

Unravelling the fine print of the 'new' IBC

In continuation of last week's explainer on key features of the Insolvency and Bankruptcy Code (Amendment) Ordinance 2018, S. Dhanapal, senior partner, S. Dhanapal and Associates, explains the other aspects.

Relief to micro, small and medium enterprises (MSME)

The promoter of a MSME is not disqualified to bid for his firm which is undergoing corporate insolvency resolution process, provided the firm/person is not a wilful defaulter (though NPA) and does not attract any other disqualification.

A person who has provided a guarantee on the loan taken by the MSME firm is also not disqualified from bidding. Prior to the ordinance, under Section 29 A, promoters and guarantors of the firm were disqualified from bidding. Now, exemption has been provided to MSMEs. Further, the amendment also empowers the Centre to allow further exemptions or modifications with respect to the MSME sector, if required, in public interest

Limitation Act 1963

The ordinance has said that the Limitation Act 1963 will apply to the proceedings before the National Company Law Tribunal (NCLT) and National Company Law Appellate Tribunal (NCLAT). The law deals with whether the debt in question is time-barred and whether an application can be filed.

Transfer of pending winding-up petition to the NCLT

The ordinance has made an amendment to Section 434 of the Companies Act, 2013. This enables parties to seek the transfer of winding-up cases against companies pending in any court, before the commencement of the IBC, to the NCLT and the court may order the transfer of such cases which would be dealt with as insolvency proceedings application before the NCLT.

Putting the onus on person submitting the resolution plan to revive sick company

The person, while submitting a resolution plan for the sick firm, will now have to additionally submit an affidavit to the resolution professional, confirming that he/she has complied with the provisions of Section 29 A. Wherein the terms of the plan, shareholders' approval is required under any law for a particular action under the resolution plan, the approval shall be deemed to have been given for the purpose of implementation of the plan. The person filing the resolution plan is also required to obtain the necessary approvals required under any law for the time being in force within a period of one year from the date of approval of the plan or within such period as provided for in such law, whichever is later.

Corporate guarantor

The amendment had defined corporate guarantor as a corporate person who has provided guarantee to the loans availed by the firm facing insolvency proceedings. Now, insolvency proceedings can be initiated against the corporate guarantors.

The amendment empowers govt. to allow further modifications in respect of MSMEs

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