

MCA proposes changes to bankruptcy code for quicker corporate rescue



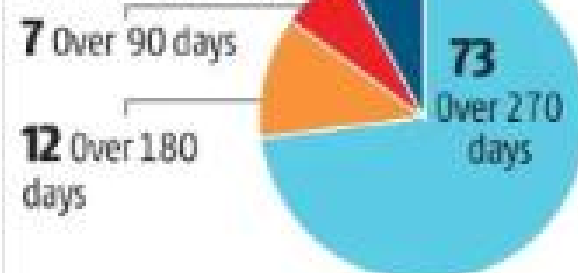
The ministry has given time till 13 January for receiving suggestions on the proposals

Experts said the proposed changes may be considered as learnings from the IBC experience so far. The process should be accessible to companies fallen on hard times, but should prevent promoters and directors to gain from the protections offered by the law in case of wilful defaults, explained Srinivasa Rao, partner and leader, risk advisory services, Nangia Andersen LLP, a consultancy. Another aspect that the IBC should actively strive to improve is about how not to become a bureaucratic process, said Rao. "The ease of resolution will also be determined how quick the process is without compromising on its efficiency," said Rao.

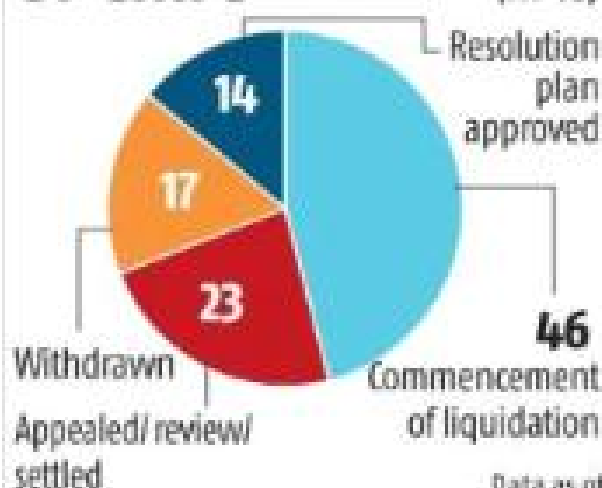
said this move would help ensure that no one takes advantage of the timelines prescribed in the IBC.

"The resolution professional's rights were curtailed in approaching the NCLT, despite clear evidence of wrongdoing and manipulation because the look-back period was shorter. The government must have realised this needed to be fixed," said Manoj Kumar, partner, Corporate Professionals.

TIMELINE OF ONGOING CIRPs (in %)



MODE OF CLOSURE OF CIRPs (in %)



Data as of Sep 30, 2020

Source: Insolvency and Bankruptcy Board of India

The look-back period refers to the time that a resolution professional, following the NCLT's permission, can investigate for any fraudulent transaction or wrongdoing.

The MCA has also proposed that a voluntary liquidation need not require the nod of adjudicating authority. Instead, this could be done by a special resolution or members' resolution, and approval of creditors representing two-thirds in value of the debt. "The liquidator may be required to make a public announcement of the closure of the process, and intimate concerned authorities, such as the Insolvency and Bankruptcy Board of India (IBBI) and the registrar."

"While voluntary liquidation matters could be closed in one or two hearings, they are not a priority of the tribunals. It could take from several months to a couple of years for a voluntary liquidation to be approved," said Anshul Jain, partner, PwC India.

As for avoidance transactions, the ministry has suggested that an explanation may be added to the Code to clarify that proceedings for avoidance of transactions and wrongful trading can continue even after the approval of a resolution plan.

"Various aspects of the process need to be closed within a fixed timeline to prevent corporate debtors or perpetrators from exploiting the purpose of the IBC regulations. The learning from the cases gone into the IBC is that there is a need for financial institutions to improve funding mechanisms for companies not showing obvious signs of distress," said Srinivasa Rao, partner & leader - Risk Advisory Services, Nangia Andersen.

In another step that can pave the way for automatic admissions, the ministry has said that financial creditors may be required to submit only information utility (IU)-authenticated records to establish default for the purpose of admission of a Section 7 CIRP (corporate insolvency resolution process) application by financial creditors.

The idea is to make the admission process quicker as the NCLT will only be required to consider IU-authenticated records as evidence of default for Section 7 applications.

The corporate affairs ministry has also proposed changes to the IBC fund, so that it can support part of the expenses of resource-strapped insolvency proceedings, such as payment towards workmen's dues or for carrying forward avoidance proceedings.

A detailed framework for contribution to and utilisation of the IBC fund will be prescribed by the government, since the present structure, it is felt, provides limited ways of utilising the amount contributed. "The fund could also be used to provide interim finance as often operations during CIRP suffer due to lack of reasonably priced interim finance," said Bikash Jhawar, partner, Saraf & Partners.



Ministry proposes fixed timeline for NCLT, extended look-back period in IBC

The government has sought public comments on the proposal by January 13

Ruchika Chitravanshi | New Delhi December 23, 2021 Last Updated at 20:53 IST



In a move to plug gaps in the

Illustration: Ajay Mohanty

Insolvency and Bankruptcy Code (IBC), the ministry of corporate affairs (MCA) has proposed robust norms against avoidance transactions, wrongful trading, and inordinate delays via changes to look-back period and fixed timelines for the tribunals to reject or approve plans, among other measures.

The MCA has proposed that the IBC should provide the adjudicating authority with 30 days for approving or rejecting a resolution plan under Section 31. If a decision is not made on the resolution plan within that period, the adjudicating authority will record reasons in writing for the same, the ministry has proposed.

The government has sought public comments on the proposal by January 13.

The Centre is of the view that delays erode the value of the corporate debtor and disincentivise potential resolution applicants from participating in the process. "Such delays go against the objective of the Code to provide value-maximising outcomes for stakeholders," the MCA said.

The two-year look-back period -- which starts from the date of the admission of the insolvency application -- is suggested to be extended to the date when the corporate insolvency resolution application is filed. Experts

"The proposed changes should serve as an easy mechanism to get the maximum value from the winding up proceedings of a company," said Srinivasa Rao, partner & leader – Risk Advisory Services, Nangia Andersen LLP.

The process should be accessible to companies fallen on hard times, but should prevent promoters and directors from gaining protections offered by the law in cases of wilful defaults, Rao said.

Among other proposals, ILC also suggested that financial creditors may be required to submit only Information Utility (IU) - authenticated records - to establish default for the purposes of admission of a resolution application and the adjudicating authority to only consider IU-authenticated records as evidence to enable quicker disposal of insolvency applications.

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Govt Panel for amendments to Insolvency and Bankruptcy Code

Synopsis

The Insolvency and Bankruptcy Code (IBC) came into force in 2016 and has already undergone various amendments.



Representative Image

A key government panel has suggested amendments to the [Insolvency and Bankruptcy Code](#) including provisions related to time period taken for approval of resolution plans, avoidable transactions and wrongful trading.

To ensure swift approvals for resolution plans, the committee sought to make it mandatory for the [National Company Law Tribunal \(NCLT\)](#) to approve the plan within 30 days or else record its reasons for delay in writing.

The ministry of corporate affairs Thursday sought public comments on the amendments proposed by the [Insolvency Law Committee \(ILC\)](#).

The last date for submission of comments is January 13, 2022.

The panel has proposed changes to the 'look-back period,' by making it effective from the date of filing petition instead the date of admitting the petition so that a longer net can be cast to capture pre-filing transactions of the debtors.

A look-back period is the time within which the resolution professional can revisit concluded transactions of an entity referred under the IBC as being preferential or undervalued.

At present the time is two-years preceding insolvency commencement date.

The committee suggested changes to enable expeditious admission process and reduce the time period taken for approval of resolution plans.

"This is crucial as it will help plug the loophole which could be misused to take undue advantages by the promoters by taking away the valuable assets through these avoidable transactions," said Anshul Jain, partner, PwC.

Besides, amendments have also been suggested in connection with closure of the voluntary liquidation process and the IBC Fund.

The Insolvency and Bankruptcy Code (IBC) came into force in 2016 and has undergone various amendments.