



26 March 2020

As part of measures being announced to deal with the unprecedented situation arising from the outbreak of COVID-19, the Central Government in its efforts to provide protection to companies from the lock downs and slowdown, has granted the following relaxations with respect to the Insolvency and Bankruptcy Code, 2016 (“Code”).

- The default threshold prescribed under Section 4 of the Code has been increased from the existing Rs. 100,000 to Rs. 10,000,000. This measure has been announced with a view to grant relief to the MSME sector. Accordingly, an application for initiation of the insolvency resolution process will be maintainable only in cases where the default on the part of a corporate person is more than Rs. 10,000,000. A notification to this effect was notified later on 24 March 2020 itself.
- In the event the current lockdown situation continues beyond 30 April 2020 and in order to protect companies from being subject to insolvency proceedings under the Code, the Government may consider the suspension of the operation of Section 7 of the Code (*i.e., initiation of the insolvency resolution process by a financial creditor*), Section 9 of the Code (*i.e., initiation of the insolvency resolution process by a operational creditor*); and Section 10 (*i.e., initiation of the insolvency resolution process by a debtor itself*) for a period of 6 months, so as to stop companies at large from being forced into insolvency proceedings in such force majeure causes of default.
- If such notifications / circulars are infact issued by the Ministry of Corporate Affairs, they will suspend the applicability of Sections 7, 9 and 10 of the Code for new filings thereby preventing the filing of fresh applications under these sections of the code.
- Various legal issues may arise as to the date of commencement of the enhanced threshold of default under Section 4 of the Code; the time period during which the notification applies and the date of lapse of the notifications.
- Similarly, if further notification regarding suspension of Sections 7, 9 and 10 is issued, issues would arise as to the effect of such notified modifications on pending applications filed under Sections 7, 9 and 10 which have not been heard or admitted by NCLT till the date of the commencement of the notification; whether maintainability of default claims greater than one lac but less than one crore will continue to apply to applications pending admission on the date of the notification; the extension of limitation in filing applications under sections 7, 9 and 10 from the date of the lapse of the notification and the method of computing limitation.
- The implications of these issues would need to be examined on a fact specific basis and are not covered in this note. Please seek legal counsel regarding treatment of these issues anticipated due to the COVID-19 outbreak. Appropriate legal assistance is also needed for undertaking an assessment and analysis of key concerns and for obtaining advice on next steps.

Disclaimer

This article is provided by Shardul Amarchand Mangaldas & Co for informational purposes only, and is not intended to provide, and does not constitute, legal advice.

© Shardul Amarchand Mangaldas & Co