

**INTERNATIONAL JOURNAL OF LEGAL
SCIENCE AND INNOVATION**
[ISSN 2581-9453]

Volume 2 | Issue 1

2020

© 2020 *International Journal of Legal Science and Innovation*

Follow this and additional works at: <https://www.ijlsi.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Legal Science and Innovation at VidhiAagaz. It has been accepted for inclusion in International Journal of Legal Science and Innovation after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at International Journal of Legal Science and Innovation, kindly email your Manuscript at editor.ijlsi@gmail.com.

Recent Developments in the Insolvency and Bankruptcy Act, 2016

ANUSHREE VIRUPAKSH HANCHINAL¹

ABSTRACT

The sole purpose of the law making is for the welfare of the society. The executives of our country have also made the recent developments in the law for the welfare of the society in the time of this pandemic. These efforts are made for the welfare of businesses across the country which directly affects the general public. They have tried their best to provide relief to all the classes of society which has suffered during this pandemic whether it is general public or the corporate or businesses across the country. They have provided the relaxation to all the classes from which they can find difficulty because of this pandemic. An example of such a relief is the recent amendments in the Insolvency and Bankruptcy Act which provides for increase in threshold value. One of the provision of this act deals with the minimum amount of default that can be done by a debtor for the initiation of bankruptcy proceedings. The amount that is prescribed for such proceedings 1 lakh but it can be altered to a maximum value of 10 million with the proper amendments done by the government. This is only an example while many such amendments of same nature are done by the government in this act which shall be entertained in this paper.

I. INTRODUCTION

The legislation named Insolvency and Bankruptcy Code, 2016 was introduced by the legislature of our country with the objective to provide a process for the matters of insolvency related things under a prescribed basis of time for the welfare of companies, its owners and for other persons. This act has come into existence for the welfare of creditor and debtors.

The act has amended from time to time to fill the necessary loopholes of the act as per the changing social and economical conditions of the country. It has also been amended to smoothen the functioning of the process named Corporate Insolvency Resolution. In the year 2019, the act has been amended. In the time of pandemic for the safeguards of businesses, creditors and debtors various amendments has been done in the section 5,7,9,10,66 etc. It has been done for the smooth running of businesses across the county and for the welfare of its

¹ Author is a Student at Karnataka State Law University, Hubballi, India.

owners and partners. The executive has done it with a good intention but it has also created some sort of vagueness in the minds of general public also. This paper will deal with the various provisions under the changes made and will help in better understanding of the insolvency proceedings across the country.

II. OBJECTIVES OF THE ORDINANCE

The foremost and most important thing with which amendment was made is to remove all the problems and the amendments made to the act should have a positive impact. The amendments made to the act shall be effective from different dates for different provisions and the provision shall be effective from the date on the day in which originally came into existence.

This amendment act addresses mostly three issues. In the beginning, it deals with the purpose of time limit that has to be extended. On the other hand, it gives operational pay-outs a minimum amount of money for any plan. At last, it gives a mechanism of how a group of home buyers as representatives should vote.

The amendment that has been made inserts provision under the act in section 10A which suspends the insolvency proceedings that have been initiated under the section 7, 9 and 10 of the act. The time limit that has been set for a period of six months. The above section that has been inserted says that no new application for the purpose of insolvency shall be entertained after the date of 25 March 2020 for next six months. Then after it can be extended to another 1 year for the ease of businesses. It doesn't include the applications that have been made before the prescribed date.

Furthermore, a new section named section 66(3) has been inserted through this ordinance. It prohibits the new applications for defaults since the other sections have been suspended. The newly inserted section named 66(3) protects the owners of the companies in terms of liabilities.²

Also according to the notification dated 24 March it can be said that value of defaults has been increased from the amount of one lakh to one crore also. Accordingly, as per the notification dated 29th March, section 40C has been inserted under the act through which suspension of dates has been done for the period of pandemic.

III. CORPORATE INSOLVENCY RESOLUTION PROCESS: DOES IT NEED A CHANGE?

It is clear from the ordinance that it was made with a good intention but it also creates a type

²The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 (last visited on September 19, 2020)
<https://www.prsindia.org/billtrack/insolvency-and-bankruptcy-code-amendment-ordinance-2020>

of vagueness in the minds of general public also. It has been made so that defaults that are made during this period of time will get suspended during a prescribed period of time in the pandemic. It creates a query in the minds of people that whether a complete suspension is required or not ? On the one hand, it has been duty of the executives to provide safeguards to those companies that has been pushed in the insolvency because of this pandemic and can recover in future. On the other hand, the suspension will take the opportunities of the other companies under the said act. For some corporate debtors, this ordinance will let them get deeper into their financial difficulty and may lead into greater difficulties.

Before the Insolvency and Bankruptcy(Amendment) Act, 2018, the NCLT has a narrow view towards the initiation of proceedings through the section 7 and 8 of the Act.³The apex court of the county held that the period of time under section 7 can only be extended through section 5.⁴Thus, it creates a vagueness since both the sections are suspended by the ordinance.

The act also describes that it raises difficulty over the executives to apply a large number of ordinances in this time of pandemic. This may raises difficulties for a company that is got be sale under the normal circumstances. Some sort of probability is also that the this ordinance was made out so that the debtors will get a restructuring of their debts in the condition of insolvency. But the condition is that it is not handover to another. In other countries like United Kingdom also the same type of ordinance is passes which provides a type of relief to the debtors for the restructuring of their debts in the hard time of this pandemic.

A general query that may arises is that whether all the defaults that are made by defaulters should be treated by the same process. Many types of defaults are also like that are not result of pandemic but are due to the failure in the companies. It may lead to a larger cause of controversy over the period for the judiciary and for the executives.

IV. ANOTHER ALTERNATIVE FOR BETTERMENT

One of the basic questions that arises in the minds of the people that what can be an other way through which the aims of the preamble of the ordinance can be achieved by the government. At the *prima facie* level, it can be seen that the intention of the executives is to give relief to all those businesses and debtors who has been suffering hard during this pandemic and make all the defaults made during this time to be ineffective. To achieve this purpose the executives has suspended the various sections of the ordinances like section 7, 9 and section 10 of the

³B.K. Educational Services Private Limited v Parag Gupta and Associates, (2019) 11 SCC 633 : (2018) 5 SCC (Civ) 528

⁴BabulalVardharjiGurjar v Veer Gurjar Aluminium Industries Pvt. Ltd., 2020 SCC OnLine SC 647

ordinance. For section 66 of the ordinance, the best way is to amend the definition of default in the section 3(12) of the above ordinance.

It will give help to achieve all the aims cited in the preamble and no vagueness will be left behind. All the sections in which amendment was done in part two like in section 7,9,10 and 66 would become ineffective for the prescribed period of time. Through this way, a suggestion has to be provided to the executives so that they can improve their legislations in the future. It will save the precious time of the judiciary and the executives by getting engaged in unnecessary conflicts and relaxation will be provided to the people without having any type of vagueness in their minds.

V. THE LOOPHOLES OF THE IBC AMENDMENT ORDINANCE, 2020

It is clear from the ordinance that it was made with a good intention but it also creates a type of vagueness in the minds of general public also. For consideration, the term "*no application shall ever be filed*" as described in Section 10A of the act cannot be give meaning as it is available for life time or after the prescribed time period of the pandemic or lockdown. If this type of interpretation will be done then the ordinance will create a bad effect in the corporate sector. A type of protection will be given to the debtors so that they can make a default in the prescribed period of time and can attain a permanent protection from the default. However, this is not the intention of the government while making the amendment. Thus, a type of explanation has to be given so that the vagueness that has been created under the section 10A will get cleared.⁵

VI. THE IBC AMENDMENT ORDINANCE, 2020 – A RELIEF IN THE TIME OF PANDEMIC?

The recent amendment made to the code has been made with the intention to provide some sort of relief for the corporate debtors in the time of pandemic when they are suffering the most. It is also due to since because of this pandemic all the businesses across the country has been affected badly. This ordinance has came up with the duty to rescue those thousands of corporate debtors that has been affected badly due to this pandemic and was not able to obliged their duties in this bad time.

Thus, this amendment was largely done with the intention to provide relief to all those corporate debtors who has been affected badly due to this pandemic. It was made so that the debtors

⁵Plea against Insolvency Code ordinance; HC seeks Centre stand (last visited on September 19, 2020)
<https://www.thehindu.com/news/cities/Delhi/plea-against-insolvency-code-ordinance-hc-seeks-centre-stand/article32211105.ece/amp/>

couldn't get pushed into the insolvency proceedings under the said act. This ordinance give them some time for relief and for restructuring of their businesses.

CORPORATE DEBTOR IS PROHIBITED FROM INITIATING INSOLVENCY PROCEEDINGS

The recent amendment act restrains the proceedings that has to be initiated by corporate debtor for the purpose of Insolvency. The main question that has been addressed is that whether the debtor should be restrained for starting the proceedings of insolvency. The debtor will be in better shape after this amendment act. When the proceedings are done on a timely basis it will positively affect the creditor as well as the debtor. In some other countries of the world like France and Germany, the obligation over the debtor to ask for the proceedings is relaxed and the creditor has been restricted from making the proceedings begin. The insolvency proceedings by the debtor voluntary is allowed firmly.⁶

VII. CONCLUDING REMARKS:

To conclude it can be said that the executives are trying their best in this harsh conditions also to look over the people for the betterment of the social and economical conditions of the country. In this period of pandemic, various sections of the society as well as the executives are facing their worst but then also they are taking good decisions for the welfare of society. In this way, the government has introduced various amendments to the Insolvency and Bankruptcy Code, 2016 for the welfare of businesses and corporate sector. However, it has also created a vagueness in the minds of public.

⁶An international guide to change in insolvency law in response to Covid-19(DLA Piper, 2020)