

Sensex	↑(0.28%)	Nifty	↑(0.33%)	Nifty Midcap	↑(0.68%)	Nifty Smallcap	↑(0.86%)	Nifty Ban	Heatmap
82365.77	+ 231.16	25235.90	+ 83.95	59286.65	+ 402.70	9168.95	+ 78.20	51351.00	

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Both debtors & creditors will be wary of using IBC in short term: M S Sahoo

As the banking system gears up to support businesses in face of defaults due to Covid 19, resolution of stressed assets could be the next big task for system, says M S Sahoo



Both Debtors And Creditors Would Be Wary Of Using The IBC In The Short-Term, Says Chairperson M S Sahoo Addresses A Gathering At The Insolvency Professionals Conclave In New Delhi, On Saturday. Photo: PTI

Namrata Acharya | [Kolkata](#)

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M S Sahoo, Insolvency and Bankruptcy Board of India (IBBI), in an email interview with *Namrata Acharya*, says debtors and creditors should think of solutions outside Insolvency and Banking Code (IBC), and explains why in the days ahead, liquidation will be rare, as the objective of the code is to rescue companies in distress. *Edited Excerpts:*

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

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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 a 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 and 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, which fully factors in the abnormal situation, or defer 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. The firms would settle down to market clearing prices. They would then use the IBC as they do today. However, there will be pains of adjustment in the medium term. Possibly, the economy will go through a deep recession, creative destruction will disrupt some businesses and business models, international economic relations will be reconfigured, and new avenues of resolution of distress would be available. The series of measures being taken by governments across the world would ameliorate the pains to a larger extent.

Due to Covid-19, many small and mid-sized companies might turn defaulters. Do you see the need for more relaxation, and are you open to more relaxations to save such companies from being dragged to NCLT?



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With the intent to prevent MSMEs from being pushed into insolvency over 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 Rs1 lakh to Rs1 crore. We have seen an extremely accommodating stance by the 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 down to avoid persistent resource misallocation. The state could take the welfare costs of liquidation such as reskilling the people rendered unemployed.

How equipped are NCLTs to handle a large number of cases once the lockdown is lifted? Do you see the need to have more NCLT benches?

I do not see a deluge of matters before the NCLT after the lockdown is lifted. The likely outcome of NCLT proceeding, as I explained earlier, would weigh on the minds of stakeholders before they invoke 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 the government has been reviewing and adding bench capacity continuously, disposal would possibly be faster as stakeholders may not pursue and NCLTs may not entertain frivolous litigation anymore.

At present liquidation is a long-drawn process, and in the process, banks often lose substantial value. What according to you is the solution for this issue?

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 companies – 69 through the liquidation process and 202 through voluntary liquidation process – have been liquidated under the Code. The average time taken for these liquidations from the liquidation commencement date has been about 300 days. In the initial days, it takes longer to travel in an unknown terrain. With experience, a track is laid and paved, and with practice, it becomes amenable to robotic navigation. Soon, we should see the liquidation process moving in top gear and concluding faster. Let me add that the objective of the Code is rescuing companies in distress. It entitles the stakeholders to initiate the 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 might not be able to meet their commitments. Do you see the need for some relaxations for such bidders (the ones who had bid before, but now may find it difficult to finance their buy)?

It is quite understandable that the resolution applicants may themselves be under stress. This calls for flexibility in approach, which the stakeholders have 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.

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