

## **Lok Sabha Clears IBC (Amendment) Bill 2020**

The Lok Sabha on Friday passed the **Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019**, by voice vote.

Aimed at easing the insolvency resolution process, the Bill was introduced in the house by Finance Minister Nirmala Sitharaman on December 12, last year. After having been scrutinized by the Standing Committee, whose report was received on March 4, the Bill was passed today amidst high tension in the house with the opposition MPs demanding immediate discussion on Delhi Riots.

As per the statement of Objects and Reasons annexed with the Bill,

"A need was felt to give the highest priority in repayment to last mile funding to corporate debtors to prevent insolvency, in case the company goes into corporate insolvency resolution process or liquidation, to prevent potential abuse of the Code by certain classes of financial creditors, to provide immunity against prosecution of the corporate debtor and action against the property of the corporate debtor and the successful resolution applicant subject to fulfillment of certain conditions, and in order to fill the critical gaps in the corporate insolvency framework, it has become necessary to amend certain provisions of the Insolvency and Bankruptcy Code, 2016."

### **Insolvency commencement date**

The Bill omits proviso to clause (12) of section 5 of the Code so as to clarify that the insolvency commencement date is the date of admission of an application for initiating corporate insolvency resolution process (CIRP).

Presently under the Code, the insolvency resolution process commences when the Insolvency Resolution Professional (IRP) is appointed by the adjudicating authority.

### **Threshold for initiating resolution process**

The Bill also specifies the minimum threshold for certain classes of financial creditors for initiating insolvency resolution process.

The Code allows the creditors to initiate an insolvency resolution process, if the amount of default by the debtor is at least one lakh rupees. The Bill adds an additional requirement for certain classes of financial creditors for filing application. These classes include real estate allottees and security or deposit holders represented by a trustee or agent. The application by these creditors should be filed jointly by at least 100 such creditors or 10% of their total number, whichever is less.

### **Corporate debtors entitled to make application**

The Bill further clarifies that a corporate debtor should not be prevented from filing an application for initiation of corporate insolvency resolution process against other corporate debtors.

An explanation to that effect is proposed to be inserted under Section 11 of the Code which stipulates that a corporate debtor undergoing CIRP, or having completed CIRP 12 months preceding the date of making of the application or in respect of whom a liquidation order has been made, etc. shall not be entitled to make an application to initiate CIRP.

### **Liabilities for prior offences**

The Bill provides that a company will not be liable for any offence committed prior to the commencement of the CIRP and the company will not be prosecuted for such an offence from the date the resolution plan is approved by the NCLT, if the resolution plan results in the change in the management or control of the company.

Further, the Bill provides immunity to the company from attachment, seizure, retention, or confiscation of their property in relation to such offences.

### **Licenses and permits not to be terminated due to insolvency**

The Bill also amends the Code the effect that a licence, permit, registration, quota, concession, clearances or a similar grant or right will now not be terminated or suspended during the Moratorium period. This provision will be applicable as long as the debtor does not default in the payment of current dues arising for the use or continuation of such licenses or permits.

Pertinently, the government had promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance 2019 in December last year, introducing similar changes to the Code.

The Ordinance was however challenged before the Supreme Court against the abovementioned precondition imposed upon the real estate allottees to file an insolvency petition.

*(Sources: Livelaw.in)*