

[TO BE INTRODUCED IN THE SENATE]

A

BILL

to provide for rehabilitation and re-organisation of distressed corporate entities

WHEREAS it is expedient to provide for rehabilitation and re-organisation of distressed corporate entities and their business so as to encourage economic growth and development;

It is hereby enacted as follows:—

1. **Short title, extent and commencement.**—(1) This Act shall be called the Corporate Rehabilitation Act, 2016.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

CHAPTER I

Preliminary

2. **Definitions.**—(1) In this Act, unless there is anything repugnant in the subject or context,—

- (a) “administrator” means an administrator appointed under section 20;
- (b) “administration committee” means committee of creditors or shareholders of debtor appointed under section 26;
- (c) “claim” or “debt” means right to payment, whether or not such right is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, secured or unsecured and includes principal amount and any mark-up, profit, return and other charges;
- (d) “Commission” means the Securities and Exchange Commission of Pakistan established under the Securities and Exchange Commission of Pakistan Act, 1997 (XLII of 1997);
- (e) “Court” means the High Court having territorial jurisdiction;
- (f) “creditor” means an entity that has a claim against debtor that arose at the time of or before the commencement of a case under this Act;
- (g) “debtor” means a company specified under section 6;

- (h) “financial institution” shall have the same meaning as assigned to it under the Financial Institutions (Recovery of Finances) Ordinance, 2001 (XLVI of 2001);
- (i) “insolvency expert” means the expert specified under section 5;
- (j) “interests” or “class of interests” means any person or class of persons liable to contribute to the assets of a company in the event of its being wound up and includes the holder of any shares which are fully paid up;
- (k) “mediator” means the mediator appointed under section 10;
- (l) “Ordinance” means the Companies Ordinance, 2016 (VI of 2016) or such other law in force for regulations of companies;
- (m) “order of mediation” means the order passed by the Court under section 10;
- (n) “plan of rehabilitation” means a plan of rehabilitation of debtor defined under section 7;
- (o) “prescribed” means prescribed by rules or regulations made under this Act;
- (p) “property” means property of all description, whether movable or immovable, tangible or intangible, existing or future, claims for money, cash, and includes instruments that evidence title in property;
- (q) “qualifying creditors” means one or more creditors holding unpaid and overdue claims for an aggregate amount of not less than two-third of the value of assets of the debtor as per its latest balance sheet;
- (r) “regulations” means regulations made under this Act;
- (s) “rules” means rules made under this Act;
- (t) “security interest” means a charge, mortgage, lien, hypothecation, pledge, assignment or any other encumbrance over a property;
- (u) “State Bank” shall have the same meaning as assigned to it under the State Bank of Pakistan Act, 1956 (XXXIII of 1956); and
- (v) “statement of affairs” means statement of particulars about the property and business of a debtor prepared under section 9.

(2) The words and expressions used but not defined in this Act shall have the same meaning as assigned to them in the Ordinance.

3. **Jurisdiction and powers of High Court.**—(1) The Court having jurisdiction under this Act shall be the High Court having jurisdiction over the place at which the registered office of the debtor or, as the case may be, the principal place of business of the debtor is situated.

(2) Subject to the provisions of this Act, the Court shall—

- (a) in exercise of its civil jurisdiction, have all the powers vested in a civil court under the Code of Civil Procedure, 1908 (Act V of 1908);
- (b) in exercise of its criminal jurisdiction, have all the powers vested in a court exercising jurisdiction under the Code of Criminal Procedure, 1898 (Act V of 1898); and
- (c) in exercise of its company jurisdiction, have all the powers vested in a court exercising jurisdiction under the Ordinance.

(3) Notwithstanding anything contained in any other law, all matters coming before the Court under this Act shall be disposed of expeditiously and final judgment shall be pronounced as soon as may be practicable and, except in extraordinary circumstances, the Court shall hear the case on day to day basis.

4. **Appeal and review.**—(1) An appeal shall lie, at the instance of any person aggrieved by an order made by a Judge of the High Court in the exercise of the jurisdiction conferred by this Act, in the same way and subject to the same provisions as an appeal lies against an order passed by a single Judge of that Court in exercise of its original civil jurisdiction.

(2) The Court may review, rescind or vary any order made by it under this Act.

5. **Insolvency experts.**—(1) The Commission shall, in consultation with the State Bank, maintain a panel of insolvency experts who shall be professionals having a minimum experience of fifteen years in the field of accountancy, banking, finance, law, management and sound knowledge of insolvency practices of the country.

(2) An insolvency expert shall, for due performance of his functions under this Act, be entitled to such remunerations and privileges as may be prescribed by regulations.

(3) The Commission may, by regulations, prescribe the code of conduct for the panel of insolvency experts to be appointed under this Act and organize training, capacity building and accreditation programmes for professional development of such insolvency experts.

CHAPTER II

Rehabilitation of Debtor

6. **Debtor.**—A debtor shall be a company incorporated or registered under the Ordinance or previous companies legislation and shall not include—

- (a) a financial institution;
- (b) a company engaged in the business of insurance as defined in clause (xxvii) of section 2 of the Insurance Ordinance, 2000 ((XXXIX of 2000);
- (c) a company which has debts of less than hundred million Rupees or such other sum as the Federal Government may, by notification in the official Gazette, specify from time to time;
- (d) a company against which an order of dismissal under section 17 has been passed within the past five years;
- (e) a company with respect to which a plan of rehabilitation has been confirmed under this Act within the past seven years;
- (f) a company against which a winding up order has already been passed;
- (g) a company which has resolved by special resolution that such company be wound up voluntarily;
- (h) a company against which execution proceedings are pending for satisfaction of one or more decrees for an aggregate sum not less than twenty-five percent of the value of its assets; or
- (i) a company which has availed relief under the BPD Circular No. 29 of 2002 issued by the State Bank.

7. **Plan of rehabilitation.**—(1) A plan of rehabilitation shall specify the following matters in relation to a debtor,—

- (a) claims and classes of claims against the debtor;
- (b) interests and classes of interests in the debtor;
- (c) claims and interests belonging to the debtor;
- (d) claims or interests that will not be impaired under the plan of rehabilitation;
- (e) claims or interests that will be impaired under the plan of rehabilitation;
- (f) places of business of the debtor, details of its assets and any security interests created over such assets;
- (g) particulars of shareholders, directors and key management of the debtor; and
- (h) scheme of implementation of plan of rehabilitation of the debtor.

(2) Subject to sub-section (1), a plan of rehabilitation may provide for the following matters, in relation to a debtor,—

- (a) the settlement, restructuring or rescheduling of any claims or interests or classes of claims or interests;
- (b) the change of ownership and management of the debtor;
- (c) the sale of all or any assets of the debtor and the distribution of proceeds of such sale among holders of claims or interests;
- (d) the assumption, rejection or assignment of any executory contract or unexpired lease of the debtor;
- (e) the enforcement of any claims or interests belonging to the debtor; and
- (f) any other matter concerning rehabilitation of the debtor or distribution of proceeds of sale of property of the debtor.

8. **Commencement of a case.**—(1) A debtor may file a petition in the Court for an order of mediation, which shall be supported by a plan of rehabilitation and special resolution of the debtor approving the plan of rehabilitation.

(2) The qualifying creditors may file a petition in the Court for an order of mediation against a debtor.

(3) On first date of hearing, the Court shall issue notice to the parties listed in the petition through,—

- (a) registered post, acknowledgement due;
- (b) courier service; and
- (c) publication in one English language and one Urdu language daily newspaper of wide circulation in the country,

and service duly effected in any one of the aforesaid modes shall be deemed to be valid service for the purposes of this Act.

(4) The notice issued under sub-section (3) shall specify a date of hearing not later than twenty-one days after completion of the service.

(5) Any person interested of filing a written reply to the petition shall do so at least three days prior to the hearing and supply a copy of such reply to the party that filed the petition.

(6) The Court may, where a *prima facie* case has been made out by the qualifying creditor for an order of mediation in relation to a petition filed under sub-section (2), direct—

- (a) the debtor to submit, within fifteen days, the statement of affairs in the Court; and
- (b) the qualifying creditor to submit, within thirty days after submission of the statement of affairs, a plan of rehabilitation of the debtor in the Court.

9. **Statement of affairs.**—(1) The statement of affairs of a debtor shall be verified by an affidavit of the chief executive officer or a director of the debtor and shall contain the following particulars, namely:—

- (a) the assets, debts and liabilities of the debtor;
- (b) the particulars of the creditors, stating separately the amount of secured debts and unsecured debts and in the case of secured debts, particulars of the securities given, their value and the dates when they were given;
- (c) the debts due to the debtor and the particulars of the persons from whom such debts are due and the amount likely to be realized therefrom;
- (d) where any property of the debtor is not in its custody or possession, the place where and the person in whose custody or possession such property is;
- (e) full address of the places where the business of the debtor was conducted during six months preceding the relevant date and the names and particulars of the persons in charge of the same;
- (f) details of any pending suits or proceedings in which the debtor is a party;
- (g) latest publically disclosed accounts and the last audited accounts; and
- (h) such other particulars as may be prescribed by regulations or as the Court may by order require.

(2) Whoever intentionally files a statement of affairs which is false in material particulars or falsely denies his signature on any document before the Court, or fails to file the statement of affairs without just excuse when so ordered by the Court, shall be guilty of an offence punishable with imprisonment of either description for a term which may extend to six months, or with fine, or with both.

10. **Mediation.**—(1) The Court may, after notice and a hearing of the petition filed under section 8, pass an order for the appointment of insolvency experts to act as sole mediator or joint mediators, as the case may be, in relation to the plan of rehabilitation filed in the Court.

(2) The mediator appointed by the Court shall carry out mediation between the debtor and creditors or different classes of creditors to achieve acceptance of the plan of rehabilitation, whether with or without any modifications.

(3) For due discharge of his functions under this Act, a mediator shall have the following powers:—

- (a) to hold separate meetings of shareholders of the debtor and creditors or different classes of creditors;
- (b) to invite, scrutinize and determine claims and interest against the debtor;
- (c) to determine security interests created over the debtor's assets;
- (d) to determine the debtor's assets available for satisfaction of the claims of the creditors;
- (e) to carry out valuation of the assets of the debtor through professional experts approved by the State Bank; and
- (f) any other power given by the Court, either on its own accord or on application of the mediator, to carry out the functions under sub-section (1).

(4) A mediator shall, from the date of his appointment, submit monthly progress reports and may refer any matter to Court for appropriate directions including for the purposes of—

- (a) production of any records or property of the debtor in possession of any person; and
- (b) examination and attendance of any person concerned with affairs of the debtor.

(5) The person filing the petition shall provide necessary funds to allow the mediator to perform the functions under this Act and, where required, the matter may be referred to the Court for necessary directions in this regard.

11. **Notice of order of mediation.**—(1) The person filing the petition under this Act shall provide the notice of the order of mediation to all interested parties within three days of the order through—

- (a) registered post, acknowledgement due;
- (b) courier service; and
- (c) publication in one English language and one Urdu language daily newspaper of wide circulation in the country;

and service duly effected in any one of the aforesaid modes shall be deemed to be valid service for the purposes of this Act.

(2) The notice of order of mediation shall specify the appointment of mediator and for filing of any claims against, and interests in, the debtor with the mediator within a period of fourteen days of publication of notice of the order of mediation.

12. Stay of actions against debtor.—(1) In a case commenced under this Act, the Court may, on an application made to it by the debtor or an interested person, pass an order after notice and a hearing for—

- (a) preservation of assets of the debtor in such manner as the Court may deem fit in circumstance of the case; and
- (b) protection of the debtor or its shareholders, directors and guarantors,

Against any imminent adverse action, measure, process or proceeding commenced to recover a claim against the debtor or its shareholders, directors and guarantors through sale, transfer, repossession or mortgage of assets of the debtor or its shareholders, directors and guarantors, or by creating any rights or interests in relation to such assets.

(2) The stay granted under sub-section (1) shall, if not earlier vacated, *ipso facto* cease to have effect on,—

- (a) the confirmation of a plan under section 14; or
- (b) the dismissal of the case under section 17.

(3) Notwithstanding anything contained in sub-section (2), the Court may, on application of the qualifying creditors or an interested party and after notice and a hearing, grant such relief from the stay granted under sub-section (1) as may be necessary to prevent irreparable harm or loss to the interest of that party.

13. Acceptance of plan of rehabilitation.—(1) The acceptance or rejection of a plan of rehabilitation shall not be solicited from a holder of a claim or interest unless such holder is first provided with a copy of the plan.

(2) A class of creditors shall be deemed to have accepted a plan of rehabilitation if such plan is accepted by the creditors holding at least two-thirds in value of such class.

(3) A class of interests of the debtors shall be deemed to have accepted a plan of rehabilitation if such plan is accepted by holders of at least two-thirds in value of interests of such class.

(4) A class that is not impaired under a plan of rehabilitation and each holder of a claim or interest of such class are conclusively presumed to have accepted the plan and solicitation of acceptance with respect to such class from the holders of claims or interests of such class is not required.

14. Confirmation of a plan of rehabilitation.—(1) The Court may, after notice and a hearing, confirm a plan of rehabilitation if the plan is in accordance with the provisions of this Act and—

- (a) with respect to each class of claims or interests, —
 - (i) such class has accepted the plan; or
 - (ii) such class is not impaired under the plan; and
- (b) except to the extent that the holder of a particular claim has agreed to a different treatment of such claim, the plan provides that the holder of such claim will receive cash equal to the allowed amount of such claim.

(2) The provisions of a plan of rehabilitation confirmed by the Court bind the debtor, any entity issuing securities under the plan, any entity acquiring property under the plan and any creditor or shareholder of the debtor, whether or not the claim or interest of such creditor or shareholder is impaired under the plan and whether or not such creditor or shareholder has accepted the plan.

(3) The Court may refuse to confirm a plan if the principal purpose of the plan is avoidance of taxes, duties and fiscal charges levied under law.

15. Implementation of plan of rehabilitation.—(1) The Court may, on the application of the debtor or qualifying creditors and after notice and a hearing, pass such directions as deemed appropriate for the purposes of implementation of the plan of rehabilitation and any person responsible for carrying out the plan or any part thereof shall comply with such directions.

(2) The Court may direct the debtor and any other necessary party to execute or deliver or to join in the execution or delivery of any instrument required to effect a transfer of property dealt with by a plan of rehabilitation confirmed by the Court and to perform any other act, including the satisfaction of any charge, that is necessary for the consummation of the charge.

16. Revocation of confirmation of a plan of rehabilitation.—(1) The Court may, on the application of any person aggrieved by the plan of rehabilitation, at any time within twelve months of the date of confirmation of the plan and after notice and a hearing, make an order upon such terms as the Court thinks fit declaring the confirmation to have been void.

(2) The Court may pass an order under sub-section (1) if the order of confirmation to be declared void was procured by fraud.

(3) An order under this section revoking an order of confirmation shall provide for all such measures as are necessary to protect any entity which has acquired rights in good faith reliance on the order of confirmation.

17. Dismissal of a case.—(1) Notwithstanding anything to the contrary in this Act, the Court may, on the application of any person concerned with the debtor or on its

