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With IBC Amendment Bill, govt hopes to expedite insolvency process, maximise value: Key takeaways

The amendment bill has proposed changes to improve the efficiency and oversight in the liquidation process by authorising the CoC to supervise liquidation.

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Finance Minister Nirmala Sitharaman said that the proposed changes to the IBC legislation are aimed at reducing delays, maximising value for all stakeholders, and improving governance of all processes under the Code.

The much-awaited bill to amend the Insolvency and Bankruptcy Code (IBC) was introduced in the Lok Sabha on Tuesday by Finance Minister Nirmala Sitharaman, who said that the proposed changes are aimed at reducing delays, maximising value for all stakeholders, and improving governance of all processes under the Code. The proposed modifications include provisions to ensure faster admission of insolvency cases, an out-of-court mechanism to address "genuine business failures", and introduction of group and cross-border insolvency frameworks, and a slew of others.

Introduced in 2016, the IBC promised an overhaul of insolvency resolution with the aim to rescue and reorganise distressed companies through a time-bound process, prioritising their survival as going concerns. While the IBC has fostered a culture of accountability and credit discipline among debtors, its efficiency has been undermined by procedural delays, shortage of personnel, deviations from key principles, and slow implementation of critical provisions.

Although the IBC has had a few successes, it has been marred by issues like high case backlog, lengthy delays in admission and resolution, and steep haircuts for creditors. Over the past couple of years, various stakeholders flagged concerns and the need to rethink the IBC's design. The amendment bill—referred to a select committee for consultations—is expected to help make the insolvency resolution process swifter and efficient, in addition to being in line with international best practices. The proposed amendments are to facilitate faster admission, resolution, and liquidation, maximise asset value, and improve governance.

Changes to deal with admission delays

One of the key changes proposed in the amendment bill is that an insolvency application filed by a financial creditor "must" be admitted if the default is proven, procedural compliance is met, and there are no disciplinary proceedings against the resolution professional. This means that there will be no real scope for rejecting such applications on additional grounds, and the default would be the only real ground for consideration of an insolvency application. The bill also clarifies that records from financial institutions are to be considered as sufficient and conclusive proof of default by the debtor.

While the National Company Law Tribunal (NCLT) should ideally decide on whether a case can be admitted under the IBC within 14 days of an insolvency application, it often takes months and sometimes even over a year to initiate insolvency proceedings. The average time taken for admission is around 434 days. In 2022, the Supreme Court had held that admission within 14

days was not a mandatory provision of the IBC and that the NCLT had discretionary powers on deciding whether or not to admit the insolvency application. This meant that the NCLT, instead of considering just the default as the sole basis of admission, was to also consider the default's circumstances and the debtor's arguments. That is going to change if the bill is enacted in its current form.

The amendment bill also stipulates that the adjudicating authority — the NCLT — should strictly enforce the 14-day timeline to decide on admission of insolvency applications, and if there is a delay, it would need to "record the reasons for such delay in writing".

Out-of-court initiation mechanism option

The bill proposes a creditor-initiated insolvency resolution process (CIIRP), with an out-of-court initiation mechanism for "genuine business failures" to facilitate faster and more cost-effective insolvency resolution with minimal business disruption. According to the government, once implemented, this will help ease the burden on the judicial system, promote ease of doing business, and improve access to credit.

As per the proposed amendments, for CIIRP, a financial creditor would have to get the consent of creditors representing at least 51 per cent of the debtor's outstanding debt. Meanwhile, the corporate debtor can continue to manage the company with oversight from a resolution professional, who would attend board meetings and will have veto powers.

The CIIRP process would be required to be concluded within 150 days. If there is failure to reach a resolution within that time frame or the plan is rejected, the CIIRP can be converted into a standard corporate insolvency resolution process (CIRP) under the IBC framework.

Group and cross-border insolvency frameworks

The bill has proposed a group insolvency framework, which seeks to resolve insolvencies that involve complex corporate group structures. Essentially, it would facilitate coordinated insolvency proceedings involving entities of the same corporate groups, instead of individual proceedings for each debtor separately.

The proposed framework is aimed at minimising value destruction caused by fragmented proceedings involving individual companies that are part of the same corporate group, and helping creditors to maximise value through coordinated decision-making in such cases. As per

the bill, the government can prescribe how insolvency proceedings against more than one debtors within a corporate group should be handled. This would potentially allow having a common resolution professional for group companies and a joint panel of committee of creditors (CoC) of the group companies, among other measures, to save time and costs.

The cross-border insolvency framework proposed in the bill aims to lay the foundation for protecting stakeholder interests in domestic and foreign insolvency proceedings, promoting investor confidence, and aligning the framework in India with global best practices. This is expected to improve the recognition of India's insolvency process in overseas jurisdictions, and help with recovery of foreign assets of corporate debtors undergoing insolvency proceedings in India.

Other key provisions

The amendment bill has proposed changes to improve the efficiency and oversight in the liquidation process by authorising the CoC to supervise liquidation. It includes a provision to allow the CoC to replace the liquidator through a 66 per cent vote. The proposed changes also include extending the moratorium on assets available under the CIRP to the liquidation process in a bid to expedite dissolution.

The bill's provisions also allow the adjudicating authority to restore the CIRP once — on the request of the CoC — thereby facilitating the potential rescue of viable companies. The CoC can recommend direct dissolution if assets are negligible, and will be empowered to retain or appoint the resolution professional as liquidator, according to the provisions of the bill.

The bill also proposes to expand the definition of resolution plans to include sale of assets. It also restricts the right of the corporate applicant to propose the resolution professional to ensure fairer and more transparent appointments. The amendments also propose restricting the withdrawal of CIRP applications before the constitution of the CoC and after the first invitation of the resolution plans, and also enable continuation of avoidance transaction proceedings after the resolution process has concluded. Other proposed changes include removal of the interim moratorium for personal guarantors and introduction of a provision to prevent transactions that defraud creditors. The priority of government dues is also clarified in the bill.

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