

Bill Summary

The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2020

- The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2020 was introduced in Rajya Sabha on September 15, 2020. It amends the Insolvency and Bankruptcy Code, 2016. The Code provides a time-bound process for resolving insolvency in companies and among individuals. Insolvency is a situation where individuals or companies are unable to repay their outstanding debt. The Bill seeks to temporarily suspend initiation of the corporate insolvency resolution process (CIRP) under the Code. It replaces the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 promulgated on June 5, 2020.
- **Prohibition on the initiation of CIRP for certain defaults:** When a default occurs, the Code allows the creditors of the company or the company itself to initiate CIRP by filing an application before the National Company Law Tribunal (NCLT). The Bill provides that for defaults arising during the six months from March 25, 2020, CIRP can never be initiated by either the company or its creditors. The central government may extend this period to one year through notification. The Bill clarifies that during this period, CIRP can still be initiated for any defaults arising before March 25, 2020.
- **Liabilities for wrongful trading:** Under the Code, a director or a partner of the corporate debtor may be held liable to make personal contributions to the assets of the company in certain situations. This liability can occur if despite knowing that the insolvency proceedings cannot be avoided, the person did not exercise due diligence in minimising the potential loss to the creditors. The Resolution Professional may apply to the NCLT to hold such persons liable. The Resolution Professional is appointed to manage the resolution process upon the acceptance of an application for initiation of CIRP. The Bill prohibits the Resolution Professional from filing such an application in relation to the defaults for which initiation of CIRP has been prohibited.

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