

Bill Summary

The Insolvency and Bankruptcy Code (Amendment) Bill, 2019

- The Insolvency and Bankruptcy Code (Amendment) Bill, 2019 was introduced in Rajya Sabha by the Minister of Finance, Ms. Nirmala Sitharaman, on July 24, 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.
- Under the Code, a financial creditor may file an application before the National Company Law Tribunal (NCLT) for initiating the insolvency resolution process. The NCLT must find the existence of default within 14 days. Thereafter, a Committee of Creditors (CoC) consisting of financial creditors will be constituted for taking decisions regarding insolvency resolution. The CoC may either decide to restructure the debtor's debt by preparing a resolution plan or liquidate the debtor's assets.
- The CoC will appoint a resolution professional who will present a resolution plan to the CoC. The CoC must approve a resolution plan, and the resolution process must be completed within 180 days. This may be extended by a period of up to 90 days if the extension is approved by NCLT.
- If the resolution plan is rejected by the CoC, the debtor will go into liquidation. The Code provides an order of priority for the distribution of assets in case of liquidation of the debtor. This order places financial creditors ahead of operational creditors (e.g., suppliers). In a 2018 Amendment, home-buyers who paid advances to a developer were to be considered as financial creditors. They would be represented by an insolvency professional appointed by NCLT.
- The Bill addresses three issues. First, it strengthens provisions related to time-limits. Second, it specifies the minimum payouts to operational creditors in any resolution plan. Third, it specifies the manner in which the representative of a group of financial creditors (such as home-buyers) should vote.
- **Resolution plan:** The Code provides that the resolution plan must ensure that the operational creditors receive an amount which should not be lesser than the amount they would receive in case of liquidation. The Bill amends this to provide that the amounts to be paid to the operational creditor should be the higher of: (i) amounts receivable under liquidation, and (ii) the amount receivable under a resolution plan, if such amounts were distributed under the same order of priority (as for liquidation). For example, if the default were for Rs 1,000 crore and the resolution professional recovered Rs 800 crore, the operational creditor must at least get an amount which they would have received if Rs 800 crore have been obtained through liquidation proceeds.
- Further, the Bill states that this provision would also apply to insolvency processes: (i) that have not been approved or rejected by the National Company Law Tribunal (NCLT), (ii) that have been appealed to the National Company Appellate Tribunal or Supreme Court, and (iii) where legal proceedings have been initiated in any court against the decision of the NCLT.
- **Initiation of resolution process:** As per the Code, the NCLT must determine the existence of default within 14 days of receiving a resolution application. Based on its finding, NCLT may accept or reject the application. The Bill states that in case the NCLT does not find the existence of default and has not passed an order within 14 days, it must record its reasons in writing.
- **Time-limit for resolution process:** The Code states that the insolvency resolution process must be completed within 180 days, extendable by a period of up to 90 days. The Bill adds that the resolution process must be completed within 330 days. This includes time for any extension granted and the time taken in legal proceedings in relation to the process. On the enactment of the Bill, if any case is pending for over 330 days, the Bill states it must be resolved within 90 days.
- **Representative of financial creditors:** The Code specifies that, in certain cases, such as when the debt is owed to a class of creditors beyond a specified number, 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 instructions received from them. The Bill states that such representative will vote on the basis of the decision taken by a majority of the voting share of the creditors that they represent.

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