



## news flash

June 2020



### **Suspension of Sections 7, 9 and 10 of the Insolvency and Bankruptcy Code, 2016**

The Insolvency and the Bankruptcy Code, 2016 (“**the Code**”) was enacted in 2016 and introduced the concept of the corporate insolvency resolution process (“**CIRP**”). CIRP can be initiated against a financial debtor under Section 7 of the Code and against an operational debtor under Section 9 of the Code. The Code also allows a company to file a petition under Section 10 for voluntarily initiating CIRP. Section 66 of the Code provides that if during the CIRP, it is discovered that the business of any company was carried out with the intention to defraud its creditors or for any other fraudulent process, the Resolution Professional may make an application before the National Company Law Tribunal (“**NCLT**”) for passing appropriate directions.

Vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 (“**Ordinance**”), published on 5<sup>th</sup> June 2020, Section 10A has been introduced to the Code. Section 10A states that no application for initiation of CIRP of a corporate debtor is to be filed for any default arising on or after 25<sup>th</sup> March 2020, for a period of six months, or such further period, not exceeding one year from such date, as may be notified. The Ordinance goes on to clarify that no application shall ever be filed to initiate CIRP for the aforementioned period. However, these provisions do not apply to defaults committed prior to 25<sup>th</sup> March 2020.

The Ordinance further provides for the introduction of sub-clause (3) to Section 66 of the Code. This clause states that no applications may be made by a Resolution Professionals under this Section in respect of any defaults as against which initiation of CIRP is suspended under Section 10A.

Thus, the Ordinance clearly states that no CIRP may be initiated against companies for defaults committed from 25<sup>th</sup> March to 24<sup>th</sup> September, or such period as may be extended. However, such extension shall not be beyond one year from the date on which it is notified. Further, no action can be taken with respect to frauds discovered during the course of the CIRP, for defaults as mentioned hereinabove.

This Ordinance has been passed by the President of India in light of the Covid-19 pandemic and the ensuing lockdown, which has impacted businesses and economies in India and all over the world, creating uncertainty and stress for businesses for reasons beyond their control. These measures have been put into force to protect companies which are experiencing distress on account of this unprecedented pandemic situation from being pushed into any CIRP proceedings.

In our view, the promulgation of this Ordinance will provide relief to companies, especially smaller industries, which have been struggling to make payments of their debts since 25<sup>th</sup> March 2020. However; creditors will not have the option of initiating CIRP against companies for the debts incurred during the notified time period, leaving them with no other choice but to approach the Civil Courts for recovery.

As the Parliament is not in session, the suspension has come by way of an Ordinance passed by the President, which is required to be laid before the Parliament within six weeks' time, failing which it will lapse.

For a copy of the Ordinance [Click here](#)

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