

## IBC Amendment Bill 2019

written by Divyadeep Manu | July 18, 2019

Major update on IBC Amendment Bill 2019, on 4<sup>th</sup> July 2019, the National Company Law Appellate Tribunal ("NCLAT") pronounced a judgement in the Essar Steel case[1], which provides for parity between financial creditors and operational creditors in the resolution plan. The judgement has received discontentment and concerns amongst leading market creditors from approaching the Insolvency and Bankruptcy Code, 2016 ("Code") route in the future.

While creditors are gearing up to challenge NCLAT's

ruling in the Supreme Court, the Union Cabinet on 17<sup>th</sup> July, 2019,

approved the proposal of introducing the Insolvency and Bankruptcy Code (Amendment ) Bill, 2019 ("Amendment Bill") for amending certain provisions of the

Code. The Amendment Bill aims to resolve and clarify present ambiguities and difficulties under the Code by making it more efficient and creditor friendly.

Salient features of the proposed IBC Amendment Bill 2019 are as follows:[2]

- Introduction of alternative schemes

The proposed Amendment Bill aims

to amend the Code to include alternative restructuring schemes such as mergers,

demergers and amalgamations as part of the resolution plan.

- Extended Deadline

The Amendment Bill aims to amend

the Code by extending the deadline taken for completion of corporate insolvency

resolution process from 270 days to 330 days but this period of 330 days shall also

include the time spent in litigation or any other judicial process after a resolution plan is admitted under the Code. This amendment shall make the resolution process more efficient and economically viable for the creditors.

- Voting by Lenders' Trustees/ Agents

The Amendment Bill intends to

restructure voting by trustees/ agents appointed as representatives by financial creditors of the same class under section 21 (6A) of the Code. Such trustees/ agents of financial creditors of the same class shall cast vote in accordance with the decision approved by the highest voting share (more than 50

%) of financial creditors on present and voting basis. The idea is to make decision-making easier even if a large number of them do not take part in voting.

- Distribution of Claims

The Amendment Bill intends to

provide a specific provision for financial creditors who have not voted in favour of the resolution plan and operational creditors for receiving at least

the amount that would have been received by them if the amount to be distributed under the resolution plan had been distributed in accordance with Section

30 read with Section 53 of the Code or the amount that would have been receive

if the liquidation value of the corporate debtor had been distributed in accordance with Section 53 of the Code, whichever is higher. This will have retrospective effect where the resolution plan has not attained finality or has been appealed against.

Further, the Amendment Bill

intends to reiterate the position of creditors in a resolution process under Section 53 of the code by giving a secured creditor higher priority over the unsecured and other operational creditors.

- Grant of Power to Committee of Creditor

The Amendment Bill intends to

grant powers to the Committee of Creditors by permitting it to decide how claims will be dispersed on the basis of commercial consideration.

- Resolution Plan shall be Binding on all Entities

The Amendment Bill aims to clarify

that the resolution plan shall be binding on all stakeholders, including the Central Government, any State Government or local authority who have claims against a corporate debtor.

- Liquidation

The Amendment Bill intends to

provide that a Committee of Creditors may take the decision to liquidate the corporate debtor, at any time after the constitution of Committee of Creditors

and before the preparation of Information Memorandum (a document prepared by a

resolution professional with details and information about the formulation of a resolution plan).

The Central Government by introducing this Amendment Bill intends to speed up the bankruptcy resolution process which has been delayed in various ongoing cases due to the involvement of courts and rectification of irregularities, thereby affecting the efficiency and intention of the Code since the law came into force in 2016. Also, this Amendment Bill after getting the approval of the Union Cabinet will resolve the concerns all secured creditors who were worried after the interpretation of the Code by NCLAT in the Essar Steel case.

Contributed By - Divyadeep Manu

Designation - Associate

---

[1] Company

Appeal (AT) (Ins.) No. 242 of 2019, dated 4<sup>th</sup> July, 2019.

[2] <http://www.pib.gov.in/indexd.aspx>

King Stubb & Kasiva,

Advocates & Attorneys

[Click Here to Get in Touch](#)

[New Delhi](#) | [Mumbai](#) | [Bangalore](#) | [Chennai](#) | [Hyderabad](#) | Kochi

Tel: [+91 11 41032969](tel:+911141032969) | Email: [info@ksandk.com](mailto:info@ksandk.com)