

Extend prepack to big firms: Industry

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As Finance Minister Nirmala Sitharaman, in her Budget speech, hinted at impending changes to the Insolvency and Bankruptcy Code (IBC), industry experts suggest priorities should include extending pre-packaged insolvency to larger firms, codifying group insolvency norms, and clarifying project-wise insolvency processes.

The minister announced plans to reform and strengthen tribunals to expedite insolvency resolution, establish more tribunals, and assign some exclusively to cases under the Companies Act.

Madhav Kanoria, partner at Cyril Amarchand Mangaldas, advocated for extension of pre-packaged insolvency to additional categories of companies. According to him, a process must be robust involving National Company Law Tribunals (NCLTs) only for the approval of the final resolution plan. This would help save businesses from bankruptcy, especially ones caused due to the cyclical nature of the business, he said. Currently, prepackaged insolvency is limited to MSMEs and involves negotiations on a resolution plan between the debtor and its creditors before initiating the formal resolution process.

So far, the process has yielded a 25 per cent realisation against admitted claims in five approved cases.

Siddharth Srivastava, partner at Khaitan & Co, supported Kanoria's proposal and suggested that the government should also explore a creditor-led resolution process under the IBC to potentially replace the fast-track insolvency

RESOLUTIONS UNDER IBC

(Amount in ₹ crore)				
	No. of resolutions	Admitted claims worth	Total realisation	Realisation (%)
FY18	19	8,197.59	4,457.85	54
FY19	75	2,06,807.2	1,11,441.04	54
FY20	132	1,64,568.01	41,825.8	25
FY21	119	1,27,199.56	27,551.37	22
FY22	144	2,10,934.22	47,522.57	23
FY23	189	1,54,285.35	55,449.11	36
FY24	269	1,74,291.09	47,653.34	27
Total	947	10,46,283	3,35,901	32

Source: IBBI

route. Last year, an expert committee of the Insolvency and Bankruptcy Board of India (IBBI) had proposed the creditor-led insolvency resolution process framework for out-of-court initiated insolvency. Currently, the IBC offers three distinct resolution processes to corporate entities: the corporate insolvency resolution process (CIRP), fast-tracking CIRP, and pre-packaged insolvency.

Experts have also urged the government to look at codifying group insolvency norms and bring in more clarity to project-wise insolvency. "Though regulations have been amended to enable project-wise insolvency within the CIRP, the IBC itself has not been amended accordingly. While project-wise insolvency has been introduced conceptually, specific operational details have yet to be specified resulting in stakeholders/RPs interpreting its application independently," said Srivastava.

He said the government could look at codifying the provisions for personal insolvency for individuals since the framework has been notified only for personal guarantors to corporate debtors.

Kanoria recommended automatic admission into insolvency based on Information Utilities' records and treating government debts on par with unsecured creditors. Kanoria suggested an amendment to facilitate automatic admission into insolvency based on Information Utilities' (IUs) records to determine default. All the debts owed to government authorities should be treated on par with unsecured creditors, irrespective of any underlying statutory provision creating a first charge, he said.

According to Zeeshan Farooqui, partner at King Stubb & Kasiva, called for creation of a separate framework for real estate insolvency. The government should also bring in amendments to address cross-border and group insolvency, streamlining the liquidation process with enhanced oversight by the stakeholders' consultative committee.

Meanwhile, both the finance minister and the Economic Survey have highlighted the success of IBC.

The process has resulted in more than 1,000 companies getting resolved, with direct recovery of ₹3.3 trillion to creditors.