

Ordinance Suspending Provisions of IBC

On 5th June 2020, an Ordinance titled "Insolvency And Bankruptcy Code (Amendment) Ordinance 2020" for suspension of initiation of fresh bankruptcy proceedings against persons impacted because of COVID-19, for at least six months, upto a maximum of one year. Section 10A has been introduced with a view to provide protection to the corporate persons experiencing distress on account of unprecedented situation, from being exposed to insolvency proceedings under the Code for upto a period of 1 year and has also sought to restrain the RP from filing applications under section 66(2) of the Code. The ordinance come into force at once.

"10A: Notwithstanding anything contained in sections 7,9 and 10, no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf:

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

Explanation – For the removal of doubts, it is hereby clarified that the provisions of this section shall not apply to any default committed under the said sections before 25th March 2020."

Reason being, it is difficult to find adequate number of resolution applicants to rescue the corporate person who may default in discharge of their debt obligations.

The Ordinance also inserts 66 (3) thereby prohibiting the Resolution Professional from filing an application under 66(2) :- (Fraudulent Trading or wrongful trading)

" 66 (3) Notwithstanding anything contained in this section, no application shall be filed by a resolution professional under sub-section (2), in respect of such default against which initiation of corporate insolvency resolution process is suspended as per section 10A."

Note : Only 66(2) is suspended 66(1) is still open.

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The Central Government hereby specifies one crore rupees as the minimum amount of default for the purpose of the said section. [earlier the limit was Rs. One lakh]

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