

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.

Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2020

The Insolvency and Bankruptcy Board of India hereby makes the following regulations further to amend the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017, namely: -

1. In the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) Regulations, 2017 (hereinafter referred to as the principal regulations), in regulation 2, in sub-regulation (1), after clause (b), the following clause shall be inserted, namely: -
 '(ba) "Corporate Voluntary Liquidation Account" means the Corporate Voluntary Liquidation Account operated and maintained by the Board under regulation 39;'

2. In the principal regulations, in regulation 10, in sub-regulation (2), for clause (q), the following clause shall be substituted, namely:-

"(q) Register of unclaimed dividends and undistributed proceeds; and"

3. In the principal regulations, for regulation 39, the following regulation shall be substituted, namely: -

"39. Corporate Voluntary Liquidation Account.

(1) The Board shall operate and maintain an Account to be called the Corporate Voluntary Liquidation Account in the Public Accounts of India: Provided that until the Corporate Voluntary Liquidation Account is operated as part of the Public Accounts of India, the Board shall open a separate bank account with a Scheduled bank for the purposes of this regulation.

(2) A liquidator shall deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon till the date of deposit, into the Corporate Voluntary Liquidation Account before he submits an application under sub-section (7) of section 59.

(3) A liquidator, who holds any amount of unclaimed dividends or undistributed proceeds in a liquidation process on the date of commencement of the Insolvency and Bankruptcy Board of India (Voluntary Liquidation Process) (Amendment) Regulations, 2020, shall deposit the same within fifteen days of the date of such commencement, along with any income earned thereon till the date of deposit.

(4) A liquidator, who fails to deposit any amount into the Corporate Voluntary Liquidation Account under this regulation, shall deposit the same along with interest thereon at the rate of twelve percent per annum from the due date of deposit till the date of deposit.

(5) A liquidator shall submit to the authority with which the corporate person is registered and the Board, the evidence of deposit of the amount into the Corporate Voluntary Liquidation Account under this regulation,

and a statement in Form-G setting forth the nature of the amount deposited into the Corporate Voluntary Liquidation Account, and the names and last known addresses of the stakeholders entitled to receive the unclaimed dividends or undistributed proceeds.

(6) The liquidator shall be entitled to a receipt from the Board for any amount deposited into the Corporate Voluntary Liquidation Account under this regulation.

(7) A stakeholder, who claims to be entitled to any amount deposited into the Corporate Voluntary Liquidation Account, may apply to the Board in Form-H for an order for withdrawal of the amount: Provided that if any other person other than the stakeholder claims to be entitled to any amount deposited to the Corporate Voluntary Liquidation Account, he shall submit evidence to satisfy the Board that he is so entitled.

(8) The Board may, if satisfied that the stakeholder or any other person referred to under sub-regulation

(7) is entitled to withdrawal of any amount from the Corporate Voluntary Liquidation Account, make an order for the same in favour of that stakeholder or that other person.

(9) The Board shall maintain a corporate person-wise ledger of the amount deposited into and the amount

withdrawn from the Corporate Voluntary Liquidation Account under this regulation.

(10) The Board shall nominate an officer of the level of Executive Director of the Board as the custodian of the Corporate Voluntary Liquidation Account and no proceeds shall be withdrawn without his approval.

(11) The Board shall maintain proper accounts of the Corporate Voluntary Liquidation Account and get the same audited annually.

(12) The audit report along with the statement of accounts of the Corporate Voluntary Liquidation Account referred to in sub-regulation (11) shall be placed before the Governing Board and shall be forwarded to the Central Government.

(13) Any amount deposited into the Corporate Voluntary Liquidation Account in pursuance of this regulation, which remains unclaimed or undistributed for a period of fifteen years from the date of order of dissolution of the corporate person and any amount of income or interest received or earned in the Corporate Voluntary Liquidation Account shall be transferred to the Consolidated Fund of India.”.Ordinance, 2019 was promulgated on December 28, 2019.

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