

**Insolvency Code: what's new**

*Last week, President Ram Nath Kovind gave his nod to promulgate the Insolvency and Bankruptcy code (Amendment) Ordinance 2018. S. Dhanapal , senior partner, S. Dhanapal and Associates, decodes the key amendments to IBC.*

**Homebuyers as financial creditors**

In a major change, homebuyers would now be treated as financial creditors or, in other words, on par with banks. The amendment enables homebuyers (either as an individual or group) to initiate insolvency proceedings against errant builders. Homebuyers shall have the right to be represented in the committee of creditors (CoC), which takes the key decision regarding revival of the company or its liquidation.

**Definition of a related party in relation to an individual**

The amendment now defines related party in relation to an individual running the firm and they would be barred from bidding for the firm under the resolution process.

Prior to the amendment, related party was defined only with reference to a company facing insolvency.

**Changes in voting share of committee of CoC**

The amendment has changed the voting share required in CoC meetings. For extending the insolvency process beyond 180 days till 270 days and for appointment of the resolution professional (who oversees the process), now a voting share of 66% is sufficient, compared with earlier requirement of 75%. Unless a specific approval is required in the Code, all other decisions of the CoC can be taken with 51% voting share against the earlier norm of 75%.

Withdrawal from the insolvency process is permitted with the approval of 90% of voting share of the CoC (the norms for which would be prescribed).

**If a financial creditor is a related party**

If a financial creditor (banks and other financial institution) or his authorised representative is a related party to the company facing insolvency, it shall not have any participation or voting during a meeting of the CoC.

However, exemption is provided in case the financial creditor has become a related party on account of conversion or substitution of debt to equity shares or instruments convertible into equity shares prior to the date of commencement of insolvency proceedings.

**Moratorium not to be available to the guarantors of a company**

For a company under insolvency, a moratorium period is provided during which no parallel proceedings are allowed. Whether such moratorium is available to guarantors of the company was a subject of debate. Now the amendment has said that the moratorium is not available to persons who provided guarantee for the loans availed by the corporate debtor.

**Filing of application by the company**

A company can file an insolvency application, provided it seeks shareholders' approval and at least three-fourth of the stakeholders approve the proposal.

### **Operational creditor to confirm dues only if available**

Operational creditors (suppliers of the company) are required to furnish a certificate from the financial institution managing their accounts regarding pending dues from the company, only if it is available. Prior to the amendment, it was mandatory.

### **Tenure of an insolvency resolution professional**

Under the insolvency process, an interim resolution professional (IRP) is appointed first and then, a resolution professional. As per the amendment, the tenure of the IRP would continue till the appointment of the resolution professional (RP), compared with the earlier 30-day fixed tenure. Also, for the appointment of the RP, a written consent from the professional is required in a specified format.

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