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**The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020**

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REGISTERED NO. DL—(N)04/0007/2003—20

  
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असाधारण

EXTRAORDINARY

भाग II—खण्ड 1

PART II—Section 1

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इस भाग में भिन्न पृष्ठ संख्या दी जाती है जिससे कि यह अलग संकलन के रूप में रखा जा सके।  
Separate paging is given to this Part in order that it may be filed as a separate compilation.

MINISTRY OF LAW AND JUSTICE

(Legislative Department)

New Delhi, the 5th June, 2020/Jyaishttha 15, 1942 (Saka)

THE INSOLVENCY AND BANKRUPTCY CODE (AMENDMENT)  
ORDINANCE, 2020

No. 9 of 2020

Promulgated by the President in the Seventy-first Year  
of the Republic of India.

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An Ordinance further to amend the Insolvency and Bankruptcy Code, 2016.

WHEREAS the entire ecosystem for implementation of the Insolvency and Bankruptcy Code, 2016 is in place;

AND WHEREAS the provisions relating to corporate insolvency resolution process and liquidation process for corporate persons under the Code are in operation;

AND WHEREAS COVID-19 pandemic has impacted business, financial markets and economy all over the world, including India, and created uncertainty and stress for business for reasons beyond their control;

AND WHEREAS a nationwide lockdown is in force since

25<sup>th</sup> March, 2020 to combat the spread of COVID-19 which has added to disruption of normal business operations;

AND WHEREAS it is difficult to find adequate number of resolution applicants to rescue the corporate person who may default in discharge of their debt obligation;

AND WHEREAS it is considered expedient to suspend under sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016 to prevent corporate persons which are experiencing distress on account of unprecedented situation, being pushed into insolvency proceedings under the said Code for some time;

AND WHEREAS it is considered expedient to exclude the defaults arising on account of unprecedented situation for the purposes of insolvency proceeding under this code;

AND WHEREAS Parliament is not in session and the President is satisfied that circumstances exist which render it necessary for him to take immediate action;

NOW, THEREFORE, in exercise of the powers conferred by clause (1) of article 123 of the Constitution, the President is pleased to promulgate the following Ordinance:-

Short title and commencement.

1. (1) This Ordinance may be called the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020.

(2) It shall come into force at once.

Insertion of new section 10A.

2. After section 10 of the principle Act, the following section shall be inserted, namely:—

Suspension of initiation of corporate insolvency resolution process.

“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 25<sup>th</sup> 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 25<sup>th</sup> March, 2020.”

Sec. 1]

THE GAZETTE OF INDIA EXTRAORDINARY

3

Amendment of section 66.

3. In section 66 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:-

“(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.”

RAM NATH KOVIND,  
*President.*

DR. G. NARAYANA RAJU,  
*Secretary to the Govt. of India.*

## **Introduction**

The outbreak of Corona virus disease (Covid-19) pandemic has caused unprecedented economic and health crisis in India. The Nation-Wide Lockdown to combat the spread of Covid-19 had also severely impacted the Indian corporate sector and inevitably disrupted creditor-debtor relationships. The severity of the situation requires quick and decisive action from the Government and all sections of the economy to prevent deepening of the crisis. In order to prevent companies to be dragged into insolvency due to the present pandemic, a need was felt to amend the Insolvency and Bankruptcy Code (IBC), 2016. The Code provides a time-bound process for resolving insolvency in companies and among individuals.

## **Need for the Ordinance<sup>1</sup>**

There were various reasons for bringing out the Ordinance, as listed below:

- The COVID-19 pandemic has impacted business, financial markets across the world including India and created uncertainty and stress for business beyond their control.
- The nationwide lockdown since 25.03.2020 has added disruption to the normal business operations.
- It is difficult to find adequate number of resolution applicants to rescue the corporate person who may default in discharge of their debt obligation.
- It is expedient to exclude the defaults arising on account of unprecedented situation preventing them from being pushed into insolvency proceedings under the IBC,2016 for some time, thus giving them a breather in which to recoup and resuscitate their business.

## **Salient features of the Ordinance**

The Ordinance has inserted a new Section 10A (Suspension of Initiation of Corporate Insolvency Resolution Process) and modified Section 66 (Fraudulent Trading or Wrongful Trading) of the IBC.

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<sup>1</sup> Clause (1) of Article 123 of the Constitution of India grants the President of India certain law-making powers to promulgate ordinances when either of the two Houses of Parliament is not in session. The fundamental reason for bestowing the executive with the power to issue ordinances is to deal with situations where an emergency in the country necessitates urgent action. By virtue of the said powers vested in him under the Constitution of India, the Hon'ble President of India has promulgated **The Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020** on 05.06.2020

- Under the first proviso of Section 10A provides for suspension of Section 7, 9, 10 of IBC, 2016 in case of defaults which arose on or after 25.03.2020. **Section 7** of IBC enables financial creditors to file for insolvency against a corporate debtor. **Section 9** provides for application of insolvency by an operational creditor. (*Financial and operational creditors are different as their liabilities arise from different origins. Where financial creditor is liable because of a contract such as a loan or debt and operational creditor is liable because of operational transactions.*) Similarly, **Section 10** relates to initiation of insolvency proceedings by a corporate applicant.
- Time period in which suspension of initiation of Corporate Insolvency Resolution Process (CIRP) will be effective – minimum of 6 months and maximum of 1 year.
- Applications seeking to initiate CIRP for corporate debtors is allowed if :
  - ✓ The default arose before 25.03.2020
  - ✓ The amount of default is more than Rs. 1 crore.
- Under second Proviso to Section 10A provides that no application shall ever be filed for initiation of corporate insolvency resolution process (CIRP) of a corporate debtor for the default occurring during the said period.
- The Ordinance has proposed to insert a Sub-Section (3) to the Section 66 after sub-section 66(2) in the Code. Under Section 66(2) of the Code, during the CIRP of a corporate debtor and upon an application filed by the resolution professional with the relevant National Company Law Tribunal, the directors or partners (in case of a limited liability partnership) of the corporate debtor can be ordered to personally contribute to the corporate debtor's assets if the director or partner knew or ought to have known that there was no reasonable prospect of avoiding CIRP and did not exercise due diligence to minimize potential losses to creditors. The Ordinance now inserts sub-section (3) to Section 66 of the Code, which prohibits making any applications under Section 66(2) in respect of any default for which initiation of CIRP has been suspended under Section 10A. The aforesaid provision provides relaxation from wrongful trading provisions, i.e., resolution professionals will be barred from initiating wrongful trading applications against directors of companies where the CIRP is suspended.

**A comparison between the Principal Act and the key Amendments brought in by the Ordinance in the IBC, 2016 is given in the Table below:**

Sl. No.	IBC, 2016 (Existing)	Amendments of Sections/ insertion of new Sections in the Ordinance
1.	<p>Under Sections 7, 9 &amp;10 of the IBC, 2016, Creditors of company (financial or Operational) or the company itself may file an application before the adjudicating authority for initiating corporate insolvency resolution process when a default has occurred.</p>	<p>Insertion of a new Section 10A after section 10 of the principal Act:            "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 25<sup>th</sup> 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:</p> <p>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."</p>
2.	<p>Sub Section 66 (2):            "(2) On an application made by a resolution professional during the corporate insolvency resolution process, the Adjudicating Authority may by an order direct that a director or partner of the corporate debtor, as the case may be, shall be liable to make such contribution to the assets of the corporate debtor as it may deem fit if-</p> <p>(a) before the insolvency commencement date, such director or partner knew or ought to have known that there was no reasonable prospect of avoiding the commencement of a corporate insolvency resolution process in respect of such corporate debtor; and</p> <p>(b) such director or partner did not exercise due diligence in minimising the potential loss to the creditors of the corporate debtor.</p>	<p>Insertion of sub-section in section 66 of the principal Act, after sub-section (2):-</p> <p>"(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."</p>

## PRESS COVERAGE

### Coverage in support of the Ordinance

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Suspension of the IBC because of the COVID-19 pandemic through the IBC Ordinance, 2020 is not a setback to insolvency reforms as insolvency law is not the panacea to deal with stress of all firms impacted by COVID-19 said the Insolvency and Bankruptcy Board of India (IBBI).

(Source-<https://www.cnbtv18.com>)

Difficult times call for unprecedented measures. In essence, the ordinance had to have been brought into the picture for safeguarding the interests of all stakeholders in the market. The ordinance provides for intended succour, giving time to companies to recoup from the shambles they are in, and will eventually prove to be in the interest of all. (Source-

<https://lawschoolpolicyreview.com> )

### Coverage critical of the Ordinance

Section 10A says that ‘no application shall ever be filed for initiation of corporate insolvency process of a corporate debtor for the said default occurring during the said period’<sup>2</sup>. This means that for defaults that would occur between March 25, 2020 over the next six months to one year, banks can never initiate insolvency proceedings. This may lead to abuse of the system by some borrowers who may not be genuinely impacted because of the COVID-19 pandemic.

(Source-<https://www.cnbtv18.com>)

Micro, Small and Medium Enterprises (MSMEs) may be the affected due to the suspension of Section 9 of the IBC, which earlier allowed operational creditors to file for insolvency applications against a corporate debtor. An operational creditor is simply a person to whom an operational debt is owed. This person can be a supplier of goods or services to companies, and is most likely to fall into the MSME category. Therefore, if a corporate/entity fails to repay such operational creditors (OCs) during the period, they will have no legal recourse left under IBC.

Filing a civil case against such corporate debtors would be the only option left. (Source-<https://www.newindianexpress.com> )

The legal protection a corporate debtor can get under Section 10 via voluntary bankruptcy is also suspended. So if a creditor decides to use the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest Act, 2002 (SARFAESI) in the absence of IBC, the debtor will get no protection from security enforcement which it would have otherwise been able to get. (Source-<https://www.cnbtv18.com> )

The effect of the said Ordinance is to deprive a corporate applicant of its statutory rights under Section 10 and is also violative of Article 14 of the Constitution. The said Ordinance in suspending the provisions of Section 10 of the Code will push the companies towards liquidation, discourage entrepreneurship and defeat the objectives of the Code’ the plea filed in Delhi High Court said. (Source-<http://www.businessworld.in>)

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<sup>2</sup>[http://www.mca.gov.in/Ministry/pdf/IBCamedBill\\_05062020.pdf](http://www.mca.gov.in/Ministry/pdf/IBCamedBill_05062020.pdf)

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**Sources:**

1. Original Text of the Ordinance  
[http://www.mca.gov.in/Ministry/pdf/IBCAmendBill\\_05062020.pdf](http://www.mca.gov.in/Ministry/pdf/IBCAmendBill_05062020.pdf)
2. Indian Insolvency Law responds to the COVID-19 Pandemic -Part-I & II.  
<https://corporate.cyrilamarchandblogs.com/2020/03/indian-insolvency-law-responds-to-the-covid-19-pandemic/><https://corporate.cyrilamarchandblogs.com/2020/06/indian-insolvency-law-responds-to-the-covid-19-pandemic-part-ii/>
3. IBC Amendment Ordinance 2020: No fresh insolvency for default after lockdown declaration  
<https://www.newindianexpress.com/business/2020/jun/08/ibc-amendment-ordinance-2020-no-fresh-insolvency-for-default-after-lockdown-declaration-2153907.html>
4. India: Covid-19: Suspension of Insolvency proceedings in India  
<https://www.mondaq.com/india/insolvencybankruptcy/952018/covid-19-suspension-of-insolvency-proceedings-in-india>
5. <http://vinodkothari.com/wp-content/uploads/2019/06/A-note-of-Fraudulent-and-Unlawful-Trading.pdf>

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