

Business Standard

IBC suspension during Covid-19 will give firms breathing space: Experts

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Illustration: Ajay Mohanty

The government's decision to shield corporates from the Insolvency and Bankruptcy Code (IBC) during the coronavirus pandemic will provide some breathing space to businesses struggling to combat the onslaught of diminishing demand and poor growth prospects, according to experts.

Lenders as well as operational creditors can look at the alternative mechanism outside the IBC to recover debts, said experts while commenting on the implications of the Ordinance to temporarily suspend the provisions of the IBC, news agency PTI reported.

As per the Ordinance, the corporate insolvency resolution process cannot be initiated against a company under the IBC for defaults arising on or after March 25, 2020, for a period of six months, which may be further extended to one year. The government had imposed the nationwide lockdown from March 25 to curb spread of coronavirus.

Among other things, the Ordinance sought to prevent businesses that are experiencing distress on account of unprecedented situation following lockdown, from being pushed into insolvency under the Code.

"Overall, it is a welcome move," said Pratibha Jain, founding partner of Nishith Desai Associates, adding that "many businesses are currently under stress especially in industries that have not received stimulus from the government."

Moreover, Jain said, "The judicial system would not have been able to handle a huge influx of cases especially for a relatively nascent law under which jurisprudence is still being developed."

L Viswanathan, partner, Cyril Amarchand Mangaldas, said, "The Ordinance is intended to give corporate debtors breathing space to deal with distress arising on account of Covid-19, which could be resolved through alternative mechanisms outside IBC."

The Ordinance is linked to the Reserve Bank of India's (RBI) decision to grant a six-month moratorium beginning March 1, 2020, and, accordingly, many corporates may not have been defaulted during this period.

"Since the IBC suspension aligns closely with the payment moratorium period under the RBI regulation, the practical impact of this exclusion is more likely to be felt by creditors who are outside the RBI framework and those who have not granted borrowers a moratorium. Banks and NBFCs (non-banking financial companies) who may have extended the payment moratorium to debtors may not be significantly impacted by the suspension," said Viswanathan.

Khaitan & Co Partner Atul Pandey said the Ordinance that suspends initiation of fresh proceedings under IBC for defaults taking place on or after March 25, 2020, for a period of six months "must be seen in conjunction with the six-month moratorium that will be extended by banks (and also NBFCs) to borrowers, thereby shielding all borrowers from any borrowings from these entities for the period."

The amendments to IBC are welcome considering the slowdown happened across the world due to Covid-19, said Singh & Associates Senior Partner Daizy Chawla.

However, she added, "More clarity is required to the proviso added that no proceedings ever be initiated under IBC 2016 against those corporate persons who have defaulted during the suspension period as such blanket ban will restrict the options of creditors to ever proceed against them. As it's not clear will the suspension will be on those defaults which are due to Covid-19 slowdown or for all reasons."

HostBooks founder and Chairman Kapil Rana said the Ordinance is a landmark proactive move by the government and it was vitally required. "It will protect businesses against IBC proceedings if any default arising on or after March 25 for a period six months or such further period not exceeding one year. This quick action taken by the government will fuel the businesses and help the economy bounce back strongly."

Samir Sheth, partner and head (deal advisory services), BDO India, said it is fair that suspension only applies to defaults arising on or after March 25, 2020, and protects defaults that would have arisen only as a result of unique circumstances the economy has to face due to the pandemic, and permits resolution under IBC for cases of default before that date.

Considering that this period of six months runs co-terminus with moratorium offered by the RBI, in any case, the chances of usual set of financial creditors like banks and NBFCs invoking IBC was improbable, the Ordinance however gives a relief to corporate debtors from operational creditors invoking IBC, he said.