

AMMENDMENT UNDER THE INSOLVENCY AND BANKRUPTCY CODE, 2016 RELATED TO INSOLVENCY RESOLUTION PROCESS

The Ordinance dated 23 November 2017 (the Ordinance), amending the Insolvency and Bankruptcy Code, 2016 (Code) was brought and the Ordinance was sought to be replaced by the Insolvency and Bankruptcy Code (Amendment) Bill, 2017 which was passed by the Lok Sabha late last year, and thereafter by the Rajya Sabha on 2 January 2018. Following the presidential assent on 18 January 2018, the Insolvency and Bankruptcy Code (Amendment) Act, 2017, the Ordinance aims to put safeguards in place by prohibiting willful defaulters from regaining control of the defaulting company. It has now been notified in the official gazette and has come into force retrospectively from 23 November 2017, i.e. the date of the Ordinance.

Corporate Insolvency Resolution Process

Prior to the ordinance under Section 2(25) of the Code permitted “any person” to submit a resolution plan to the Resolution Professional (RP) and participate in the Corporate Insolvency Resolution Process (CIRP) for acquiring the distressed assets, due to this any kind of buyers who can bid for stressed assets of companies that are undergoing bankruptcy proceedings. According, to the ordinance it will be restricted in terms of Section 29A introduced by the Ordinance which made certain persons ineligible to submit a resolution plan. So, that the people with a history of siphoning off funds or convictions will also be barred.

Changes to Disqualification Criteria

In Section 29A of the Amendment Act further widens and clarifies the ineligibility criteria for resolution applicants as set out in the Ordinance. The language in the Amendment Act states that resolution applicants will be ineligible if such resolution applicant or any person acting jointly or in concert with the resolution applicant meets the ineligibility conditions stipulated in Section 29A, sub-clause (a) to sub-clause (j).

This, in effect, makes the scope of ineligibility wider by covering both formal and informal arrangements within its scope in line with the position prescribed under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011.

Some other modifications to the disqualification criteria are set out below:

1. The Ordinance inserted a new Section 29A(c) to the Code as a result of which, a person whose account had been classified as an NPA for a period of over 1 (one) year from the date of classification and who failed to make the payment of all NPA related overdue amounts and interest / charged before submission of a resolution plan stood disqualified.
2. Section 29A(c) has been broadened by the Amendment Act to the effect that the scope of the section now extends not only to a borrower under default whose account has been classified as a NPA for a period of more than 1 (one) year but also a person who is in management or control of such defaulter.
3. Section 29A (g) has been aligned with the Code to include extortionate credit transactions, in addition to the earlier ineligibility prescriptions of ‘preferential, fraudulent and undervalued transactions’.
4. Sections 29A(e) and 29A(f) made the following persons ineligible, who are:
 - a) Disqualified from acting as a director under Companies Act, 2013; and/ or
 - b) Prohibited from trading in or accessing the securities markets under any order or directions of the Securities and Exchange Board of India;

5. The Amendment Act has now exempted:
 - i) scheduled commercial banks;
 - ii) Asset reconstruction companies; and
 - iii) Asset reconstruction companies, from the purview of 'connected persons', keeping in mind their diversified holding and investor base.
6. The Ordinance addressed existing CIRP cases and amended Section 30(4) of the Code to, inter alia, provide that the Committee of Creditors (CoC) would not accept the plans submitted prior to the Ordinance if the resolution applicant is ineligible under section 29A and in the absence of other plans, the Resolution Professional would be required to invite fresh resolution plans.
7. The Amendment Act, however, makes an exception for allowing resolution applicants disqualified under Section 30(4) and Section 29A(c) who are otherwise ineligible to submit the resolution plan. The CoC(Committee of Creditors) may permit a disqualified resolution applicant from clearing all overdue amounts within a 30 days' period. However, the amended provision clarifies that CoC(Constitute a Committee of Creditors) extending such cure period to the resolution applicant, would in no way be deemed to extend the maximum permissible corporate insolvency resolution period (i.e. 180/ 270 days).
- h) To waive the penal interest, simple interest, compound interest, damages charges on the liability of the company as on the date of approval of the Resolution Plan.

PENALTY

If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, then under section 235A such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

CONCLUSION

"Insolvency resolution is a commercial process and hence banks and financial institutions should be allowed to take informed decision taking their best business interest in mind. While the Amendment Act broadens the ineligibility criteria and removes some of the unintended consequences of the Ordinance, it also provides some useful exemptions in terms of which an ineligible person can bid after clearing the overdue. Whether this is a realistic exemption and would be availed by the promoters is to be seen.

Kindly go to the link for the amendment <http://www.ibbi.gov.in/180404.pdf>

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