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-LAW IN ACTION



Legal Updates

Hon'ble Supreme Court of India, vide its judgement dated 19.01.2021 in *Manish Kumar v Union of India and others W.P. (Civil) No. 26 of 2020*, upheld the constitutional validity of Sections 3, 4 and 10 of the Insolvency and Bankruptcy Code (Amendment) Act 2020 ("**IBC Amendment Act**").

Section 3 of the IBC Amendment Act inserted certain provisos to Section 7 of the Insolvency and Bankruptcy Code, 2016 ("**IBC 2016**"), wherein, it was clarified that if any insolvency proceedings are intended to be initiated in case of any real estate projects, joint petition by at least one hundred real estate allottees or ten percentage of the total number of allottees, whichever is lesser, is required to be filed. Section 4 of the IBC Amendment Act inserted explanation to Section 11 of IBC 2016, wherein, it was clarified that nothing mentioned in the said section shall prevent a corporate debtor referred to in clauses (a) to (d) from initiating corporate insolvency resolution process against another corporate debtor. Further, Section 10 of the IBC Amendment Act added a new provision to the IBC 2016 i.e., Section 32A, whereunder, the liability of a corporate debtor would cease to exist on the date a resolution plan gets approved and new management takes over the corporate debtor. As per Section 1(2) of the IBC Amendment Act, the said amended provisions to the IBC 2016 were to come into force retrospectively from 28.12.2019, which in other way effected the pending applications.

The petitioners challenged the said provisions to the IBC Amendment Act alleging arbitrariness, discrimination and amounting to illegal classification

Hon'ble Supreme Court rejected the contentions and accordingly upheld the constitutional validity of Section 3, 4 and 10 of the IBC Amendment Act.

Hon'ble Supreme Court of India upholds constitutional validity of Sections 3, 4 & 10 of IBC Amendment Act 2020

Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2021

The Insolvency and Bankruptcy Board of India (“**IBBI**”) on 14.01.2021 notified the Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) (Amendment) Regulations, 2021 (“**IBBI Amendment Regulations**”), whereunder, it amended certain provisions of the Insolvency and Bankruptcy Board of India (Model Bye- Laws and Governing Board of Insolvency Professional Agencies) Regulations, 2016 (“**IBBI Regulations 2016**”). The salient features of the IBBI Amendment Regulations are as follows:

- i. The governing board shall self-evaluate its performance in a financial year within three months of the closure of the year and the insolvency professional shall publish the self-evaluation report as submitted by governing board, on its website;
- ii. An insolvency professional shall designate or appoint a compliance officer who shall be responsible for ensuring compliance with the provisions of the IBC and its regulations, circulars, guidelines, and directions issued by the appropriate authority. In case of any non-compliance by the insolvency professional, the compliance officer shall immediately and independently report directly to the board. The compliance officer shall submit an annual compliance certificate to the board verifying the compliance of IBC and its regulations, circulars, guidelines, and directions undertaken by the insolvency professional.

The Ministry of Corporate Affairs, Government of India, issued Companies (Corporate Social Responsibility Policy) Amendment Rules, 2021 (“**Amended CSR Rules**”) vide notification dated 22.01.2021 to allow companies to undertake multi-year projects and also require that all CSR implementing agencies be registered with the Government. Other salient features of the Amended CSR Rules include:

- i. Activities undertaken by a Company under Section 135 of the Companies Act, 2013, and activities undertaken in pursuance of normal course of business of the company engaged in research and development activity of new vaccine, drugs and medical devices, any research and development activity of new vaccine, drugs and medical devices related to COVID-19 for financial years 2020-21, 2021-22, 2022-23 subject to the conditions specified, are now included under the definition of CSR under Regulation 2(d);
- ii. *International Organization* is now defined under Rule 2(g) as an organization notified by the Central Government as an international organization under section 3 of the United Nations (Privileges and Immunities) Act, 1947. International organisations have been permitted to carry out designing, monitoring and evaluation of the CSR projects or programmes.
- ii. Companies have been permitted to set off the excess amount spent under CSR up to three succeeding financial years and they have also been allowed to create or acquire capital assets through CSR in the name of beneficiaries or a public authority or registered trust, among others.
- iv. Non-compliance with CSR provisions has been decriminalised by shifting such offences to penalty regime, while Companies having CSR obligation below Rs 50 lakhs have been exempted from constituting a CSR Committee.

The idea for the amendment is to move from just looking at expenditure to focusing on impact of CSR projects implemented under the Companies law. The amendment is intended to boost transparency.

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