

The Insolvency and Bankruptcy Code, 2016 is set for a major overhaul. The Ministry of Corporate Affairs is considering and finalizing number of amendments to the Code based on the recommendations of the Committee to remove difficulties in turning around the businesses and to enhance the resolution process by striking a balance between interests of lenders, customers of failed businesses and their promoters.

The Committee constituted by the Government of India has submitted its report proposing amendments for treating home buyers as Financial Creditors, enabling them to invoke the jurisdiction of the Adjudicating Authority-NCLT against the developers defaulting in their obligations and decide their rights alongwith the other Financial Creditors. An important aspect in relation to home buyers account was lost sight of the fact that the Banks lent money to the allottee of the said flat (though it is yet to be built) and the same is expressly secured by the Developer. Large number of flat allottees had not only been repaying the financial loans taken by them but in some cases, had made payments to the Developer with a stipulation that there shall be a minimum guaranteed amount payable as rent. Such flat buyers certainly come within the domain of Financial Creditors even under the present Code.

Another change proposed is that instead of 75% required for taking key decisions for resolution or liquidation, the Committee of Creditors would only require 60% of their voting besides routine decisions will require only 50% votes i.e. ordinary resolution.

Yet another amendment being proposed is of Section 29-A of the Code considering that the disqualification of willful defaulters is too wide and needs to be narrowed down. The expression 'acting jointly and acting in concert' is likely to be deleted.

There is likelihood to bring in the concept 'settlement' before moratorium in terms of Section 14 of the Code is ordered. The Corporate Debtor can have an independent settlement outside the insolvency process.

The proposed amendments to the code are being proposed to bring it in line with the object of the Code namely the resolution of the Corporate Debtor rather than liquidation. The amended Code is also likely to make it easier for entities like ARCs and others to provide interim finance to the Corporate Debtor undergoing insolvency proceedings. The same is likely to enable them to improve their valuation and facilitate a quick turnaround. The proposed amendments are necessary and clearly regulatory dues are not 'operational credit' Financial entities are likely to be exempted from the purview of Section 29-A of the Code.

While the Ministry is working to amend the Code which many feel will be a milestone in evolution of Bankruptcy law in India but the same will only be known once the bill is introduced in the Parliament.

Monnet Ispat Energy Limited's Insolvency case has now reached the Adjudicating Authority-NCLT, Mumbai Bench. The Industrial Financial Corporation of India has filed an application to intervene in the insolvency resolution process urging that its claim of Rs. 158 crores need to be considered. The Resolution Professional and the Committee of Creditors had not included its claim holding that the Corporate Guarantee given by the Corporate Debtor Monnet Ispat Energy Limited in favour of its subsidiary does not entitle the same to be part of the resolution process. Similar application by ICICI Bank Limited is already pending adjudication for its claim of \$ 75 million (about 4.86 crores) had also been rejected by the resolution professional and the Committee of Creditors. Adjudicating Authority-NCLT has stayed the holding of any further meeting of the Committee of Creditors till the hearing and disposal of the Applications by Industrial Financial Corporation of India and ICICI Bank Limited.