



IBC suspended for six months for defaults after 25 March 2020

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The Government has promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 under which a new provision, Section 10A has been introduced in the Insolvency and Bankruptcy Code, 2016 (“Code”).

By the operation of Section 10A, all fresh proceedings for initiation of the corporate insolvency resolution process (“CIRP”) by and against a defaulting company have been suspended, in all cases where the default occurred on or after 25 March 2020. A provision has been made for extending this suspension up to one year. It further perpetually bans applications for corporate insolvency for all defaults during the above said period. This means, that, where a default by a company occurs on or after 25 March 2020 and during the period of six months therefrom (extendable up to one year), such default shall be forever excluded to trigger a CIRP. In other words, a ban has been placed in perpetuity against all filings for fresh insolvency in cases of defaults on or before 25 March 2020 up to 6 months, or up to one year, if extended.

The Ordinance clarifies that for defaults that have occurred before 25 March 2020, the suspension shall not be applicable. Therefore, corporates in default of more than rupees one crore, and where such default occurred before 25 March 2020 are vulnerable to insolvency proceedings by creditors.

The Ordinance was promulgated on 05 June 2020 and comes into force with immediate effect.

The amendment has been made pursuant to the announcements made by the Financial Creditor, as part of the *Atmanirbhar Bharat* package which included various economic relief measures to mitigate the disruption caused by COVID19 and the ensuing countrywide lockdown.

Under the Code, insolvency proceedings against a corporate debtor can be initiated under Section 7 by a financial creditor, under Section 9 by an operational creditor and under Section 10 by the company itself. The amendment effectively bars all insolvency proceedings where the default occurred on or after 25 March 2020.

In the absence of any other resolution mechanism, companies that may have declared self-insolvency as a viable option for revival, are left without a recourse. Therefore, a suspension of Section 10 i.e. application by corporate debtors to undergo insolvency, may not be in the best interest of such corporate debtors who are already reeling under liabilities, exacerbated by the lockdown. This will lead to depreciation of assets without any effective option for turnaround and, counters the objective of the Code for the value maximization of a corporate debtor’s assets. Operational creditors will also be affected by this Ordinance as the Code was used widely by vendors against defaulting companies for a quick settlement.

Institutional lenders will now have to consider other options for enforcement available subject to terms and conditions in loan agreements. Lenders regulated by the Reserve Bank of India, continue to have recourse to Inter-Creditor Agreements (“ICA”) for the resolution of non-performing assets. At the same time, recourse under Section 230 of the Companies Act, 2013 for arrangements and compromise between the company and its creditors is also available.

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