



## Insolvency and Bankruptcy (Amendment) Bill, 2019

The Union Cabinet on 17 July 2019 approved the proposal to introduce the Insolvency and Bankruptcy (Amendment) Bill, 2019 (“**Bill**”) to make certain amendments to the Insolvency and Bankruptcy Code (“**Code**”) aimed to “fill critical gaps in the corporate insolvency resolution framework as enshrined in the Code”. The text of the Amendment Bill was made available publicly today and following are *inter alia* the major changes proposed under the Bill:

### Reiteration of the principle that time is of essence under the Code

- The Bill proposes the inclusion of a proviso to S. 12(3) of the Code to clarify that a corporate insolvency resolution process (“**CIRP**”) being undertaken under the Code mandatorily needs to be completed within a period of three hundred and thirty (330) days including any time spent in legal processes (*and sought to be excluded in light of law laid down by the Hon’ble Supreme Court in ArcelorMittal Judgement<sup>1</sup>*) and any extensions granted pursuant to the provisions of S. 12(3) of the Code.
- Further, the Bill proposes the inclusion of a proviso to S. 7(4) requiring the Adjudicating Authorities to give reasons in writing in the event an application under S. 7 is not admitted within the statutorily prescribed period of fourteen (14) days.

### Clarification on the scope of a resolution plan

- The Bill proposes the addition of a clarification to the definition of a resolution plan under S. 5(26) to state that a resolution plan may include the provisions of restructuring including by way of merger, demerger and amalgamation.

### Treatment of the operational creditors and dissenting financial creditors

- The Bill proposes to amend S. 30(2)(b) of the Code to provide that a resolution plan under the Code must mandatorily provide for payments to operational creditors which shall not be less than (a) liquidation value due to such creditor in terms of S. 53; or (b) amount payable to such creditor in case the proceeds under a resolution plan are distributed in accordance with S. 53 of the Code, whichever of the two is higher.
- The Bill further proposes that a resolution plan must provide for the payment of a minimum of the liquidation value due to a financial creditor who does not vote in favour of a resolution plan.
- The Bill also clarifies that a distribution in accordance with the provisions of the amended S.30(2)(b) would be just and equitable and the said amendment would be applicable to all pending cases where (a) resolution plan has not been approved / rejected; (b) appeals against approval / rejection of a resolution are pending before the NCLAT and / or the Hon’ble Supreme; and (c) any other proceeding initiated in any court against Adjudicating Authority’s decision on a resolution plan.

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The emerging learnings from this leading case are:

#### Part II – Cross Border Insolvency

#### Background and Purpose

#### Key amendments under the Listing Amendment Regulations

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## Distribution of proceeds and recognition of security interest

- The Bill proposes an amendment to S. 30(4) to clarify that a the Committee of Creditors (“CoC”) while considering a plan shall besides the “feasibility and viability”, shall also look into the manner of distribution proposed.
- Further, while considering the manner of distribution, the Bill clarifies that the CoC may take into account the priority amongst creditors laid down under S. 53 including the priority and value of the security interest of a secured creditor.

## Resolution Plan to be binding on the government

- The Bill proposes to amend S. 31(1) of the Code and clarify that a resolution plan approved under S. 31 of the Code shall be binding on the Central Government, State Government or any local authority to whom statutory dues are owed.

## Clarification to S. 33(2) of the Code

- The Bill proposes the addition of a clarification to S. 33(2) of the Code that the CoC after its formulation under S. 21 may at anytime take a decision to liquidate a corporate undergoing CIRP under the Code anytime before the confirmation of a resolution plan.

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1 ArcelorMittal India Private Limited v. Satish Kumar Gupta & Ors., Civil Appeal No. 9402-9405 of 2018

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