

Bill Summary

The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2018

- The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2018 was introduced on July 23, 2018 by the Minister of Finance and Corporate Affairs, Mr. Piyush Goyal. The Bill amends the Insolvency and Bankruptcy Code, 2016, and replaces the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2018 that was promulgated on June 6, 2018. The Code provides a time-bound process for resolving insolvency in companies and among individuals. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt.
- **Financial creditors:** The Code defines a financial creditor as a person to whom financial debt is owed. Such debt includes any amount raised that has the commercial effect of a borrowing. The Bill clarifies that an allottee under a real estate project will be considered a financial creditor. An allottee includes any person to whom a plot, apartment, or building has been allotted, sold, or transferred by a promoter (real estate developer or development authority).
- **Representative of financial creditors:** The Bill specifies that, in certain cases, such as when the debt is owed to a class of creditors, the financial creditors will be represented on the committee of creditors by an authorised representative. These representatives will vote on behalf of the financial creditors as per prior instructions received from them. Under the Ordinance, the remuneration payable to this representative is to be jointly borne by the financial creditors. The Bill changes this to provide that such remuneration will be a part of the insolvency resolution costs.
- **Voting threshold of committee of creditors:** The Code specifies that all decisions of the committee of creditors be taken by a majority of at least 75% of the financial creditors. The Bill lowers this threshold to 51%. For certain key decisions, the voting threshold has been reduced from 75% to 66%. These include: (i) appointment and replacement of the resolution professional, and (ii) approval of the resolution plan.
- **Ineligibility to be a resolution applicant:** The Bill amends the criteria which prohibits certain persons from submitting a resolution plan. For example, the Code prohibits a person from being a resolution applicant if he has been convicted of an offence punishable with two or more years of imprisonment. Under the Bill, this provision will be applicable only for certain specified offences, and will not apply after two years from the date of his release from imprisonment.
- The Bill amends the criteria which prohibits certain persons from submitting a resolution plan. For example, the Code prohibits a person from being a resolution applicant if his account has been identified as a non-performing asset (NPA) for more than a year. The Bill provides that this criterion will not apply if such an applicant is a financial entity, and is not a related party to the debtor (with certain exceptions). Secondly, the Code also bars a guarantor of a defaulter from being an applicant. The Bill specifies that such a bar will apply if such guarantee has been invoked by the creditor and remains unpaid.
- **Applicability of the Code to Micro, Small and Medium Enterprises (MSMEs):** The Bill states that the ineligibility criteria for resolution applicants regarding NPAs and guarantors will not apply to persons applying for resolution of MSMEs. The central government may modify or remove other provisions of the Code while applying them to MSMEs.
- **Corporate resolution:** The Bill provides that for a corporate applicant to initiate an insolvency resolution process, they will have to submit a special resolution. Such resolution must be passed by at least three-fourth of the total number of partners of the corporate debtor.
- **Withdrawal of admitted applications:** Under the Bill, a resolution applicant may withdraw a resolution application, from the National Company Law Tribunal (NCLT), after such process has been initiated. Such withdrawal will have to be approved by a 90% vote of the committee of creditors.
- **Implementation of resolution plans:** The Ordinance specifies that the NCLT must ensure that a resolution plan has provisions for effective implementation, before approving it. Further, once the plan has been approved, the resolution applicant must obtain any approvals, required by law, within a period of one year from such approval. The Bill adds another proviso that if the resolution plan contains a provision for acquisition or merger of enterprises, then the resolution applicant will obtain the approval of the Competition Commission of India. Such approval must be obtained before the resolution plan is approved by the creditors committee.

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