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**Newsflash: Union Cabinet approves Proposal to
Amend the Insolvency and Bankruptcy Code**

1.0 Background

The Union Cabinet has on 17th July, 2019, approved the proposal to introduce a Bill in the Parliament to carry out 8 amendments to the Insolvency and Bankruptcy Code, 2016 ('IBC'). The amendments aim to fill critical gaps in the corporate insolvency resolution framework as enshrined in the Code, while simultaneously maximizing value from the Corporate Insolvency Resolution Process (CIRP).

The changes which will come into force after the approval of both the houses of parliament, are expected to lead to timely admission of applications and timely completion of the Corporate Insolvency Resolution Process, greater clarity on permissibility of corporate restructuring schemes, manner of distribution of amounts amongst financial and operational creditors, clarity on rights and duties of authorized representatives of voters and applicability of the resolution plan on all statutory authorities.

Analysis of data available demonstrates that there are delays in admission of applications and spillage of CIRP cases well over the time limits presently laid down in the code. The amendments are expected to address the issue of sanctity of timelines for completion of the entire corporate insolvency resolution process and also maximize the outcomes envisioned in the Code.

2.0 Salient Features

The salient features of the amendments are:

I. Inclusion of alternative restructuring schemes as part of the resolution plan

The amendment seeks to add clarity on allowing comprehensive corporate restructuring schemes such as mergers, demergers, amalgamations etc as part of the resolution plan.

II. Time Bound disposal of Application

Greater emphasis on the need for time bound disposal at application stage.

III. A deadline for completion of CIRP within an overall limit of 330 days, including litigation and other judicial processes

IBC currently allows a maximum of 270 days for clearing a resolution plan, but courts have taken the lenient approach of excluding the time spent on litigation or judicial recourse by various parties from this time frame.

The bill proposes to extend the deadline for completing insolvency resolution process from 270 days to 330 days; however it is pertinent to note that this time limit of 330 days will include the time spent in litigation or judicial process after the plan is admitted. The changes will clear several roadblocks currently holding up resolution under the law and will fast track the resolution process.

IV. Votes of all financial creditors covered under section 21(6A) shall be cast in accordance with the decision approved by the highest voting share (more than 50%) of financial creditors on present and voting basis

Currently the decision of financial creditors is being calculated on the basis of the total voting powers of the members of Committee of Creditors ("COC") and not of those who are present in the COC meeting. The amendment has allowed for the decision of financial creditors to be calculated as per the decision of the majority of financial creditors who are present and voting in the COC meeting.

According to the new formula, if more than half of these creditors who are present approve a plan, it will be considered that the entire class of creditors has approved it.

It will help in quick decision-making, especially in the case of real estate companies, in which the decision of COC was getting delayed on account of the requirement of taking the consent of the homebuyers who are also considered as a financial creditor.

The idea is to make decision-making easier even if a large number of them do not take part in voting.

V. A financial creditors who have not voted in favor of the resolution plan and operational creditors shall receive at least the amount that would have been received by them if the amount to be distributed under the resolution plan had been distributed in accordance with section 53 of the Code or the amount that would have been received if the liquidation value of the corporate debtor had been distributed in accordance with section 53 of the Code, whichever is higher. This will have retrospective effect where the resolution plan has not attained finality or has been appealed against

The amendment proposes to equate distribution of amounts under a resolution plan with the manner it's allowed in case of liquidation (section 53 of the Code) i.e. maintaining the hierarchy of lenders.

The proposal also aims to provide protection to dissenting financial creditors and operational creditors for a minimum value.

As the operational creditors don't have a right to vote in the COC meeting under the insolvency code, the liquidation value under the waterfall mechanism under Section 53 would be a suitable parameter to protect the interest of operational creditors, as well as for the financial creditors who do not vote in favor of the resolution plan.

Further, this amendment is proposed to have a retrospective effect where the resolution plan has not attained finality or has been appealed against.

VI. Inclusion of commercial consideration in the manner of distribution proposed in resolution plan, within the powers of the Committee of Creditors

The amendment proposes to enhance the powers of the Committee of Creditors by allowing it to decide how claims will be distributed on the basis of commercial consideration. As of now, there is no clarity on distribution to creditors other than the financial and operational creditors. The amendment will also empower the COC to decide on the distribution of proceeds to such remaining creditors on the basis of a commercial consideration.

VII. Clarity that the resolution plan shall be binding on all the stakeholders including the Central Government, any State Government or local authority to whom a debt in respect of the payment of the dues may be owed

This amendment clarifies that the bankruptcy resolution or liquidation arrived at under IBC is binding on central, state and local governments, to whom the bankrupt firm may owe dues. This will prevent state authorities including income tax officials from questioning a rescue plan adopted in a court-monitored process.

VIII. Clarity that the CoC may take the decision to liquidate the corporate debtor, any time after constitution of the COC and before preparation of Information Memorandum

The committee of creditors may take a decision to liquidate a corporate debtor at any time after the constitution of CoC and before preparation of information memorandum—a document prepared by a resolution professional with details and information about the formulation of a resolution plan.

3.0 Disclaimer:

The full text of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 is not available on the Government Website. In this newsflash, we have summarized the press release issued by the Ministry of Corporate Affairs on 17th July 2019. It may be noted that nothing contained in this newsflash should be regarded as our opinion and the Government or judicial authorities may or may not subscribe to the views expressed therein. We are not responsible for any liability arising from any statements or errors contained in this newsflash.



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In this newsflash, we have summarized the salient features of the proposed amendments to the Insolvency and Bankruptcy Code, 2016 ('IBC').

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