Bigger role for operational creditors in resolution process worries bankers

K Ram Kumar Updated on January 13, 2019

Bankers are worried that the corporate insolvency resolution process (CIRP) could turn chaotic and face delays as the Insolvency and Bankruptcy Board of India (IBBI) may amend the rules, giving operational creditors (OCs) a larger say in the resolution process.

Their fear stems from the observations of a two-judge Supreme Court Bench last month that OCs should have voting rights in proportion to their exposure, just like the committee of creditors (CoC), in the CIRP. Bankers say the IBBI may amend the Insolvency and Bankruptcy Code (IBC) rules in the wake of these observations.

An OC is a person/enterprise to whom an operational debt (a claim in respect of provision of goods and services) is owed by a corporate debtor and includes any person to whom such debt has been legally assigned or transferred.

The CoC comprises all the financial creditors of a corporate debtor. All the decisions of the CoC pertaining to the insolvency resolution require a 66 per cent quorum.

Merging creditors

"To further the cause of natural justice, the IBBI is believed to be thinking of including OCs as part of the CoC. Right now OCs are kept out of the CoC and they are dealt with separately by the insolvency resolution professional," said a public sector bank official.

The banker observed that recently a large telecom company was close to settling the ₹40,000 crore it owed to financial creditors through sale of spectrum. But the OC took the company to court, demanding that its ₹550-crore dues be settled, and the bank could not get back its dues.

There is a lingering fear among bankers that company promoters could manoeuvre OCs to derail/delay the CIRP).

Delays in the resolution process are a constant cause of worry. Of the 816 ongoing CIRPs, about 30 per cent have already exceeded the IBC's 270-day timeline, according to rating agency ICRA. Another 20 per cent has crossed the 180-day timeline.

Abhishek Dafria, Vice-President & Co-Head, Corporate Ratings, ICRA, said: "Of the 12 large defaulting accounts identified by the RBI in June 2017, only four have been resolved so far, while the others remain unresolved even after more than 450 days have passed since being admitted by the NCLT (National Company Law Tribunal).”

Per ICRA’s analysis, the lenders of these 12 companies have lost out on about ₹4,000 crore in additional income due to the delays in the corporate insolvency resolution process.

Published on January 13, 2019

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