

## Insolvency and Bankruptcy (Amendment) Bill, 2017

The Rajya Sabha on 2<sup>nd</sup> January, 2017 passed the Insolvency and Bankruptcy (Amendment) Bill, 2017 in order to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. The provisions relating to insolvency resolution for corporate persons (Part II of the Code), regulation of insolvency professionals, agencies, information utilities and establishment of the Insolvency and Bankruptcy Board of India (the Board) (Part IV of the Code) and Miscellaneous provisions (Part V of the Code) have been brought into force, in phases. Part III of the Code, which deals with insolvency resolution and bankruptcy for individuals and partnership firms is yet to be commenced.

Under an amendment to Section 29 of the IB Code; Section 29A has been added to address the concerns which have been raised regarding persons who had contributed to defaults of companies, who may misuse this situation due to lack of prohibition to participate in the resolution or liquidation process. This may result in these persons gaining or regaining control of the corporate debtor. This may undermine the processes laid down in the Code as the unscrupulous person would be seen to be rewarded at the expense of creditors. Therefore, a person who is an un-discharged insolvent, a willful defaulter, a person who is in control of management or is a promoter of a company which is declared as Non-Performing Asset among other conditions cannot apply for a resolution plan.

The Insolvency and Bankruptcy Code (Amendment) Bill, 2017 which seeks to replace the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017, inter alia, provide for amendment to the following provisions, namely:—

- a. Sec 2: Facilitate phased implementation of the provisions of the Code to corporate persons, individuals and partnership firms;
- b. Sec 5: Provide clarity as to the persons who can submit a resolution plan in response to an invitation made by the resolution professional;

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