

Ordinance Summary

The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021

- The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021 was promulgated on April 4, 2021. It 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 the insolvency of corporate debtors (within 330 days) called the corporate insolvency resolution process (CIRP). The debtor himself or its creditors may apply for initiation of CIRP in the event of a default of at least one lakh rupees. Under CIRP, a committee of creditors is constituted to decide regarding the insolvency resolution. The committee may consider a resolution plan which typically provides for the payoff of debt by merger, acquisition, or restructuring of the company. If a resolution plan is not approved by the committee of creditors within the specified time, the company is liquidated. During CIRP, the affairs of the company are managed by the resolution professional (RP), who is appointed to conduct CIRP.
- **Pre-packaged insolvency resolution:** The Ordinance introduces an alternate insolvency resolution process for micro, small, and medium enterprises (MSMEs), called the pre-packaged insolvency resolution process (PIRP). Unlike CIRP, PIRP may be initiated only by debtors. The debtor should have a base resolution plan in place. During PIRP, the management of the company will remain with the debtor.
- **Minimum default amount:** Application for initiating PIRP may be filed in the event of a default of at least one lakh rupees. The central government may increase the threshold of minimum default up to one crore rupees through a notification.
- **Debtors eligible for PIRP:** PIRP may be initiated in the event of a default by a corporate debtor classified as an MSME under the MSME Development Act, 2006. Currently, under the 2006 Act, an enterprise with an annual turnover of up to Rs 250 crore, and investment in plant and machinery or equipment up to Rs 50 crore, is classified as an MSME. For initiating PIRP, the corporate debtor himself is required to apply to the adjudicating authority (National Company Law Tribunal). The authority must approve or reject the application for PIRP within 14 days of its receipt.
- **Approval of financial creditors:** For applying for PIRP, the debtor needs to obtain approval of at least 66% of its financial creditors (in value of debt due to creditors) who are not related parties of the debtor. Before seeking approval, the debtor must provide creditors with a base resolution plan. The debtor must also propose the name of the RP along with the application for PIRP. The proposed RP must be approved by at least 66% of the financial creditors.
- **Proceedings under PIRP:** The debtor will submit the base resolution plan to the RP within two days of the commencement of the PIRP. A committee of creditors will be constituted within seven days of the PIRP commencement date, which will consider the base resolution plan. The committee may provide the debtor with an opportunity to revise the plan. The RP may also invite resolution plans from other persons. Alternative resolution plans may be invited if the base plan: (i) is not approved by the committee, or (ii) is unable to pay the debt of operational creditors (claims related to the provision of goods and services).
- A resolution plan must be approved by the committee by a vote of at least 66% of the voting shares. A resolution plan must be approved by the committee within 90 days from the commencement date of PIRP. The resolution plan approved by the committee will be examined by the adjudicating authority. If no resolution plan is approved by the committee, the RP may apply for termination of PIRP. The authority must either approve the plan or order termination of PIRP within 30 days of receipt. Termination of PIRP will result in the liquidation of the corporate debtor.
- **Moratorium:** During PIRP, the debtor will be provided with a moratorium under which certain actions against the debtor will be prohibited. These include filing or continuation of suits, execution of court orders, or recovery of property.
- **Management of debtor during PIRP:** During the PIRP, the board of directors or partners of the debtor will continue to manage the affairs of the debtor. However, the management of the debtor may be vested with the RP if there has been fraudulent conduct or gross mismanagement.
- **Initiation of CIRP:** At any time from the PIRP commencement date but before the approval of the resolution plan, the committee of creditors may decide to terminate PIRP and instead initiate CIRP in respect of the debtor (by a vote of at least 66% of the voting shares).

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