

Bill Summary

The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019

- The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019 was introduced in Lok Sabha by the Minister of Finance, Ms. Nirmala Sitharaman, on December 12, 2019. The Bill amends the Insolvency and Bankruptcy Code, 2016. 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.
- **Minimum threshold for initiating the resolution process:** Under the Code, a financial creditor (either by itself or jointly with other financial creditors) may file an application before the National Company Law Tribunal (NCLT) for initiating the insolvency resolution process. The Bill amends this to provide minimum thresholds for certain class of financial creditors to initiate the insolvency resolution process. In case of real estate projects, if an allottee (person to whom a plot, apartment, or building has been allotted or sold) wants to initiate resolution, the application should be filed jointly by at least 100 allottees of the same real estate project, or 10% of the total allottees under that project, whichever is less.
- For other financial creditors, where the debt owed is either: (i) in the form of securities or deposits, or (i) to a class of creditors, the application should be filed jointly by at least 100 creditors in the same class, or 10% of the total number of such creditors in the same class, whichever is less.
- **Restriction on persons allowed to make applications:** The Code restricts certain corporate debtors from making an application to initiate the resolution process. These include: (i) corporate debtors undergoing an insolvency resolution process, (ii) corporate debtors who have completed the resolution process 12 months before making the application, (iii) corporate debtors or financial creditors who have violated terms of the resolution plan, or (iv) corporate debtors in respect of whom a liquidation order has been passed. The Bill clarifies that these corporate debtors will be allowed to initiate the resolution process against any other corporate debtor.
- **Permits, licenses and registrations not to be terminated on ground of insolvency:** The Bill states that any existing licence, permit, registration, quota, concession, or clearance, given by the government or local authority, will not be suspended or terminated on the grounds of insolvency. However, there should be no default in payment of current dues for the use or continuation of such grants.
- **Liability for prior offences:** The Bill provides that corporate debtors will have immunity against offences committed by them prior to the commencement of the resolution process. In addition, the Bill provides immunity from any action against the property (such as attachment, seizure, or confiscation) of the corporate debtor in relation to such offences. Such immunity will be granted if the resolution plan approved by the NCLT results in the change of promoters, or management of the corporate debtor.
- However, any person in charge of the corporate debtor, or associated with it, will continue to be held liable for such offences.

DISCLAIMER: This document is being furnished to you for your information. You may choose to reproduce or redistribute this report for non-commercial purposes in part or in full to any other person with due acknowledgment of PRS Legislative Research ("PRS"). The opinions expressed herein are entirely those of the author(s). PRS makes every effort to use reliable and comprehensive information, but PRS does not represent that the contents of the report are accurate or complete. PRS is an independent, not-for-profit group. This document has been prepared without regard to the objectives or opinions of those who may receive it.