



**IBC on hold – permanent relief for coronavirus related debt**

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E-mail: [info@amicusservices.in](mailto:info@amicusservices.in)  
Website: [www.amicusservices.in](http://www.amicusservices.in)

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## **IBC on hold – permanent relief for coronavirus related debt**

The Finance Minister has made a set of fresh announcements with respect to the Insolvency and Bankruptcy Code, 2016 (“IBC”) in her last tranche of measures under the Central Government’s Atmanirbhar India Campaign.

The following changes have been made in the IBC:

- The Government has raised the minimum threshold for the default amount from INR 1 lac to INR 1 crore to initiate insolvency proceedings to ringfence MSMEs from being pushed into insolvency;
- Suspension of initiation of fresh insolvency proceedings up to the period of one year;
- All defaults that have arisen out of the coronavirus pandemic will be excluded from the definition of default under the IBC;
- For MSMEs, a special insolvency framework will be notified under Section 240A of the IBC.

These announcements will be implemented through an Ordinance that will be promulgated with immediate effect. Though the intention behind these measures is to protect companies that have run into default during the COVID-19 crisis, the blanket embargo on all insolvency petitions for one year will grant undue protection to financial defaulters and defaulters of operational debts even for pre-COVID-19 defaults. In addition, a complete exclusion of COVID-19 related debts from the definition of default in IBC is a relief measure, far in excess of the effect of the crisis. Under the COVID-19 Regulatory Package of the Reserve Bank of India, certain measures were announced to mitigate the burden of servicing debts in the COVID crisis, which included a moratorium (deferment of payment) on installments. Will an IBC exclusion of default that has come into existence during the COVID-19 lockdown mean that even where repayment regularises after the lockdown, a subsequent default will not trigger the right of a creditor to file an application once the ban is lifted? Presumably, a corporate in distress can recuperate from the effects of the current crisis. Therefore a blanket exclusion for a COVID-19 default, to continue in effect in a post-COVID healthy scenario is an excessive measure.

Another area of concern is debt-laden corporates that want to initiate self-insolvency. Suspension of insolvency action by such corporate debtors can backfire as these entities will have to continue in the absence of a viable resolution mechanism, resulting in further dissipation and depreciation. This runs counter to the IBC objective of value maximization, which is least desirable in the current circumstances.

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While the move to suspend invocation of IBC provisions is a step in the right direction, it is crucial to fine-tune this measure to the extent it is needed to mitigate the adverse effects of COVID-19. Moreover, suspension of IBC only bans the remedy but does not ensure the solvency of a corporate. To ensure that companies remain solvent and quickly find the ground under their feet, other economic boosters announced by the Government will have to prove successful.

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