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PART I

Acts, Ordinances, President's Orders and Regulations

GOVERNMENT OF PAKISTAN

LAW AND JUSTICE DIVISION

Islamabad, the 7th July, 2020

No. F. 2(1)/2020-Pub.—The following Ordinance Promulgated on 7th July, 2020 by the President is hereby published for general information:—

ORDINANCE NO. IX OF 2020

AN

ORDINANCE

further to amend the Corporate Restructuring Companies Act, 2016

WHEREAS it is expedient to amend the Corporate Restructuring Companies Act, 2016 (XXXII of 2016) for the purposes hereinafter appearing;

(453)

Price: Rs. 20.00

[5690(2020)/Ex. Gaz.].

AND WHEREAS the Senate and the National Assembly are not in session and the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in exercise of powers conferred by clause (1) of Article 89 of the Constitution of Islamic Republic of Pakistan, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

It is hereby enacted as follows:—

1. **Short title and commencement.**—(1) This Ordinance shall be called the Corporate Restructuring Companies (Amendment) Ordinance, 2020.

(2) This Ordinance shall come into force at once.

2. **Amendments in Section 2, Act XXXII of 2016.**—In the Corporate Restructuring Companies Act, 2016 (XXXII of 2016), hereinafter called as the said Act, in section 2,—

(a) in sub-section (1),—

(i) after clause (ii), the following new clause shall be inserted, namely:—

“(iia) “Companies Act” means the Companies Act, 2017 (XIX of 2017);”;

(ii) in clause (iv), in sub-clause (a), after the word “institutions”, the expression “, save as otherwise provided for in section 8A” shall be added;

(iii) clause (vi) shall be omitted;

(iv) in clause (x) after the word “obligation”, the words “or which has been classified by the financial institution as a loss in its books in accordance with the applicable laws” shall be added;

(v) clause (xii) shall be omitted;

(vi) after clause (xxi), the following new clause (xxia) shall be inserted, namely:—

“(xxia) “trust” means a trust constituted pursuant to section 6A,”;
and

(vii) in sub-section (2), for the word "Ordinance", the words "Companies Act" shall be substituted.

(b) in sub-section (2), for the word "Ordinance", the words "Companies Act" shall be substituted.

3. **Amendment in section 4, Act XXXII of 2016.**—In the said Act, in section 4, in sub-section (2), for the word "Ordinance", the words "Companies Act" shall be substituted.

4. **Amendments in section 5, Act XXXII of 2016.**—In the said Act, in section 5, in sub-section (1),—

(a) in clause (g), the word "and", occurring at the end, shall be omitted;

(b) in clause (h), for full stop at the end a semicolon shall be substituted and thereafter the following new clauses shall be added, namely:—

"(i) to provide finance as defined in the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001) for carrying out the purposes of this Act;

(j) to establish and provide management services to trusts in terms of section 6A;

(k) to act as an agent for any financial institution for the purpose of recovering their non-performing assets as providing as section 6B, and

(l) to develop and implement a scheme in terms of section 8A."

5. **Amendments in section 6, Act XXXII of 2016.**—In the said Act, in section 6, in sub-section (1),—

(a) in clause (a),—

(i) the expression "established, owned or" shall be omitted; and

(ii) after the expression "affiliates," the expression "subject to clause (e) of sub-section (1)," shall be inserted;

(b) in clause (c), the word "and", occurring at the end, shall be omitted;

- (c) in clause (d), for full stop at the end, a semicolon and the word “and” shall be substituted and thereafter the following new clause (e) shall be added, namely:—

“(e) any transfer or assignment of non-performing assets pursuant to the transfer and assignment agreement shall be deemed to be effected by operation of law and not—

(i) by virtue of execution of such agreement by any party thereto; and

(ii) constitute any assignment, transfer, devolution, conveyance, lease, consent order, alienation, parting with possession or any other disposition under any applicable law other than the provisions of section 6.”

6. **Insertion of section 6A, Act XXXII of 2016.**—In the said Act, after section 6, amended as aforesaid, the following new section shall be inserted, namely:—

“6A. **Creation of trust.**—(1) A Corporate Restructuring Company may constitute one or more trusts under the Trusts Act, 1882 (II of 1882) for the purpose of acquiring non-performing assets from financial institutions.

(2) A trust constituted under sub-section (1) may acquire non-performing assets from a financial institution in accordance with section 6, provided that the transfer and assignment agreement shall be entered into by the Corporate Restructuring Company, for and on behalf of the trust.

(3) The management of any trust constituted under sub-section (1) shall vest in the Corporate Restructuring Company on the terms set forth in the constitutive document of such trust.

(4) The trust may be liquidated in a manner as may be prescribed.

(5) For the purpose of giving effect to section 6A, the references in this Act to a Corporate Restructuring Company shall, unless repugnant to the context, include a trust established under section 6A.”;

“6B. **appointment a corporate restructuring company as a recovery agent.**—A financial institutions may appoint a corporate restructuring company as its agent for recovery its non-performing assets by entering into an agency agreement with such Corporate

Restructuring Company on such terms and conditions as may be mutually agreed between them:

Provided that in case an agency relationship, their shall be no transfer of any non-performing assets to Corporate Restructuring Company.”

7. **Insertion of sections 7A and 7B, Act XXXII of 2016.**—In the said Act, after section 6, the following new sections shall be inserted, namely:—

“7A. **Exchange of information.**—(1) For the purposes of this Act, financial institutions may exchange information relating to an obligor on confidential basis with the Corporate Restructuring Company.

(2) No suit or other legal proceedings shall lie against any financial institution or its officers, for anything done in good faith in pursuance of this section or for any damage caused or likely to be caused by anything done or intended to be done as aforesaid.

7B. **Credit institution.**—A Corporate Restructuring Company shall be deemed to be a credit institution for the purposes of the Credit Bureaus Act, 2015 (XI of 2015).”;

8. **Insertion of sections 8A and 8B Act XXXII of 2016.**—In the said Act, after section 8, the following new sections shall be inserted, namely:—

“8A. **Scheme.**—(1) A Corporate Restructuring Company, holding at least two-third in value of the principal amount payable to the secured financial institutions, may present a scheme to the Corporate Restructuring Board which may sanction such a scheme, subject to the provisions of this Act.

(2) For the purpose of determining the requisite majority of secured financial institutions as provided in sub-section (1), the Corporate Restructuring Company—

(a) may rely on the publicly available information with the Registrar of Companies; and

(b) shall send a notice to the secured financial institutions in terms of which the secured financial institutions shall be required to swear, within fourteen calendar days of such notice, an affidavit in relation to the following, namely:—

- (i) specify the principal amount owed and outstanding from the obligor together with the nature and extent of their security interest;
 - (ii) basis on which the executant of the affidavit is authorized to execute and bind the concerned financial institution; and
 - (iii) any other matters as may be required by the Corporate Restructuring Company or as may be prescribed.
- (3) If the affidavit provided by any person is false or incorrect in any material respect, or omits any material fact, knowing it to be material or such person fails to provide the same within the time frame or in the manner set forth in sub-section (2), the Commission, in consultation with the Corporate Restructuring Board, may impose a penalty on such a person of an amount not exceeding fifty million Rupees and such penalty shall be in addition to and without prejudice to any other remedy available to any party that may have been effected by a false affidavit or due to the failure to provide the affidavit.
- (4) The Corporate Restructuring Board shall, upon receipt of a scheme from a Corporate Restructuring Company in terms of sub-section (1) and in the manner and period prescribed, invite objections to the same.
- (5) If the Corporate Restructuring Board on consideration of the objections is of the view that the objections are not valid, it may sanction the scheme.
- (6) If the scheme is sanctioned by the Corporate Restructuring Board, by virtue of the scheme, the same shall be binding on the concerned obligor, all its creditors of whatsoever nature, its members and shareholders, its liquidators and other persons who have any interest in the company, pecuniary or otherwise, and shall have effect without requiring compliance with and notwithstanding any—
 - (a) other law for the time being in force;
 - (b) agreement or contract entered into or applicable to the concerned obligor; and

- (c) agreement or contract entered into *inter se* financial institutions and other creditors of the concerned obligor.
- (7) The Corporate Restructuring Board may refuse to sanction the scheme where it is satisfied that either the scheme suffers from illegality or procedural requirements of this Act or the rules made there under have not been complied with.
- (8) The provisions of clause (e) of sub-section (1) of section 6 shall apply *mutatis mutandis* to a scheme sanctioned by the Corporate Restructuring Board under this section.
- (9) Any person aggrieved by the order of the Corporate Restructuring Board may, within thirty days of the date of such order, file a petition for leave to appeal in the High Court having jurisdiction.
- (10) When a scheme is presented to the Corporate Restructuring Board in terms of sub-section (1), no suit or other legal proceedings shall be proceeded with or commenced against the obligor until the scheme is sanctioned by the Corporate Restructuring Board and has attained finality in terms of sub-section (9) or such sanction has been refused by the Corporate Restructuring Board, whichever is earlier.
- (11) Upon sanctioning of the scheme and the same having attained finality in terms of sub-section (6), all suits or other legal proceedings pending against the obligor shall stand abated, provided that a scheme may provide for continuation of any suit or proceeding set forth therein.
- (12) Sections 279 to 283 of the Companies Act shall not apply to any scheme under this section.
- (13) Notwithstanding anything contained in any other law, no civil court as provided for in the Code of Civil Procedure, 1908 (V of 1908) or any other court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which the High Court is empowered to determine by or under this section.
- (14) For the purposes of this section,—
- (a) “High Court” means the High Court of the Province where registered office of the Corporate Restructuring Company is located; and

- (b) "Corporate Restructuring Board" means a board notified by the Federal Government in the official Gazette comprising of not more than five members who shall be professionals having experience and sound knowledge of dealing with company law or recovery of non-performing assets or restructuring and rehabilitation of companies in financial distress, and in this regard, subject to the foregoing, any or all of the following matters may be prescribed through rules, namely:—
- (i) functions of the Corporate Restructuring Board and its members;
 - (ii) composition, appointment and governance of the Corporate Restructuring Board and its code of conduct;
 - (iii) remuneration and privileges of members of the Corporate Restructuring Board;
 - (iv) eligibility and qualifications of the members of the Corporate Restructuring Board;
 - (v) budgetary allocation for the proper functioning of the Corporate Restructuring Board and its staff and matters connected to its accountability; and
 - (vi) any other matter that may be considered necessary or expedient for the purpose of furthering the objectives of this section;
- (c) "scheme" means any arrangement, for the purpose of achieving the objectives of this Act, entered into amongst the obligor, the Corporate Restructuring Company and one or more secured financial institutions, that contains one or more of the following, namely:—
- (i) the sale or lease of a part or whole of the business or assets of the obligor;
 - (ii) rescheduling of payments of debt payable by the obligor;
 - (iii) enforcement of any pledge by a third party securing the obligations of the obligor;
 - (iv) settlement of dues payable by the obligor;

- (v) conversion of any portion of debt into ordinary shares of the obligor;
 - (vi) conversion of any portion of debt into assets or properties of the obligor;
 - (vii) matters connected with pending suits and other proceedings against the obligor, including in connection with their abatement; and
 - (viii) provisions that are incidental or conducive to facilitating, promoting or advancing any matter referred to in sub-clauses (a) to (g) or such other matter as may be prescribed;
- (d) "secured financial institutions" means in relation to an obligor, all financial institutions that have created a security interest over any or all of the assets or properties of the obligor, irrespective of—
- (i) whether such security interest is shared amongst such financial institutions as a syndicate or otherwise;
 - (ii) ranking of such security interest amongst such financial institutions; and
 - (iii) whether such security interest secures a non-performing asset.

8B. Special bench of High Court.—(1) The High Courts shall constitute one or more special benches consisting of one or more Judges to adjudicate the cases under this Act.

- (2) The special benches as constituted under sub-section (1) shall decide the cases in accordance with the procedure prescribed through rules, if any, within ninety days from the date of institution of the case."

9. Amendment in section 10, Act XXXII of 2016.—In the said Act, in section 10, in sub-section (4), for the expression "section 255 of the Ordinance", the expression "section 249 of the Companies Act" shall be substituted.

10. Insertion of Section 19, Act XXXII of 2016.—In the said Act after Section 18, the following new sections shall be inserted namely:—

- “19. **Validation of Laws.**—Notwithstanding anything contained in any other law, all transfer of non-performing assets undertaken, orders made, proceedings taken and act done, rules, regulations, circulars, notification and other legal instruments made at any time until the enactment of the Corporate Restructuring Companies (Amendments) Act, 2020 are declared and affirmed to have been and shall deemed to have always been, validly undertaken, made, decided, taken or done and shall not be called in question in any court on any ground whatsoever”

DR. ARIF ALVI,
President.

MUHAMMAD KHASHIH-UR-REHMAN,
Secretary.