgated by President of India on 28/12/2019**

## **Key Amendments**

### **1. CIRP Commencement date**

Proviso to section 5(12) has been omitted mean: CIRP commencement date would always be the date of admission of an application and the appointment of IRP would be done on the same day.

### **2. Interim Finance**

Definition of Interim Finance was restricted to financial debt raised during CIRP under section 5(15). The amendment proposes that the Govt will notify other kinds of debt also that can be raised during CIRP and can qualify as Interim Finance and will have priority of payment in case of Resolution or Liquidation.

### **3. Threshold for filing the insolvency petition by Homebuyers(allottees), debenture or bond holders, public depositors :**

#### **a) Homebuyers /Allottees:**

Joint application by minimum 100 allottees or 10% of the allottees of the same real estate project (not all the projects of Corporate Debtor), whichever is less. The application should be joint application and not through the RWAs or Homebuyers' Association or Welfare Society.

#### **b) Debenture /Bond Holders or Public Depositors:**

Joint application by minimum 100 such creditors or 10% of such creditors, whichever is less. Each class of creditors e.g. Debenture holders, bond holders or public depositors would be considered as a separate class.

#### **c) Existing Pending applications:**

30 days have been given to all the pending applications filed where the minimum threshold is not met for compliance, otherwise the application would be considered as withdrawn. The applicants would have to work for gathering the support of required number of such creditors.

The individual creditors or small group of these classes of creditors would not be able to pressurise the Corporate Debtor for settlement is a good protection to real estate industry and other Corporate Debtors who have raised debt as debentures or bonds.

On the other hand, the collective action of these classes of creditors would get immediate response either from Corporate Debtor or from the Tribunal.



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#### **4. Filing of Applications for initiating CIRP against the debtors of Corporate Debtor by IRP / RP/ Liquidator / Resolution Applicant / Monitoring Agency / Corporate Debtor**

Section 11 is amended to provide that IRP/ RP/ Liquidator / Resolution Applicant/ Monitoring Agency / Corporate Debtor can file application against any other Corporate Debtor for initiating CIRP of that other Corporate Debtor in case of default of debt owed to Corporate Debtor.

This amendment is made to address some judgements giving varied views. It would be easier to recover debts of Corporate Debtor during CIRP or Liquidation or even after the Resolution Plan is approved.

#### **5. Moratorium is extended to protect the license, permit, registration, quota, concession, clearances or a similar grant or right during CIRP Period**

a) A non-obstante clause has been inserted in section 14 of the Code wherein it is provided that following would not be suspended or terminated on the grounds of commencement of CIRP: -

1. A licence, permit, registration, quota, concession, clearances or a similar grant or right given by
2. The central, state or local authority, sectoral regulator or any other authority subject to the condition
3. That there is no default in dues arising for the use or continuation of the said licence, permits, etc during the moratorium period.

b) The supply of goods or services would also not be terminated, suspended or interrupted during moratorium if IRP/RP considered that the supply is critical to protect and preserve the value of the Corporate Debtor and to manage the Corporate Debtor as a going concern.

Unless the payment for the current supply is not being made by the Corporate Debtor to the supplier.

These provisions would bring revival of many companies, otherwise there are doubts in the minds of Resolution Applicant about the revival of licences, permits, etc. or about the availability of critical raw material.

#### **6. RP to continue managing the Corporate Debtor and to do all such acts as required from RP till the Resolution Plan is approved or liquidation order is passed.**

It is clarificatory amendment that Resolution Professional will continue to function till Resolution Plan is approved or Liquidation order is passed.

#### **7. Liability of Corporate Debtor for offences prior to CIRP ( PMLA, FEMA, SEBI, etc. ) and Attachment of Assets for the offences**

1. New Section 32A is inserted
2. This is non-obstante section/clause and provide as under:
  - The liability of Corporate Debtor for any offence committed prior to CIRP shall cease;
  - Corporate Debtor shall not be prosecuted for such offence from the date Resolution Plan is approved
  - Even if the prosecution is instituted during CIRP, this section would be applicable;
  - Any person of officer who is in default for the offence, would continue to be liable for the offence and punishment, notwithstanding that the liability of the Corporate Debtor is ceased;
  - No action shall be taken against the property of the Corporate Debtor in relation to an offence committed prior to CIRP if that property is part of a Resolution Plan approved by AA, which results in to change in the management
  - No action shall be taken against the property of the Corporate Debtor in relation to an offence committed prior to CIRP if that property is sold during liquidation process under IBC
  - 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;
  - The Corporate Debtor and any other person including Resolution Professional or Liquidator shall provide all the assistance and co-operation to the investigating agency regarding the offence committed before the commencement of CIRP

#### **Conditions for this section:**

- Resolution Plan or sale during liquidation process results in change in the management or control of Corporate Debtor
- The new management or the buyer during liquidation process is not a promoter or in the management or control of the corporate debtor or a related party of such a person; or
- The new management or the buyer during liquidation process is not a person with regard to whom the relevant investigating authority has reason to believe that he had abetted or conspired for the commission of the offence

### **List of Some Acts, where offences are committed (inclusive)**

- Prevention of Money Laundering Act, 2002 (PMLA Act); Information Technology Act, 2000 (IT Act); The Securities and Exchange Board of India Act, 1992 (SEBI Act); The Securities Contracts (Regulations) Act, 1956; The Companies Act, 2003; The Prevention of Corruption Act, 1988; The Benami Transactions (Prohibition) Act; The Indian Penal Code; The Protection of Depositors Act, 1999;
- Tax Crimes under Income-tax Act, 1961; The Customs Act, 1962; The Central Excise Act, 1944; Goods and Services Tax Act,
- Environmental Crimes under The Environment (Protection) Act, 1986; The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981; The Representation of People Act, 1951
- Foreign Transactions crimes under the Foreign Trade (Development and Regulation) Act, 1992; Foreign Exchange Management Act, Foreign Contribution (Regulation) Act, 1976;
- Banking Regulation Act, 1949 for bank frauds
- Offences under the investigation of State Governments: Prize Chits and Money Circulation Schemes (Banning) Act, 1978; The Protection of Interest of depositors, 1999

### **Agencies to Enforce Criminal Law (inclusive):**

- The Directorate of Enforcement (ED) for PMLA & FEMA; Central Bureau of Investigation (CBI); Criminal Investigation Department (CID);
- Serious Fraud Investigation Office (SFIO), Ministry of Corporate Affairs;
- The Central Economic Intelligence Bureau (CEIB) for various economic offences and COFEPOSA
- The Central Bureau of Narcotics (CBN) for drug related offences
- The Directorate General of Anti-Evasion (DGA) for central excise related crimes
- The Directorate General of Revenue Intelligence (for customs, excise and service tax related offences)
- The SEBI for protection of interest of investors and securities related offenses
- The Directorate General of Income-tax (Investigation)
- The Competition Commission of India for anti-competitive trade practices)

