

Business Standard

IBC overhaul seeks to give adjudicating authority a power boost

MCA proposes specialised framework for realty projects

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The ministry of corporate affairs (MCA) has proposed sweeping changes to the Insolvency and Bankruptcy Code to bring more technology, transparency, and speediness to the corporate insolvency resolution process.

The draft proposal gives more power to adjudicating authority, allows mandatory admission of insolvency applications filed by financial creditors (FCs), seeks specialised framework for real estate providing major relief to allottees, and looks at expanding the scope of pre-packaged insolvency scheme beyond MSMEs.

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In a bid to make the process fairer, a new mechanism for an equitable scheme of distribution of proceeds is proposed through which creditors will receive proceeds up to the liquidation value of the company based on the waterfall mechanism. Thereafter, all surplus will then be distributed among creditors based on the ratio of

their unsatisfied claims. Any further surplus shall be distributed among shareholders and partners of the company.

The MCA has said that the Code may be amended to provide that the framework shall apply to prescribed categories of corporate debtors in addition to MSMEs. The procedure itself is to be relaxed for faster decision-making by reducing the 66 per cent threshold for unrelated FCs to 51 per cent. The avoidance transaction declaration requirement for the pre-packaged scheme is also proposed to be relaxed.

The amendments also address cases in which assets of a company and guarantor often intermingle, by proposing a mechanism to include such assets of the guarantor in the general pool of assets available for the CIRP (corporate insolvency resolution process). A special window may also be created in the corporate insolvency resolution for the sale of secured assets whose possession has been taken by the secured creditor under the SARFAESI (Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest) Act, 2002. This would be done if the guarantor's and corporate debtor's assets are linked. For CIRPs of related parties, the government wants that the committee of creditors (CoCs) of two or more CDs be allowed to apply for cooperation and coordination of the separate processes.

The government has proposed a state-of-the-art e-platform for a case management system, automated processes to file applications, delivery of notices, enabling interaction of insolvency professionals with stakeholders, storage of records of corporate debtors undergoing the process, and incentivising participation of other market players in the IBC ecosystem. "It may also allow regulators and the AAs (adjudicating authorities) to exercise better oversight over their respective domains of functioning through the consolidated information available on the e-platform," the MCA said.

To mitigate such delays and value destruction, it is also being considered that CoCs may be mandated to transparently look into competing plans through an appropriately designed challenge mechanism.

For real estate projects, the ministry has proposed to amend the IBC to enable the transfer of the ownership and possession of a plot, an apartment, or a building to the allottees with the consent of CoCs. This is not allowed currently due to the moratorium under the Code. It is also suggested that if insolvency is initiated against a promoter of a real estate project, then CIRP provisions shall apply only to projects, which have defaulted, according to the discretion of adjudicating authority.

In order to discourage frivolous or vexatious applications, the draft proposal looks to give AAs the power to impose penalties. The MCA has observed that several proceedings are maliciously instituted before the AA to delay the conduct of processes. The minimum penalty, it is proposed, should not be less than Rs 1 lakh per day, which may mount to three times the loss caused or unlawful gain, whichever is higher.

Section 29A of the Code may also be amended to allow AAs to bar a promoter who has committed repeated or substantial contraventions from being a resolution applicant.

A rethink of the fast-track CIRP is also being considered to provide that unrelated FCs of a CD may select and approve a resolution plan through an informal out-of-court process and involve the AA only for its final approval. The government will notify the asset size of the companies that can avail of this procedure.

The Centre also wants to amend the Code to restrict the right of the promoters -- who can also initiate insolvency under Section 10 of the IBC -- to propose an interim resolution professional.

"The report is a thorough assessment of the difficult issues involved with the presentation of the possible solutions," said Jyoti Prakash Gadia, managing director at Resurgent India.

The Code also proposes to boost the power of the Insolvency and Bankruptcy Board of India to issue a show cause notice without inspection or investigation, if sufficient material is available on record.

Public comments on these changes are invited by February 7.

KEY CHANGES ON THE ANVIL

▶ **Mandatory to admit an application filed** by financial creditors if default established

▶ **Information utilities to be ramped up** for establishing default

▶ **Empower adjudicating authority** to impose penalties

▶ **Informal out-of-court resolution process** for a certain asset class

▶ **Prepackaged insolvency regime** to go beyond MSMEs

▶ **CoC must use a challenge mechanism** for competing plans