

Still nascent IBC ecosystem requires nurturing, says outgoing IBBI chief Sahoo

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On October 1, insolvency regulator IBBI will turn five. MS Sahoo, who has been at the helm of the regulatory body since its inception, and played a critical role in hand-holding to overcome several challenges, will demit office on September 30.

BusinessLine interacted with him to understand IBC journey, experiences and the unfinished agenda of the regulator. Excerpts:



What is your overall assessment of the IBC journey so far?

The code has revolutionised insolvency resolution, established the supremacy of markets and the rule of law in insolvency resolution, and professionalised the process of resolution. From providing freedom of exit to rescuing companies in financial stress to releasing entrepreneurs and idle resources stuck up in inefficient uses to helping creditors realise their dues and, most importantly, bringing about a behavioural change among the debtors and creditors alike, the list of achievements is a long one.

The improvement in India's rank in World Bank's resolving in-

solventy parameter from 136th to 52nd position in three years is a testimony of the remarkable journey.

What more can be done to improve the effectiveness of the IBC ecosystem?

The IBC ecosystem is still nascent, requiring nurturing. Building capacity of each constituent of the ecosystem, ensuring each constituent plays by the rule book, enabling enhanced use of information utility in insolvency proceedings, establishing institutional framework for valuation profession, promoting robust and liquid market for distressed assets, and developing best professional practices should help improve the effectiveness of the ecosystem.

Five years on, has the IBC system matured enough, or are we still riddled with implementation issues?

An economic law like the IBC is invariably a journey and not a destination. With the blessings of the government and stakeholders, it has travelled a considerable distance, addressing the difficulties that it came across. The code has undergone course cor-

rections six times to address specific implementation issues. The ecosystem is richer today with the experience of handling 20,000 applications, 4,500 corporate insolvency resolution processes, 1,500 liquidations, and 1,000 voluntary liquidations. It has passed the constitutional muster.

The Apex Court has settled several contentious issues and resolved grey areas.

To my mind, most of the implementation issues have been resolved, though the enforcement of the law continues to deal with issues of capacity, conduct and approach of the constituents of the ecosystem. Fresh issues are likely to arise as we embark on newer dimensions of the regime.

What, according to you, is the unfinished agenda as IBC chief?

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MS SAHOO
Chairperson, IBBI



One of the challenges faced by the IBC is the heavy

We have just scratched the surface. As we resolved the first order issues, much deeper issues have come to light.

Building capacity of the ecosystem, ensuring everyone plays by the rule book, enriching the processes with value-added features, simplifying the processes, operationalising provisions related to individual insolvency, promoting resolvability of firms, intensive use of information utility to facilitate processes, automating resolution processes, institutional framework for valuation profession, developing robust and liquid market for distressed assets, best practices in different aspects, and planning resources matching responsibilities of IBBI, among others, should form the agenda for a few successive chairpersons.

pendency of cases at NCLT. What can be done to tackle the problem?

The government is seized of the urgent need to strengthen NCLT infrastructure. It has appointed 18 new members in NCLT recently. It is equally important to consider measures to reduce the load.

Disincentivising frivolous applications, limits on time for arguments and number of adjournments, provision of administrative process for simpler processes like fresh start, reliance on informal mechanism for resolution, may help in this regard.

What is your view on the perception that some promoters are still gaming the system? What needs to be done on this front?

Probably reality is different from perception. Though there have been attempts by ineligible persons to submit resolution plans, and some have dragged the matters up to the Apex Court, the law has ultimately triumphed. I do not think any ineligible person has acquired or retained a company through a resolution plan. Let us not confuse with withdrawal under section 12A, which,

as the Supreme Court has clarified in the matter of Arun Kumar Jagatramka, leads to a status quo ante in respect of the liabilities of the corporate debtor.

What can be done to improve the timeline for completion of CIRP? The average time taken is more than the statutory limit.

The timeline, compared to pre-IBC days, is extremely good. However, compared to the legislative intent, it is not so good. An insolvency proceeding is like an orchestra, where each constituent has a specific role. If there is any slip-up / inadequacy in the performance of any of the constituents, the process may not conclude in time.

Delay arises from many sources: the promoters and management do not allow smooth takeover of the firm by the IP and may not co-operate with him in running the business; the committee of creditors (CoC) may not take decisions promptly; some stakeholders may file frivolous applications, wasting judicial time; and the IP may not conduct the process with promptitude.

While State strengthens the Adjudicating Authority, the stakeholders need to conduct them-

selves more responsibly. The IBBI is closely monitoring market participants, as well as professionals, to ensure early closure of processes.

How do you see the performance of the committee of creditors in the last five years? Should there be a code of conduct for them?

The CoC has performed admirably well. It is now settled that the commercial wisdom of the CoC is supreme and not justiciable. However, there have been instances where its conduct has been found wanting, at times threatening the integrity of the resolution process.

In some cases, it has strayed into matters that do not fall into commercial domain, and has unduly influenced the resolution professional.

Given its wide powers and larger implications of its actions, it has become necessary to provide for matching accountability. The Standing Committee of Finance, Adjudicating Authority, regulators and stakeholders, have suggested some form of regulation of conduct of CoC. In consultation with the IBA, the IBBI is working on guidelines to stipulate conduct expected from a CoC.