

Just the threat of IBC process made debtors pay up Rs 1 lakh crore: IBBI chairman Sahoo

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As the Insolvency and Bankruptcy Board of India (IBBI) turns two on Monday, its chairman MS Sahoo dwells upon the efficacy of the new insolvency law in preventing a pile-up of bad debts in future as well as good recovery from default cases where the law is applied fairly early.



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As the Insolvency and Bankruptcy Board of India (IBBI) turns two on Monday, its chairman MS Sahoo dwells upon the efficacy of the new insolvency law in preventing a pile-up of bad debts in future as well as good recovery from default cases where the law is applied fairly early. In an interview with FE's Banikinkar Pattanayak, he also says just the threat of IBC is forcing debtors to pay up, as operational creditors have recovered more than Rs 1 lakh crore even before their insolvency applications were admitted by NCLTs. Commenting on the delay in the resolution of the

large cases (only four of the 12 large cases recommended by the central bank over a year ago have been resolved so far), Sahoo says every new law takes some time initially to be settled, after which the process picks up pace. Edited excerpts:

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How do you see the performance of Insolvency and Bankruptcy Board of India (IBBI) over the past two years?

While searching for an accommodation in Delhi, one of my colleagues met

many landlords. All of them invariably asked him: 'where do you work?' My colleague with reluctance responded: I am working for a very new and

small organization, called Insolvency and Bankruptcy Board of India. Most of the landlords responded: 'Oh, IBBI'. Now, IBBI has an identity and it has given identity to me and my colleagues.

IBBI is one of the four key pillars of the institutional infrastructure for implementation of the IBC. It is a unique regulator: it regulates and develops a profession, institutions and best practices as well as regulates the various processes under the IBC. It has put in place the regulatory framework providing for corporate insolvency resolution process (CIRP), fast track resolution, corporate liquidation, voluntary liquidation, insolvency professionals (IPs), insolvency professionals agencies (IPAs), insolvency professional entities (IPEs), information utilities (IUs), inspection and investigation, and grievance redressal. It has facilitated development of the ecosystem comprising 2037 IPs, 81 IPEs, three IPAs, one IU, 8 registered valuer organisations (RVOs), and 70 registered valuers (RVs) as on date. The debtors and creditors alike are undertaking corporate processes. About 1100 corporates, some of them having very large non-performing assets account, have been admitted into CIRP. About 250 of them have completed the process yielding either resolution or liquidation. About 250 corporates have commenced voluntary liquidation.

One needs to pass the limited insolvency examination for registration as an IP. Similarly, one needs to pass valuation examination of the relevant asset class for registration as a valuer. IBBI offers an online limited insolvency examination and also online valuation examinations in three asset classes (Land & Building, Plant & Machinery, and Financial Assets or Securities) throughout the year for prospective candidates. Only those persons, who are fit and proper, are registered as IPs or RVs. IBBI, IPAs and RVOs offer pre and post-registration trainings for IPs and RVs to build their capacity.

IBBI is a **mini** state having quasi-legislative, executive and quasi-judicial functions. In order to avoid intra-institutional bias, these three functions are located in three separate verticals, each under the charge of a whole-time member. As regards quasi-legislative function, it has been the endeavour to effectively engage stakeholders to factor in ground reality, secure ownership of regulations and make regulations robust and precise, relevant to the time and for the purpose. In addition to usual roundtables, working groups, advisory committees and public consultations, it has also institutionalized an online mechanism for crowdsourcing of ideas. Consequently, the universe of ideas available with IBBI much larger and the possibility of a more conducive regulatory framework much higher. As regards the quasi-judicial function, only after due process of fact finding, IBBI issues a show cause notice. The disciplinary committee disposes of show cause notices by a reasoned order, after following principles of natural justice.

With the IBC increasingly becoming the preferred tool for creditors to recover dues from defaulters, does the eco-system have adequate capacity to handle a large number of cases?

Banks have many options for recovery of their loans. IBC is not one of them. Even when they want resolution, IBC is not the only option. There is no compulsion on any stakeholder to use IBC for resolution. They should use it only when they do not find an effective resolution outside IBC. In fact, given the inevitable consequence of a resolution process that the firm may move away from the hands of the existing promoters, the debtors are exploring other options for resolution. Nevertheless, it is the duty of IBBI and other elements of the of the ecosystem to make IBC the preferred option for stakeholders.

The scheme of incentives and disincentives under the IBC would bring in behavioural changes on the part of every stakeholder, minimising the incidence of failure, default and under-performance. I firmly believe, in the long run, the best use of the IBC would be not using it at all.

IBC segregates commercial aspects of insolvency resolution from judicial aspects and empowers stakeholders and adjudicating authority to decide matters within their domain expeditiously. In the initial days, many issues need to be sorted out for the first time. After a while, admission into CIRP and approval of resolution plan will be fairly straight forward and routine. In any case, Government has plans to increase bench capacity of Adjudicating Authority. Other capacity such as number and quality of IPs are market driven. I do not, therefore, see any capacity constraint in the long run.

Although the IBC stipulates that the insolvency resolution process must be over in a maximum of 270 days, of the 12 large default cases recommended by the **RBI** over a year ago, resolution has taken place in only four cases. Some of these cases are being heard by NCLAT or even the Supreme Court.

India is probably the only country which has put a timeline into the process. She is trying to adhere to timeline. When you start something new, many contentious issues arise. In the initial days of the implementation of a new law, the disposal of cases takes a little longer. Once those issues are sorted out and the law is settled, the process picks up pace and becomes fairly mechanical after a while. We have crossed this stage as regards admission into CIRP. We are yet to cross this stage as regards approval of resolution plan. Further, it is not that every CIRP is getting delayed. The CIRPs, which have yielded resolution, took about 230 days on average for filing resolution plans with the Adjudicating Authority for approval. Please compare this with the track record in pre-IBC days.

An amendment to the CIRP regulations on 4th July, 2018 has specified internal timelines for each activity in the process and allowed certain activities to run simultaneously. The stakeholders are learning the process, best practices are developing and various activities in the process are getting streamlined and automated. Going forward, each activity will take lesser time. It is important to note that the issues are being settled by IBBI, Government, Adjudicating Authority, and the Hon'ble High Courts and Hon'ble Supreme Court very expeditiously.

Once the initial sets of cases are closed, what is the future of recovery through this law?

To me, the IBC is a proactive and behavioural law. It has already brought in a paradigm shift in the behaviour of both debtors and creditors. Though it is not for recovery, its very existence is prompting recovery within as well as outside the IBC. After we have seen the outcome of several CIRPs, where very big firms such as Bhushan Steel have changed hands, debtors are leaving no stone unturned to repay the dues on time. They are repaying dues as soon as default occurs, or they receive notice from an operational creditor, before filing of an application for initiation of CIRP, before admission into CIRP, and even before 90 days of the commencement of CIRP. Hence incidence of default would reduce. This law entitles the stakeholders to trigger CIRP as soon as there is a default of Rs. 1 lakh. They have a right, but an obligation to trigger it. They need to explain at least to themselves as to why they are delaying trigger. This will prevent ballooning of default to unresolvable proportions. In early days of default, enterprise value is much higher than the liquidation value and hence the stakeholders have motivation to resolve insolvency of the firm rather than liquidate it. Hence the possibility of resolution will be higher.

At market place, firms fail for many reasons, including competition and innovation. Irrespective of the reason, failure dampens entrepreneurship. IBC reduces the incidence of failure, by incentivizing prevention of failure, rescuing failing businesses, wherever possible, and releasing resources from failed businesses, wherever required. It enables an entrepreneur to get in and get out of business with ease, undeterred by honest business failures. This would promote entrepreneurship.

How much of recovery has been made under the influence of the IBC even though the law wasn't actually applied?

There is no reliable data as to recovery before filing of applications to Adjudicating Authority. After an application is filed to trigger CIRP, it can be withdrawn before its admission. Most of such applications are withdrawn on payment of default amount. Reportedly, the creditors have recovered more than Rs. 1 lakh crore through this route. Recovery is happening even after admission into CIRP. A few matters have been settled with the approval of the Hon'ble Supreme Court. The data indicate that the banking sector is making good recovery through resolutions outside the IBC.

Now that the IBC is relatively fairly streamlined, what next? Wherever and whenever we find a scope to further bolster the insolvency ecosystem, we address them immediately. A legislative framework for cross-border insolvency is under consideration of the Insolvency Law committee. There is a proposal to commence insolvency resolution of personal guarantors to corporates. IBBI is contemplating a 27-month Graduate Insolvency Programme to produce world class insolvency professionals.
