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Banks can now refer defaulters to NCLT on case by case basis: Bankers

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NEW DELHI: With the Supreme Court nixing February 12 circular, the banks will now have discretion in taking the defaulting companies to NCLT under Insolvency and Bankruptcy Code (IBC), said experts.

The Supreme Court on Tuesday quashed the RBI's February 12 circular, which prescribed rules for recognising one-day defaults by large corporates and initiating insolvency action as a remedy.

In the best interest of customers, banks will take a call on referring cases to National Company Law Tribunal (NCLT) on case by case basis, a top public sector bank official told PTI.

Prior to February 12 circular of the RBI, the resolution mechanism available to banks were Corporate Debt Restructuring Scheme (CDR), Scheme for Sustainable Structuring of Stressed Assets (S4A), and Joint Lenders' Forum (JLF).

It would be difficult to say now cases would be resolved only through a particular mechanism like CDR, S4A or JLF, the official said, adding it would depend on the gravity of the default cases.

Banks can also look at the Project Sashakt as mechanism for the resolution of stressed assets apart from CDR, S4A and JLF, another senior public sector bank official said.

Last year, over two dozen lenders, led mostly by state-run banks, signed the inter-creditor agreement (ICA) under 'Project Sashakt' to speed up the resolution of stressed assets that are under the Rs 500 crore bracket.

According to former RBI Deputy Governor R Gandhi banks can now take defaulting companies on their own instead of being directed by the regulator.

"It is for the banks now to take a call on case to case basis whether the default is such that it can be taken to NCLT or they are willing to give some more time or restructure it. All these options are within the commercial domain of banks...they will still remain answerable to the RBI," Lakshmikumaran & Sridharan Executive Partner Punit Dutt Tyagi said.

According to Tyagi, the resolution can be done through any of the mechanism which existed prior to February 12, 2018 circular.

According to the circular, lenders had to classify a loan account as stressed if there was even a day of default. The bankers had to mandatorily refer all accounts with over Rs 2,000 crore loans to the National Company Law Tribunal (NCLT) or the bankruptcy court if they failed to resolve the problem within 180 days of default.

Lenders were supposed to file an insolvency application under the Insolvency and Bankruptcy Code 2016 within 15 days of the completion of the 180-day deadline. The circular also withdrew the loan resolution mechanisms the RBI had implemented, such as Corporate Debt Restructuring and Strategic Debt Restructuring.

Revised framework for resolution of stressed assets issued on February 12, 2018 invited criticism from various quarters, including a parliamentary panel.

The Reserve Bank of India substituted the previous guidelines with a harmonised and simplified generic framework for resolution of stressed assets in view of the enactment of the Insolvency and Bankruptcy Code.

"Although the new guidelines have been termed as harmonized and simplified generic framework, yet they are far from being so," Standing Committee on Energy in its report tabled in Parliament last year said.

"The Committee are of the opinion that the coinage of restructuring in resolution plan is hollow without having any serious meaning or business which only reflects the blurred vision of RBI in understanding and appreciating the problems. The Committee expect that clarity of thought and transparency in approach should be the guiding factor to streamline and strengthen the sector squirming under ineluctable hardships," it said.