

# INSOLVENCY AND BANKRUPTCY CODE

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## Overview of IBC Ordinance 2019

### Highlights of amendments w.e.f. 28-12-2019

The major amendments are as follows –

Immunity from prosecution of corporate debtor for offence committed prior to CIRP, if there is change of management [section 32A(1)] and Protection to property of corporate debtor in relation to offence committed prior to CIRP, if there is change of management [section 32A (2)]

The need to buckler the successful resolution applicants from criminal proceedings against offences committed by erstwhile promoters

The resolution plan under the Code may result in change in the management or control of a corporate debtor to other persons. The Ordinance states that in such cases, the corporate debtor will not be liable for any offences committed prior to the CIRP. The liability will cease from the date the plan is approved by the Hon'ble NCLT. The Ordinance also provides immunity to the corporate debtor from actions against their property, such as attachment, confiscation or liquidation of property, in such cases.

The immunity against prior offences will be available if such other person

- (i) Was not a promoter or in the management or control of the CD, or a related party of such a person,
- (ii) Was not a person against whom investigating authorities have submitted or filed a complaint or have reasons to believe that the person abetted or conspired to commit the offence.

Scope of 'interim finance' enhanced to provide for last mile funding to prevent insolvency [section 5(15)]

Minimum number of applicants under section 7(1) In case of numerous small financial creditors (like holders of public deposits or debentures or home buyers).

The Ordinance requires at least 100 home buyers or buyers holding 10% of the total available units of same class, whichever is lower, to file joint petitions for initiating insolvency proceeding the developer company

The Hon'ble SC has given a stay against IBC (Amendment) Ordinance, 2019. The stay order has restored the rights of home buyer which enable even a single person to file a petition for initiating CIRP before Hon'ble NCLT

Licenses, quotas, essential supplies cannot be cut during period of moratorium [section 14]

The Ordinance states that any existing license, permit, registration, quota, concession, or clearance, given by the government or local authority, will not be suspended or terminated on the grounds of insolvency. However, there should be no default in payment of current dues for the use or continuation of such grants.

Corporate debtor can file CIRP against another corporate debtor [section 11]

Insolvency Professional must be appointed on the insolvency commencement date itself [section 16(1)]

All these changes are effective from 28-12-2019.

**For more details on updates, visit [www.wirc-icai.org](http://www.wirc-icai.org)**

