

CLIENT ALERT

February 2023

EXECUTIVE SUMMARY

The Ministry of Corporate Affairs has proposed amendments to the Insolvency and Bankruptcy Code, 2016 including in relation to the admission of CIRP applications, streamlining the insolvency resolution process, recasting the liquidation process and the role of service providers under the Code.

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***The Ministry of Corporate Affairs Proposes Amendments to the Insolvency and
bankruptcy Code, 2016***

The Ministry of Corporate Affairs (the “MCA”) has proposed the following changes to the Insolvency and Bankruptcy Code, 2016 (the “Code”)¹:

1. While considering a corporate insolvency resolution process (“CIRP”) application, the adjudicating authority will only rely on the record of the default available with the information utilities to determine if a default has taken place and such a record will be conclusive proof about the occurrence of a default.
2. Removal of the right of the corporate debtor to propose an insolvency resolution professional (“IRP”). In such instances, the IRP should be appointed by the adjudicating authority on the recommendation of the Insolvency and Bankruptcy Board of India (the “IBBI”).
3. Empowering the adjudicating authority to impose penalties where any person fails to comply with the provisions of the Code.
4. Empowering the adjudicating authority to impose penalties where it believes that a person has filed frivolous or vexatious applications.
5. Inclusion of the assets of the guarantor in the general pool of assets available for the CIRP for efficient resolution of the corporate debtor.
6. Empowering the adjudicating authority to bar a promoter from being a resolution applicant and submitting a resolution plan. The adjudicating authority, while exercising this power, shall be required to consider the conduct of the promoter in the relevant CIRP and the gravity of the contraventions committed.
7. It is being considered that the Code may be amended to enable that the committee of creditors may approve that individual or collective assets of the corporate debtor may be resolved in one or more resolution plans.
8. When an application is filed to initiate the CIRP in respect of a corporate debtor who is the promoter of a real estate project, and the default pertains to one or more of its real estate projects, the adjudicating authority, at its discretion, shall admit the case but apply the CIRP provisions only with respect to such real estate projects, which have defaulted. Accordingly, such projects shall be recognised as distinct from the larger entity for the limited purpose of resolution.

For a detailed analysis of this topic, you may email us at delhi@jurislegal.org or call us on +91 11 4359 3370.

¹ File No. 30/38/2021-Insolvency, Ministry of Corporate Affairs, Government of India.
<https://www.mca.gov.in/content/dam/mca/pdf/IBC-2016-20230118.pdf>.