

Ministry of Corporate Affairs

The Insolvency and Bankruptcy Code (Amendment) Bill, 2021

Relevant for All Mahindra Business

21st July 2021

Introduction

Insolvency and Bankruptcy Code, 2016 is a comprehensive law that consolidates into its manifold both the consequential aspects of an economic collapse of a debtor – rehabilitation and liquidation. The principal objective of the law is to restructure and resolve insolvency of corporate persons, partnership firms and individuals promptly for leveraging the maximum value of assets of such persons.

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 (No.3 of 2021) was promulgated by the President of India on 4th April 2021. This ordinance is promulgated to allow pre-packaged insolvency resolution process for Micro, Small and Medium Enterprises (MSMEs). The Ordinance, in essence, has amended the Insolvency and Bankruptcy Code 2016 and allows the Central Government to notify such pre-packaged process for defaults of not more than Rs. 1 crore.

Need for the Ordinance:

- The suspension for filing of applications for initiation of corporate insolvency resolution process has ended on 24th March 2021.
- It is considered necessary to urgently address the specific requirements of micro, small and medium enterprises relating to the resolution of their insolvency.
- It is considered expedient to provide an efficient alternative insolvency resolution process for corporate persons classified as micro, small and medium enterprises under the Insolvency and Bankruptcy Code, 2016, ensuring quicker, cost-effective and value maximising outcomes for all the stakeholders, in a manner which is least disruptive to the continuity of their businesses and which preserves jobs.

Benefits of the Amendments:

- It is expected that the incorporation of Pre-Packaged insolvency resolution process for MSMEs in the Code will alleviate the distress faced by MSMEs due to the impact of the pandemic and the unique nature of their business, duly recognizing their importance in the economy.
- Assurance of continued business relation with corporate debtor (CD) and rights protection for operational creditors (OC).
- Prepacks will assist Corporate Debtors in reaching an agreement with lenders and handling the company's entire liability.
- A proper implementation of the Pre-Packaged Insolvency regime would benefit both the Debtor (MSME's) and the creditors as higher resolution values could be achieved due to the quick process involved as compared to the steps involved in the Resolution Process under the Insolvency and Bankruptcy Code.
- Overall, it is expected that with the pursuit of the proposed draft framework, a positive impact will be seen on the financial health of the debt market.
- A pre-packaged resolution essentially translates to a company preparing a restructuring plan with its creditors before initiating insolvency proceedings. This helps to cut down the time and costs in the overall process.
- Other expected impact and benefits of the amendment in Code are lesser burden on Adjudicating Authority, assured continuity of business operations for corporate debtor (CD).
- Less process costs & maximum assets realization for financial creditors (FC).

Conclusion

In the ongoing session of the Parliament, Government of India seek to pass the Insolvency and Bankruptcy Code (Amendment) Bill 2021. This will allow stakeholders, who may find it difficult to relate to the new name or registered office address and consequently fail to participate in the CIRP, to participate in the resolution process.