

## Money & Banking

# Insolvency suspension necessary during Covid-19 times: IBBI Chief M S Sahoo

KR Srivats New Delhi | Updated on May 20, 2020 | Published on May 19, 2020



## Says there aren't enough 'white knights' to rescue firms in distress

In conversation with *BusinessLine*, IBBI Chief M S Sahoo shares his views on the latest announcement of suspending the Insolvency and Bankruptcy Code (IBC) initiation for a year and other challenges. According to Sahoo, pushing firms to insolvency when there is nobody to rescue them will mean they will all die, which Government wants to avoid.

He also said that one of the main reasons why suspending the insolvency and bankruptcy code (IBC) is required, in the current Covid-19 times, is that there are not enough 'White Knights' to rescue the firms in distress. *Excerpts:*

## How do you think the announcements related to the stimulus package would impact the economy?

I limit my observations to insolvency related measures. In view of demand contraction and supply chain disruptions arising from primarily two external variables, namely, Covid-19 and consequential imposition of nationwide lockdown, many companies may have receding top line and bottom line and some of them may default in servicing debt obligations. While the impact of these external variables on the economy is very deep, similar shocks of a comparatively lower intensity in the past have witnessed a sharp increase in corporate and personal insolvencies all over the world.

Typically, the resolution of insolvency requires a white knight to rescue a firm in distress. When every other firm is under stress at this time, it is unlikely to find sufficient number of white knights to rescue all firms in distress. In recognition of this, Governments all over the world have adopted an accommodative stance. The Government of India, NCLAT, RBI and IBBI have taken several measures since March 24, 2020, to ameliorate the suffering. The announcements by the Finance Minister on May 17 are quite significant in the sense that these provide a breathing time to firms to recalibrate their operations and business to an all new normal, while ensuring the continuity of business operations and enabling the debtors and creditors to work out resolution of their choice.

**The Government has announced the suspension of the IBC initiation for one year. Will the proposed amendments cover/impact applications that were filed prior to the lockdown and are still pending admission?**

It appears that the intention is to prevent companies to be pushed into insolvency proceeding for their failure to service debt obligations on account of Covid-19 induced stress. Therefore, it is expected that suspension of sections 7, 9 and 10 would disable filing of fresh applications. This will not hit the applications, which are pending admission on the date of commencement of the nationwide lockdown, as they do not relate to defaults arising from Covid-19. In the cases where an application has been admitted, the insolvency proceeding would continue till it reaches logical conclusion. Many countries around the world have taken such a measure in the interest of protecting the lives of companies which take years to build and mature.

**In the absence of the IBC framework for one year, what other regime of resolution is available for lenders/creditors?**

It has been reiterated time and again that recourse to the provisions of the Code is meant to be the last resort. There are several formal and informal frameworks to address stress. Nothing stops a debtor and creditor to sit across a table and work out a solution. The parties may informally and mutually arrive at a solution without involvement of Court, or outside any formal framework. They may work out a solution under the prudential framework of RBI. They may also use the route of compromise and arrangement under the Companies Act. Those who are focussed on recovery, they have the option to use the frameworks under the recovery laws.

**Does it mean that when the IBC is suspended for one year a company cannot refer itself to insolvency?**

One has to wait for the Ordinance to see the details of suspension that is envisaged by the Government. As it appears, irrespective of suspension, a separate mechanism within the Code for resolution of insolvencies of MSMEs is being envisaged. Further, the applications already filed and the ongoing insolvency proceedings will continue to be dealt under the Code.

## **Why is there a need to introduce a special insolvency framework for MSMEs?**

MSMEs are different from other firms in many ways. Among others, the market for resolution plans for MSMEs is local, while the entire globe is the market for bigger firms. Almost every MSME is an operational creditor. Further, most of the MSMEs are entrepreneurial ventures. Given the number of MSMEs, the number of entrepreneurs behind them is also very large. Most countries have a special dispensation for resolution of insolvencies of this category of firms. The Insolvency and Bankruptcy Code (IBC), 2016 enables the Central Government, in public interest, to provide a different framework for resolution of insolvency of MSMEs. With the intent to prevent MSMEs from being pushed into insolvency for their inability to meet their repayment obligations due to business disruptions, the Government, even before imposition of lockdown, increased the threshold amount of default required to initiate an insolvency proceeding from ₹1 lakh to ₹1 crore.

Published on May 19, 2020

### **A letter from the Editor**

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