Cabinet clears ordinance to amend bankruptcy code

Asit Ranjan Mishra

NEW DELHI: Days after Prime Minister Narendra Modi promised to decriminalise business failures, the Union cabinet on Tuesday cleared an ordinance to amend the Insolvency and Bankruptcy Code (IBC) that would ring-fence successful bidders from criminal proceedings against offences committed by previous promoters.

“The amendment will remove certain ambiguities in the Insolvency and Bankruptcy Code, 2016, and ensure smooth implementation of the Code,” the cabinet said in a statement on Tuesday.

While ongoing investigations against original promoters will continue, the new promoter would be required to extend all assistance and cooperation to any authority investigating an offence committed prior to the commencement of the corporate insolvency resolution process.

The cabinet had cleared the proposed amendments and introduced the bill in the Lok Sabha earlier in December.

However, Parliament could not clear the bill as the winter session ended on December 13. The ordinance will now be sent for the approval of the President.

The amendments will also make IBC prevail over other laws including the Prevention of Money Laundering Act.

The move will help in the rescue of bankrupt Bhushan Power and Steel Ltd (BPSL) by the second-largest private steelmaker in the country, JSW Steel Ltd, a transaction that has been complicated due to a probe by the Enforcement Directorate and the attachment of BPSL’s assets.

The National Company Law Appellate Tribunal (NCLAT), BPSL, subsequently stayed the transfer of payment by the bidder to the creditors of BPSL, pending an investigation into allegations of fraud and money laundering by the former owner of the steel mill. Bhushan Power, which had accumulated a debt of ₹47,000 crore, was part of the original dozen cases identified by the Reserve Bank of India (RBI) to be referred to bankruptcy courts.

The move will help safeguard corporate debtors, protect last-mile funding, boost investments in financially distressed sectors, speed up the corporate insolvency resolution process (CIRP) and strengthen the overall IBC framework, said DK Aggarwal, president of PHD Chamber of Commerce and Industry.

“This will attract more bidders to come forward and bid for stressed assets by boosting their confidence in the IBC process.”

Speaking at an ASSOCHAM event last week, Modi said all business failures are not due to financial crimes.

“That’s why our government has made the IBC, IBC is helping many such companies that are facing failure for some reason. This is an effort from the government to handhold the corporate world so that companies learn from their experiences and do something better in future.”

Under the IBC process, of the 21,136 applications filed so far, 9,653 cases involving a total amount of ₹3.7 lakh crore have been disposed of at pre-admission stage. While 2,838 cases were admitted into CIRP, 308 are closed—either by appeal, review or withdrawal. In the 161 resolved cases, the realisable amount is ₹1.6 lakh crore.

As a result of India implementing IBC, India’s ranking in the World Bank Doing Business report 2020 in “Resolving Insolvency” pillar jumped to 52 from