

President signs bankruptcy ordinance

Tough talking:The ordinance, signed by President Kovind, will help deter unscrupulous persons from misusing the IBC.PTI

President Ram Nath Kovind on Thursday gave his assent to the ordinance approved by the Union Cabinet to amend the Insolvency and Bankruptcy Code (IBC) to strengthen the regime.

The ordinance aims at putting in place safeguards by prohibiting wilful defaulters, those associated with non-performing assets (NPAs), and the habitually non-compliant, from regaining control of the defaulting company or stressed assets through the back door in the garb of being a 'resolution applicant'.

"The sale of property to a person who is ineligible to be a resolution applicant ... has been barred," an official statement said. Significantly, the amendments also provide for fine ranging from Rs. 1 lakh to Rs. 2 crore for those violating these norms.

Ineligible persons

According to the statement, a new section has been introduced in the IBC that makes certain persons ineligible to be a 'resolution applicant'. Those being made ineligible include "wilful defaulters, those who have their accounts classified as NPAs for one year or more and are unable to settle their overdue amounts including interest thereon."

The ineligible persons also include those who have executed an enforceable guarantee in favour of a creditor, in respect of a corporate debtor undergoing a Corporate Insolvency Resolution Process or liquidation process under the IBC.

Also ineligible are those who are promoters or in management or control of the resolution applicant, or will be promoters or in management or control of corporate debtor during the implementation of the resolution plan, the holding company, subsidiary company, associate company or related party of the above referred persons, the statement said.

To ensure that the norms are enforced effectively, a new section "provides for punishment... [which] is fine, which shall not be less than Rs. 1 lakh but which may extend to Rs. 2 crore."

The ordinance aims at putting in place safeguards to prevent unscrupulous, undesirable persons from misusing the IBC, the statement said. Actions against defaulting companies to prevent misuse of corporate structures for diversion of funds, as well as weeding out of unscrupulous elements from the resolution process "would help strengthen the formal economy and encourage honest businesses and budding entrepreneurs to work in a trustworthy, predictable regulatory environment," it added.

In addition to putting in place restrictions for such persons to participate in the resolution or liquidation process, the amendment also provides such check by specifying that the Committee of Creditors (CoC) should ensure the viability and feasibility of the resolution plan before approving it.

The Insolvency and Bankruptcy Board of India (IBBI) has also been given additional powers.

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