

Standing Committee Report Summary

The Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019

- The Standing Committee on Finance (Chair: Mr. Jayant Sinha) submitted its report on the Insolvency and Bankruptcy Code (Second Amendment) Bill, 2019 on March 4, 2020. The Bill seeks to amend the Insolvency and Bankruptcy Code, 2016 (IBC), which provides a time-bound process to resolve insolvency among companies and individuals. Key observations and recommendations of the Committee include:
 - **Supply of critical goods and services not to be discontinued:** The Bill mandates that the supply of goods and services deemed critical for the company by the resolution professional cannot be discontinued during the moratorium period. The Committee noted that this provision aims to make the IBC process smoother, with the hope of a probable revival of the company. However, to do so, suppliers cannot be burdened with overly restrictive conditions. It noted that over-legislation must be avoided and delegated legislation such as rules should be followed to strike a harmonious balance between the needs and concerns of the stakeholders. The Committee recommended that the provision should be deleted from the Bill.

It also noted that due to a limited availability of resources and capacity with suppliers, these need to be channelised in the economy's best interest, and not be directed solely towards keeping the debtor alive. It recommended that market forces should resolve whether a supplier decides to supply to a debtor.
 - **Immunity from prior offences:** The Committee noted that immunity given to the company from prior offences seeks to safeguard the position of resolution applicant(s). The provision is essential to give them a fair chance to revive the unit, which otherwise would go into liquidation which may not be as beneficial to the economy. The Committee noted that this ring-fencing is essential to achieve revival or resolution, without imposing additional liabilities on applicants.
 - **Resolution under IBC:** The Committee noted that so far, under IBC, claims of Rs 8.4 lakh crore have been filed (including the disposed cases not admitted under IBC). The realisable amount has been Rs 3.57 lakh crore, i.e. 43% of the claims. The average time taken for resolution is 394 days. It noted that the recovery percentage should increase significantly in the near future and the time taken for resolution should conform to the timeline prescribed under IBC.
 - **Speedy resolution:** The Committee recommended that the number of benches of NCLT should be increased and e-courts should be established for faster disposal of cases and speedy resolution.
 - **Resolution of NPAs:** The Committee observed that IBC has played a role in arresting the growth of the Non-Performing Assets (NPAs) of banks. It noted that effective measures within the ambit of IBC be taken to realise better results from the process.
 - **Cross-border insolvency:** The Committee observed that cross-border insolvency cases have resulted in uncertain recoveries for creditors. In such cases, some of the assets of the debtor or its creditors are based outside India. The Committee noted that a draft Bill is in the pipeline to deal with such cases. It recommended that the Bill should be introduced as soon as possible in order to further strengthen IBC.
 - **Strengthening IBC:** The Committee recommended that the Indian insolvency framework should be benchmarked against other jurisdictions to evaluate outcomes and assess resolution efficiency. Empirical evidence and benchmarking analysis should identify the major gaps which need to be addressed, and the extent to which Indian case law needs to be refined.

The Committee noted that to address these gaps, there is a need to evaluate the inter-dependent roles of legislation, rule-making, adjudication, and informal norms. There is a considerable ambiguity on which policy lever is most appropriate to address which issue. The Committee recommended that further legislation needs to be informed by such analysis.
 - **Notes of dissent:** Notes of dissent were submitted by three Members of Parliament, related to a provision in the Bill which specifies a minimum threshold for homebuyers for initiating the IBC process. The Code allows creditors to initiate the process, if the amount of default is at least one lakh rupees. The Bill adds that in case of homebuyers, a joint application should be filed by at least 100, or 10% of them, whichever is less. Mr. Rajeev Chandrasekhar and Mr. Manish Tewari stated that this provision discriminates against homebuyers and violates their right to equality under the Constitution. Mr. T. K. Rangarajan stated that the additional threshold for homebuyers denies them a level-playing field, and due to the unavailability of any public data, it is almost impossible to meet.

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