

PERSONS NOT ELIGIBLE TO BE RESOLUTION APPLICANT - SECTION 29A OF INSOLVENCY AND BANKRUPTCY CODE, 2016

A person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person -

- a) is an undischarged insolvent;
- b) is a willful defaulter in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949);
- c) at the time of submission of the resolution plan has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 (10 of 1949) or the guidelines of a financial sector regulator issued under any other law for the time being in force, and at least a period of one year has lapsed from the date of such classification till the date of commencement of the corporate insolvency resolution process of the corporate debtor:

Provided that the person shall be eligible to submit a resolution plan if such person makes payment of all overdue amounts with interest thereon and charges relating to nonperforming asset accounts before submission of resolution plan:

Provided further that nothing in this clause shall apply to a resolution applicant where such applicant is a financial entity and is not a related party to the corporate debtor.

Explanation I- For the purposes of this proviso, the expression “related party” shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date.

Explanation II - For the purposes of this clause, where a resolution applicant has an account, or an account of a corporate debtor under the management or control of such person or of whom such person is a promoter, classified as non-performing asset and such account was acquired pursuant to a prior resolution plan approved under this Code, then, the provisions of this clause shall not apply to such resolution applicant for a period of three years from the date of approval of such resolution plan by the Adjudicating Authority under this Code;

- d) has been convicted for any offence punishable with imprisonment -
 - (i) for two years or more under any Act specified under the Twelfth Schedule; or
 - (ii) for seven years or more under any law for the time being in force:

Provided that this clause shall not apply to a person after the expiry of a period of two years from the date of his release from imprisonment:

Provided further that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

- e) is disqualified to act as a director under the Companies Act, 2013 (18 of 2013):

Provided that this clause shall not apply in relation to a connected person referred to in clause (iii) of Explanation I;

- f) is prohibited by the Securities and Exchange Board of India from trading in securities or accessing the securities markets;

g) has been a promoter or in the management or control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place and in respect of which an order has been made by the Adjudicating Authority under this Code:

Provided that this clause shall not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place prior to the acquisition of the corporate debtor by the resolution applicant pursuant to a resolution plan approved under this Code or pursuant to a scheme or plan approved by a financial sector regulator or a court, and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction;

h) has executed a guarantee in favour of a creditor in respect of a corporate debtor against which an application for insolvency resolution made by such creditor has been admitted under this Code 4 and such guarantee has been invoked by the creditor and remains unpaid in full or part

i) is subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India; or

j) has a connected person not eligible under clauses (a) to (i)

Explanation 5 [I]. – For the purposes of this clause, the expression "connected person" means -

(i) any person who is the promoter or in the management or control of the resolution applicant; or

(ii) any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or

(iii) the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii):

Provided that nothing in clause (iii) of Explanation I shall apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor:

Provided further that the expression "related party" shall not include a financial entity, regulated by a financial sector regulator, if it is a financial creditor of the corporate debtor and is a related party of the corporate debtor solely on account of conversion or substitution of debt into equity shares or instruments convertible into equity shares, prior to the insolvency commencement date;

Explanation II—For the purposes of this section, "financial entity" shall mean the following entities which meet such criteria or conditions as the Central Government may, in consultation with the financial sector regulator, notify in this behalf, namely: –

(a) a scheduled bank;

(b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator of a jurisdiction outside India which jurisdiction is compliant with the Financial Action Task Force Standards and is a signatory to the International Organization of Securities Commissions Multilateral Memorandum of Understanding;

(c) any investment vehicle, registered foreign institutional investor, registered foreign portfolio investor or a foreign venture capital investor, where the terms shall have the meaning assigned to them in regulation 2 of the Foreign Exchange Management (Transfer or Issue of Security by a Person Resident Outside India) Regulations, 2017 made under the Foreign Exchange Management Act, 1999 (42 of 1999);

(d) an asset reconstruction company register with the Reserve Bank of India under section 3 of the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (54 of 2002);

(e) an Alternate Investment Fund registered with Securities and Exchange Board of India;

(f) such categories of persons as may be notified by the Central Government.

Section 5(24) “related party”, in relation to a corporate debtor, means-

- a) a director or partner of the corporate debtor or a relative of a director or partner of the corporate debtor;
- b) key managerial personnel of the corporate debtor or a relative of key managerial personnel of the corporate debtor;
- c) a limited liability partnership or a partnership firm in which a director, partner, or manager of the corporate debtor or his relative is a partner;
- d) a private company in which a director, partner or manager of the corporate debtor is a director and holds along with his relatives, more than two per cent. of its share capital;
- e) a public company in which a director, partner or manager of the corporate debtor is a director and holds along with relatives, more than two per cent. of its paid- up share capital;
- f) anybody corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- g) any limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, acts on the advice, directions or instructions of a director, partner or manager of the corporate debtor;
- h) any person on whose advice, directions or instructions, a director, partner or manager of the corporate debtor is accustomed to act;
- i) a body corporate which is a holding, subsidiary or an associate company of the corporate debtor, or a subsidiary of a holding company to which the corporate debtor is a subsidiary;
- j) any person who controls more than twenty per cent. of voting rights in the corporate debtor on account of ownership or a voting agreement;
- k) any person in whom the corporate debtor controls more than twenty per cent. of voting rights on account of ownership or a voting agreement;
- l) any person who can control the composition of the board of directors or corresponding governing body of the corporate debtor;
- m) any person who is associated with the corporate debtor on account of-
 - i) participation in policy making processes of the corporate debtor; or
 - ii) having more than two directors in common between the corporate debtor and such person; or
 - iii) interchange of managerial personnel between the corporate debtor and such person; or
 - iv) provision of essential technical information to, or from, the corporate debtor;

Section 5(24A):

“related party”, in relation to an individual, means-

- a) a person who is a relative of the individual or a relative of the spouse of the individual;
- b) a partner of a limited liability partnership, or a limited liability partnership or a partnership firm, in which the individual is a partner;
- c) a person who is a trustee of a trust in which the beneficiary of the trust includes the individual, or the terms of the trust confers a power on the trustee which may be exercised for the benefit of the individual;
- d) a private company in which the individual is a director and holds along with his relatives, more than two per cent. of its share capital;
- e) a public company in which the individual is a director and holds along with relatives, more than two per cent. of its paid-up share capital;
- f) a body corporate whose board of directors, managing director or manager, in the ordinary course of business, acts on the advice, directions or instructions of the individual;
- g) A limited liability partnership or a partnership firm whose partners or employees in the ordinary course of business, act on the advice, directions or instructions of the individual;
- h) a person on whose advice, directions or instructions, the individual is accustomed to act;
- i) a company, where the individual or the individual along with its related party, own more than fifty per cent. of the share capital of the company or controls the appointment of the board of directors of the company.

Explanation. - For the purposes of this clause, -

- a) “relative”, with reference to any person, means anyone who is related to another, in the following manner, namely: -
 - i. members of a Hindu Undivided Family,
 - ii. husband,
 - iii. wife,
 - iv. father,
 - v. mother,
 - vi. son,
 - vii. daughter,
 - viii. son’s daughter and son,
 - ix. daughter’s daughter and son,
 - x. grandson’s daughter and son,
 - xi. granddaughter’s daughter and son,
 - xii. brother,
 - xiii. sister,
 - xiv. brother’s son and daughter,
 - xv. sister’s son and daughter,
 - xvi. father’s father and mother,
 - xvii. mother’s father and mother,
 - xviii. father’s brother and sister,
 - xix. mother’s brother and sister; and
 - xx. wherever the relation is that of a son, daughter, sister or brother, their spouses shall also be included