



No Fresh Insolvency Cases for Six Months, MCA to notify

APRIL 24, 2020

E-mail: info@amicusservices.in

Website: www.amicusservices.in

No Fresh Insolvency Cases for Six Months, MCA to notify

The Union Cabinet has approved a proposal by the Ministry of Corporate Affairs to suspend fresh applications for initiation of insolvency against corporate debtors. This is a one-time measure that shall be in place for six months, or until further directions.

Amidst the COVID-19 crisis, Finance Minister **Nirmala Sitharaman** announced a slew of measures to mitigate the decimating effect of the pandemic on the Indian economy. In relation to the **Insolvency and Bankruptcy Code, 2016**, a significant move was made to protect companies from being dragged into insolvency by raising the threshold default amount from rupees one lakh to a whopping one crore rupees. In the same vein, she had also announced that in the event the lockdown is extended, the Ministry of Corporate Affairs would consider suspension of fresh insolvency cases. Following the announcement there were talks of a notification by the Ministry to suspend fresh filings for the immediate future. Though a formal notification is yet to be announced, it is understood that applications for initiating corporate insolvency by a financial creditor ([section 7](#)), by an operational creditor ([section 9](#)) and by a corporate debtor itself ([section 10](#)) shall be suspended by the operation and effect of [section 10A](#), which shall be a new insertion.

These measures are being implemented to address the current cessation of the economy, that has put entities, especially **MSMEs**, in distress and to ringfence such entities from the threat of insolvency proceedings in the present force majeure situation. However, there is a flip-side to these measures. While the intent is to protect MSMEs, these measures also bar MSMEs to resort to IBC for enforcement of debts. The MSME sector has already expressed its concerns with respect to the increased threshold limit of one crore rupees as most transactions and debts are operational in nature and IBC was a quick and efficient route for realizing debts from corporate debtors. Now with the six-months' stall on fresh filings, the IBC route shall not be available to entities that were relying on realizations from its creditors to stay afloat in these tough times.

Perhaps these measures could have been better implemented with certain qualifications rather than a blanket measure, because the relief is available even to those creditors who have defaulted on loans prior to the pandemic and the ensuing lockdown. An exception for accounts that turned NPAs before the lockdown or creditors who went rogue on payments before the pandemic, would have served the interest of creditors as well as protected borrowers in distress.

Disclaimer: Amicus Insights is published only to provide overview of issues arising out the subject matter covered. It is not and should not be treated as a substitute for legal or regulatory advice. Readers are advised to seek specific guidance from their advisors on impact of the issues covered in this publication.