

Business Standard

Corporate debt market could be the benchmark of our performance: M S Sahoo

Interview with chairman of the Insolvency and Bankruptcy Board of India

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M S Sahoo

M S Sahoo, chairman of the Insolvency and Bankruptcy Board of India, tells *Veena Mani and Indivjal Dhasmana* in an interview the new system will strengthen the corporate debt market, particularly non-bank and unsecured debt. Edited excerpts:

What are the parameters to judge the efficacy of the Insolvency and Bankruptcy Code?

The new bankruptcy regime provides an opportunity to resolve insolvency wherever possible and provide a smooth exit wherever required in a market-determined and a time-bound manner. Let us look at measurable outcomes.

There are two broad ways of financing enterprises: equity and debt. Different projects have different profiles and hence need different patterns of financing. Today, the share of debt in enterprise financing is below the levels of comparable economies. A key outcome will be improvement in the share of debt in total financing, the share of financial debt, the share of non-bank debt in total debt, and the share of unsecured debt in total debt.

A corollary of this is a developed debt market. Another outcome will be the amount of unutilised resources released from defunct enterprises.

By when should we start making this assessment?

After a reasonable mass of transactions passes through the regime.

Even though the resolution professional is independent, there is need for some oversight...

An insolvency professional proposed by the applicant is appointed as an interim resolution professional and his term is at best 30 days. The committee of creditors in its first meeting either appoints the interim resolution professional as resolution professional or appoints another insolvency professional as resolution professional. Further, the committee of creditors may replace the resolution professional by another resolution professional whenever it feels necessary. The applicant as well as the committee of creditors undertake due diligence before appointing or replacing an insolvency professional as interim resolution professional or resolution professional, as the case may be. There is thus oversight by stakeholders.

Further, an insolvency professional is subject to regulations and oversight of the insolvency professional agency concerned and the IBBI. These require the insolvency professional to be independent of the corporate debtor. He is required to make various disclosures about existence of any pecuniary or personal relationship with any of the stakeholders. He has a number of obligations. For example, he will not ordinarily allow his relatives to acquire assets of a debtor under liquidation.

The IBBI is working towards framing rules on direct liquidation by March. What clauses are likely to go into them?

It is too early to say what the rules will be. A working group constituted by the ministry of corporate affairs is working on voluntary liquidation. After it submits the report, it will go through the normal process and it will be our endeavour to notify these rules expeditiously.

Will the insolvency and bankruptcy process make debt recovery tribunals redundant?

The Insolvency and Bankruptcy Code does not dilute the role of debt recovery tribunals. It confers on debt recovery tribunals an additional responsibility as adjudicating authority for individual insolvency and bankruptcy.

Will lenders aim at the company instead of promoters to flesh out debt?

The code provides an opportunity to stakeholders at the very first default to take a call and empowers them to take the most appropriate call in their best interests. If one takes note of the alert and acts accordingly, one is unlikely to reach an alarming situation. It is not an issue between a company and promoters or even between debtors and creditors – all of them can use and benefit from the code. In fact, a few applications filed by debtors have already been admitted.

How long do you think it will take for insolvency to become a full-fledged profession?

We have a full-fledged insolvency profession today. Statutorily regulated professionals like chartered accountants, cost accountants, company secretaries and advocates with 15 years of practice have been allowed to act as insolvency professionals for a limited period. Such professionals with 10 years of experience are allowed on passing the limited insolvency examination. The market has come up with a large number of training programmes to build the capacity of insolvency professionals. The IBBI is also contemplating a training programme. This is a practice oriented profession; quite a bit of learning will happen on the job.

Given the institutional capacity, can you meet the timelines set?

The timeline of 180 days is for stakeholders. They undertake transactions and the entire process is under their control. If one is pursuing his own interest, and everything is under his control, in all probability he will do it well in time. The state is not examining the transaction (resolution plan) on merits. It mostly looks at if due process has been followed.

To make it happen in 180 days, there are certain institutional facilities. One facility is the insolvency professional, who guides stakeholders throughout the process. The other is the information utility, which will be the storehouse of all the information one needs for a transaction.

Further, over time, efficient practices develop and processes become standardised and automated. For example, regimes abroad have a practice called pre-pack, where the stakeholders anticipate the entire process and agree upon the resolution plan in advance and then trigger the process. If things are planned beforehand, with services of insolvency professionals and information utilities, the stakeholders should be able to complete transaction faster.

How will you tackle cross-border insolvency?

The code enables the government to enter into an agreement with the government of any other country for enforcing its provisions. This will allow a resolution professional to apply to an adjudicating authority to deal with the assets of a corporate debtor situated in a country with which the government has reciprocal arrangements. This is the beginning, and it will evolve further.

Innoventive industries has challenged the constitutional validity of the Insolvency and Bankruptcy Code in the Bombay High Court over rights of borrowers and its retrospective application. Does this bother you?

I have not seen the plea, though I have read about it in the newspapers. My feeling is that if someone goes to court now, it will only help clarify the matter and transactions will move faster in future. The judiciary guides and settles matters where parties have different perspectives and thereby streamlines the path for all similar transactions.