

Companies Act vs IBC: Govt must resolve conflict between two laws: Bankers

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Bankers have asked the government to resolve the conflict between Sections 230-232 of the Companies Act. (Thinkstock)

Bankers have asked the government to resolve the conflict between Sections 230-232 of the Companies Act that indirectly allow defaulting promoters to take over their assets after they have gone into liquidation and Section 29 (A) of the Insolvency and Bankruptcy Code, which bars such promoters from bidding for assets undergoing corporate insolvency resolution process (CIRP).

Executives from two public sector banks (PSBs) told FE that while there has been no written communication sent to the government, lenders have suggested an amendment to the Companies Act to harmonise it with the IBC at various forums.

Sections 230-232 of the Companies Act deal with the nature of compromises or arrangements that may be reached between a company and its creditors. Bankers

first became aware of the potency of these clauses when Arun Kumar Jagatramka, the promoter of Gujarat NRE Coke, offered to present a resolution plan to the company's creditors in April this year — three months after liquidation of the company had been ordered.

An executive with a large PSB said his bank had a clear policy of keeping defaulting promoters out of assets under insolvency. “We realised only in the Gujarat NRE case that defaulters have another way of getting their companies back, even after the amendment to the IBC. Since we are internally very clear that no asset should return to a defaulting borrower, we have communicated this point about the Companies Act to the government,” he said.

Another banker with a mid-sized PSB said while they were primarily concerned with the recovery of dues from the insolvency process, it makes sense to resolve the conflict between the two pieces of legislation.

“To be honest, we are concerned with getting our money back, irrespective of who gets the asset. But, since IBC has already been amended to keep defaulters out, why not fix this anomaly? This has been conveyed to the government through various channels over the last few months,” the banker observed.

Karan Kalra, head of financial services at Nishith Desai Associates, said while there is a view that a conflict exists between the two laws, there are two ways of looking at it. “A very simple legal interpretation is that if there is one section does not debar you from doing something — for example, Section 230 — and there is a separate section that debars you, then you take the more negative one,” he said, adding, “so it's not a legal battle per se. It's more of a matter of people questioning whether Section 29(A) was an afterthought.”