'IBC is a road under construction,' says IBBI chairperson M S Sahoo

Referring to the pre-pack scheme of insolvency resolution for micro, small and medium enterprises (MSMEs), he says it takes three-six months for the market to understand a new framework

M S Sahoo, Chairman Of The IBBI

Ruchika Chitravanshi | New Delhi

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Insolvency and Bankruptcy Board of India (IBBI) Chairperson **M S SAHOO** says 90 per cent of companies applying for corporate insolvency resolution process (CIRP) closed before or after admission. In conversation with **Ruchika Chitravanshi**, he says after disposal of pre-Insolvency and Bankruptcy Code (IBC) legacy matters, liquidations will be fewer. Referring to the pre-pack scheme of insolvency resolution for micro, small and medium enterprises (MSMEs), he says it takes

three-six months for the market to understand a new framework. He says the IBC is a road under construction. **Edited excerpts:**

You recently said liquidation is minimal under the IBC regime since many cases have either been settled or withdrawn before the process started. However, over 48 per cent of cases that did get resolved ended up in liquidation. How do we look at these numbers?

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Of the companies proceeding for liquidation, three-fourths were defunct. Of the companies rescued, one-third was defunct.This means, two-thirds were defunct to start with. In value terms, companies accounting for 70 per cent of stressed assets were rescued, while those accounting for 30 per cent of stressed assets proceeded for liquidation. Now let us consider the universe of companies for which applications are filed for initiation of CIRP. Over 90 per cent were closed midway - either before or after admission. Of the universe, the percentage of companies proceeding for liquidation is negligible. I am not even considering the resolution happening outside IBC, but on account of IBC. However, I anticipate that after disposal of pre-IBC legacy matters, liquidations will be fewer. Liquidation by itself is not all bad in the case of unviable businesses.

The IBBI has held several seminars for banks orienting them towards the pre-packaged scheme. What is the response to the pre-packaged scheme among lenders and MSMEs? What are the practical challenges coming to light since the scheme has not taken off yet?

The IBBI undertakes several programmes to create awareness and build capacity among stakeholders. It is organising programmes on pre-pack for banks, professionals, and other stakeholders. It, however, takes three to six months for the market to understand a new framework, compare it with the other available options, and prepare itself to use it.

Besides, pre-pack requires prior understanding between the debtor and creditors before initiating the formal process. It envisages up to 90 days for informal preparatory work before the formal part begins. It is, therefore, too early to see a response. Nonetheless, the demand by the market to expand its reach to large

companies, even before experiencing the framework in the context of MSMEs, lays bare its huge potential.

There is huge demand in the industry to make pre-packs available to all companies. Is that something that can be considered? If not, why?

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There is interest to enrich the Code in the context of evolving realities. The Code is evolving in the context of life. It envisaged standard, plain vanilla processes to start with, but anticipated course corrections to continue to remain in the service of the business and the economy. New processes and new features to existing processes are being added, with maturity of the ecosystem. The Standing Committee of Finance has recently recommended a pre-pack for companies.

The Ministry of Corporate Affairs secretary recently said that Section 66(2) of the IBC - that makes directors liable to the creditors for loss made during the twilight period - is hardly being used. Are you asking the insolvency professionals to pay more attention to such transactions?

The twilight zone begins from the time a director knows or ought to have known there was no reasonable prospect of avoiding the commencement of CIRP till it commences. During this period, a director has the additional responsibility to exercise due diligence to minimise potential loss to the creditors. This incentivises the corporate, as well as its promoters and managers, to seek resolution in the early days of stress, when the possibility of resolution is higher. Sometimes, the commencement of CIRP gets delayed on account of resistance by the corporate debtor. If insolvency professionals file applications under Section 66(2), requiring

directors to make good on the potential loss to creditors, a company would not have the incentive to resist admission on frivolous grounds.

The Reserve Bank of India has proposed that Indian promoters be allowed to issue personal guarantees for overseas firms in which they have acquired controlling stake. What will be the implications of this under the IBC? Does cross-border insolvency also come into play?

It has no direct implication from the IBC perspective since it is a guarantee for loans taken by foreign entities outside the IBC domain. Further, this merely creates an additional layer of security for the lender, who will have recourse against the debtor and/or guarantor.

There have been suggestions from the industry for greater changes to the IBC and has raised concerns that some corporate debtors might be finding a way around Section 29A. In that light, how do you see the law evolving five years hence?

The IBC is a road under construction. The Insolvency Law Committee continuously reviews its workings to identify issues impacting efficiency and effectiveness, and makes recommendations to address them. In less than five years, the Code has witnessed six major legislative interventions. The stakeholders have been the driving force behind the design of the IBC and its evolution thus far. The suggestions from the industry are always welcome.

With regard to Section 29A, though there have been attempts by ineligible persons to submit resolution plans. Some have even taken the matter up to the Supreme Court (SC). I do not think any ineligible person has acquired or retained a company through a resolution plan. Let us not confuse it with withdrawal under Section 12A which, as the SC clarified in the matter of Arun Kumar Jagatramka versus Jindal Steel & Power, leads to status quo ante in respect of liabilities of the corporate debtor.

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