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IBC intelligence

The Insolvency & Bankruptcy Code (Amendment) Ordinance, 2017

Changes & Impact

Assent - It received the assent of Honorable President of India on 23rd November, 2017.

Date of effect - It is effective from 23rd November, 2017 itself.

Aim - The following is the aim to bring this ordinance:

- i. To further strengthen the insolvency resolution process.
- ii. To prohibit certain persons from submitting a resolution plan who, on account of their antecedents, may adversely impact the credibility of the processes under the Code.
- iii. To specify additional requirements for submission and consideration of the resolution plan before its approval by the Committee of Creditors.

Section No.	Provision	Before	After Ordinance
2(d) and 2(e)	To whom the code applies?	The code only applied to companies, LLPs, partnership firms and Individuals	Now, the code <u>also</u> applies to: <ul style="list-style-type: none"> • Personal guarantors to corporate debtors • Partnership firms and proprietorship firms; and • Individuals, other than persons notified by government.
5(25)	Definition of Resolution	Any person who submits a	A resolution applicant can submit the resolution plan, either



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	Applicant	resolution plan to a resolution professional.	individually or jointly, to the resolution professional but only when he is invited by resolution professional to do so.
25(2)(h)	Duties of Resolution Professional	A resolution professional could invite prospective lenders, investors, and any other persons to put forward resolution plans	A resolution professional can invite resolution plans with the approval of committee of creditors, having regard to the complexity and scale of operations of the business of the corporate debtor and such other conditions as may be prescribed by the Board, to submit a resolution plan or plans.
29A	Persons not eligible to be resolution applicant	New Section inserted	Individually or person acting jointly with promoter or person in management or control of such person shall not submit resolution plan if: <ol style="list-style-type: none"> a. He is an undischarged insolvent; b. Wilful defaulter in accordance with the guidelines of the Reserve Bank of India. c. Whose account is classified as non-performing asset in accordance with guidelines of the Reserve Bank of India and the Banking Regulation Act, 1949 and period of one year or more has passed since such classification but the dues still exist. d. Has been convicted for any offence punishable with imprisonment for two years



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			<p>or more.</p> <p>e. Has been disqualified to act as a director.</p> <p>f. Has been prohibited by the Securities and Exchange Board of India from trading in securities.</p> <p>g. Has indulged in preferential transaction or undervalued transaction or fraudulent transaction under the code.</p> <p>h. Has executed an enforceable guarantee in favour of a creditor in respect of a corporate debtor under insolvency resolution process or liquidation under this Code.</p>
30(4)	Submission of Resolution Plan	The committee of creditors may approve a resolution plan by a vote of not less than 75% of voting share of the financial creditors.	<p>The committee of creditors may approve a resolution plan by a vote of not less than 75% of voting share of the financial creditors <u>after considering its feasibility and viability, and such other requirements as may be prescribed by the Board.</u></p> <p>Provided that a committee of creditors shall not approve a resolution plan submitted before the ordinance if the person is ineligible under section 29A. If no other resolution plan is available, then it can invite a fresh resolution plan.</p>



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			The proviso under sub-section (4) of Section 30 has been given retrospective effect.
35(1) (f)	Powers and Duties of Liquidator	Liquidator could sell movable and immovable property to any person.	Added proviso says that Liquidator can sell movable and immovable property to any person except those who are not eligible to be resolution applicant under sub-clause(25) of Section 25.
235A	Punishment where no specific punishment is provided in the code.	New Section inserted	If any person contravenes any of the provisions of this Code or the rules or the regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punished with a fine which shall not be less than one lakh rupees but which may extend to two crore rupees.

CONCLUSION

The changes brought by this Ordinance are a welcome step towards strengthening the Insolvency & Bankruptcy Code, 2016.

However, it is expected that a plethora of cases where the resolution plan has been finalized will be reopened and scrutinized again in light of the introduction of Section 29A and 30(4).

An expression, under sub-section (4) of Section 30, to the effect **“feasibility and viability”** of a resolution plan will further become a bone of contention in various issues.

“AMLEGAL'S foresees that this will pave way for a lot of litigations in the future.”



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