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by Suman K Jha | Apr 22, 2017



Insolvency and Bankruptcy Board of India Chairperson Dr. M. S. Sahoo, in an exclusive interview with *BW Businessworld's* Suman K Jha, says that with the Insolvency and Bankruptcy Code, 2016, the country has got a futuristic, robust and vibrant insolvency regime, and that it has the potential to push up GDP growth by about 2 per cent, apart from improving ease of doing business, developing corporate debt market, promoting entrepreneurship, and helping inclusive growth, in the days to come.

Excerpts:

The Insolvency & Bankruptcy Board of India is considering a proposal to expedite the resolution of smaller cases, and those involving start-ups, in 90 days. Can you tell us a little more about this?

The Insolvency and Bankruptcy Code, 2016 provides for a time bound mechanism for orderly resolution of insolvency. The normal time limit for resolution of a corporate insolvency is 180 days. However, all insolvency resolutions may not entail the same level of complexity, which may arise from structure of assets or liabilities, size of operations, the number and kind of stakeholders, etc. The insolvency of many corporates could be resolved much earlier. An early resolution increases the probability of its success. Therefore, the Code provides for a fast track process for certain categories of corporates where the resolution needs to be done within 90 days. We need to identify such categories and provide a simpler process in those categories. Government has identified three categories, namely, small companies as defined under the Companies Act, 2013, start-ups as defined in the DIPP notification and any other corporate with a borrowing not exceeding Rs.2 crore. We have sought public comments on the same.

You had said that corporate insolvency and bankruptcy system was to be fully functional by March 31, 2017. Do you think the progress has been satisfactory?

The insolvency and bankruptcy regime provides for two sets of matters: one, corporate insolvency and liquidation and the other is individual insolvency and bankruptcy. What I had told was that the provisions relating to corporate part would be in place by March 31, and that is mostly done. Let me explain. The corporate part has two aspects. First is the institutional arrangement. NCLAT, NCLT and IBBI are in place. The regulations for insolvency professionals (IPs), insolvency professional agencies (IPAs), and information utilities (IUs) have been notified. There are three registered IPAs and 1000+ registered IPs in place. The second is institutional environment - the regulations for corporate insolvency

resolution process, corporate liquidation process, and voluntary liquidation process have been notified. Corporate insolvency provisions came into force from 1st December, 2016 and many insolvency transactions are underway.

How long will the individual part take?

Individual insolvency is our next immediate priority. It is difficult to give a firm time line. Unlike corporates which have a uniform legal structure, individuals are not homogenous. They come from different socio-cultural milieu and hence one uniform structure may not fit all. It would require a sustained advocacy and awareness effort also. In addition to making rules and regulations, we may need more Debt Recovery Tribunals. In fact, the Code enables the Debt Recovery Tribunals to have circuit benches in every district.

IBBI came into being on October 1, 2016. Apart from the one you have just outlined, what have been the major initiatives since then?

Yes, the IBBI was established on 1st October, 2016. The provisions relating to corporate insolvency resolution came into force on December 1. Within these two months, five regulations relating to institutional environment and institutional arrangement were notified. The service providers were registered. Transactions commenced.

We have two categories of insolvency professionals. As an immediate arrangement, we registered statutorily regulated professionals such as chartered accountants, cost accountants and the company secretaries and advocates with 15 years of practice experience, but with a registration validity of six months. We came up with a regular arrangement when we started the Limited Insolvency Examination from December 31. This allows these professionals with 10 years of experience and graduates with 15 years of managerial experience to pass this examination and then get registered as IPs. This is an online examination available from 100+ locations across the country and is available on all days throughout the year. In the first category there are 977 professionals; and about 100 professionals in the second category. There are three IPAs.

What have been the challenges in your journey so far?

It has been uncharted terrain for the ecosystem, including IBBI and IPs. The first challenge was to get insolvency professionals. Fortunately, we have professionals with experience of doing, if not the same, similar or related transactions. We started off with them. Then we came up with Limited Insolvency Examination. The IBBI and IPAs are organising capacity building programmes for them. Another challenge was that in the initial days, the IBBI did not have the legal capability to draft regulations. We got help from Working Groups set by Government. There were challenges, nothing was insurmountable.

So, in this year's ease of doing business rankings, will we see a jump in our rank?

I am quite confident that there will be a substantial improvement in ranking for ease of doing business, but we expect a lot more gains from the Code.

A good portion of our resources remains unutilised or underutilised. We are looking towards the optimum utilization of the resources, all the time, that is, resources should be used with utmost efficiency within the firm and, where that is not possible, these should be released seamlessly for fresh allocation to other efficient uses. There are factories which do not produce, there are buildings which are not occupied, these are productive resources, but not in use. Reportedly, 20% of productive resources are unutilised for some reason or the other. That means, utilisation of 80% of resources today yields a growth rate of 7%. If we can achieve utilisation of 100% of resources, the growth rate may well go up by 2 percent, other things remaining unchanged. The Code enables this either by ensuring

efficient utilisation through resolution of insolvency or by releasing unutilised resources to efficient uses.

In addition, the Code really provides for the ultimate economic freedom. The country saw freedom of entry in the 90s; freedom to compete in the 2000s; and now comes the freedom of exit. Freedom of entry is not complete unless there is a freedom of exit. One does not like to enter unless there is a way to exit. The Code provides a mechanism to deal with genuine failures. This enables every person to get in and get out with ease and thereby promotes inclusive growth.

In fact, it is one code, with multiple benefits. It develops corporate debt market, promotes in entrepreneurship, facilitates balanced corporate financing, etc.

The journey has been eventful although it has been a short journey. How has the market responded to setting of IBBI?

It has been very positive. IBBI was set up on October 1. On November 23, we issued regulations relating to IPs and IPAs. On November 28, we registered 3 insolvency professional agencies. On November 30, we started registering IPs. As told earlier, there are about 1000 IPs. Transaction commenced on 1st December. Many transactions have underlying defaults of thousands of crore of rupees. This could happen only because it was a drive by all stakeholders.

Can we say that we can prevent the recurrence of the Vijay Mallya phenomenon?

Absolutely, yes. Let me explain.

So no more further Vijay Mallyas?

I won't comment on a particular person or case. In fact, we have moved to a model of proactive economic laws. These are intended to prevent the damage before it is done. Under the Code, there is an alert as soon as there is a default of Rs.1 lakh. This makes the parties to sit up and take a view at the earliest instance of default. This prevents ballooning of default and reaching dangerous proportions. Second, it provides that as soon as an insolvency resolution process starts, a professional exercises the powers of the Board and takes control and custody of all assets of the debtor. The fear of loss of control will drive the debtor not to default unless it is absolutely unavoidable or beyond his control. This will reduce the incidence of default and ballooning of default.

How many cases of Insolvency and Bankruptcy have come up before the National Company Law Tribunal (NCLT)?

I am told, about 200 applications have been filed. Of these, about 40 have been admitted. About 30 have been rejected or withdrawn, and the rest are in pipeline. You can have firm figures from NCLT or Government.

IBBI is a part of the ecosystem that relies on market forces to achieve outcome in a time bound manner. So how important is the market and how important is the government regulation?

What we mean is that the stakeholders decide the matters for them. Under the Code, the committee of creditors takes decisions. It decides whether to resolve an insolvency and how to do it. It also decides to close down a business. The creditors in the committee are motivated as they are working to protect their own interests. The entire process is under their control. They go to NCLT for an approval. The NCLT ascertains if the resolution plan meets the specified requirements. It also verifies if due process has been followed. It does make a second guess on merits. Merit is the stakeholder's responsibility. Therefore, the role of the State is minimum, the stakeholders take the call. The Code, however, provides facilitation in the form of professionals, continuation of essential services, calm period, interim finance, etc.



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