**Applicability of Amendment of Section 4 of the Insolvency and Bankruptcy Code, 2016**

The Insolvency and Bankruptcy Board of India has on 24th March, 2020 has notified amendment to Section 4 of the Insolvency and Bankruptcy Code, 2016. The newly amended Section 4 reads as under:

**4. Application of this Part. – (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 crore rupees.

Therefore, the Insolvency Resolution and Liquidation of Corporate Persons shall be maintainable only when the minimum amount of default by a Corporate Debtor is Rupees One Crore or more.

This amendment has arrived amidst the nationwide lockdown declared on 24th March, 2020 operative for a period of 21 days i.e. with effect from 24th March, 2020 till 14th April, 2020. The Finance Minister has announced this increase in threshold as the outbreak of coronavirus pandemic is creating large scale economic disturbances. This may be a temporary arrangement to maintain the status and prevent extinction of small business and corporates. Since the other relaxations and amendments as declared by the Hon'ble Finance Minister are mostly temporary aimed towards extending a helping hand standing the financial crisis, it can be expected that the amendment in Section 4 would also be a temporary one. Also, the maximum limit as per the powers conferred by the section 4 is rupees one crore, so this move would exhaust the remedy available and so it can be conjectured that the amendment is a temporary one. However, the experts have been refusing the above predictions and see it as a permanent amendment disparate to the need of the hour due to coronavirus pandemic.

The essential question running to the minds of every stakeholders are whether the amendment will be effective retrospectively or it will be applicable to the applications not yet filed. It is also not yet clear that will the amendment apply to application filed but not admitted? In a recent amendment in the status

The Supreme Court has earlier in its decision in the matter of Karvy Group Scheme has stayed retrospective effect of first proviso to section 7 of the Insolvency and Bankruptcy Code wherein it was amended that application for CIRP can be filed jointly by 100 allottees or not less than 10% of the total allottees. The amendment required the compliance within 30 days for applications that were filed but were awaiting admission. The matter was taken up before the Supreme Court where stay was granted and the Hon'ble NCLT was directed to maintain status quo for the applications filed in the registry awaiting or not admission.

While, during the amendment in section 29A of the Code, in November 2017, the NCLT ordered for prospective effect of the ineligibility criteria to apply on the promoters to bid for their own concerns, the Hon'ble Supreme Court in its decision in the matter of Jaypee Infratech clarified that since the amendment was introduced to plug the loophole, it is intended to apply not just prospectively, but to a limited extent, retrospectively to resolution plans that may have been submitted before the ordinance was promulgated but had not been approved.

As per the above studies, the amendment is proposed to be enacted retrospectively only when a need for curing the loophole arises and is not applicable where the rules or limits are simply altered without causing prejudice in the cases pending before the Hon'ble courts. It can be inferred that the status of the cases filed in the registry of Hon'ble NCLT would haver status quo while new petitions would be not maintainable on the ground of default amount being less than as prescribed – rupees One Crore.