

## SC order to examine anomalies in RBI circular

In September, the Supreme Court passed an order halting Insolvency and Bankruptcy Code proceedings. Mayur Shetty, Associate Partner, Rajani Associates, discusses the significance of the Supreme Court order:

**N. Mohan:** Can you give a gist of the RBI order of 12 February 2018, which was contested in various high courts?

**Mayur Shetty:** The RBI order replaced all the existing RBI instructions pertaining to resolution of the stressed assets with an aim to provide a harmonized and simplified generic framework. The theme of the revised framework seems to be to provide flexibility to the lenders and the stressed borrowers but, at the same time it ensures that a credible resolution plan (RP) is implemented within a timeframe.

The circular sets down a revised framework for resolution of stressed assets, which entails:

(i) early identification of the stressed assets; (ii) implementation of resolution plan for the stressed assets; (iii) conditions of implementation for resolution plan; and (iv) timeline of 180 days for accounts with lenders' aggregate exposure of ₹20 billion and above to be referred under the Insolvency and Bankruptcy Code 2016.

**How was this directive detrimental to corporates, especially those in power sector?**

The RBI order sets out a timeline of 180 days to arrive at a RP for accounts with lenders' aggregate exposure of Rs 20 billion and above. The RP has to be put in place by the lenders of such accounts. If the lenders fail to arrive at an RP for such account, the matter is to be referred under IBC. The concerned corporates have found this to be detrimental to their interest in several ways.

Firstly, the RP requires to be approved by 100% of the lenders of a company. Even one dissenting lender can stall the entire RP of the company. Thus the probability of successful implementation an RP under the circular is quite low.

Secondly, the RP involving restructuring of large accounts requires independent credit evaluation (ICE) of the residual debt by a credit rating agencies (CRAs) specifically authorized by the RBI for this purpose. Although the circular was issued on 12 February 2018, the RBI issued



**Mayur Shetty affirms only those corporates which are party to the plea will get relief**

a notification authorizing CRAs only on 21 May 2018, i.e. almost after 100 days from the date of the circular. Thus for the lack of CRA notification, insolvency resolution process could not begin and the concerned debtors lost 100 days out of 180 days.

Most pertinently, the circular does not make any concessions for sectors, which might have become stressed assets due to forces beyond their control for eg government policies, court orders etc. The power sector, which has been reeling since the Supreme Court's order of September 2014, cancelling 204 coal blocks, is one such majorly affected sector. Though Union of India and certain lending banks have shown an inclination to consider power sector specific issues, the RBI has taken a stand that it being a regulatory body, it cannot make any preferential treatment to any particular sector.

**What is the exact relief to corporates affected by the RBI circular as a result of the interim order?**

Relief, if any, would only be for the

corporates, which are party to the petition and not to corporates in general. In other words, the order is not likely to benefit any corporates other than the ones who are party to the transfer petition before the Supreme Court. The corporates who are party to the petition and in whose case the insolvency resolution process under IBC has not been initiated on the date of the order may get some breather from the circular. Having said that, the lending banks are free to refer any defaulting corporate's matter under the IBC.

**There is a view that this is not a general order and may apply only against those who moved court?**

Yes. The order would apply only to those corporates who are parties to the petition and it is not a general order. The order inter alia directs that status quo is to be maintained until the records of the case are being transferred to it.

**Can businesses, which have already gone into restructuring under the IBC, gain anything by this order?**

In the case of businesses which are party to the petition and have gone into restructuring under IBC, the process of restructuring would be stalled until the next date of the petition. However, it is to be ascertained whether or not any of the corporates, which are party to the petition are undergoing the restructuring process under IBC.

**Will banks stand to lose as a result of the Supreme Court order?**

As discussed, the banks are free to refer any defaulting corporates matter under IBC. Therefore, in my view, in general the banks don't stand to lose as a result of the order. However, if in any of the corporate petitions, which have now been transferred vide the SC order, happens to seek specific prayer in respect of pending proceeding under the IBC by a bank, then such proceeding would have to be kept in abeyance until the next date of hearing.

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