

Govt introduces a Bill in the Lok Sabha to amend insolvency law

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The government on Monday introduced a bill in the Lok Sabha to amend the insolvency law and provide for a pre-packaged resolution process for stressed MSMEs.

The proposed amendments would enable the government to notify the threshold of a default not exceeding Rs 1 crore for initiation of pre-packaged resolution process. The government has already prescribed the threshold of Rs 10 lakh for this purpose.

The Insolvency and Bankruptcy Code (Amendment) Bill, 2021 -- which was introduced by Corporate and Finance Minister Nirmala Sitharaman -- will replace the ordinance that was promulgated on April 4 as part of efforts to provide relief for MSMEs adversely impacted by the pandemic.

The bill, which was introduced in the Lower House amid Opposition din over various issues, seeks to have a new chapter in the Code to facilitate pre-packaged insolvency resolution process for corporate persons that are Micro, Small and Medium Enterprises (MSMEs).

Generally, under a pre-packaged process, main stakeholders such as creditors and shareholders come together to identify a prospective buyer and negotiate a resolution plan before approaching the National Company Law Tribunal (NCLT). All resolution plans under IBC need to be approved by NCLT.

As per the Statement of Objects and Reasons of the bill, it seeks to specify a minimum threshold of not more than Rs 1 crore for initiating pre-packaged insolvency resolution process as well as provisions for disposal of simultaneous applications for initiation of insolvency resolution process and pre-packaged insolvency resolution process, pending against the same corporate debtor.

There would be a penalty for fraudulent or malicious initiation of pre-packaged insolvency resolution process or with intent to defraud persons, and for fraudulent management of the corporate debtor during the process.

Further, punishment would be meted out for offences related to pre-packaged insolvency resolution process.

According to the Statement of Objects and Reasons, the MSME sector is critical to the economy considering their significant contribution to the country's gross domestic product and generation of employment to a sizeable population.

"It has, therefore, been considered necessary to urgently address the specific requirements of the sector by providing an efficient and alternative framework under the Code for quicker, cost-effective insolvency resolution process that is least disruptive to the businesses, ensuring, among other objectives, job preservation," it noted.

Against this backdrop, the government had promulgated the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2021, on April 4 and the bill seeks to replace the ordinance.

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Rajiv Chandak, Partner at Deloitte India, said the bill covers provisions pertaining to pre-packaged insolvency process for MSME units.

"Lenders are awaiting similar provisions for larger corporates. Pre-packaged insolvency can help in resolving stress early and cut resolution time for corporates staring at default," he added.

Anoop Rawat, Partner, Insolvency & Bankruptcy at Shardul Amarchand Mangaldas & Co said the amendments are in line with the IBC ordinance that was promulgated on April 4, 2021.

The time line for completion of the pre-packaged insolvency resolution process is shorter than the normal Corporate Insolvency Resolution (CIR) period.

"Unlike the CIR Process where the control is transferred to the Interim Resolution Professional, in this process, the control remains with the existing management and only in case of fraud the NCLT may shift control to Resolution Professional. The process is intended to be swift and efficient.

"It gives better visibility of resolution as compared to a normal CIR process since a base resolution process need to be in place prior to initiation of the process at NCLT," Rawat noted.

In the wake of the pandemic, the government has taken various steps including increasing the minimum amount of default to Rs 1 crore for initiating a corporate insolvency resolution process.

Besides, the government had suspended fresh filing of corporate insolvency resolution applications in respect of defaults arising during the period between March 25, 2020 and March 24, 2021.

To deal with emerging market realities, the Code has been amended on earlier occasions also.

The Code, which came into force in 2016, was enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals.

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