

### IBC intelligence

### The Insolvency & Bankruptcy Code (Amendment) Ordinance, 2017

#### **Changes & Impact**

**Assent -** It received the assent of Honorable President of India on 23<sup>rd</sup> November, 2017.

**Date of effect** - It is effective from 23<sup>rd</sup> 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	Provision	Before	After Ordinance
No.			
2(d) and 2(e)	To whom the code applies?	The code only applied to companies, LLPs, partnership firms and Individuals	<ul> <li>Now, the code <u>also</u> applies to:</li> <li>Personal guarantors to corporate debtors</li> <li>Partnership firms and proprietorship firms; and</li> <li>Individuals, other than persons notified by government.</li> </ul>
5(25)	Definition of Resolution	Any person who submits a	A resolution applicant can submit the resolution plan, either



	Applicant	resolution plan to	individually or jointly, to the
		a resolution	resolution professional but only
		professional.	when he is invited by resolution
		•	professional to do so.
25(2)(h)	Duties of	A resolution	A resolution professional can invite
	Resolution	professional could	resolution plans with the approval of
	Professional	invite prospective	committee of creditors, having
		lenders, investors,	regard to the complexity and scale of
		and any other	operations of the business of the
		persons to put	corporate debtor and such other
		forward	conditions as may be prescribed by
		resolution plans	the Board, to submit a resolution
			plan or plans.
29A	Persons not	New Section	Individually or person acting jointly
	eligible to be	inserted	with promoter or person in
	resolution		management or control of such
	applicant		person shall not submit resolution
			plan if: 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
		1	imprisonment for two years



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			or more.
			e. Has been disqualified to act
			as a director.
			f. Has been prohibited by the
			Securities and Exchange
			Board of India from trading in
			securities.
			g. Has indulged in preferential
			transaction or undervalued
			transaction or fraudulent
			transaction under the code.
			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.
30(4)	Submission of	The committee of creditors may approve a resolution plan by	The committee of creditors may
	Resolution		approve a resolution plan by a vote
	Plan		of not less than 75% of voting share
		a vote of not less	of the financial creditors <u>after</u>
		than 75% of voting share of the financial creditors.	considering its feasibility and
			viability, and such other
			<u>requirements as may be</u>
			<u>prescribed by the Board.</u>
			Provided that a committee of
			creditors shall not approve a
			resolution <b>plan submitted before</b>
			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.



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

"AMLEGALS foresees that this will pave way for a lot of litigations in the future."





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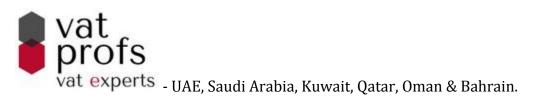
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