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'Of all biz referred under IBC, negligible few get liquidated'

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It may be too early to think about prepack scheme for large businesses before experiencing how it pans out for MSMEs, says M.S. Sahoo, IBBI chairperson

The Insolvency and Bankruptcy Code (IBC), brought in to improve the credit culture in the country and counter industrial sickness, has been closely watched by policymakers and experts for its effectiveness. Only a few of the businesses that get referred to tribunals under IBC are liquidated, Insolvency and Bankruptcy Board of India (IBBI) chairperson M.S. Sahoo said in an e-mail interview. Edited excerpts:

India operationalised the IBC in 2016-17, when the economy grew at 8.2%. Is it time for a review?

Like any other economic law, IBC is evolving in the context of life. It has been responsive to emerging market realities and has undergone prompt course corrections to stay in sync. In less than five years, it has witnessed six major legislative interventions. Two recent ones, suspension of filing of applications for initiation of insolvency proceedings and the introduction of pre-packaged insolvency resolution process for micro, small and medium enterprises (MSMEs) are products of the changing times. The Insolvency Law Committee continuously reviews the working of IBC to identify issues impacting efficiency and effectiveness of processes and makes recommendations to address them.

IBC has improved India's ease of doing business score and cut the time taken for bankruptcy resolution. However, the higher share of liquidation cases remains a worry. What went wrong and how can we fix this?

The claim regarding higher incidence of liquidation may appear correct if one watches only the end game, where about 1,600 cases reach the finishing line, that is, end with resolution plan or liquidation. However, 19,000 cases were closed, either before or after admission, but before reaching the finishing line. If the entire universe of companies touching IBC is considered, the percentage of companies proceeding for liquidation is negligible. Even at the end game, what matters is the value of stressed assets rescued. In value terms, the cases accounting for 70% of the stressed assets were rescued, while the cases accounting for 30% of the stressed assets proceeded for liquidation.

Further, of the companies proceeding for liquidation, three-fourth were defunct, and of the companies rescued, one-third were defunct. This means that of the companies touching the finishing line, two-third were defunct to start with. The companies ending up with liquidation had assets valued, on average, at about 6% of the claims against them, when they entered the IBC. If a company has been sick for years, and the assets have depleted significantly, the market is unlikely to rescue it.

The code provides for reorganization in two ways, first by a resolution plan, failing which, by liquidation. It is the market that makes the choice, and the law is only an enabler. Liquidation per se is not all bad. It is through liquidation that the resources sunk in the failed firms are released for more efficient uses in the economy.

IBC practitioners say disallowing existing shareholders, under whose watch the company defaulted on repayment obligations, from bidding under the IBC process (under section 29A of IBC) reduces the number of bidders for the bankrupt business. Are you prepared to drop this section?

IBC does not prohibit existing shareholders from submitting resolution plans. The prohibition is only on a person, whether a shareholder or not, who does not have credible antecedents. Any person, which is connected or related to the prohibited person, is also prohibited. This disincentivizes opportunistic behaviour and helps to reduce moral hazard. Since the entire world, except the set of ineligible persons, can submit resolution plans, section 29A does not really shrink the pool of resolution applicants. There are better ways of expanding the pool than compromising the provisions of section 29A, which is a part of basic structure of the Code.

IBBI has been strengthening the disciplinary framework of insolvency resolution professionals. Has the conduct of these professionals not been satisfactory in the past? What are the areas where their conduct and efficiency need improvement?

Institutions are foundations of a well-functioning market economy. Insolvency profession is a key institution of market processes under the Code. An insolvency process demands the highest level of competence as well as the highest standards of integrity of the insolvency professional. I believe they have performed exceedingly well, in the face of vested interests. However, a few of them have brought criticism to the entire profession. The profession is still in its infancy and establishing its legitimacy and now is the time to lay a strong foundation of professionalism. The IBBI and Insolvency Professional Agencies (IPAs) have been unsparing in dealing with misconduct of insolvency professionals. The guiding principle in this has been to decrease the cost of compliance and increase the cost of non-compliance. The provisions for imposition of monetary penalty for contraventions have always existed. The recent IBBI circular specifying minimum and maximum amounts of monetary penalties for various contraventions is to bring in objectivity and uniformity across insolvency professional agencies.

Can the pre-pack resolution scheme introduced for small businesses be extended to large businesses?

The IBC is a road under construction. It envisaged standard, plain vanilla processes to start with, but anticipated course corrections to continue to remain in the service of the business and economy. New processes and new features to existing processes are being added, with maturity of the ecosystem. Pre-pack has just been rolled out. It may be too early to think about prepack for large businesses before experiencing how it pans out for MSMEs.