

Rapid Fire Debate-Around the world: Update on Amendments to Insolvency Regulations and Their Significance



INTERNATIONAL
INSOLVENCY
INSTITUTE





INDIA

Insolvency and Bankruptcy Code, 2016

- Threshold of default increased – Section 4 – INR 10,00,000 (Ten Million only) from 1,00,000 (0.10 Million only)
- Relief to the MSME's



INDIA

Insolvency and Bankruptcy Code, 2016

- Relief to the traders, companies
- Clogging of the courts with the insolvency matters post COVID-19



Insolvency and Bankruptcy Code, 2016

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

- Introduced vide Insolvency and Bankruptcy Code (Amendment) Ordinance 2021 dated April 4, 2021
- Only available to MSME's- Debtor in possession and creditor in control model



Insolvency and Bankruptcy Code, 2016

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

- Pre-out of court settlement protecting the interests of all parties
- Promoters, directors allowed to participate with a base resolution plan which would be approved by 66% of the unrelated creditors to start the PPIRP



Insolvency and Bankruptcy Code, 2016

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

- 120 days timeline
- 90 day resolution or liquidation
- Swiss challenge



Insolvency and Bankruptcy Code, 2016

PRE-PACKAGED INSOLVENCY RESOLUTION PROCESS

Significance

- Preliminary work already done by approval of 66% creditors before filing application
- Informal understanding between the creditors and debtor
- Fast approval and rejection of burden on Court



Insolvency and Bankruptcy Code, 2016

- Section 32 A- Liability for prior offences
- Immunity to the new management (resolution applicant) from any investigations conducted by regulatory authorities for offences committed by erstwhile promoters prior to the commencement of CIRP



Insolvency and Bankruptcy Code, 2016

- Whitewashing for the domestic and foreign bidders
- NCLAT – *JSW Steel Ltd vs Mahendra Kumar Khandelwal & Ors* – Once the resolution plan is approved, the criminal investigation against the debtor stands abated



Insolvency and Bankruptcy Code, 2016

Significance

- Confidence to the bidders
- Protection against the misdeeds of the past
- Extending to the assets of the debtor
- Wider range



Insolvency and Bankruptcy Code, 2016

- Personal Guarantors Insolvency Regime-
Notified
- Prior to 2019 Rules –Part III was inapplicable
- Notification dated November 11, 2019-
Challenged – Supreme Court
- *Lalit Kumar Jain vs Union of India*



Insolvency and Bankruptcy Code, 2016

- Creditors can recover their dues from the assets of the guarantor and before same forum
- Section 95 applications maintainable in the absence of pending CIRP or liquidation of the debtor



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Insolvency and Bankruptcy Code, 2016

- Group Insolvency
- Videocon case – *State Bank of India & Anr vs Videocon Industries*
- Common Control, common assets, common liabilities, pooling of resources, common financial creditors and corporate debtors



Insolvency and Bankruptcy Code, 2016

- Procedural coordination mechanism –rules coordinate the different the different insolvency processes without disturbing the assets and claim
- Joint application, single court, cooperation and communication between Ips, NCLT and CoC, single IP



Insolvency and Bankruptcy Code, 2016

- Substantial consolidation
- Seeks to consolidate the assets and liabilities of group companies for consideration of a single economic unit for insolvency unit



Thank you