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## Analysis of Suspension of Fresh Initiation of Insolvency Proceedings

The Insolvency and Bankruptcy Code, 2016 (hereinafter referred as “Code”) has been enacted for revival of Corporate Debtors through Corporate Insolvency Resolution Process (hereinafter referred as “CIR Process”). It is the essence of Code to encourage sustainable growth of the credit market in India, while safeguarding interests of various stakeholders. The key recommendations of *Law Committee in its Report March, 2018*<sup>1</sup> are following:

- *The applicability of Section 29A of Code has been restricted only to disqualify willful defaulters from bidding for MSMEs.*
- *In order to fulfill the stated objective of the Code i.e. to Promote Resolution, It has been suggested “to re-calibrating voting threshold for various decisions of the committee of creditors.”*
- *In order to enable the corporate debtor to continue as a going concern while undergoing CIR Process, to empower the NCLT on the application of IRP/RP to allow expansion of the scope of essential goods and services and it leads to broader the concept of “Moratorium”.*
- *In order to facilitate successful implementation of the resolution plan by the successful bidder, it has been proposed “to allow one year time to obtain necessary statutory clearances from Central, State and other authorities”.*

These key amendments have been proposed and most of these are also incorporated in Amendment Ordinance, 2019 which aimed to procure and preserve the interest of all stakeholders and also to effectuate the very purpose of the Code.

### Suspension- A Jolt

Hon’ble Finance Minister proclaimed that “*fresh initiation of insolvency proceedings will be suspended up to one year depending upon the pandemic situation*” and in addition she also reiterated that “*Corona virus-related debt will be excluded from the definition of “default” under the IBC for the purpose of triggering insolvency proceeding.*”

In order to ameliorate the condition of MSMEs, the “*minimum threshold to initiate insolvency proceedings will be raised to Rs 1 crore from Rs 1 lakh, which largely insulates micro, small and medium enterprises (MSMEs) from bankruptcy on defaulting on loans.*”<sup>2</sup>

However, there is no forethought on recovery of debt by MSMEs through this Code and the MSMED Act is being presented as a useful tool for recovery of debt but the question arises that-

### ***Is MSMED Act an effective tool for recovery of debt?***

Notably, Insolvency and Bankruptcy Code is a constructive mechanism to deal with the restructuring of debt vis-à-vis revival of Corporate Debtors. It provides an efficacious tool i.e. 'Committee of Creditors' which aims to achieve a '**Resolution, Revival and Restructuring of Debt**' of Corporate Debtors which is a Win-Win situation to Creditors as well as Debtors.

Arguably, MSMED Act is not provided a debt restructuring mechanism and just a vague tool of recovery of debt. It simply paves the way to the award holder and treated them as a secured debtor. It does not provide an efficacious remedy through which a dispute comes to an end.

In addition to that, Major setback in the MSMED Act is that the certain offences are being tried by Metropolitan Magistrate and the Magistrate of First Class which definitely leads to long and tardy process and then the famous proverb is suited here i.e. "**Justice Delayed is Justice Denied.**"

Probably, it is a Win-lose situation to MSMEs as how will it concurred with the drastic decision which is about to come. MSMEs are in meddling situation because insolvency proceedings are hardly initiated against these enterprises due to increase of threshold limit as well as suspension of fresh insolvency proceedings put a bar on recovery for MSMEs through the Code. Now, we will have to keep vigilance over the bar on fresh initiation of Insolvency Proceedings that it works as shield over the sword or sword over the shield.

### ***Impediment for Bidders/Resolution Applicants & Relief to Corporate Guarantors***

The Resolution Applicants are the vital organ of the CIR Process and works as stimulant for '**Resolution, Revival and Restructuring of Debt**' of Corporate Debtors. Even they are the instrument to achieve the intent of legislation behind the enactment of the Code. Therefore, certain provisions have been also laid down by the legislation to ease the participation of Resolution Applicants in CIR Process of the Corporate Debtors.

However, the suspension of fresh insolvency proceedings put also the bar for initiation of insolvency proceedings against *Personal Guarantors of Corporate Debtors* which may prove major setback to the bidders. It provides huge relief to Corporate Guarantors but simultaneously there is uncertainty around bidders for realization of corporate guarantee. It creates a question mark on the degrading position of resolution applicants and leaves no resolution thereof.

**In abroad** like Hungary the concept of '**Payment Moratorium**' is incorporated. It laid down certain conditions with respect to already existing credit facility agreements, loan agreements and finance lease agreements that have been provided by lenders for business related purpose. It also applicable to the payment obligations arising out of the agreements, debtors are not required complying with their payment obligations for a certain period. **In Australia**, the amendment temporarily provides debtors more time to respond to a bankruptcy notice and the period is extended from 21 days to 6 Months. **In Germany**, the changes brought in insolvency laws. Pursuant to the same, there is temporary suspension of obligations to file for insolvency and of creditor's right to request opening of insolvency proceedings subject to certain terms and conditions.

*Conclusively*, the suspension of Code in its entirety may prove the major setback amid crunch in financial sector. It may catalyze degradable position of Resolution Applicant, MSMEs and leads to non-determination of crucial issues. The bar on fresh initiation of Insolvency Proceedings tends to uncertainty in the new era of Insolvency and if we assessing the situation then there is nothing crystal clear and win-lose situation is posing amid financial crisis. **The World Bank Doing Business' Index 2018** recognized the sustained efforts and commitment of the Government of India and in year 2018 India became one of the top 10 'improvers' in the rankings released by the World Bank. The suspension of initiation of fresh insolvency proceedings will dilute this indelible approach of insolvency laws in India.

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## References:

1. Report Of The Insolvency Law Committee March 2018[[↔](#)]
2. <https://timesofindia.indiatimes.com>[[↔](#)]