

## 'IBC ordinance will affect pending suits'

The biggest concern regarding the amendments to the Insolvency and Bankruptcy Code (IBC) is that they will cause disruption in nearly all pending insolvency proceedings, according to leading insolvency lawyer Sumant Batra.

This is because the eligibility of all bidders will have to be ascertained before examining their bids. "Earlier, the resolution plan had to qualify for consideration. Now, the bidder has also to qualify," Mr. Batra said.

In cases where only the promoter has submitted a plan, and such a promoter is found to be ineligible, fresh bids would need to be invited, he pointed out.

Mr. Batra, who is the managing partner of law firm Kesar Dass B. & Associates, said, "If the total time of 270 days has lapsed in these cases or no bidder comes forward, the debtor will be pushed into liquidation. In cases, where the creditors have not approved the criteria for inviting of bids by the resolution professional, their approval would have to be obtained."

### 'Unduly harsh'

Besides, the amendments are unduly harsh to bonafide defaulters and guarantors. "Just because an account has turned non-performing, it does not render its promoter dishonest. Every default cannot be equated to malfeasance," he said, adding that it was unfair to exclude them from consideration by bracketing them with dishonest promoters.

Identification of wilful defaulters has been left to the banks. Though this might be on the basis of RBI guidelines, the risk is that the promoter will challenge such determination by the lender in court and seek stay of insolvency proceedings till the challenge is decided, he said.

"It is possible that the court does not stay the insolvency process and the promoter loses his company. But later, if the bank's decision is found to be illegal by the court, the promoter would become entitled to claim damages from the bank," Mr. Batra said.

Besides, the amendments place foreign bidders in an advantageous position as the concept of wilful defaulters may not exist in other countries and the disqualification criteria in corresponding situations may also be different or even harsher, he said.

"This will pose a challenge for resolution applicant in determining eligibility of foreign bidders," he added.

Diwakar Maheshwari, partner, Khaitan & Co, said, "While the amendments lay down certain ineligibilities in qualifying as a resolution applicant, what about a situation if such ineligibilities are already a subject matter of challenge before a court of law (sub-judice)? Would such applicant still be ineligible or otherwise?"

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