

XII**Bill No. XV of 2025**

A Bill further to amend the Insolvency and Bankruptcy Code, 2016

BE it enacted by Parliament in the Seventy- sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Insolvency and Bankruptcy Code (Amendment) Act, 2025.
- (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Short title and
commencement.

Amendment
of section 53.

2. In the Insolvency and Bankruptcy Code, 2016, in the Explanation to section 53, after clause (ii), the following new clause shall be inserted, namely:—

31 of 2016.

“(iii) the Central or the State Government shall not be classified as a secured creditor unless a security interest has been created pursuant to a transaction of the Central Government or a State Government with the corporate debtor”.

STATEMENT OF OBJECTS AND REASONS

The Insolvency and Bankruptcy Code, 2016, was enacted to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms, individuals and to achieve the desired objectives under it. The Code was amended in the past to deal with the emerging market realities and to achieve certainty to the various processes under the law.

2. Section 53 of the Code establishes the waterfall mechanism for the distribution of liquidation proceeds, prioritizing secured creditors while ensuring equitable treatment of all claimants. This mechanism is foundational to the liquidation process and the sale of assets of a corporate debtor.

3. The Code was designed to grant favorable treatment to financial creditors, recognizing their critical role in funding and supporting businesses. By definition, government dues are not categorized as financial debt under the Code. However, ambiguities in the interpretation of the term “secured creditor” has led to the classification of statutory dues, including those owed to the State and Central Governments, as secured debts. This broad interpretation distorts the equitable distribution intended by the Code, effectively elevating statutory creditors over operational creditors and other stakeholders. Such an outcome undermines the certainty and fairness of the insolvency resolution framework, creating disincentives for investments and delaying resolutions.

4. The inclusion of government dues as secured debts contradicts the principles underlying the waterfall mechanism by allowing statutory creditors to circumvent their designated priority under Section 53. This not only skews the intended balance but also risks the rejection of resolution plans that do not account for inflated statutory claims, thereby frustrating the Code’s objectives of timely and effective resolution.

5. The Ministry of Corporate Affairs seems to have recognised this issue as far back as 2023. As per the contents of a discussion paper, only where the security interest is created pursuant to a transaction of the Central Government or a State Government with corporate debtor, the Government in question will continue to be treated as a secured creditor in the order of priority.

6. The Insolvency and Bankruptcy Code (Amendment) Bill, 2025 which seeks to amend the Code, provides for the following, namely: —

- I. Clarify that the State or Central Government shall not be classified as secured creditors for the purposes of Section 53 unless a security interest has been created pursuant to a transaction of the Central Government or a State Government with the corporate debtor. This amendment aims to restore the intent of the legislature by ensuring that statutory dues are treated in accordance with their designated priority, thereby upholding the principles of equity and predictability essential for an efficient insolvency regime.

- II. Eliminate ambiguity, foster trust among stakeholders, and strengthen the insolvency resolution process by reaffirming the equitable distribution of liquidation proceeds in alignment with the Code's objectives. By providing this clarity, the proposed change will enhance India's insolvency framework, making it more efficient and conducive to economic growth.

The Bill seeks to achieve these objectives.

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