

BANKRUPTCY CODE PUT ON HOLD FOR ONE YEAR

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Provisions will be made to exclude all virus-related debt from defaults covered under the IBC, the government said

India will suspend fresh bankruptcy proceedings against defaulters for one year so that companies are not dragged into tribunals at a time they are trying to get back on their feet, finance minister Nirmala Sitharaman said.

The government will also make provisions in the law to exclude all debt associated with the pandemic from defaults covered under the Insolvency and Bankruptcy Code (IBC) for triggering action against defaulters by creditors, the minister said while announcing a raft of legislative measures to help businesses tide over the crisis. The measures will be brought to effect through an ordinance, Sitharaman said. Details of the proposed amendments will be known once the ordinance and subsequent notification of the proposals are issued.

The government will also notify a special framework for dealing with the bankruptcy of micro, small and medium enterprises. Also, the minimum payment default threshold for triggering bankruptcy proceeding against a company will be raised from 1 lakh currently to 1 crore, she said.

"Many businesses have got severely affected, particularly during the lockdown and the coronavirus pandemic. Debt related to covid-19 shall be excluded from the category of 'default' under IBC. No fresh insolvency proceeding shall be initiated for up to one year," Sitharaman said while explaining the provisions in the proposed ordinance.

While pausing fresh bankruptcy proceedings could be a breather for many companies, it could deprive lenders the opportunity to restructure certain companies which may be beyond redemption.

Experts said the uncertainty surrounding the economy warrants more fundamental changes in the IBC than suspending it for a period.

"Bankruptcy laws have undergone fundamental changes during uncertain times like these in the past. What we need is a revolutionary rehash of the insolvency law and not a pause of the bankruptcy proceedings for a year," said Sumant Batra, managing partner of law firm Kesar Dass B. and Associates.

"A new, out-of-the-box resolution approach is needed, which incentivizes banks and public sector institutions to proactively participate in rescuing businesses. The government should take another leap of faith on IBC," he added.

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