Should revised bids be allowed in the insolvency resolution process?

BY MANNU ARORA, ETCFO | UPDATED: MAR 16, 2018, 11.06 AM IST

Two high profile cases are similarly poised under the still nascent Insolvency and Bankruptcy Code (IBC). In both cases of Binani Cement and Bhushan Power and Steel, there are legal cases in court on the process of bidding for these assets.

In each case, a party is ready with a higher offer than the one selected by the lenders. So is the process of bidding skewed if it rejects an offer which would perhaps provide better value for these distressed assets?

ETCFO asks Arjun Gupta, a corporate insolvency lawyer with law firm, Nishith Desai Associates for some answers. Edited excerpts:

What does the IBC currently state in terms of revised bids? Should they be allowed or not? Where exactly is the lack of clarity?

Arjun Gupta: The Code does not prescribe a particular set of circumstances where resolution plans are to be reevaluated or where a fresh invitation for resolution plans has to be made, this depends on factual circumstances.

However, as we have seen in recent cases, if the total amount due to financial creditors undergoes a change due to the inclusion of the claims of a financial creditor which was disallowed earlier, then the Information Memorandum basis which resolution plans have been submitted would have to be altered, thus necessitating a fresh invitation for resolution plans.

The confusion reigning in present cases is because of the lack of guidance on process under the Code.

However, with the recent amendments to the CIRP Regulations*, whereby an "evaluation matrix" has to be provided by the resolution professional to all prospective applicants, we expect there to be more transparency and accountability in the manner of evaluation of resolution plans and the associated processes.

Q: As an insolvency lawyer, what is your view: should revised bids be allowed? What could be the possible ramifications? Undervaluation of assets?

Arjun Gupta: Sometimes, due to aforementioned factual constraints, it would be imperative to discard resolution plans and re-initiate the process. This will obviously cause delays in completion of the process of resolution.

As is evident from the recent cases, some of the accounts have failed to come up with a viable resolution plan within the extended 270 day period, thereby pushing such debtors into liquidation.

This will hamper not only the amount which can be realized by financial creditors but also cause employment issues. Therefore, it would be in the interest of all stakeholders to not scrap already submitted resolution plans.

Can the law be more explicit regards revised bids? How?

Arjun Gupta: The amended CIRP Regulations have already provided certain timelines for submission of details to resolution applicants including the evaluation matrix and also for receiving resolution plans.

These timelines along with the added information which is to be provided to prospective resolution applicants will make the entire process more streamlined and less prone to errors.

Further, if there is a strict timeline for submission of claims by all creditors which cannot be extended by any adjudicatory authority, then that would help the resolution professional in finalizing important documentation, without there being any scope for revisions which could possibly derail the resolution process.

* On 07 November 2017, the Insolvency and Bankruptcy Board of India (IBBI) amended the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016 (CIRP Regulations) and the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017 (Fast Track CIRP Regulations), issued under the Insolvency and Bankruptcy Code, 2016 (Code).

The stated aim of these amendments was to ensure that the Corporate Insolvency Resolution Process (CIRP) was to lead to "a credible resolution plan that maximises the value of assets of the corporate debtor."