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Latest updates On Insolvency & Bankruptcy

06th February 2023

"Don't let yesterday take up too much of today"

➤ **Insolvency and Bankruptcy Code had big role to play in India's startup culture: Justice SK Kaul**

Justice Sanjay Kishan Kaul of the Supreme Court on Saturday said the Insolvency and Bankruptcy Code (IBC) has had a big role to play in India's new "startup culture" as it created a conducive environment for budding entrepreneurs.

Speaking at the Insolvency Law Academy's inaugural conference on the topic of "Emerging Global Insolvency Horizon: Indian Footprint and Front View", Justice Kaul said India's economy has been growing since the early 1990s, leading to an expansion of the credit market.

"In my opinion, the IBC has also had a big role to play in India's new startup culture by creating a conducive environment for budding entrepreneurs," he said. Justice Kaul said the expansion of the credit market has resulted in an increase in non-performing loans and assets. "

To solve this problem, the Insolvency and Bankruptcy Code was enacted in 2016 primarily to serve two purposes -- first, to ensure that debtors take sound and practical decisions and second, to give financially-ailing corporate entities a chance to rehabilitate and continue their business.

"The IBC essentially consolidated laws relating to insolvency resolution of companies, partnerships and individuals. Hence, the implementation of the IBC in India marked the beginning of a new era that completely overhauled India's insolvency regime," he said.

The apex court judge said in the early years of the code's implementation, there were complex questions that required authoritative and conclusive answers.

But this provided an opportunity not only to the judiciary, but all the professionals to contribute towards laying an infallible foundation, he added. Justice Kaul said the diversity in the Indian society must be reflective in all fields of life as it brings on the table varied views and experiences and wholesome solutions. "I believe that the main issue in ensuring a successful representation is unconscious bias.

This has led to a vicious cycle where on one hand, newcomers are not given a platform to showcase their talent due to their lack of experience. "But on the other hand, these newcomers cannot find that experience if opportunities are not granted to them.

Hence, I look forward to following how the discussions on bringing diversity into the process of insolvency, along with gender inclusivity, are dealt with by the panellists," he said.

The judge said mediation might also help reduce the burden on the National Company Law Tribunal (NCLT) and the National Company Law Appellate Tribunal (NCLAT).

"Alternative resolution of such disputes will not only provide an avenue to the entities without facing an adversarial process, but can also result in speedy and cost-effective solutions for the creditors. We have to realise that these are not professional creditors so as to say. "

These are people who have invested their life savings to be able to cherish the dream of owning their own house.

In these cases, it becomes all the more urgent to ensure that the relief extended to the homebuyers is not only effective, but also quick and least cumbersome," Justice Kaul said.

Source: The Economic Times

Read Full news at: [India Startup: Insolvency and Bankruptcy Code had big role to play in India's startup culture: Justice SK Kaul - The Economic Times \(indiatimes.com\)](https://www.indiatimes.com/india-startup-culture-justice-sk-kaul-the-economic-times/indiatimes.com)

➤ **Bankruptcy resolutions expected to soar after Budget spells relief for RPs**

Liquidators in India, who are entrusted with winding up bankrupt companies, will no longer be prosecuted for failing to comply with income tax (IT) regulations. They will only have to meet provisions under the insolvency law, since the government has decriminalized liquidators from meeting select provisions under the IT Act.

The move could provide a leg up for resolutions of liquidation cases under the Insolvency and Bankruptcy Code (IBC).

The Union Budget 2023 has decriminalized section 276A of the Income Tax Act which enabled criminal prosecution of a liquidator for failing to give notice of his/her appointment within 30 days or set aside amount or part with assets without notifying an officer.

The move will aid liquidators to abide by only one insolvency law without the fear of complying with two laws – Income Tax Act and Insolvency & Bankruptcy Code (IBC).

This will ensure smoother outcomes of resolutions under the IBC process, which has moved at a snail's pace since its implementation in December 2016, experts say.

"This will reduce the burden of legal compliances on the liquidators and they can perform their functions without any baggage and biases," Ashish Pyasi, associate partner, Dhir and Dhir Associates.

On Wednesday, the Budget proposed that no fresh prosecution shall be launched against a liquidator who fails to give notice or set aside the amount as required under the IBC law sub-section(1) of section 178 after 1 April, 2023.

Including this, during the Budget speech, finance minister Nirmala Sitharaman announced reduction 39,000 compliances and decriminalized over 3,400 other provisions.

The Budget documents said it has been the stated policy of the Government "to decriminalize minor offences as a step towards improving ease of business".

"It's a welcome move to delink both the sections (section 178 and 276A) from the liquidation process under IBC. As such this legacy had to be carried by an Insolvency Professional acting as the liquidator, who is neither promoter nor management of the Company, and liable for past acts of the Company, said Sutanu Sinha, Partner with the Business Restructuring practice at BDO India, who also acts as insolvency professional in cases under IBC.

Section 276A also imposes personal liability on liquidators for non-compliance.

According to Pyasi, the income tax law's provisions requiring to keep aside an amount was leading to conflict with the Insolvency and Bankruptcy Code (IBC) because of the nature of its claims and settlements. Therefore, compliance was difficult and non-compliance with the same would attract prosecution which would have attracted imprisonment up to two years.

"The provisions were made when the government dues (among the claims under IBC) were in priority. However, now IBC provides for a waterfall mechanism wherein it provides for which dues (including tax) will be paid. Therefore, to decriminalise these provisions became a necessity. If not decriminalised then it will lead to prosecution of the liquidator for something which is not even required to be complied with," Pyasi added.

A waterfall mechanism provides for distribution from sale of liquidation on priority basis with secured creditors in the top tier as the first to receive the settlement amount. This is followed by other dues including government and tax liabilities, workmen or employees and unsecured creditors.

While there are not many cases of liquidator being prosecuted, the law was a hindrance for them to conclude a sale under liquidation thereby slowing down the overall resolution process.

