

Govt Looking at Decriminalising Some IBC Offences

NCLTs, DRTs may get powers to impose fines for violations under Sec 235A

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New Delhi: The government has proposed the decriminalisation of several violations under the Insolvency and Bankruptcy Code (IBC) to further improve the ease of doing business and speed up corporate failure resolution.

The move is in line with the government's initiative to clean up the statute book to decriminalise minor offences and switch to monetary penalties. A similar process has been carried out in the laws for companies and limited liability partnerships.

In a discussion paper floated last week, the ministry of corporate affairs proposed to empower National Company Law Tribunals (NCLTs) and Debt Recovery Tribunals (DRTs) with powers to penalise anyone who violates the IBC. These violations are currently handled by special courts through

Remedial Steps

At present, special courts deal with IBC violations



Sec 235A of code says criminal proceedings can be initiated for offences for which no penalty has been prescribed

Key Proposals

Conversion of Sec 235A into a civil penalty

Empower NCLTs & DRTs

to levy a fine of ₹1 L/day or 3 times the unlawful gains, whichever is higher



Cover violations by promoters, RPs and other stakeholders

criminal proceedings.

The proposed amendments will apply to violations falling under Section 235A of the IBC, which says criminal proceedings can be initiated against anyone over contraventions for which the code doesn't specify the penalty. Violations such as promoters not cooperating with liquidators or resolution professionals (RPs) filing frivolous cases don't have any penalty prescribed in the code.

Legal Experts Hail Move

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These would fall under Section 235A, involving criminal prosecution.

"In furtherance of the central government's policy to decriminalise offences in business law statutes wherever feasible, it is felt that Section 235A should be converted into a civil penalty," said the discussion paper.

Legal experts welcomed such a move.

"Rather than involving the criminal law machinery, NCLTs, DRTs dealing with the relevant insolvency, bankruptcy process are better placed to deal with the breach and will be able to provide for consequences of the breach swiftly," said Dhananjay Kumar, partner, Cyril Amarchand Mangaldas. "This will cover not only promoters but also

persons breaching the moratorium, officers and directors of the corporate debtor involved in misfeasance or misconduct, and resolution applicants in breach of resolution plans." Currently, anyone failing to comply with the IBC can be subject to a fine of Rs 1 lakh to Rs 2 crore through criminal proceedings if the violation has no other penalty prescribed, experts said.

Under the proposal, NCLTs and DRTs can impose a penalty of Rs 1 lakh per day or three times the unlawful gains, whichever is higher.

FRIVOLOUS APPLICATIONS

"The proposed amendment to the IBC, wherein the adjudicating authority will be empowered to impose penalties for filing a frivolous or

vexatious application will certainly expedite the resolution process and shall keep busybodies at bay," said Ruby Singh Ahuja, senior partner, Karanjawala & Co.

This proposed shift from a criminal to a civil penalty could effectively bring more cases under the penalty threshold. "While in case of a criminal proceeding, the test of 'beyond reasonable doubt' needs to be satisfied before imposing punishment, in civil proceeding, the test that needs to be satisfied is that of 'preponderance of probability'," said Chirag Nangia, partner, Nangia Andersen. "One would hope that once implemented, the NCLT, DRT use these provisions sparingly and only in situations where there is a flagrant abuse by parties."
