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Insolvency & Bankruptcy Code(Amendment)Act,2019 notified on MCA dated 09.08.2019

M Mayank Sahal
on 12 August 2019

The Ministry of Corporate Affairs hadnotified I.B.C (Amendment) Act,2019 dated 09.08.2019.

For bare reference follow the link: http://www.mca.gov.in/Ministry/pdf/IBCAmendBill_08082019.pdf

Apart from, bare link, the amendment has been abridged in a concise manner as a ready reference while going through the operational day to day activities. The amendments are read as follows:

1) Amendment in Section 5:Explanation Inserted

The explanation envisages that Resolution Plan may include provisions for Restructuring of Corporate debtors, including by way of merger, amalgamation & De-Merger.

Quick Analysis: Provision for restructuring is inserted.

2) Amendment in Section 7(4): Proviso Inserted

If Adjudicating Authority has NOT ascertained the existence of default and passed an order under Sub-Section 5 within such time, it shall in record it's reasons in writing.

Quick Analysis: Now, AA cannot just pass any order u/s 7(5), if it does so then Written reasons has to be shown, if appealed against it.

3) Amendment in Section 12: 2 more Provisos are added in it

- Provided further that Corporate Insolvency Resolution Process shall be MANDATORILY completed in 360 days from Insolvency Commencement date. It includes any extension period and legal proceeding period of resolution process under this section.
- Provided further that where the resolution process of Corporate Debtor is pending in above proviso(2nd Proviso), it shall be completed in 90 days of Commencement of IBC (Amendment) Act,2019.

Quick Analysis: Now the whole procedure of New Resolution plan has to be summed up COMPULSORILY in 360 days and if it is pending under AMENDMENT Act then in 90 days of this Act. This means cases as carry forward from Old Act can have extension of 90 days, otherwise, in 360 days.

4) Amendment in Section 25A (3): Inserted a new Sub-Section 3A

Notwithstanding anything to contrary in Sub-Section 3, Authorised representative u/s 21(6A) shall cast his vote on behalf of Financial Creditor he represents in accordance with decisions taken by more than 50% voting share of Financial Creditors he represents who have cast their votes.

Provided that, vote to cast in respect of application under section (u/s) 12A, Authorised representative shall cast his vote with respect to provisions of sub-section 3.

Quick Analysis: This indicates clearly that AR shall cast his vote according to Majority (defined here as 50%) and the majority not of all financial creditors but of the FCs who casted their votes only in case of Section 21(6a) of IBC.

Section 21(6a) read as follows: Where a financial debt-

(a) is in the form of securities or deposits and the terms of financial debt provide for appointment of a trustee or agent to act as authorized representative for all the financial creditors, such trustee or agent shall act on behalf of such financial creditors;

(b) is owed to a class of creditors exceeding the number as may be specified, other than the creditors covered under clause (a) or sub-section (6), the interim resolution professional shall make an application to the Adjudicating Authority along with the list of all financial creditors, containing the name of an insolvency professional, other than the interim resolution professional, to act as their authorised representative who shall be appointed by the Adjudicating Authority prior to the first meeting of the committee of creditors;

(c) is Representative by a guardian, executor or administrator, such person shall act as authorised representative on behalf of such financial creditors,

and such authorized representative under clause (a) or clause (b) or clause (c) shall attend the meetings of the committee of creditors, and vote on behalf of each financial creditor to the extent of his voting share.

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5) Section 30: Substitution in provisions & Explanation Inserted

Provides for Payment of debts of Operational Creditors in such manners as may be specified by board which shall not be less than:-

- The amount to be paid to Operational creditor in liquidation of Corporate Debtors under section 53 or
- The amount that would have been paid to such creditors, if the amount to be distributed in accordance with Section 53(1).

Whichever is HIGHER

And also provides for payment of the Financial Creditors, who do not vote in favour of the Resolution Plan in manner specified by the Board, which shall not be less than the amount to be paid to such creditors in accordance of Section 53(1) in liquidation of the Corporate Debtors.

Now Explanations inserted reads as follows:

Distribution in accordance with the provision of this clause shall be fair & Equitable to such creditors.

On & From Date of Commencement of IBC (Amendment) Act, provision of this clause shall also apply to Corporate Insolvency Resolution Process of Corporate Debtors –

1. Where resolution plan has not been Approved/Rejected by Adjudicating Authority.
2. Where any Appeal is preferred U/s 61,62 or such appeal is not time barred under any provision of law for time being in force;
3. A legal proceeding initiated in ANY court against decision of Adjudicating Authority in respect of Resolution Plan.

Quick Analysis: Here in substituted provisions a Floor amount is fixed as Payment of OCs which shall be higher of Liquidation amount u/s 53 or Liable amount u/s 53. As far as FCs are concerned the amount shall not be less than Liquidation amount u/s 53(1). Further, the explanation goes for manner of distribution and also, the applicability grounds of this provision.

Section 53(1) read as Follows: Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified, namely :—

(a) the insolvency resolution process costs and the liquidation costs paid in full;

(b) the following debts which shall rank equally between and among the following :—

(i) workmen's dues for the period of twenty-four months preceding the liquidation commencement date; and

(ii) debts owed to a secured creditor in the event such secured creditor has relinquished security in the manner set out in section 52;

(c) wages and any unpaid dues owed to employees other than workmen for the period of twelve months preceding the liquidation commencement date;

(d) financial debts owed to unsecured creditors;

(e) the following dues shall rank equally between and among the following:—

(i) any amount due to the Central Government and the State Government including the amount to be received on account of the Consolidated Fund of India and the Consolidated Fund of a State, if any, in respect of the whole or any part of the period of two years preceding the liquidation commencement date;

(ii) debts owed to a secured creditor for any amount unpaid following the enforcement of security interest;

(f) any remaining debts and dues;

(g) preference shareholders, if any; and

(h) equity shareholders or partners, as the case may be.

6) Section 30(4): Insert after 'Feasibility and Viability'

"THE MANNER OF DISTRIBUTION PROPOSED, WHICH MAY TAKE INTO ACCOUNT THE ORDER OF PROVIDING AMONGST CREDITOR AS LAID DOWN IN 53(1) INCLUDING PRIORITY & VALUE OF SECURITY INTEREST OF SECURED CREDITORS."

Quick Analysis: The scope for manner of distribution is broadened as the secured creditor interest priority is also taken into account.

7) Section 31(1): Insert after 'MEMBERS, CREDITORS'

'Including Central Government, any State Government or any local Authority to whom a debt in respect of payment of dues arising under any law for time being in force , such as authorities to whom statutory dues are owed' .

Quick Analysis: The scope of dues now includes government and local authorities in this provision.

8) Section 33(2): Explanation Inserted

For this Sub-Section, it is hereby declared that Committee of Creditors may take decision to liquidate the Corporate Debtor, ANYTIME After it's constitution under section 21(1) and Before confirmation of Resolution Plan, including at Anytime before preparation of Information Memorandum.

Quick Analysis: Between its constitution and confirmation of Plan and before I.MO is prepared CDs can be liquidated by COC. The subway to expedite proceeding is opened by this.

9) Section 240(2) (w): Substitution

'Repayments of debts of Operational Creditors' is substituted and now forward to be read as 'Payment of debts'.

Quick Analysis: Now the clause along with section is open for All debts due instead of payment of debts of operational creditors.

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Apart from the legal language to summarize for regular discussion, it has been concise well.. Good job!!

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