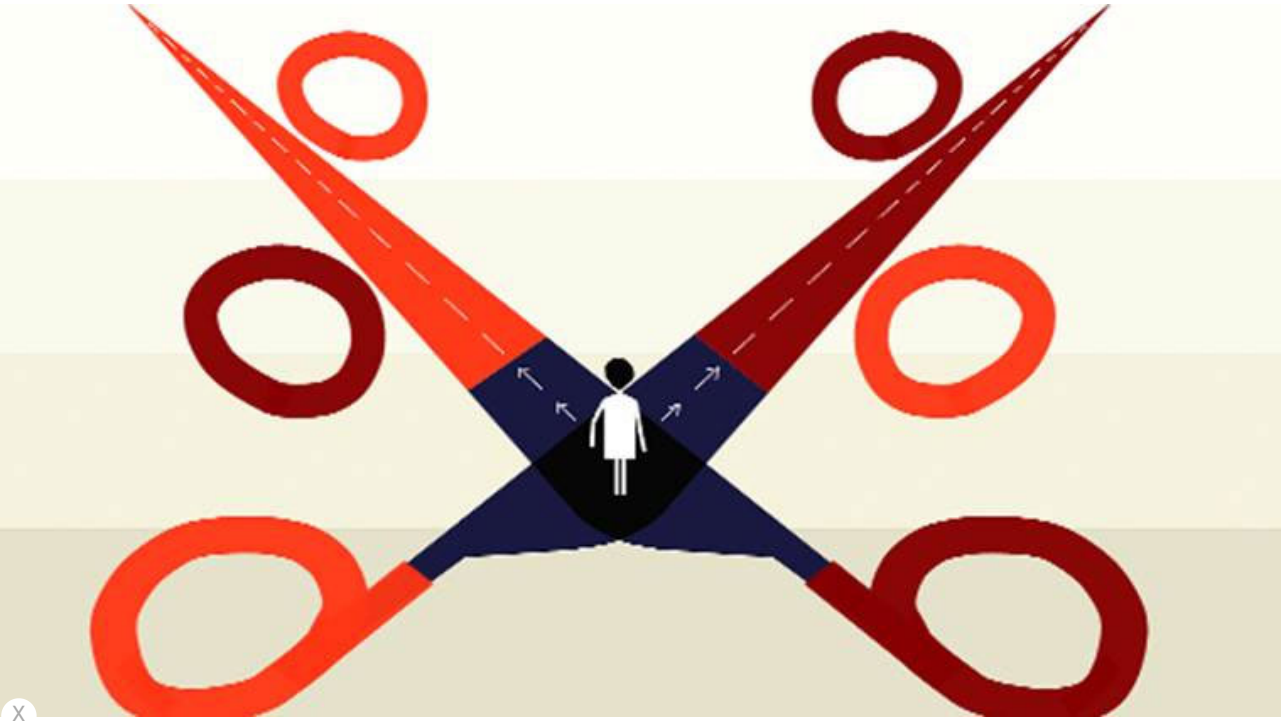
Union Budget 2018, Insolvency Resolution: MAT relief for resolution of stressed companies, but experts want more

Provisions in the IT Act pertaining to carry forward and set off of losses in closely held firms would be relaxed for entities being dealt with under the code.

Written by **George Mathew** | Mumbai | Updated: February 2, 2018 10:41:32 am



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With the success rate of bad debts recovery under the Insolvency Bankruptcy Code (IBC) at a low level, the government has decided to provide some tax reliefs to facilitate insolvency resolution proceedings to help make stressed companies more attractive to potential buyers. However, industry experts said the government should consider more tax reliefs to make the process a success.

The government will amend the Income Tax Act in order to provide relief with respect to Minimum Alternate Tax (MAT) and carry forward of losses by companies undergoing insolvency proceedings. The government has proposed that for computation of MAT the aggregate amount of unabsorbed

depreciation and brought forward loss will be allowed to be reduced from the book profit in the case of companies where an application under the IBC has been admitted. Provisions in the Income Tax Act pertaining to carry forward and set off of losses in closely held companies would be relaxed for entities that are being dealt with under the Code. Insolvency resolution professionals would be allowed to verify the return of income in case of a company where an application under IBC, 2016 has been admitted.

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Shardul S Shroff, Executive Chairman, Shardul Amarchand Mangaldas, said, “Finance Bill 2018 provides relief on MAT and carry forward of loss for distressed companies under the IBC process. However, in order to facilitate the successful resolution of such companies under the IBC, a few more tax exemptions should have been provided including exemption on capital gains on sale of assets by ailing companies, exemption to acquirers acquiring shares of distressed companies at substantial discounted prices, waiver of requirement to obtain NoC from the tax department.”

"The budget had also expected incremental changes to assist with the insolvency process under the IBC regime. Apart from the relaxation for calculation of MAT and the requirement of Insolvency Professionals to verify the audited accounts no big-ticket changes were introduced in this budget," said Babu Sivaprakasam, Partner, Economic Laws Practice.

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Jinesh Shah, Partner, KPMG, said, "companies under insolvency resolution process go through debt restructuring and change of control. Budget has provided relief on tax arising due to book profit (MAT) on account of write back of debt. Currently in case of unlisted company any change of majority voting rights leads to lapse of carry forward losses. Budget has provided relief to allow carry forward of losses by companies under insolvency resolution process even if majority voting rights undergo change."

The Economic Survey 2017-18 shows a low success rate of recovering only one-third of loans. The Indian Express had reported that financial creditors were able to recover 33.53 per cent of total claims outstanding from the defaulting borrowers. The financial creditors were able to recover Rs 1,854.40 crore out of the total claims of Rs 5,530.30 crore.

The number of companies facing liquidation under the Insolvency and Bankruptcy Code (IBC) is thrice that of companies where a resolution plan has been approved.

Of the 525 insolvency petitions filed in the National Company Law Tribunal (NCLT), 30 companies have been ordered to be liquidated, 10 companies have got their resolution plans approved, 34 have been closed by appeal or review and 451 companies are still undergoing the process. In terms of the quantum of loans involved for companies under the insolvency process, the steel sector tops the list with Rs 57,000 crore of debt, followed by retail at Rs 12,719 crore.

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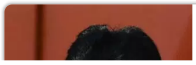

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