

Ordinance Summary

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019

- The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 was promulgated on December 28, 2019. The Ordinance amends the Insolvency and Bankruptcy Code, 2016. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt. The Code provides a time-bound process for resolving insolvency.
- **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 Ordinance amends this to provide minimum thresholds for certain classes of financial creditors for initiating 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 the resolution process, 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 (ii) 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 insolvency 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 Ordinance clarifies that such corporate debtors will be allowed to initiate the resolution process against other corporate debtors.
- **Permits, licenses and registrations not to be terminated on the ground of insolvency:** The Ordinance states that any existing license, 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.
- **Supply of critical goods and services not to be discontinued:** The Ordinance states that the resolution professional may order that the supply of certain goods and services which are critical for the corporate debtor's operations cannot be discontinued during the moratorium period. The moratorium period refers to the time period during which the NCLT may prohibit persons from taking certain actions against the corporate debtors, such as filing of recovery suits. This provision will not apply if the debtor has unpaid dues to the suppliers or in certain other specified circumstances.
- **Liability for prior offences:** The resolution plan under the Code may result in change in the management or control of a corporate debtor to other persons. The Ordinance states that in such cases, the corporate debtor will not be liable for any offences committed prior to the commencement of the insolvency resolution process. The liability will cease from the date the plan is approved by the NCLT. The Ordinance also provides immunity to the corporate debtor from actions against their property, such as attachment, confiscation or liquidation of property, in such cases.
- **Immunity to apply in certain cases:** The immunity against prior offences will be available if such other person (i) was not a promoter or in the management or control of the corporate debtor, or a related party of such a person, (ii) was not a person against whom investigating authorities have submitted or filed a complaint, or have reasons to believe that the person abetted or conspired to commit the offence.

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