

**No. 30/14/2017-Insolvency
Government of India
Ministry of Corporate Affairs**

5th Floor, 'A' Wing,
Shastri Bhawan, New Delhi
Dated: 25.10.2017

To

The Chairperson, IBBI
All Regional Directors
All Registrar of Companies
All Stakeholders

Subject: Clarification regarding approval of resolution plans under section 30 and 31 of Insolvency and Bankruptcy Code, 2016

Sir/Madam,

Clarification has been sought by stakeholders as to whether approval of shareholders/members of the corporate debtor/company is required for a resolution plan at any stage during the process for its consideration and approval as laid down under sections 30 and 31 of the Insolvency and Bankruptcy Code, 2016 (the Code) and after approval during its implementation, for any actions contained in the resolution plan which would normally require specific approval of shareholders/members under provisions of Companies Act, 2013 or any other law. The clarification is sought in view of the requirement under section 30(2)(e) of the Code for the resolution professional to confirm that each resolution plan received by him does not contravene any of the provisions of the law for the time being in force.

2. The matter has been examined in the Ministry in the light of provisions of sections 30 and 31 of the Code which provide a detailed procedure from the time of receipt of resolution plan by the resolution professional to its approval by the Adjudicating Authority and there is no requirement for obtaining approval of shareholders/members of the corporate debtor during this process.

3. It is understood that the requirement of section 30(2)(e) of the Code is to ensure that the resolution plan(s) considered and approved by the Committee of Creditors and the Adjudicating Authority is compliant with the provisions of

the applicable laws and therefore is legally implementable. For example, a resolution plan must not contemplate 100% foreign investment in a corporate debtor if the FDI policy/relevant foreign exchange laws permit foreign investment only up to 75% in the relevant sector of the industry; it should be compliant with requirements such as restrictions on an Indian entity to issue securities to a person resident outside India under Foreign Exchange Management Act, 1999, etc. The purpose is to prevent approval of resolution plans, which are not legally implementable.

4. Section 31(1) of the Code further provides that a resolution plan approved by the Adjudicating Authority shall be binding on the corporate debtor and its employees, members, creditors, guarantors and other stakeholders involved in the resolution plan. The notes to clauses appended to the Insolvency and Bankruptcy Code, 2015 (Bill) in respect of such clause explains: *"Therefore, if a plan requires stakeholders to do or not do certain actions for the successful implementation of a plan, it shall be binding on all the affected parties who shall be bound to undertake the actions set out in the plan"*.

5. In view of above, it is also clarified that the approval of shareholders/members of the corporate debtor/company for a particular action required in the resolution plan for its implementation, which would have been required under the Companies Act, 2013 or any other law if the resolution plan of the company was not being considered under the Code, is deemed to have been given on its approval by the Adjudicating Authority.

6. This issues with the approval of competent authority.

Yours faithfully,


(Rakesh Tyagi)
Director

Copy to:-

- 1) E-Gov section, MCA for placing the circular on the website.
- 2) Guard file