

## SECTION 227 OF INSOLVENCY & BANKRUPTCY CODE NOTIFIED

# Resolution of financial service providers via NCLT mechanism under IBC gets go ahead

**ENSECONOMIC BUREAU**  
NEW DELHI, NOVEMBER 15

THE CENTRAL government has paved the way for resolution of financial service providers (FSPs) through the National Company Law Tribunal (NCLT) mechanism under the Insolvency and Bankruptcy Code (IBC). The Ministry of Corporate Affairs, on Friday, notified Section 227 of the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 to provide "a generic framework for insolvency and liquidation proceedings of systemically important FSPs other than banks".

As a result of this move, resolution process of some non-banking financial companies (NBFCs), including DHFL, is expected to gather pace. As of now, the resolution process of DHFL has been stalled due to differences among various creditors such as banks,

### EXPLAINED Relief for lenders of NBFCs hit by liquidity crunch

**L**ENDERS DID not have the option of taking a financial service provider for insolvency proceedings to the NCLT under the IBC so far. With the government on Friday notifying the Section 227 of the Code, however, a "generic framework" has now been provided for insolvency and liquidation proceedings of FSPs other than banks.

With the financial sector reeling under a liquidity crisis for several months now, Friday's move is expected to bring some relief to banks as liquidation of heavily-stressed NBFCs can now be initiated.

bondholders and mutual funds.

Under Section 227 of the IBC, the government can notify FSPs or categories of FSPs for the purpose of insolvency and liquidation proceedings. A statement issued by the government said that the rules will apply to "such FSPs or categories of FSPs, that are notified by the central government under

agency, pending introduction of a full-fledged enactment to deal with financial resolution of banks and other systemically important FSPs. "The special framework under Section 227 of IBC shall not apply to banks," said the statement.

Last week, *The Indian Express* reported that the government is set to notify regulation under Section 227 of IBC, in a bid to start resolution of FSPs through NCLT mechanism under the Code. Till date, no financial institution could be taken for resolution to the NCLT under the IBC. However, with the rules under Section 227 of the Code now getting notified, the existing consortium of lenders and the existing resolution professional can take the FSP or the NBFC to the NCLT for resolution.

Sources say that once banks take an FSP for resolution to NCLT, cases filed by separate creditors against the debtor company will stand nullified, thereby, paving the way for faster resolution.

Section 227 of IBC states, "Notwithstanding anything to the contrary examined in this Code or any other law for the time being in force, the Central government may, if it considers necessary, in consultation with the appropriate financial sector regulators, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings, which may be conducted under this Code, in such manner as may be prescribed."

Dewan Housing Finance Corporation (DHFL) — with loan outstanding of around Rs 78,000 crore (as per the debt resolution plan in July 2019) — has been facing liquidity pressure since the IL&FS crisis hit the NBFC sector in September last year. A series of debt defaults by IL&FS had spiralled into a broader liquidity crisis for the markets, putting pressure on several NBFCs. DHFL has been facing severe liquidity issues since September last. Facing stress to honour its debt repayments, it started raising funds and also selling its subsidiaries.

# Essar Steel takeover: ArcelorMittal gets Supreme Court nod

**AASHISH ARYAN**  
NEW DELHI, NOVEMBER 15

AFTER a lengthy litigation process that lasted 835 days, the Supreme Court on Friday gave the final approval to ArcelorMittal's plan for Essar Steel India. In doing so, the apex court also set aside the July 4 judgment of the National Company Law Appellate Tribunal (NCLAT), which redistributed the funds from ArcelorMittal nearly equally between the financial and operational creditors.

"The NCLAT judgment which substitutes its wisdom for the commercial wisdom of the Committee of Creditors and which also directs the admission of a number of claims which was done by the resolution applicant, without prejudice to its right to appeal against the aforesaid judgment, must therefore be set aside" a three-judge Bench headed by Justice Rohinton Nariman stated.

The corporate insolvency resolution process (CIRP) of Essar Steel shall now proceed in terms of the resolution plan submitted by ArcelorMittal, wherein the latter had proposed to pay Rs 42,000 crore to all creditors of the corporate debtor, the three-judge bench said in its 168-page judgment.

Reiterating the importance of the Committee of Creditors (CoC), the apex court said that neither the National Company Law Tribunal (NCLT), nor the NCLAT "has been endowed with the jurisdiction to reverse the commercial wisdom of the dissenting financial creditors and that too on the specious ground that it is only an opinion of the minority financial creditors". The SC judgment is likely to come as a major relief for banks and other secured financial creditors who were vehemently opposed to the NCLAT's decision

### SC SETS ASIDE NCLAT JUDGMENT

■ The Supreme court set aside the July 4 judgment of the NCLAT, which redistributed the funds from ArcelorMittal nearly equally between the financial and operational creditors

of "equality for all" approach.

In their pleadings before the SC, the banks had said that if the courts indeed accepted the "equality for all" approach, the banks would "be incentivised to vote for liquidation rather than resolution, as they would have better rights if the corporate debtor was to be liquidated rather than a resolution plan being approved".

The NCLAT had, in a judgment on July 4, held that though it was approving the resolution plan submitted by ArcelorMittal, the distribution of funds as envisaged by the resolution applicant was faulty and thus, needed to be changed. It had then said that of the Rs 42,000 crore, the financial creditors would get around Rs 30,030 crore, while the operational creditors would get around Rs 12,000 crore.

Following the judgment, Essar Steel — which had so far put up a spirited fight against ArcelorMittal's plans to enter India — issued a statement welcoming the latter into the country. "We wish ArcelorMittal and Nippon Steel the very best on their entry into the Indian market. They are acquiring a world-class facility in a market that has a long runway for growth" a spokesperson for the company said.

# SC decision will lead to faster NPA resolution: SBI Chairman

**ENSECONOMIC BUREAU**  
MUMBAI, NOVEMBER 15

STATE BANK of India (SBI) Chairman Rajnish Kumar said Friday the Supreme Court judgment on Essar Steel India will lead to faster resolution of stressed assets with the Committee of Creditors (CoC) getting the "ultimate discretion" on distribution of funds.

"This much awaited judgment also settles numerous points of law under the Insolvency and Bankruptcy Code (IBC) which were tested in various courts. This should significantly reduce the scope for long drawn litigations under IBC and would eventually lead to faster resolutions of stressed assets," Kumar said.

"The Supreme Court has upheld that the ultimate discretion on distribution of funds is with the CoC. It has held that secured and unsecured financial creditors are differentiated when it comes to amounts to be paid under a resolution plan, together with what dissenting secured or unsecured financial creditors are to be paid. "It has been held that the CoC can distribute amongst the secured financial creditors as per their commercial wisdom as CoC is not restricted from classifying creditors as financial, operational, secured or unsecured," he added.

The apex court decision is expected to result in faster distribution of funds among lenders.

On Friday, the apex court gave nod to ArcelorMittal's resolution plan for Essar Steel. Though the ArcelorMittal takeover of Essar Steel was decided several months ago, the repayment to lenders was held up as distribution of funds among various classes of lenders was challenged in the SC.

# Insolvency regime for personal guarantors to corp debtors from Dec 1

**New Delhi:** The insolvency regime for individual guarantors to corporate debtors will be in force from December 1, according to the Centre. The provisions for resolution for individuals under the IBC is being implemented in a phased manner.

On Friday, the Corporate Affairs Ministry said the provisions pertaining to personal guarantors to corporate debtors would come into force from December 1. The Code provides for a market-driven and time-bound resolution for stressed assets.

A case is taken up for resolution under the law only after approval from the National Company Law Tribunal (NCLT).

In October, Corporate Affairs Secretary Injeti Srinivas said personal insolvency regime would be fully operational in one year. PTI

## 'RBI to cut rates by 40 bps by Feb despite high inflation'

Headline inflation is bound to rise further to 5 per cent for November, but despite the pinch in price rise, the Reserve Bank will go for two consecutive rate cuts on growth concerns, brokerage Bank of America Merrill Lynch (BofAML) said

<b>0.25%</b> Expected cut in repo rate by Reserve Bank of India in December, according to analysts at BofAML	<b>0.15%</b> Follow-up cut in lending rates expected to be brought by RBI in February	<b>4.7%</b> Growth projected for September, on gross value added basis, as against 4.9 per cent in June
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**DIFFERENT FACTORS CAUSING INFLATION:** The higher inflation will be driven by base effects or lower inflation in the year-ago period when the same number had dipped to 2.2 per cent, and some pressure on onion prices

**LIMITED NON-FOOD, NON-FUEL INFLATION:** The "fundamental drivers of inflation remain weak", which have resulted in the non-food and non-fuel core inflation getting limited to 3.3 per cent in October as against September's 3.7 per cent

**AGFLATION TO BE UNDER CONTROL:** Agflation will also be in check going forward on well-stocked rivers which should water a bumper winter sowing and the minimum support price hikes are also small

**ADDITIONAL NEED FOR MONETISATION:** Funding the 0.8 per cent of GDP corporate tax rate cut will likely need additional direct or indirect monetisation

# SC finds ex-Ranbaxy promoters 'guilty of committing contempt'

**PRABHARAGHAVAN**  
NEW DELHI, NOVEMBER 15

THE SUPREME Court Friday found former Ranbaxy promoters Malvinder Singh and Shivinder Singh "guilty of committing contempt" in a case filed by Daiichi Sankyo to block them from selling stake in Fortis Healthcare, a company previously controlled by them. It gave the Singh brothers "one chance" to purge themselves by depositing with the court Rs 1,170.95 crore each within eight weeks, in which case it "may consider dealing with them in a lenient manner" while imposing a sentence.

The verdict deals another blow to the brothers, who have already been arrested over allegations of corporate fraud and are still embroiled in a Rs 3,600-crore arbitration enforcement case by Daiichi in the Delhi High Court.

It also adds to the ongoing woes of minority shareholders in Fortis and Malaysian healthcare group IHH Bhd, which has been unable to initiate an offer for additional stake in the hospital group after its initial acquisition. This is because the apex court has, on its own, initiated a contempt case against Fortis and several others, blocking any open offers in the

### The court has also initiated a contempt case against Fortis Healthcare, potentially blocking IHH from completing its takeover of the hospital chain

company until February 3.

According to the apex court, the Singh brothers and directors of Indiabulls Housing Finance Ltd as well as Indiabulls Ventures Ltd "knowingly and wilfully" violated or disobeyed orders passed between August 11, 2017 and February 23, 2018. The orders involved directions to maintain the status of the pledged and unencumbered shares in Fortis.

Fortis, along with the Singhs and companies controlled by them, had also "wilfully violated" the court's order in December 2018 that ordered that "status quo" with regard to the sale of controlling stake in the hospital chain to IHH be maintained. "... Issue notice to them returnable for 03.02.2020 asking them to show cause why they should not be punished for contempt," stated the SC in its order on Friday.

It demanded the presence of the Singhs, firms controlled by them, directors of Indiabulls and Fortis in court on February 3.

Indiabulls has also been given the opportunity to purge itself for possible leniency in sentencing by depositing within the same eight-week period the value of 12.25 lakh shares held in Fortis as on August 31, 2017. The total value of these shares is "approximately" Rs 17-18 crore, an Indiabulls spokesperson told *The Indian Express*. "In compliance of and out of respect for the orders of the honourable court, we are immediately depositing the said amount," the spokesperson added. IHH is waiting for the written judgment from the SC before taking a decision. "Thereafter, the group will consult with its advisors on its next course of action," the company told *The Indian Express* in an email.

It had infused over Rs 4,000 crore for 31.1 per cent stake in Fortis last year, but was unable to initiate an open offer for an additional 26 per cent as the SC had stalled the process. Emails to RHC Holding Pvt Ltd, controlled by the Singhs, as well as separate holding firms of the brothers, remained unanswered by press time Friday. Queries to Fortis Healthcare also did not elicit a response.

# Legislative changes to hike insurance cover for bank deposits from current ₹1L likely in Winter Session: FM

**ENSECONOMIC BUREAU**  
NEW DELHI, NOVEMBER 15

THE GOVERNMENT is planning to make legislative changes in the upcoming Winter Session of Parliament to raise insurance cover on bank deposits from Rs 1 lakh at present and bringing multi-state cooperative banks under the purview of banking regulations, Finance Minister Nirmala Sitharaman said Friday.

The Centre has also held discussions with the Reserve Bank of India (RBI) to check whether the confiscated properties of promoters of HDIL can be given to the central bank, in order to provide some relief to depositors of Punjab and Maharashtra Co-operative Bank, she said.

When asked about the stress in the telecom sector, Sitharaman

**ON TELECOM SECTOR:**

■ The FM said that not just the telecom sector, her wish is that all companies in all sectors be able to do business, service their market customers and survive

said, "I want no company to shut operations. I want everyone to be up and running. We want the economy to have a good number of companies in business and flourish in their business. Not just telecom sector, my wish is that all companies in all sector(s) be able to do business, service their market customers and survive. So with that approach, the Finance Ministry has always been talking and in telecom too that's the approach we have taken."

Two major telecom companies, Vodafone Idea and Airtel, have posted a combined quarterly loss of about Rs 74,000 crore as they were hit by statutory dues after a recent Supreme Court ruling.

The FM also said that the Committee of Secretaries (CoS), appointed to deal with financial problems being faced by telecom companies, has drafted some

Cabinet Secretary to suggest measures to mitigate financial stress in the sector last month.

The Centre is also looking at issues in the banking sector and has called a meeting with banks next week to assess their lending to the NBFC sector. Sitharaman said the Ministry has sought disaggregated data from RBI and banks regarding their funding to AAA-rated NBFCs and NBFCs rated below AAA, along with funding details for AAA-rated NBFCs, and investment-grade NBFCs.

On the recent announcement to form a Rs 25,000-crore fund for more than 1,600 stalled housing projects, Sitharaman said four real estate companies from three cities — Mumbai, Bengaluru and Hyderabad — have approached for the bailout. More companies are likely to approach the nodal agency for taking benefit of this window from next week, she said.

Earlier this month, the government approved a Rs 25,000-crore fund to help complete over 1,600 stalled housing projects, including ones that have been declared NPAs or admitted for insolvency proceedings, in a bid to boost growth by steering consumption in real estate and associated sectors. The Alternative Investment Fund comprises of Rs 10,000 crore coming from the government and the remaining being provided by state insurer LIC and SBI.

On the fiscal scenario amid slowing revenues, the FM said that no welfare schemes will be curtailed despite low revenues and she expected GST numbers for November to be "good". She said the Centre is responding to challenges and is hopeful the economy will grow at a better pace in the second half of the fiscal.

# Current slowdown 'episodic': NK Singh

**PRESS TRUST OF INDIA**  
NEW DELHI, NOVEMBER 15

FINANCE COMMISSION Chairman N K Singh on Friday said the current economic slowdown is episodic and expressed hope that sluggishness will not continue for long.

India's economic growth hit a six-year low of 5 per cent in the first quarter of the current fiscal.

It is estimated that the growth may further slip to below 5 per cent in the second quarter and overall the economy is likely to register a less than 5 per cent expansion for the full fiscal.

"I do not regard that the current economic sluggishness is something that the country is going to experience for too long. I remain optimistic that the current slowdown is as much as anecdotal, episodic as much as cyclical and structural," he said

"I remain optimistic that the current slowdown is as much as anecdotal, episodic as much as cyclical and structural"

Earlier this month, India decided not to join the RCEP, the proposed mega trade deal of nations, as negotiations failed to address New Delhi's concerns.

Pointing out that India improved overall budgetary resources to the health sector, he said there is scope for further improvement especially on the financing side.

The Finance Commission had constituted a group to study the health sector to holistically examine best international practices for the health sector and seek to benchmark framework to these practices for optimising benefits keeping in mind local issues.

The Commission is also evaluating the existing regulatory framework in the health sector and examine its strength and weaknesses for enabling a balanced yet faster expansion of the health sector keeping in view India's demographic profile.

# 'Consumer spending report on hold over data quality issues'

**ENSECONOMIC BUREAU**  
NEW DELHI, NOVEMBER 15

CONSUMPTION EXPENDITURE declined for the first time in four decades in 2017-18, led by a decline in consumption spending in rural areas, even as an increase was seen for urban areas, a *Business Standard* report said quoting a yet to be released government survey.

Reacting to the media report, the Ministry of Statistics and Programme Implementation (MoSPI) said it was noted that there was a "significant increase in the divergence in not only the levels in the consumption pattern but also the direction of the change when compared to the other administrative data sources like the actual production of goods and services" and hence, in view of the data quality issues, it has been decided not to release the Consumer Expenditure Survey results of 2017-2018.

The MoSPI is separately examining the feasibility of conducting the next Consumer Expenditure Survey in 2020-2021 and 2021-22 after incorporating all data quality refinement in the survey process, it said, adding that the Advisory Committee on National Accounts Statistics has also separately recommended that for re-basing of the GDP series, 2017-18 is not an appropriate year to be used as the new base year.

"We would like to emphatically state that there is a rigorous procedure for vetting of data and reports which are produced through surveys. All such submissions which come to the Ministry are draft in nature and cannot be deemed to be the final report," the Ministry said.

Officials said the report was never placed before the National Statistical Commission (NSC), which is the final approving body for the release of surveys con-

ducted by the National Statistical Office (NSO), though the findings of the survey were discussed in a meeting of the Working Group earlier in July. As per the 'Key Indicators: Household Consumer Expenditure in India' survey conducted by the NSO, the average monthly spending by an individual reportedly declined by 3.7 per cent to Rs 1,446 in 2017-18 from Rs 1,501 in 2011-12.

The survey, conducted between July 2017 and June 2018, found that rural expenditure declined to Rs 1,110 in 2017-18 as against Rs 1,217 in 2011-12, including spending on food. Urban areas recorded an increase by 2 per cent in the same period.

Non-food spending also recorded a decline in rural areas, with spending on these items having fallen by 7.6 per cent during the survey period, while urban spending on these items went up by 3.8 per cent. Rural areas spent Rs 580 on food in 2017-18, nearly a 10 per cent decline from Rs 643 in 2011-12, while in urban areas, it rose marginally from Rs 943 in the previous survey to Rs 946 in 2017-18.

Among food items, spending on cereals and substitutes declined by 20.4 per cent in rural areas, while in the urban parts, it decreased by 7.9 per cent. Sugar, salt and spices also saw a lower expenditure in rural areas by 16.6 per cent, and by 14.2 per cent in urban areas. Economists said the trend of lower expenditure on cereals has been seen for some years, but overall lower spending on food is a concern, probably a fallout of the cash crunch in the economy post-demonetisation and rollout of the GST.

"Cereals were being substituted by better quality items, but the concern here is that the overall spending on food went down. Rural economy which runs mainly on cash saw the impact much more than urban economy, which among higher income levels is a non-cash economy," Prabab Sen, country director for the India Programme of the International Growth Centre and former Chief Statistician of India, said. He added it is worrying that though the survey was ready for the last 6-7 months, it was not put up to NSC for clearance.