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EXTEND IBC PROVISIONS TO INVITS: EXPERTS

Relevant for: Economy | Topic: Issues relating to Mobilization of resources incl. Savings, Borrowings & External Resources

Changes to the Infrastructure Investment Trusts (InvITs) structure and regulations are among crucial modifications required to attract retail investors to the National Monetisation Pipeline, say financial experts.

Aashit Shah, partner at law firm J Sagar Associates, said extending IBC provisions to InvITs would help lenders access a faster and more effective debt restructuring and resolution option.

“However, infrastructure regulators and SEBI would need to work in tandem for a successful insolvency resolution of an InvIT which may involve a change in the sponsor, investment manager and/ or trustee or transfer of an infrastructure asset,” he said.

The NITI Aayog has also flagged the fact that lenders do not have existing process for recourse to project assets as Trusts are not considered a ‘legal person’ in its NMP guidebook.

“While the lenders are protected under the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act) and the Recovery of Debts and Bankruptcy Act, 1993, the provision of recourse under IBC regulations will bring in added level of comfort for the investors,” it opined.

Apart from InvITs’ inclusion under the IBC, other amendments may be needed to allay concerns that retail investors may have about the safety of their investments in such large underlying assets, said Abhishek Goenka, partner at Aeka Advisors.

Separate section

Mr. Goenka also asserted that a separate section in the income tax law to provide capital gains tax relief for investments in eligible InvITs specifically holding NMP assets would be better than extending Section 54EC, which currently applies to bonds issued by the National Highway Authority of India, Rural Electrification Corporation, Power Finance Corporation and the Indian Railway Finance Corporation.

“The government should provide a high threshold for such tax breaks given the urgent need to push retail participation in these formats,” Mr. Goenka said.

Simply put, InvITs are structured so as to give investors an opportunity to invest in infrastructure assets with predictable cash flows, while the asset owners can raise upfront resources against future revenue cash flows from those assets, which in turn can be deployed in new assets or used to repay debt.

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