

**RECENT NOTABLE DEVELOPMENTS IN INSOLVENCY LAWS AND TAX LAWS IN
INDIA**

INSOLVENCY LAWS

I. INSOLVENCY AND BANKRUPTCY (AMENDMENT) ACT, 2020

1. The laws governing insolvency and bankruptcy have seen certain amendments touching vital areas of the Insolvency and Bankruptcy Code, 2016 such as the default amount, liability for offences committed by the suspended promoters/board, last mile funding to the Corporate Debtor and the prevention of potential abuse of the provisions of the IBC Code by the creditors. The said amendments had earlier been introduced vide the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2019 on 28th December, 2019, and have subsequently been notified as the Insolvency and Bankruptcy Code (Amendment) Act, 2020 on 13th March, 2020. The amended Act has been enforced with effect from 28th December 2019. Further, the Central Government has announced a set of changes in various laws which have been made specifically in the light of COVID-19 in order to aid the industries and businesses to cope up with the circumstances and to avoid unnecessary litigation. Vide the Notification dated 29th March 2020 certain changes have been introduced in the IBC Code, which have been also covered hereinunder.
2. The key changes introduced vide the Insolvency and Bankruptcy Code (Amendment) Act, 2020, notified on 13.03.2020, are as follows:
 - a. The scope of “Interim Finance” has been widened by adding the phrase ‘and such other debt as may be notified’ in its definition under Section 5(15).
 - b. The erstwhile Section 7 has been amended to prescribe a minimum threshold for initiation of CIRP proceedings against corporate debtor.
 - c. Application to initiate CIRP against a corporate debtor can be preferred by Corporate Debtor already undergoing CIRP, or in respect of which a liquidation order has been passed.
 - d. No criminal liability can be imposed upon a successful resolution applicant for offences committed by the ex-management of the corporate debtor as per the amended provisions.
 - e. No suspension or revocation of licenses, registrations, permits, grants etc. on account of moratorium.
 - f. RP will continue beyond the period of 330 days till the approval or rejection of resolution plan by adjudicating authority.

II. NOTIFICATION DATED 24TH MARCH 2020 PASSED BY THE MINISTRY OF CORPORATE AFFAIRS

3. Over and above the Insolvency and Bankruptcy Code (Amendment) Act, 2020, certain changes have also been brought to deal with the peculiar circumstances that are being faced due to the recent epidemic, namely COVID-19. It needs no mention that the business and the industries and the businesses all over the country have been hit hard by the said epidemic and the operations have been stagnated and incomes have been drastically affected. The Central Government and statutory authorities have brought about certain amendments to deal with the present situation and to prevent it from spreading further. The said changes/amendments have been introduced to avoid multiple potential proceedings being initiated by the creditors who would be denied their lawful share or return from a company/corporate debtor due to the fact that virtually no business can be and is being carried due to the restrictions imposed by the governments at both the State and Central level.
4. Prior to the present changes carried out in the wake of the epidemic as mentioned hereinabove, Section 4 of the IBC stood as reproduced hereunder:

“4. (1) This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees.

Provided that the Central Government may, by notification, specify the minimum amount of default of higher value which shall not be more than one crore rupees.”

Thus, by the virtue of the proviso of Section 4 the Central Government has been vested with the power to alter the minimum default amount which would enable the creditors to approach the Hon’ble National Company Law Tribunal. In exercise of the same, the Central Government, vide Notification dated 24.03.2020 of the Ministry of the Corporate Affairs brought the following change:

“S.O. 1205(E). – In exercise of the powers conferred by the proviso to section 4 of the Insolvency and Bankruptcy Code, 2016 (31 of 2016), the Central Government hereby specifies one crore rupees as the minimum amount of default for the purposes of the said section.”

5. Taking the minimum default amount to Rupees One Crore, the Central Government has extended a helping hand to the industries and business who would be somehow unable to satisfy creditors, such as banks, financial institutions, secured creditors etc. The genesis of such a development can be traced back to the 3rd Report of the Insolvency Law Committee published in February, 2020. The said Report recommended an increase in the minimum threshold for invocation of insolvency proceedings under IBC. The relevant extract of the 3rd Report of the Insolvency Law Committee is reproduced hereunder for ready reference:

“Threshold for calculating default- due to the low threshold of default of INR 1 lakh that is currently required under the Code for initiation of CIRP, a large number of applications were being filed for initiation of CIRP. This has led to an increased burden on the AA.

Therefore, a need to review the minimum default threshold for admitting a case under Section 4 of the Code was felt, and in this respect, it is recommended that it would be appropriate to notify a higher default threshold of INR 50 lakhs. However, it was considered necessary to provide certain exemptions to the MSME sector and accordingly, modified threshold limits have been specifically recommended for MSMEs."

6. The Insolvency Law Committee noted certain drawbacks in the prevalent criteria for assessing the default in terms of the IBC. It was noted that due to the low threshold of default, there were a large number of applications preferred seeking initiation of CIRP. Such a large number of applications enhanced pressure on judicial infrastructure, which ultimately resulted into delays, both, at the stage of admission and during litigation in the CIRP. Adding to this, the sword of CIRP proceedings has always dangled over companies which may be solvent, and subsequently they are pushed into CIRP. Further, the object of the IBC is to maximize the value of the assets of a corporate debtor and to find a viable resolution for the distressed debtors. The said objective does not seem a practical reality if the system remains burdened. At times, it has been found that the litigation is itself frivolous and the remedy sought by the applicant/petitioner did not render it necessary to push the corporate debtor into CIRP. The Committee actually recommended the minimum default amount to be increased to Rupees. Fifty Lakhs, but the Government exercised its powers and deemed it fit to raise it to Rs. 1 Crore.
7. In order to further provide clarity on the issue of timelines in the light of the nationwide lockdown, a notification dated 29th March 2020 has been published by the Insolvency and Bankruptcy Board of India, whereby Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) (Third Amendment) Regulations, 2020 have been notified w.e.f. 29.3.2020. Vide the Amended Regulations, a Regulation 40C has been added stating the following:

"40C. Special provision relating to time-line. Notwithstanding the time-lines contained in these regulations, but subject to the provisions in the Code, the period of lockdown imposed by the Central Government in the wake of COVID19 outbreak shall not be counted for the purposes of the time-line for any activity that could not be completed due to such lockdown, in relation to a corporate insolvency resolution process."

The same was a much-needed clarification awaited by general public and the companies.

8. It is reiterated that the Notification dated 24th March 2020 and 29th March 2020 are part of the relief package announced by the Central Government to aid the individuals, corporate entities, businesses etc. to cope up with the situation and avoid them from getting buried under the pile of unnecessary litigation.

TAX REGIME

The tax regime of India has also witnessed significant developments in the recent past, including the steps taken to aid the economy cope up with the impact of COVID outbreak. Significant changes have been introduced in respect of Income Tax, Goods and Service Tax, Customs and Excise, Fisheries, Corporate Compliance etc. further, schemes have been introduced to help the taxpayers to settle their tax disputes within the extended deadline. The Union Budget 2020 has

been a center of attention and it has been used to provide a comprehensive relief package at both personal as well as professional levels. The key developments that have been witnesses in the Indian Tax regime have been discussed hereunder.

- **MAJOR AMENDMENTS IN THE CENTRAL GOODS AND SERVICES ACT, 2017**

1. Proviso to Section 31(2) is proposed to be amended in order to authorize the Central Government to categorize the services or supplies in respect of which a tax invoice shall be issued in consort with time and manner for issuance of such invoice. The same may be done on recommendation of the GST Council.
2. Under Section 16(4), the phrase present 'invoice relating to such' is proposed to be omitted. The new provision, post such omission, may prescribe a time limit for availing ITC on the basis of debit note, which would be considered from the date of issuance of debit note instead of the present practice of accepting date of issuance of corresponding invoice to which such debit note as the relevant date.
3. Further, Section 51(3) is proposed to be substituted with an aim to provide for a TDS Certificate to be issued on tax deduction. The specific manner of such certificate may be prescribed in the near future.
4. Section 132 providing for punishment for certain offences, has been proposed to be amended so as to include the persons who cause to commit and retain the benefits on specified offences as prescribed in the CGST Act.
5. Further, amendments have been proposed in Section 132(1)(c) and (e) in order extend the punishment for the cases wherein ITC is availed in a fraudulent manner and without any proper invoice or bill.
6. Section 140 has also been proposed to be amended with retrospective effect (with effect from July, 2017) in order to prescribe a strict time limit and manner for availing transactional credit.

- **MAJOR AMENDMENTS IN INCOME TAX ACT, 1961**

1. Section 35 has been proposed to be amended. The amended provision will make the deduction optional in the hands of an assessee. Further, the proposed amendment would come into effect with respect to and from the Financial Year 2020-2021.
2. In relation to "specified date" under Section 44AB, amendment has been proposed, which would mean that 'specified date' would mean the date one month prior to the due date for furnishing of the return of income under Section 139(1).
3. Section 2(42A) is proposed to be amended in order to state that in the event of capital assets being units in a segregated portfolio, the relevant period for which the assessee held the original unit in the main portfolio to be included for determination of period of holding of the said capital asset.

4. Further, amendment has been proposed in Section 194A with a goal to cover the large co-operative societies within the ambit of TDS.
 5. One of the most debated points has been the conflict between Section 194C and Section 194J. Section 194C provides that tax is to be deducted at source against payments made to contractors/subcontractors. Its implication is that TDS is to be made at the prescribed rate where payment is made for carrying out any work (including supply of labour for carrying out any work) by a contractor. While Section 194J provides fee for technical and professional services and TDS rate applicable on such services at 10%. The controversy has been proposed to be settled by reducing TDS rate on Fee for Technical Services at 2%. But The TDS rate in other cases under Section 194J i.e. royalty, professional fees, etc. is not proposed to be changed and would remain at 10%.
 6. Section 204, defining 'person responsible for paying tax' has also been proposed to be amended so as to include, in the event of a person not resident in India, the person himself or any person authorized by such person or the agent of such person in India including any person treated as an agent under the terms of Section 163.
 7. **Vivad se Vishwas Scheme-** a direct tax amnesty scheme wherein the individuals can settle their tax defaults and disputes by 30th June, 2020, and that too without 10% as additional charge till the said date.
 8. Further, tax audit limit has been proposed to be increased to Rs. 5 Crore.
- **CUSTOMS AND EXCISE**
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1. A new Chapter VAA has been proposed to be inserted in the Customs Act, 1962. The same would prescribe a scheme for governing the verification of the country of origin of the goods imported under preferential tariff FTAs with different countries.
 2. The new Chapter would also give power to the Officers to go further than merely accepting the origin certificate produced by an Importer, and empowers the officer to undertake verification of said certificate in the event the same is found to be contrary, or insufficient or non-satisfactory. Such officer can also demand additional information and documents consistent with the Trade agreement applicable.
 3. The consequences that would follow in case the information produced is not sufficient or not-satisfactory have also been stated.
 4. Further, Section 111 and Section 156 have also been proposed to be amended in order to respectively authorize the relevant Custom Authorities to exercise power to confiscate the goods in the event of contravention applicable provisions, and further delegation of power to prescribe rules in relation to the specified timelines, circumstances, etc. for the administration of ROO under the Trade agreement to the Government has also been proposed to be provided.
 5. Furthermore, creation of 'Electronic Duty Credit Ledger' has been proposed in the customs automated system.

6. **Sabka Vishwas Scheme** (similar to Vivad se Vishwas Scheme) to resolve disputes concerning service tax and central excise, has been proposed to be extended to 30th June 2020 with no interest being levied if payment is made till 30th June 2020.
7. Health Cess has been proposed to be imposed with immediate effect. It would be applicable on import of specified medical at the rate of 5% as duty of Customs, on import value of such devices. It is to be noted that health cess has not been made applicable to medical devices which are exempt from BCD. Proceeds from such Cess will be used for creating infrastructure for health services.

- **KEY DEVELOPMENTS IN THE SCHEME OF CORPORATE COMPLIANCES**

1. It has been proposed that there would be no additional fee for late filing for returns etc.
 2. The categories of government securities which are available to domestic investors have been proposed to be opened up fully for non-resident investors as well.
 3. A proposal to set up an Investment Clearance Cell through a portal has been put forth. It would provide “end to end” facilitation and support, including pre-investment advisory, and the information in relation to land banks and would further aid clearances at both Center and State levels. The said proposal forms a part of “ease of doing business” in India which has been promoted during the present government.
 4. Government has proposed that it will provide early funding, including but not limited to a seed fund to provide support in development to start-ups in early stages. Further, certain tax benefits have been also proposed with an aim to ease burden of tax on ESOPs issued by start-ups. As per the proposal, the tax will be paid at the earlier of 5 years, leaving the company or at the time of sale of the shares.
 5. Holding of board meetings has been relaxed by a period of sixty days for the next two quarters in the wake of the epidemic and the measure adopted to prevent further dissemination of the virus.
 6. Further, as a relief to the independent directors it has been provided that failure of independent directors to not hold even a single meeting in the Financial Year 2019-20 shall not be considered as a violation.
 7. Relaxation has been provided in requirement of creating a deposit reserve of 20%, and that of 15% investment in debentures maturing during particular year, and the said compliances may be now complied with by 30th June 2020.
 8. It has been clarified that the funds spent for COVID-19 by the companies (relief, donation etc.) would be regarded as Corporate Social Responsibility.
- More recently, the Reserve Bank of India has notified reduction in the Repo Rate under the Liquidity Adjustment Facility by 75 basis points, thereby bringing down the same

from 5.15% to 4.40%. The said change is applicable with immediate effect. (Notification dated 27.03.2020) (Reference no. RBI/2019- 2020/182).

- Further, vide Notification dated 27th March 2020 (RBI/2019- 20/191), the RBI has reduced Cash Reserve Ratio (CRR) from 4% to 3% of the Net Demand and Time Liabilities (NDTL). The same has been brought in effect from 28th March 2020 to 26th March 2021.

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