

# Disqualified parties, promoters banned from liquidation: IBBI

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New Delhi, 7 January

Promoters or related parties disqualified from taking part in the insolvency resolution will now be debarred from participating in the liquidation process, according to a notification issued by the Insolvency and Bankruptcy Board of India (IBBI) on Tuesday.

Such persons will also not be eligible to enter into any settlement or arrangement with the creditors of the insolvent company under Section 230 of the Companies Act, the IBBI has clarified. The notification for the Liquidation Process (Amendment) Regulations, 2020, comes into effect from January 6.

The Insolvency and Bankruptcy Code (IBC) had introduced Section 29A to keep wilful defaulting promoters from taking control of their company and also barred related parties to thwart any backchannels for such entries. However, Section 230 of the Companies Act — in the absence of any such provision — allows promoters to reach a compromise or settlement with the creditors once they are out of the purview of the IBC.

“Through the amendment in the regulations, the IBBI has shattered the



## FINE-TUNING LIQUIDATION PROCESS UNDER IBC

- Persons disqualified under 29A cannot:
  - Take part in the liquidation process
  - Enter scheme of arrangement under the Companies Act
- Unclaimed dividends, proceeds to go into the Corporate Liquidation Account

hopes of many promoters intending to get back the business via scheme of arrangements route of the Companies Act. However, whether regulations can curtail the scope of the Companies Act is a pertinent question,” Manoj Kumar, partner, Corporate Professionals, said.

In October 2019, the National Company Law Appellate Tribunal (NCLAT) had ruled in the matter of Gujarat NRE Coke that ineligible promoters cannot reclaim control through scheme of arrangement under the Companies Act.

The NCLAT had said, “Even during

the period of liquidation, for the purpose of Section 230 to 232 of the Companies Act, the ‘corporate debtor’ is to be saved from its own management, meaning the promoters, who are ineligible under Section 29A, are not entitled to file application for compromise and arrangement in their favour under Section 230 to 232 of the Companies Act.”

While the amendment experts say they have brought the law in line with past judgments of the Supreme Court as well as the NCLAT, there are concerns. “What needs to be addressed are situations where there is no buyer even

in liquidation cases and if the promoters are also now disqualified by virtue of this amendment. Then there is no saving such companies from corporate death by liquidation,” said Anshul Jain, partner, PwC India.

“A secured creditor cannot sell or transfer an asset, which is subject to security interest, to any person, who is not eligible under the Code to submit a resolution plan for insolvency resolution of the corporate debtor,” the IBBI has clarified.

“This will be significant because it will prevent promoters from making backdoor entry by buying the assets of the company under liquidation,” said Mehul Bheda, partner, Dhruva Advisors.

The amendment provides that a liquidator shall deposit the amount of unclaimed dividends, if any, and undistributed proceeds, if any, in a liquidation process along with any income earned thereon into the corporate liquidation account before he submits an application for dissolution of the corporate debtor.

“This brings clarity for liquidators on how to deal with unclaimed amounts. It will help in timely completion of the process,” added Kumar.

# Banks staring at 20% more provisioning for ₹2.2-trillion debt

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Mumbai, 7 January

Banks might have to make an additional 20 per cent provisioning in the March 2020 quarter, failing timely resolution of bad debts. The deadline to restructure such debts under the Reserve Bank of India’s June 7 circular expired on Tuesday.

Bankers said they are looking outside the bankruptcy courts and will be able to resolve a few debts in the power sector before January-end. In such a case, they will not have to make provisions this quarter.

Banks have also asked for additional time from the regulator to resolve the pile of bad debt as they have an exposure of ₹2.2 trillion. Of this, India’s largest public sector bank State Bank of India’s (SBI’s) exposure is estimated at ₹57,000 crore, and the rest is shared among other banks.

A top SBI official said according to the RBI norms, lenders will have to only make an additional 20 per cent provision, which can be written back on implementation of the resolution plan. “What we have to focus on now is for how many cases we have a viable resolution plan. For these cases, the lenders can hold intercreditor agreement (ICA) and make 20 per cent provisioning if the plan is not implemented before March 2020,” said a top SBI official on Tuesday.

Some major cases are already before the National Company Law Tribunal — including Infrastructure Leasing & Financial Services and Dewan Housing Finance. In some cases in the power sector — like RattanIndia Power, Prayagraj Power, and Avantha’s Jhabua Power — lenders will manage to resolve before end of January, the SBI official said. The official added that banks need at least 9-10 months to resolve a bad debt account — considering the fact that many stakeholders are involved, which is why they demanded more time.

In its circular, the RBI had given a 210-day period to complete the resolution process. If banks cannot meet the timeline, they have to either send the company to bankruptcy court, or make a 20 per cent additional provision and pursue resolution outside of the Insolvency and Bankruptcy Code (IBC).

On an average, banks are recovering less than 50 per cent of their exposure through bankruptcy courts and that, too, after prolonged litigation. Hence, banks are trying to



## NO RESPITE

- Banks unable to resolve large number of bad debt accounts
- A few power sector cases may be resolved by January end
- Banks want additional time to resolve bad debt cases
- Ball in the RBI’s court to extend deadline for resolving bad debt

## CII DELEGATION TALKS INVESTMENTS, EXPORTS WITH PM



A delegation from the Confederation of Indian Industry (CII) — led by Vikram Kirloskar, CII president and chairman & MD of Kirloskar Systems — met Prime Minister Narendra Modi, on Tuesday in New Delhi. The delegation also comprised T V Narendran, vice-president of the CII and CEO and MD, Tata Steel, among others. It discussed issues relating to investments, ease of doing business, exports, and other matters concerning industry and economy

PHOTO: PTI

find a debt resolution plan outside courts. This, however, has to be vetted by a rating agency, so that there is clarity on the cash flow of the company.

Corporate lawyers said banks have to comply with stringent provisioning in their books if there is no resolution. “Cases where the resolution involves restructuring or change in ownership outside the IBC, the additional provisions may be reversed upon implementation of the resolution professional,” said Nirav Shah, partner, DSK legal.

In cases where resolution is pursued under the insolvency code, half the additional provisions made may be reversed on filing of insolvency application and the remaining may be reversed upon admission of the borrower into the insolvency resolution process under the IBC. In cases where assignment of debt or recovery proceedings is initiated, additional provisions may be reversed upon completion of that process, added Shah added.

With inputs from Subrata Panda