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# Analysis of Insolvency and Bankruptcy Code: In the Light of changes in 2020

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## ABSTRACT

*The year 2020 has marked severe economic drawback in India due to the outbreak of the Covid-19 Virus. The present scenario reflects that more than 2 lakh people have been tested positive with the virus. The fear and the lockdown imposed by the Government have further deteriorated the functioning of the business enterprises. Insolvency and Bankruptcy Code, 2016 deals with the provisions for declaring insolvency and resolution of the companies in cases of defaults in payments of their dues. In the light of the present economic conditions several changes have been introduced by the Central Government in the Code to help revive the economy and protect the interests of the corporate debtors as well as stakeholders. This paper aims to analyse and study the three major changes i.e. Insolvency and Bankruptcy Code (Amendment) Act, 2020, Increase in the threshold limit by a notification issued by the Central Government, and Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020.*

**Keywords:** *Insolvency, Resolution, Corporate debtors.*

## I. INTRODUCTION

The Insolvency and Bankruptcy Code, 2016 has revolutionized the insolvency resolutions in India. It was enacted in the year 2016 after lot of recommendations to upgrade Indian resolution mechanism<sup>2</sup>. The code aims to create expeditious, time bound mechanism of resolution in order to maximise the value of the assets of the debtors. The main purpose was to expand entrepreneurship, make credit available in the market and balance the interest of all. The code, rules and regulations made there under are to create a mechanism to help the firms in financial distress, and to facilitate closure of the firm in the economic distress.

This code deals majorly with only 4 entities, namely:

1. Individuals
2. Partnership Firms

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<sup>1</sup>Author is a student of Amity University, Kolkata, India.

<sup>2</sup> Bankruptcy Law Reforms Committee, the interim Report of the Bankruptcy Law Reforms Committee(2015)

### 3. Limited Liability Partnership

### 4. Companies

With the enactment of this code, three legislative Acts were repealed, which were Presidency Towns Insolvency Act, 1989, Provincial Insolvency Act, 1920, and Sick Industrial Companies (Special Provisions) Act, 1985. The Code has also led to the Amendments in several Indian Economic Legislations<sup>3</sup>.

The Code has marked severe changes from the previous regime. The Code has introduced the creditor in control regime, time bound mechanism, less judicial intervention and established institutions such as Insolvency and Bankruptcy Board of India, Insolvency Professionals and Information Utilities.

In the last 4 years of the enactment the Code has lived up to the aims it sought to achieve. The National Company Law Tribunals, National Company Law Appellate Tribunal and High Courts and Supreme Court have adjudicated the matters falling under the Code and given a clear interpretation of the various aspects of the code.

The code however, has been through 4 amendments in the 4 years of its life. The parliament passed Insolvency and Bankruptcy Code (Amendment) Act, 2020. The Bill was passed by Voice vote in Rajya Sabha and it was approved by Lok Sabha on 6<sup>th</sup> March, 2020. It received Presidential assent on 13<sup>th</sup> March, 2020. It has replaced an Ordinance and is thus, deemed to have come into force on 28<sup>th</sup> December, 2019. In the respect of this amendment Finance Minister, Nirmala Sitharaman said that amendments are in sync with the time and also adhere to the Supreme Court Order in Letter and Spirit<sup>4</sup>. Further after this Government of India in exercise of its power under section 4 of the Code has stated by the way of a notification S.O.1205(E) that the minimum amount of default will be 1 crore Rupees to trigger insolvency<sup>5</sup>. Further in May, 2020 Finance Minister announced suspension of section 7, 9 and 10 of the IBC to protect companies under the threat of insolvency<sup>6</sup>.

This article aims to analyse the Insolvency and Bankruptcy Code with respect to the recent

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<sup>3</sup>Yogita Goyal, Insolvency and Bankruptcy Code, 2016: Critical Analysis, (June 3, 2020, 7:35 pm) <http://www.legalserviceindia.com/legal/article-1406-insolvency-and-bankruptcy-code-2016-a-critical-analysis.html>

<sup>4</sup>PTI, Parliament Passes Amendments to IBC, The Economic Times, (June 4, 2020, 12:40 pm) <https://economictimes.indiatimes.com/news/economy/policy/parliament-passes-amendments-to-ibc/articleshow/74591495.cms>.

<sup>5</sup> PTI, Government raises default threshold to 1 cr. For invoking insolvency proceedings against firms, (June 4, 2020, 13:15 pm) <https://economictimes.indiatimes.com/news/economy/policy/govt-raises-default-threshold-to-rs-1-cr-for-invoking-insolvency-proceedings-against-firms/articleshow/74796076.cms>.

<sup>6</sup>Ruchika Chitravanshi, IBC suspended for a year, Covid-19 related debt exempted from default, (June 4, 2020, 14:23 pm) [https://www.business-standard.com/article/economy-policy/ibc-suspended-for-a-year-covid-19-related-debt-exempted-from-default-120051700543\\_1.html](https://www.business-standard.com/article/economy-policy/ibc-suspended-for-a-year-covid-19-related-debt-exempted-from-default-120051700543_1.html).

amendments in the threshold limit and suspension of certain sections of the Code especially now when the whole world is facing economic turbulence because of outbreak of Covid-19 Virus.

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### III. OBJECTIVITY

The objective of this research is to:

1. Analyse and summarise the changes announced by the government of India in the Insolvency and Bankruptcy Code amidst Covid-19 Pandemic
2. To analyse the current situation and establish whether these changes were at all required or not.

#### **IV. HYPOTHESIS**

The whole world is facing a huge economic drawback because of the pandemic. In the recent times the companies and business entities are in a huge threat of insolvency. The research is being conducted based on the hypothesis that the amendments announced by the governments are to protect the interests of the companies and the business entities will benefit from them.

#### **V. RESEARCH QUESTIONS**

1. What are the significant changes in the Indian Bankruptcy Code after amendment Act of 2020?
2. What are the significant changes in respect to threshold limit for resolution?
3. What is the relevance of these changes in the present situation of Covid-19?
4. What is the relevance of Suspension of section 7, 8 and 9 of the Insolvency and Bankruptcy Code, 2016?

#### **VI. RESEARCH METHODOLOGY:**

A Research work cannot be accomplished without adopting a proper method of methodology. In this research paper analytical and doctrinal method of research is followed. Analytical method is followed in terms of analysing and scrutinizing the present scenario. The data for this work has been collected from various statutory provisions, journals, seminar papers, newspapers, reporters, magazines and web sites. By analysing the secondary data a conclusion has been established.

#### **VII. PROPOSED CHAPTERS.**

##### **(A) THE ESSENTIAL CHANGES INTRODUCED IN THE INSOLVENCY AND BANKRUPTCY CODE BY THE 2020 AMENDMENT ACT.**

This chapter explains and summarizes the essential changes brought by the Insolvency and Bankruptcy Code (Amendment) Act, 2020.

##### **(B) SIGNIFICANT CHANGES IN THE THRESHOLD LIMIT FOR INITIATING INSOLVENCY PROCEEDING.**

The Central Government has raised the threshold limit for filing an application for CIRP. This chapter explains how threshold limit is to be calculated and application is to be filed after this notification.

### **(C) IMPACT OF SUSPENSION OF SECTION 7, 9, 10 OF THE CODE IN LIGHT OF THE CURRENT SITUATION.**

This section explains the benefits and drawbacks of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020.

## **VIII. CONCLUSION**

This chapter reflects the authors analysis and conclusion from the above changes introduced in the Code.

### **(A) THE ESSENTIAL CHANGES INTRODUCED IN THE INSOLVENCY AND BANKRUPTCY CODE BY THE 2020 AMENDMENT ACT.**

The major changes introduced in the Insolvency and Bankruptcy Code is as follows:

#### **1. SECTION 5**

The Amendment Act has introduced 2 changes in the section 5 of the Code:

- The Amendment act has omitted proviso to clause 12 of section 5 of the code. This means that ‘insolvency commencement date’ shall be the date on which the application filed either under Section 7, 9 or 10 of the Code, for initiating the CIRPi.e, Corporate Insolvency Resolution Process against any corporate debtor has been admitted by the Adjudicating Authority, irrespective of the fact whether an Insolvency Resolution Professional is appointed on such date or not. Before this omission the insolvency commencement date used to be the date on which the Interim Resolution Professional got appointed by the Adjudicating Authority<sup>7</sup>.
- Further in clause 15 any other debt as “interim Finance” if notified has been included with the one which may be raised by the Resolution Professional During Corporate Insolvency Resolution Process<sup>8</sup>.

#### **2. SECTION 7**

The Amendment Act has inserted three provisos to the sub section 1 of section 7. Section 7 (1) states that when a default has occurred, a financial creditor either itself or jointly with other financial creditors may file an application before National Company Law Tribunal. The Amendment has now introduced three kinds of threshold limits for Certain Kinds of Financial Creditors to enable them maintain insolvency proceedings under this

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<sup>7</sup> The Insolvency and Bankruptcy Code (Amendment) Act, 2020, No. 1, Acts of Parliament, 2020 (India)

<sup>8</sup>*Ibid*

Code.

The first proviso states that a creditor falling under sub-section (6A) of the section 21 of the code cannot maintain an application for insolvency against a corporate debtor in its individual capacity. It has to be filed jointly by (a) not less than 100 of such creditors in the same class, or (b) not less than 10% of the total number of such creditors in the same class, whichever is less<sup>9</sup>.

The second proviso puts a similar restriction on the financial creditors who are allottees under the real estate projects. The proviso provides that an application for initiating Corporate Insolvency Resolution Process against by the allottees shall be jointly filed by (a) not less than 100 of such allottees under the same real estate project, or (b) not less than 10% of the total number of such allottees under the same real estate project, whichever is less<sup>10</sup>.

The proviso is in relation to the pending applications which have not been admitted by the National Company Law Tribunals, as on the date of the introduction of the amendments. This proviso mandates it for the applicants to modify the applications suitably, to fulfil the requirements of the 1<sup>st</sup> and 2<sup>nd</sup> proviso within 30 days of the commencement of this Act, i.e. with 30 days from 28<sup>th</sup> December, 2019 (as the ordinance was released on this date). If the application isn't modified it shall deemed to be withdrawn<sup>11</sup>.

### 3. SECTION 11

The Amendment Act has added explanation II in section 11 of the Code thus, clarifying that the restriction provided in this section shall not prevent the corporate debtor under insolvency from initiating Corporate Insolvency Resolution Process against its own debtors. Before this amendment section 11 prohibited corporate debtors from initiating Corporate Insolvency Resolution Process under certain circumstances, against its own defaulting debtors or borrowers. This explanation has taken care of the grievances of the corporate debtors who are already in CIRP, by allowing them to initiate CIRP proceeding against their corporate debtors, to recover their dues<sup>12</sup>.

Before this amendment there has been ambiguity because of the divergent views of the various National Company Law Tribunals with respect of interpretation of section 11 especially in the light of initiation of the Corporate Insolvency Resolution Process by the

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<sup>9</sup>*Ibid*

<sup>10</sup>*Ibid*

<sup>11</sup>*Ibid*

<sup>12</sup>*Ibid*



corporate debtors under CIRP. In this regard a reference can be drawn to the decision taken by the NCLT Mumbai in the matter of Jai Ambe Enterprise v. S.N. Plumbings Pvt. Ltd.<sup>13</sup> where in it was held that it is the duty of the Resolution Professionals to recover the outstanding debts of the corporate debtors who are already in CIRP. Thus, this decision is in line with the recent amendment.

#### 4. SECTION 14

There were changes in the section 14 of the Code, which provides for the Declaration of moratorium by Adjudicating Authority during the pendency of CIRP.

- a) The Amendment Act has inserted an explanation in sub-section (1) of section 14 of the Code, wherein explaining that any license, permit, registration, quota, concession, clearance or any other grant issued by the Central Government, State Government, Local Authority or any Statutory Authority in favour of the corporate debtor shall not be suspended on the grounds of the insolvency during moratorium period. However, such protection has been subjected to no default in payment of dues arising out of use of continuation of such license, permit, registration, quota, concession, clearance or any other grant by the corporate debtor during the moratorium period<sup>14</sup>.
- b) The Amendment Act has also inserted a new sub-section (2A) providing that any supply of goods or services shall not be suspended, terminated or interrupted during the period of moratorium, which in the opinion of Interim Resolution Professional or Resolution Professional is critical for protection and preservation of the value of the corporate debtor and for the management of the operations of corporate debtor, however there shall not be any default in payment of dues arising from such supply during the moratorium period<sup>15</sup>.
- c) The sub-section 3(a) of section 14 of the code has been substituted. This now provides that the provisions of the section 14(1) shall not apply to such transactions, agreements or other arrangements, which may be notified by the Central Government in consultation with any financial sector regulator or any other authority. The scope of sub-section 3(a) has been expanded by adding “agreements” and “other arrangements” in addition to the “transactions”. There has been addition of the word “any other authority” which was earlier limited to “financial sector regulator” only<sup>16</sup>.

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<sup>13</sup>(CP 1268/I&BC/NCLT/MB/MAH/2017) (India)

<sup>14</sup>The Insolvency and Bankruptcy Code (Amendment) Act, 2020, No. 1, Acts of Parliament, 2020 (India)

<sup>15</sup>*Ibid*

<sup>16</sup>*Ibid*

## 5. SECTION 16

The Amendment Act has changed the appointment date of the Interim Resolution Professional which will be on the Insolvency Commencement date itself which was earlier 14 days period. This section was amended to expedite the Corporate Insolvency Resolution Process<sup>17</sup>.

## 6. SECTION 21

There has been amendment in the second proviso of the sub-section 2 of section 21. As a consequence of which the first proviso of the section 21(2) shall not apply to those financial creditors who are related to the corporate debtor on account of such completed transactions, which may be prescribed by the Central Government under section 239(2)(fa) of the code, prior to insolvency commencement date<sup>18</sup>.

## 7. SECTION 23

There has been substitution in the proviso of the section 23(1) of the code. Now the resolution professional has been empowered to continue to manage the operations of a corporate debtor after the expiry of the period of the Corporate Insolvency Resolution Process, and until the adjudicating authority approves the insolvency plan (under section 31(1)) or appoints liquidator (under section 34). This has been done to resolve the practical problems faced by the Resolution professionals as to the authority of the affairs of corporate debtors after the completion CIRP even when the matter is pending before adjudicating authority<sup>19</sup>.

## 8. SECTION 29 A

This section provides for the persons, who are not eligible to apply for resolution. The explanation in the clause (c) and (j) of the section 29A of the code has also been amended by the Amendment Act. In the both explanations the words “or completion of such transactions as may be prescribed” have been inserted after the words “convertible into equity shares”<sup>20</sup>. Now with the above changes Central Government is empowered to prescribe any such completed transaction to determine the eligibility of the person to apply for resolution. This is definitely adopted in addition to the criteria specified in section 29A of the code.

## 9. SECTION 32A

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<sup>17</sup>*Ibid*

<sup>18</sup>*Ibid*

<sup>19</sup>*Ibid*

<sup>20</sup>*Ibid*

This new section has been inserted in the code by the Amendment Act, 2020. Section 32A(1) of the Act protects the new management officials from the offences committed by the corporate debtors prior to the commencement of the Corporate Insolvency Resolution Process<sup>21</sup>. Further section 32A(2) protects the properties of the corporate debtors which were part of the resolution plan. The protection is provided to the person who was

- a. Neither a promoter nor in management, nor*
- b. Control of the corporate debtor, or in relation to him.*

The protection is also for the person who in the investigating authority's opinion was not involved in any way with the offence of the corporate debtor and has also filed a complaint in the court<sup>22</sup>.

The Amendment Act has also inserted two provisos to the section 32A(1) the first one provides that subject to the fulfilment of the requirements provided in this subsection, the corporate debtor will be discharged of any prosecution initiated during the CIRP, from the date of approval the resolution plan.

The second proviso states that few persons shall continue to be liable to be prosecuted and be punished for the offences committed by the corporate debtor even though no liability will lie upon the corporate debtor. These persons are:

- Designated partner in terms of LLP Act, 2008 or,
- Officer who is default in terms of the Companies Act, 2013 or,
- Officer who was involved in day to day business of the company in any manner<sup>23</sup>.

The Amendment Act has also added an explanation to the subsection 2 of section 32A which explains that an action in relation to property will include attachment, seizure, retention or confiscation of that property. The proviso to this subsection has also been added which state that there shall be no bar in initiating action against property of any person who fulfils the criteria of section 32A (*who is neither the corporate debtor nor a person who acquired property through CIRP or liquidation process*).

The third subsection of this new section creates an obligation on the corporate debtor to extend its assistance in investigation relating to any offence committed prior to the CIRP<sup>24</sup>.

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<sup>21</sup>*Ibid*

<sup>22</sup>*Ibid*

<sup>23</sup>*Ibid*

<sup>24</sup>*Ibid*

Recently in the case of *JSW Steel Ltd. v. Mahnder Kumar Khandelwal And Ors.*<sup>25</sup>, the company Law Appellate Tribunal granted protection to the attachment properties of the appellant under this section.

#### **10. SECTION 227**

The new amendments of 2020 have introduced the changes in section 227 of the code by replacing the word “examined in this code” with the words “contained in this code” to remove any ambiguity in this section<sup>26</sup>. The Amendment Act has also inserted an explanation this section of the code. This new explanation provides that the insolvency and liquidation proceedings for notified financial service providers or their categories may be conducted with some modifications and in such manner as may be prescribed by the Central Government.

#### **11. Section 239**

The Amendment Act has also added clauses (fa), (fb) and (fc) to the section 239 Of the code. These amendments are in line with the powers of the Central Government to make rules in respect of transaction introduced in the proviso of the section 21(2), section 29A(c) and section 29A(j)<sup>27</sup>.

#### **12. Section 240**

The clause (ia) has been inserted to the section 240(2) of code by the Amendment Act. The board is now empowered to make regulation in relation to the circumstances in which supply of critical goods and services can be terminated during the moratorium period.

### **IX. THE HIGHLIGHTS OF THE AMENDMENT ACT ARE:**

1. The date of admission of the application for initiating CIRP is now the insolvency commencement date
2. Interim Resolution Professional is to be appointed on the new insolvency commencement date.
3. Resolution Professional shall continue to manage the affairs of the corporate debtor until the adjudicating authority approves the resolution plan or passes an order of liquidation

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<sup>25</sup>[Company Appeal (AT)(Insolvency) No. 957 of 2019]

<sup>26</sup>The Insolvency and Bankruptcy Code (Amendment) Act, 2020, No. 1, Acts of Parliament, 2020 (India)

<sup>27</sup>*Ibid*

4. A minimum threshold has been provided for financial creditors falling under section 21(6A) in respect of the real estate allottees.
5. Licenses and other grants shall not be terminated during the moratorium period unless the corporate debtor defaults in the current payment
6. The new management officials are protected from proceedings for offences committed by the corporate debtor before the commencement of CIRP.
7. The property of the corporate debtor is also granted protection for the offences committed prior to the CIRP commencement.

## **X. SIGNIFICANT CHANGES IN THE THRESHOLD LIMIT FOR INITIATING INSOLVENCY PROCEEDING.**

As mentioned earlier the Government of India has specified by the way of notification S.O. 1205(E)<sup>28</sup> that default of Rupees 1 crore will be the minimum amount to trigger the insolvency under the Code. This notification was released in the exercise of its powers under section 4 of the Code. Section 4 of the code stated that the threshold limit for filing the insolvency application will be Rupees 1 lakh however the Central Government was empowered to change it by releasing a notification in the official gazette. The problem with this was that most of the creditors filled the application for insolvency only to recover the money. This small amount of money gave creditors an upper hand which they misused profusely. Moreover with the economic crisis caused by the outbreak of Covid-19 the Government issued the notification changing the threshold limit to Rupees 1 crore.

The financial creditor under section 7 of the code is empowered to file the application individually on behalf of other financial creditors, thus, required the threshold sum is to be met by all of them collectively, which is not the case with the operational creditors.

### **(A) CALCULATION OF THRESHOLD LIMIT:**

1. A financial creditor can file an application towards aggregate claims of all the financial creditors under section 7(1) of the Code. A financial creditor having the claim of less than 1 crore Rupees can also file for the insolvency if combined financial credit is more than 1 crore Rupees.
2. A financial creditor having a financial credit of less than Rupees 1 crore. In this situation of the aggregate financial credit is also less than Rupees 1 crore, however

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<sup>28</sup>Ministry of Corporate Affairs Notification, ( June 7<sup>th</sup> , 2020, 12:20 pm) <https://www.ibbi.gov.in/uploads/legalframework/48bf32150f5d6b30477b74f652964edc.pdf>

there is certain amount of operational credit. Addition of this operational credit will reach the threshold of Rupees 1 crore. In this situation operational credit cannot be included in the financial credit as section 7(1) clearly talks about financial credit only.

3. Under section 8 and 9 only those operational creditors can file an application for insolvency, where credit owed can meet the threshold limit in the individual capacity as there is no provision for the aggregation of debts of operational creditors for application of insolvency unlike Financial Creditors.
4. The Insolvency and Bankruptcy Code doesn't provide for the application to be filed for cumulative operational debts. However, in case of employees having combined outstanding salaries more than Rupees 1 crore, but none of the employee having outstanding salary of more than Rupees 1 crore can file a combined application through their representative<sup>29</sup>.
5. If the operational creditors have sent the demand notice as required under the procedure established by this Code however, the application has not been filed. The application can filed only after the threshold limit has been met.
6. If the application for insolvency was filed and admitted before the said notification based on the prior threshold limit, it will remain applicable.

This notification is only for the corporate debtors and doesn't include the personal guarantors thus; an application can be filed against the personal guarantors upon the default of Rupees 1 Lakh.

#### **(B) THE NEED FOR THIS INCREASE IN THRESHOLD IN THE RECENT TIMES.**

The companies are definitely going through a rough patch of the journey because of the economic crisis brought by the outbreak of Covid-19 Virus. In the current time with a halt upon the market the companies will definitely default a lot of credit which may lead to the filing of application for CIRP. Thus, with the increase in the threshold limit the small and medium companies will now be protected from the wrath of the lenders.

However, code has seen the dominance of the operational creditors especially in terms of the applications filed. The data suggests that as of 31<sup>st</sup> December, 2019 the 49.21% cases were filed by the operational debtors only<sup>30</sup>. The increase in the threshold limit is expected to curb the filing of the frivolous applications.

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<sup>29</sup>Megha Mittal and Shreya Jain , IBC Threshold Raised: Analysis and Implications, Indian CorpLaw ( June 7<sup>th</sup> ,2020, 12:48 pm) <https://indiacorplaw.in/2020/03/ibc-threshold-raised-analysis-and-implications.html>

<sup>30</sup>Quarterly News Letter of Insolvency and Bankruptcy Code, ( June 7<sup>th</sup>, 2020, 1:09 pm) <https://ibbi.gov.in/uploads/publication/62a9cc46d6a96690e4c8a3c9ee3ab862.pdf>

## **XI. IMPACT OF SUSPENSION OF SECTION 7, 9, 10 OF THE CODE IN LIGHT OF THE CURRENT SITUATION.**

On 17<sup>th</sup> May, 2020 Finance Minister Nirmala Sitharama announced that insolvency proceeding will be suspended for a period of 1 year by suspending section 7, 9 and 10 of the code<sup>31</sup>. The Government has issued an ordinance on 5<sup>th</sup> June, 2020 to suspend IBC for 6 months. The ordinance has added section 10A to the code, wherein it is stated that no new CIRP of corporate debtors will be filled for any default arising on or after 25<sup>th</sup> March, 2020 for a period of 6 months. The Central Government is also empowered to extend this period<sup>32</sup>.

The suspension was the need of the time as with the outbreak of the covid-19 because of the following 3 reasons:

1. Businesses cannot perform as their usual; this will be followed by them facing difficult situations, cash flow problems leading to the default in their debt obligations.
2. Secondly, the requirements for CIRP such as interim financing for the insolvent assets, time bound resolution process and creditor in control model cannot be met in the present Covid- 19 situation.
3. To reduce the burden on the NCLT, which hears all the cases related IBC, besides other corporate cases<sup>33</sup>.

The suspension cannot be considered as to solve many problems. It merely puts them for future and buys them time. Even though the NCLT will be less burdened with the IBC cases once the situation is redeemed it can be anticipated that NCLT will be overburdened with such cases.

The second drawback is that the firm which could have restructured under IBC now will be forced to face liquidation in future. The company which is already distressed, and will remain in such position for a longer period will only deteriorate its value at the time of liquidation. From the data as of 31<sup>st</sup> December, 2019 22% percent cases were recommended for liquidation and only 5% for resolution<sup>34</sup>. Thus, suspension will only increase the troubles of the corporate debtors.

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<sup>31</sup>MukeshBhutani, IBC Suspension: Reforms that can fill the gap, (June 7<sup>th</sup>, 2020, 1:40 pm) <https://www.bloomberquint.com/opinion/ibc-suspension-filling-the-gap>

<sup>32</sup> Insolvency and Bankruptcy Code ( Amendment ) Ordinance, 2020

<sup>33</sup>Hemant Kothari, Suspension of IBC: it's half baked solution for to ease financial stress, money control, (June 7<sup>th</sup>, 2020, 1:51 pm) <https://www.moneycontrol.com/news/economy/policy/suspension-of-ibc-its-a-half-baked-solution-to-ease-financial-stress-5285481.html>

<sup>34</sup>Quarterly News Letter of Insolvency and Bankruptcy Code, ( June 7<sup>th</sup>, 2020, 1:09 pm) <https://ibbi.gov.in/uploads/publication/62a9cc46d6a96690e4c8a3c9ee3ab862.pdf>

Further there is confusion in relation to the calculation of the suspension period. The ordinance specifies that the suspension will last for 6 months but whether from 25<sup>th</sup> March, 2020 or 5<sup>th</sup> June, 2020.

There is no bar on filing of the application for the default taking place before 25<sup>th</sup> March, 2020. However the parameters to reach to the conclusion whether the default is a result of Covid-19 pandemic or not are not discussed.

Further section 66(3) of the code<sup>35</sup> provides protection to the corporate debtors for a lifetime when default occurred in the suspension period. This has given the companies and corporate debtors to enter into fraudulent transaction in this period thereby demeaning the entire purpose of the code.

## **XII. CONCLUSION**

The changes brought by the Insolvency and Bankruptcy (Amendment) Act, 2020 were necessary as this has cleared several doubts which were persisting earlier. The Amendment has also paved the way for the speedy resolution mechanism under the Code. However, the interest of real estate allottees has been compromised as it might be difficult to find other 99 allottees or 10% of the buyers with which only he could approach the court.

The threshold limit under section 4 has been increased for the benefit of the corporate debtors and to avoid unnecessary claims. However, this has compromised the interest of the stakeholders.

Further with the ordinance released on 5<sup>th</sup> June, 2020 the problems can be said to have been only postponed but not resolved. Further, the interest of the small and medium sized enterprises has not been recognized. The alternative mechanism has not been prescribed either. Thus, the changes brought by the Government of India can be detrimental to the economy in future.

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<sup>35</sup>*Supra* 31



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