

## GOVT DEPARTMENTS HAVE STARTED CLEARING UP PENDING PAYMENTS

# Over Rs,3L cr dues, IBC changes add to MEMEs' liquidity woes

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RECENT CHANGES in the Insolvency and Bankruptcy code(IBC), raising the threshold for invoking insolvency to ₹ crore from ₹ 1 lakh, are among the reasons MSMEs are finding it difficult to recover their dues from large corporates. Even as government departments have started clearing up dues of MEMEs with the Finance Ministry stressing timely clearance of funds, many micro and small firms are stuck with pending payments of more than ₹ 3 lakh crore with large firms with no easy legal recourse.

Industry sources said the IBC had empowered many small companies with dues of-say ₹40-50 lakh-to get their dues cleared by threatening to take bigger companies to NCLT for non-payment. This gave them a negotiating lever in early clearance of their dues, because a company being dragged to National Company Law Tribunal can have adverse ramifications. On March 24, the government decided to raise “the threshold of default under Section 4 of the IBC 2016 to ₹ 1 crore” due to emerging financial distress for most companies. While the intention was to provide some breathing space to companies facing distress due to pandemic, it had an unintended effect of slowing down payments by big corporates to smaller firms.

## LARGE CORPORATES ARE BATTER PREPARED

■ The pandemic has led to large corporates being on a much stronger footing financially compared to smaller firms who have lost bargaining power to claim dues, especially since April.

“Even small company doing a monthly billing of ₹ 1 core usually has pending payments of Rs30-40 lakh. Now they are stuck. They can request for clearance of dues, stop partial supplies but cannot use the IBC,” said KE Raghunathan, convener of the Consortium of MSME associations. The threshold for invoking insolvency could have been raised 10 times to ₹ 10 lakh instead of the being raised 100 times to ₹ 1 crore, as that would prevent most frivolous cases being field under the law, he said. MSMEs used this legal provision as a bargaining tool to get their dues on time and it worked in many cases.

As per a recent **Brickwork Ratings** study, MSMEs have nearly ₹3.3 lakh crore of their funds stuck with strong large corporates in form of receivables. “The liquidity crunch being faced by MSMEs is on account of two key issues, including the lack of a funding line from the banking system and stretched working capital because of low bargaining power with large corporates to have payments released,” it said.

The pandemic has led to large corporates being on a much stronger footing financially compared to smaller firms who have lost bargaining power to claim dues, especially since April. Reduction in days for which dues a pending would substantially improve liquidity conditions for MSMEs. While banks have started disbursing funds to MSMEs under the 100 percent Emergency Credit Line Guarantee Scheme announced by the government last month, credit availability remains a challenge for stressed firms.

Till March 2020,157 corporate insolvency resolution plans were withdrawn under Section 12A of the IBC, of which 64 cases involved amounts less than ₹ 1 crore, as per data from the Insolvency and Bankruptcy Board of India. The reasons for early withdrawal of cases were full settlement with the applicant and other settlement with creditors.

“The IBC law is working as a deterrent as many times debtors settle the case on receipt of a notice for repayment. In many cases, we have observed that dues are recovered after an application is field but before it's admitted by the NCLT bench. Settlement prior to admission of the case is cost effective for the both parties and it works well for smaller companies,” said a Delhi based lawyer. Even for banks and financial institutions, IBC has resulted in higher recoveries compared to other platforms.

As percentage of claims, banks recovered on a average 42.5 percent of the amount field through the IBC in 2018-19, against 14.5 percent through the SARFAESI, 5.3 percent through lok Adalats and 3.5 percent through Debt Recovery Tribunals, as per latest available RBI data.