‘Debtors, creditors will be wary of IBC over the short term’

As the banking system gears up to support businesses in the face of default due to Covid-19, a resolution of stressed assets could be the next big task for the system. **M S SAHOO**, chairperson of the Insolvency and Bankruptcy Board of India (IBBI), in an email interview with **Namrata Acharya**, says debtors and creditors should think of solutions outside the Insolvency and Banking Code (IBC). Edited excerpts:

Q&A

M S SAHOO
Chairperson, IBBI

What will be the long- and short-term impact of Covid-19 on resolution of stressed assets through IBC?

Covid-19 is an external variable. The lockdown and other measures, government and citizens take to address Covid-19 are also external variables. An otherwise well performing economy has been a victim of these variables. As and when these variables subside, the economy will bounce back. In the absence of a clear picture about these variables, it is difficult to visualise long and short-term impact of Covid-19. In view of demand contraction and supply chain disruptions arising from external variables, many companies would have receding top line and bottom line. Some of them may default in servicing debt obligations. If a company is otherwise sound, the creditors would not be in a hurry to push it to an insolvency proceeding. They understand the underlying situation, the underlying value and the likelihood of failing to find a white knight to rescue the company and its consequence. They would rather prefer forbearance to the extent possible. The debtors also understand the consequences of an insolvency proceeding. The promoters would not let it go to a third party, particularly if the company is fundamentally sound. Thus, both debtors and creditors would be wary of using the IBC in the short term. They would rather work out a resolution outside the code that fully factors in the abnormal situation or defers a resolution. In any case, the code is supposed to be the last resort. In the long run, everyone would calibrate to an all new normal, founded on several innovations.

Do you see the need for more relaxation in IBC for mid and small-sized firms?

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. We have seen an extremely accommodating stance by the Reserve Bank of India (RBI) and the government. Everyone is alive to the emerging situation and working to be part of the solution. All these provide a breather to MSMEs under stress to work out a resolution of their choice. Fundamentally, unviable ones should close to avoid persistent resource misallocation. The state could take the welfare costs of liquidation such as reskilling the people rendered unemployed.

> “I DO NOT SEE A DELUGE OF MATTERS BEFORE THE NCLT AFTER WITHDRAWAL OF THE LOCKDOWN. THE LIKELY OUTCOME OF NCLT PROCEEDINGS WOULD WEIGH ON THE MINDS OF STAKEHOLDERS BEFORE THEY INVOKE IBC”

How equipped are National Company Law Tribunals (NCLTs) to handle the large number of cases once lockdown is lifted?

I do not see deluge of matters before the NCLT with the withdrawal of lockdown. The likely outcome of NCLT proceedings, as I explained earlier, would weigh on the minds of stakeholders before they invoke the IBC. Also, the increase in threshold default for initiating insolvency would reduce the number. Along with the market and firms, the NCLT, the IBBI and every other institution would evolve to live in the present. While government has been reviewing and adding bench capacity continuously, disposal of matters would possibly be faster as stakeholders may not pursue and NCLTs may not entertain frivolous litigations anymore.

What is the solution for the issue of the (long) time taken for liquidation under IBC?

Somehow, I do not share this view. Liquidation used to be extremely long drawn, often taking decades. Until the end of March 2020, a total of 271 firms – 69 through the liquidation process and 202 through voluntary liquidation process – have been liquidated under the code. The average time taken for these liquidations has been about 300 days. In the initial days, it takes longer to travel in an unknown terrain. With experience, track is laid and paved, and with practice, it becomes amenable to robotic navigation. Soon, we should see the liquidation process moving on top gear and concluding faster. Let me add that the objective of the code is rescuing firms in distress. It entitles the stakeholders to initiate process early when rescue is rewarding. Presently, many companies are proceeding for liquidation because the process started late when little value is left to be rescued. In the days ahead, when the process starts early, liquidation would be rare. Even such rare liquidations should be closed faster.

Due to Covid-19, some of the bidding companies may not be able to meet their commitments. Do you see the need for some relaxations for such bidders?

It is quite understandable that the resolution applicants may themselves be under stress. This calls for flexibility in approach, which the stakeholders have plenty under the code, where commercial wisdom resides in the exclusive domain of financial creditors and resolution applicants. In a recent matter, the Supreme Court made it clear that the value realised under a resolution plan need not be higher than the liquidation value. The stakeholders should be mindful that a resolution plan rescues a company, salvages its going concern surplus, and avoids cost and waste associated with liquidation.