



18 May 2020

As part of the last tranche of announcements under the Aatma Nirbhar Bharat Abhiyan, on 17 May 2020, the Finance Minister announced certain measures related to the Insolvency and Bankruptcy Code, 2016 (“**IBC**”) to enhance ease of doing business.

The measures announced include:

- *Suspension of fresh initiation of proceedings under the IBC for up to one year:* The Finance Minister reiterated the Government’s intention to suspend fresh initiation of insolvency proceedings under the IBC for a period of up to one year. This is intended to ensure that businesses are not pushed into the insolvency resolution proceedings prematurely during a period of macro-economic stress, and appears to be complementary to RBI’s announcement permitting banks to grant moratoria on repayment of debts for a fixed period. This measure is also intended to help ‘flatten the bankruptcy curve’ so that institutional infrastructure, particularly the National Company Law Tribunal is not overwhelmed with fresh cases.
- *Exclusion of COVID 19 related debt from the definition of default under the IBC:* This measure will empower the Central Government to exclude COVID 19 related debt from the definition of default under the IBC. The IBC defines default as “*non-payment of debt when whole or any part or instalment of the amount of debt has become due and payable and is not paid by the debtor or the corporate debtor, as the case may be*”. This appears to be aimed at ensuring that distress caused on account of the COVID 19 pandemic, and the consequent lockdown will not push businesses into insolvency resolution proceedings. Given that suspension of insolvency proceedings has also been announced, it will be critical to see if exclusion of COVID 19 debts will continue after the suspension is lifted, or if suspension of insolvency resolution proceedings, will be done primarily for these debts/ defaults. Further, it will be important to see the manner of determining a COVID 19 induced default for the purposes of exclusion from the definition of default.
- *Special insolvency resolution framework for MSMEs under Section 240A of the IBC:* Section 240A of the IBC, *inter alia*, empowers the Central Government to exclude or modify the application of certain provisions of the IBC to insolvency resolution proceedings of MSMEs, through notification. The Finance Minister’s announcement indicates that the Central Government will notify a new framework in exercise of these powers. It is expected, that these measures will be on the lines of the pre-pack model followed in other jurisdictions and will *inter alia* seek to make insolvency resolution proceedings less costly for Micro Small and Medium Enterprises (“**MSMEs**”). This will apply to the larger gamut of enterprises that are covered under the revised definition of MSMEs which has significantly raised investment limits (to < INR 1 crore, < INR 10 crore and < INR 20 crore for micro, small and medium enterprises respectively) and introduced the criteria of turnover (of < INR 5 crore, < INR 50 crore and < INR 100 crore for micro, small and medium enterprises respectively ) for enterprises in both manufacturing and services sectors.

These measures are in addition to the steps taken by the Government to raise the initiation trigger for proceedings under the IBC. The Government had, through its notification under section 4 of the IBC raised minimum threshold of default for triggering proceedings under the IBC to INR 1 crore, from the erstwhile INR 1 lakh on 24 March 2020. This is expected to insulate MSMEs from undergoing proceedings under the IBC on occurrence of lower monetary defaults

The exact scope and impact of these measures, as well as their interplay with each other, is likely to be clearer once requisite amendments to the IBC are placed in the public domain. It will be critical to see how insolvency resolution of corporate debtors takes place outside the framework under the IBC in the coming months and if these announcements will form the basis for an IBC 2.0 for a post-COVID 19 economy. Further, suspension of initiation of insolvency resolution proceedings would also require development of an alternative platform for resolution of debt/insolvency in an equally effective manner as available under the Code, and therefore it would be critical to see how the Government fills the vacuum created by suspension of the provisions of the Code.

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