

MCA, Finance Ministry hammer out key changes to IBC at review meet

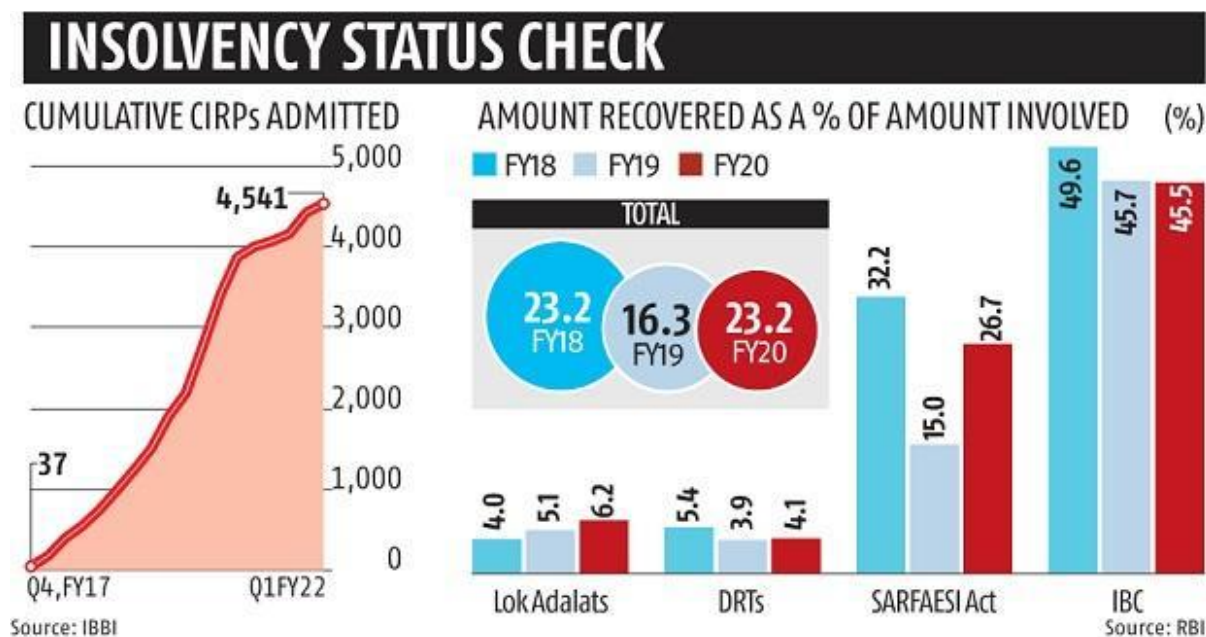
Updated at September 14, 2021 23:24 IST

A high-level review meeting was held on Tuesday with Chief Economic Advisor Krishnamurthy Subramanian, corporate affairs ministry, and senior officials to discuss some key changes to the Insolvency and Bankruptcy Code (IBC).

According to sources, one of the main topics of discussion was the code of conduct for the Committee of Creditors (CoC) proposed by the Insolvency and Bankruptcy Board of India (IBBI).

The corporate affairs ministry is working closely with the finance ministry and other regulators on the issue of conduct of the CoC under the insolvency resolution process since it is crucial for resolving prolonged stressed assets, indicated a source.

The insolvency regulator is collaborating with the Indian Banks' Association, Reserve Bank of India, and the Department of Financial Services to finalise the code of conduct, which would be a new addition to the Code.



The 32nd report of the Parliamentary Standing Committee on Finance had recommended the same, stating "there is urgent need to have a professional code of conduct for the CoC, which will define and circumscribe their decisions, as these have larger implications for the efficacy of the Code".

The IBBI, meanwhile, has invited public comments on the code of conduct for the CoC whose actions sometimes, according to the insolvency regulator, have been detrimental to the objectives of the Code.

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Resource: Business Standard, 14 September 2021

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The IBBI has said that the CoC functions in an unregulated environment. It has also proposed restrictions on request for resolution plans and the use of the Swiss Challenge model in the corporate insolvency resolution process.

According to the IBC lawyers, Section 240 (2) (r) read with Section 24 (8) empowers the IBBI to prescribe the manner in which the meetings of the CoC will be conducted. Therefore, the board is empowered to prescribe the manner of conducting the meeting, which can include the code of conduct for CoC members.

While the IBC allows the CoC to act in its commercial wisdom, there have been instances where the adjudicating authority has not agreed to their decisions. For instance, in the matter of Sterling Biotech, absconding promoters ineligible under Section 29A attempted to take over the company through a one-time settlement, with approval of 90.32 per cent vote-share of the CoC. The National Company Law tribunal had then observed, “This also raises doubt about the functionality of the CoC. Such an act of the CoC can never be treated as an act of commercial wisdom”.