

AS PASSED BY LOK SABHA
ON 06-03-2020

Bill No. 376-C of 2019

THE INSOLVENCY AND BANKRUPTCY CODE
(AMENDMENT) BILL, 2020

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further to amend the Insolvency and Bankruptcy Code, 2016.

BE it enacted by Parliament in the Seventy-first Year of the Republic of India as follows:—

1. (1) This Act may be called the Insolvency and Bankruptcy Code (Amendment) Act, 2020. Short title and commencement.

5 (2) It shall be deemed to have come in force on the 28th day of December, 2019.

services shall not be terminated, suspended or interrupted during the period of moratorium, except where such corporate debtor has not paid dues arising from such supply during the moratorium period or in such circumstances as may be specified.";

5 (c) in sub-section (3), for clause (a), the following clause shall be substituted, namely:—

"(a) such transactions, agreements or other arrangements as may be notified by the Central Government in consultation with any financial sector regulator or any other authority;"

10 **6.** In section 16 of the principal Act, in sub-section (1), for the words "within fourteen days from the insolvency commencement date", the words "on the insolvency commencement date" shall be substituted. Amendment of section 16.

15 **7.** In section 21 of the principal Act, in sub-section (2), in the second proviso, after the words "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted. Amendment of section 21.

8. In section 23 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:— Amendment of section 23.

20 "Provided that the resolution professional shall continue to manage the operations of the corporate debtor after the expiry of the corporate insolvency resolution process period, until an order approving the resolution plan under sub-section (1) of section 31 or appointing a liquidator under section 34 is passed by the Adjudicating Authority."

9. In section 29A of the principal Act,—

25 (i) in clause (c), in the second proviso, in the *Explanation I*, after the words, "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted; Amendment of section 29A.

(ii) in clause (j), in *Explanation I*, in the second proviso, after the words "convertible into equity shares", the words "or completion of such transactions as may be prescribed," shall be inserted.

30 **10.** After section 32 of the principal Act, the following section shall be inserted, namely:— Insertion of new section 32A.

35 "32A. (1) Notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the liability of a corporate debtor for an offence committed prior to the commencement of the corporate insolvency resolution process shall cease, and the corporate debtor shall not be prosecuted for such an offence from the date the resolution plan has been approved by the Adjudicating Authority under section 31, if the resolution plan results in the change in the management or control of the corporate debtor to a person who was not—

40 (a) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(b) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession, reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court:

45 Provided that if a prosecution had been instituted during the corporate insolvency resolution process against such corporate debtor, it shall stand discharged from the date of approval of the resolution plan subject to requirements of this sub-section having been fulfilled:

Provided further that every person who was a "designated partner" as defined in clause (j) of section 2 of the Limited Liability Partnership Act, 2008, or an "officer who is in default", as defined in clause (60) of section 2 of the Companies Act, 2013, or was in any manner in charge of, or responsible to the corporate debtor for the conduct of its business or associated with the corporate debtor in any manner and who was directly or indirectly involved in the commission of such offence as per the report submitted or complaint filed by the investigating authority, shall continue to be liable to be prosecuted and punished for such an offence committed by the corporate debtor notwithstanding that the corporate debtor's liability has ceased under this sub-section.

(2) No action shall be taken against the property of the corporate debtor in relation to an offence committed prior to the commencement of the corporate insolvency resolution process of the corporate debtor, where such property is covered under a resolution plan approved by the Adjudicating Authority under section 31, which results in the change in control of the corporate debtor to a person, or sale of liquidation assets under the provisions of Chapter III of Part II of this Code to a person, who was not—

(i) a promoter or in the management or control of the corporate debtor or a related party of such a person; or

(ii) a person with regard to whom the relevant investigating authority has, on the basis of material in its possession reason to believe that he had abetted or conspired for the commission of the offence, and has submitted or filed a report or a complaint to the relevant statutory authority or Court.

"*Explanation.*—For the purposes of this sub-section, it is hereby clarified that,—

(i) an action against the property of the corporate debtor in relation to an offence shall include the attachment, seizure, retention or confiscation of such property under such law as may be applicable to the corporate debtor;

(ii) nothing in this sub-section shall be construed to bar an action against the property of any person, other than the corporate debtor or a person who has acquired such property through corporate insolvency resolution process or liquidation process under this Code and fulfils the requirements specified in this section, against whom such an action may be taken under such law as may be applicable.

(3) Subject to the provisions contained in sub-sections (1) and (2), and notwithstanding the immunity given in this section, the corporate debtor and any person who may be required to provide assistance under such law as may be applicable to such corporate debtor or person, shall extend all assistance and co-operation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process."

Amendment of section 227.

11. In section 227 of the principal Act,—

(i) for the words "examined in this Code", the words "contained in this Code" shall be substituted;

(ii) the following *Explanation* shall be inserted, namely:—

"*Explanation.*—For the removal of doubts, it is hereby clarified that the insolvency and liquidation proceedings for financial service providers or categories of financial service providers may be conducted with such modifications and in such manner as may be prescribed."

12. In section 239 of the principal Act, in sub-section (2), after clause (f), the following clauses shall be inserted, namely:— Amendment of section 239.

"(fa) the transactions under the second proviso to sub-section (2) of section 21;

(fb) the transactions under the *Explanation 1* to clause (c) of section 29A;

5 (fc) the transactions under the second proviso to clause (j) of section 29A;"

13. In section 240 of the principal Act, in sub-section (2), after clause (i), the following clause shall be inserted, namely:— Amendment of section 240.

10 "(ia) circumstances in which supply of critical goods or services may be terminated, suspended or interrupted during the period of moratorium under sub-section (2A) of section 14;"

Ord. 16 of 2019.

14. (1) The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 is hereby repealed. Repeal and savings.

31 of 2016. 15 (2) Notwithstanding such repeal, anything done or any action taken under the Insolvency and Bankruptcy Code, 2016, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the said Code, as amended by this Act.

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further to amend the Insolvency and Bankruptcy Code, 2016.

(As passed by Lok Sabha)