



Bankruptcy panel proposes amendments to Companies Act

Panel has proposed making it easier for both the creditors as well as the firm to initiate rescue and insolvency proceedings



Some of the recommendations of the committee are likely to be a part of the Union budget to be presented by finance minister Arun Jaitley on 28 February. Photo: Hindustan Times

New Delhi: The panel constituted by the government to look into bankruptcy has proposed making it easier for both the creditors as well as the company to initiate rescue and insolvency proceedings.

The panel, in a report released by the finance ministry on Tuesday, has also proposed several amendments to the Companies Act, 2013, to make it easier to declare a company insolvent as India looks to make it easier for companies to wind up their operations and exit.

Last August, the finance ministry formed a committee headed by former law secretary **T.K. Viswanathan** and comprising members from the finance, corporate affairs, and micro, small and medium enterprises (MSME) ministries, the Reserve Bank of India and the Securities and Exchange Board of India to look into formulating the bankruptcy code to enable easier exit for companies.

Some of the recommendations of the committee are likely to be a part of the Union budget to be presented by finance minister **Arun Jaitley** on 28 February.

The report suggests a more active role for the yet-to-be functional National Company Law Tribunal (NCLT) to speed up corporate rescues. It also suggests various amendments to make NCLT more effective.

To ensure that it is not too late to rescue a company, the committee has suggested easing of existing regulations so that both secured and unsecured creditors are able to initiate rescue proceedings against a company.

While a secured creditor should be allowed to initiate proceedings if the debt is pending for more than 30 days, unsecured creditors representing 25% of the unsecured creditors should be allowed to initiate rescue proceeding, according to the panel's recommendations.

Currently, the Companies Act allows secured creditors to start rescue proceedings if 50% or more of the outstanding amount is due for payment for more than 30 days.

For early intervention and timely rescue of companies, the panel has also recommended a more simpler framework for appointment of administrators to oversee revival of companies.

For solving problems faced by small and medium enterprises, the panel has proposed an administrative mechanism with a statutory status for rehabilitation of viable MSMEs under financial distress.

"The proposed mechanism, if implemented effectively, will provide much needed relief to viable MSMEs under financial distress without involving the crippling costs associated with formal rescue mechanisms involving administrators and courts/tribunals," the report said.

The finance ministry is seeking feedback on the report till 20 February.

Since coming to power in May last year, the **Narendra Modi**-led National Democratic Alliance government has repeatedly articulated its intent to improve India's ranking in World Bank's Ease of Doing Business Index as the country looks to improve its standing as an attractive investment destination.

The most recent Doing Business Report ranks India 137 out of the 189 economies for resolving insolvencies. "According to data collected by Doing Business, resolving insolvency takes 4.3 years on average and costs 9% of the debtor's estate, with the most likely outcome

being that the company will be sold as piecemeal sale. The average recovery rate is 25.7 cents on the dollar”, the report said.

“The government should make it easier for rehabilitation and revival of sick MSME units as well as ensure easier bank funding. Bankruptcy code’s implementation is one important step in helping MSMEs,” said **Chandrakant Salunkhe**, president of the SME Chamber of India.

For easier liquidation of companies, the panel also suggested that the secured creditors should get first priority for payment, followed by government agencies such as the tax department, and finally, unsecured creditors. It has also suggested more powers to liquidators so that they can file cases against the management of a company for any offences committed.

The panel has also proposed safe harbour for clearing corporations and stock exchanges in the event of the insolvency of the clearing members and trading members in the interest of settlement finality in the markets.