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India: Note On Insolvency And Bankruptcy Code, 2016

09 June 2021

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As the preamble of the Insolvency and Bankruptcy Code, 2016 (Code) specifies, that this Act was legislated to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto

The Code repeals the Presidency Towns Insolvency Act, 1909, and Provincial Insolvency Act, 1920, and further amends various legislation including:

1. The Indian Partnership Act, 1932
2. The Central Excise Act, 1944
3. The Income Tax Act, 1961
4. Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;
5. Sick Industrial Companies (Special Provisions) Repeal Act, 2003
6. Limited Liability Partnership Act, 2008,
7. The Companies Act, 2013

This is a comprehensive Code as far as insolvency proceedings are concerned and will have overriding effect over all other laws in relation to insolvency proceedings. Further civil court and other authorities are barred from entertaining any kind of petitions which fall under the domain of Adjudicating Authority specified under the Code.

CORPORATE INSOLVENCY RESOLUTION PROCESS

- a. That, under chapter II of the Code, a financial creditor (either by itself or jointly with other financial creditors), an operational creditor or the corporate debtor itself may initiate corporate insolvency resolution process in respect of such corporate debtor who had committed default. The corporate insolvency process shall be initiated by making an application to Adjudicating Authority. In case of operational creditor, the operational creditor needs to give 10 days' notice to corporate debtor before filing an application before the Adjudicating Authority. After expiry of 10 days, if the operational creditor does not receive payment or notice of dispute, the operational creditor can file an application before the Adjudicating Authority for a corporate insolvency resolution process.
- b. Once the application is made and admitted by Adjudicating Authority, the corporate insolvency resolution process has to be completed within a period of 180 days. If the process is not completed for valid reasons within the 180 days specified, on application by resolution professional on instructions from committee of creditors by a vote of seventy-five per cent of the voting shares shall file an application to the Adjudicating Authority to extend the period of the corporate insolvency resolution. The Adjudicating Authority may grant one time extension upto 90 days.
- c. After admission of the application, there would be complete moratorium against all kinds of legal action against the corporate debtor until the approval of resolution plan or initiation of liquidation proceedings.
- d. The adjudicating authority shall appoint an interim insolvency professional within 14 days of admission of application. The term of interim insolvency professional would be for 30 days. The Adjudicating Authority after appointment of interim insolvency professional cause a public announcement of the initiation of corporate

insolvency resolution process and call for the submission of claims.

e. From the date of appointment of the interim resolution professional the management of the affairs of the corporate debtor shall vest in the interim resolution professional. He will receive and collate all the claims submitted by creditors to him, pursuant to the public announcement and constitute a committee of creditors.

f. The resolution professional shall prepare an information memorandum and give access to resolution applicant to prepare a resolution plan. The applicant may submit a resolution plan to the resolution professional prepared based on the information memorandum. The plan is placed before committee of creditors. The committee of creditors either can approve the plan or reject it. If the plan is not approved or no decision is taken with the stipulated time of 180 days or the extended time, the corporate debtors assets shall be liquidated to pay off the debts.

g. If the plan is approved by the committee of creditors by $\frac{3}{4}$ vote, then the resolution is presented before the Adjudicating Authority. The Adjudicating Authority is satisfied, that the plan confirms to conditions provided in the Code, the same shall be approved by order.

LIQUIDATION PROCESS

a. The process of liquidation will commence, if 1) no resolution plan is submitted with the specified time contemplated under the statute, 2) if the committee of creditors determine to liquidate the corporate debtor, 3) if resolution plan approved by the Adjudicating Authority is contravened by the concerned corporate debtor and 4) if the Adjudicating Authority rejects the resolution plan by resolution professional.

b. The resolution professional appointed for the corporate insolvency process shall act as the liquidator for the purpose of liquidation, unless replaced by the Adjudicating Authority.

c. For the purpose of liquidation, the liquidator shall form an estate of the assets of the corporate debtor, which shall be called as liquidation estate.

d. The liquidator shall verify the claims submitted by the creditors and after verification, either admit or reject their claims. The creditors have right to appeal to Adjudicating Authority against the decision of the liquidator.

e. Any secured creditor may relinquish its security interest to the liquidation estate and receive top priority in proceeds from the sale of assets by the liquidator. If the secured creditor doesn't relinquish its right over security interest may enforce their rights in accordance with law as applicable.

f. The proceeds from the sale of the liquidation assets shall be distributed in the following order of priority

1. fees of insolvency professional and costs related to the resolution process,
2. workmen's dues and secured creditors,
3. employee wages,
4. unsecured creditors,
5. government dues and remaining secured creditors,
6. any remaining debt, and
7. Shareholders.

a. On application by the liquidator, after the assets of the corporate debtor have been completely liquidated, the Adjudicating Authority shall dissolve the corporate debtor.

b. The Adjudicating Authority, in relation to insolvency resolution and liquidation for corporate persons including corporate debtors and personal guarantors thereof shall be National Company Law Tribunal having territorial jurisdiction over the place where the registered office of the corporate person is situated.

INSOLVENCY RESOLUTION AND BANKRUPTCY FOR INDIVIDUALS AND PARTNERSHIP FIRMS

1. The Code contemplates two processes for insolvency of individuals and unlimited partnership firms. Under the first process a debtor who fulfills certain conditions specified in code, can make application before the Adjudicating Authority for fresh start for discharge of his qualifying debt. Under the second process the debtor shall prepare a repayment plan for restructuring his debts or affairs in consultation with the resolution professional to be placed before the creditors. If the same is accepted by the creditors, then the Adjudicating Authority passes an order approving the same, if not the debtors or creditors can file application for bankruptcy.

2. The Adjudicating Authority for individuals and partnership firms in relation to insolvency proceedings shall be Debt Recovery Tribunal having territorial jurisdiction over the place where the individual debtor actually and voluntarily resides or carries on business.

REGULATION OF INSOLVENCY PROFESSIONALS, AGENCIES AND INFORMATION UTILITIES

The Code contemplates creation of the Insolvency and Bankruptcy Board of India. The board has the overall power to regulate and oversee various functions of professional agencies, insolvency professionals and information utilities.

CONCLUSION



The Code puts great emphasis on professionals in insolvency resolution process and the role of Adjudicating Authority is confined only to legal part. The Code provides for time bound resolution of insolvency and liquidation process thereby facilitating greater debt recovery. The Code also put emphasis on resolution of issues ailing a corporate debtor by financial creditors, failing which liquidation commences.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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