

Rendezvous with Dr. Madhusudan Sahoo, Chairperson, Insolvency and Bankruptcy Board of India (IBBI)



**"INSOLVENCY
AND BANKRUPTCY
CODE BIGGEST
ECONOMIC
REFORM IN RECENT
YEARS"**

**DR. M. S. SAHOO
CHAIRPERSON, IBBI**



Dr. M. S. Sahoo, an acclaimed thought leader in the area of securities markets and a distinguished public servant, currently serves as Chairperson of the Insolvency and Bankruptcy Board of India. He has served as a Member of the Competition Commission of India, Secretary of the Institute of Company Secretaries of India, Whole Time Member of the Securities and Exchange Board of India, Economic Adviser with the National Stock Exchange of India and held senior positions in Government of India as a Member of Indian Economic Service.

Dr. Sahoo has conceptualized, designed, authored and edited several publications relating to securities markets and corporate sector, including Indian Securities Market-A Review, NSE Research Initiative, Stock Exchange Fact book, SEBI Bulletin, and edited a professional journal, Chartered Secretary. He has delivered talks at various national and international fora and written over 100 articles.

Dr. Sahoo has been a Member/Chairman of several committees set up by Ministry of Finance, SEBI, RBI, IRDAI, and WDRA. These include Chairman of the Committees (Sahoo Committee I, II and III) on Depository Receipts, Domestic and Overseas Capital Markets, and External Commercial Borrowing. He has assisted in development and refinement of the Indian Financial Code (IFC) recommended by the Financial Sector Legislative Reforms Commission (FSLRC). He has served on Boards of a few organisations, including Oriental Bank of Commerce, Management Development Institute, National Institute of Securities Markets, SEBI and CCI. Dr. Sahoo has post-graduation degrees in Economics, Law, Management and Company Secretaryship.

The appointment of Dr. Sahoo for the Insolvency Board is viewed as a break ground for setting up of a complementary eco-system for successful implementation of the bankruptcy code. In this issue, ICSI is presenting excerpts of conversation of Dr. Harpreet Raman Bahl with Dr. Madhusudan Sahoo on contemporary developments after introduction of the Insolvency and Bankruptcy Code 2016, the code described in the words of Dr. Sahoo as the "biggest" economic reform in recent years:

Dr. Harpreet: IBBI came into being on October 1, 2016. What have been the major initiatives since then? What have been the challenges in your journey so far?

Dr. M.S. Sahoo: The IBBI is a unique regulator. It regulates a profession as well as transactions. It has regulatory oversight over the insolvency professionals, insolvency professional agencies and information utilities. It writes and enforces rules for transactions, namely, corporate insolvency resolution, corporate liquidation, individual insolvency resolution and individual bankruptcy under the Insolvency and Bankruptcy Code, 2016 (Code). Along with three other pillars of the ecosystem, it enables execution of transactions by stakeholders in a time bound manner.

The first and the most important initiative of the IBBI has been seeking proactive engagement with the stakeholders and building institutional capacity, in partnership with them, to implement the insolvency and bankruptcy reform. The reform witnessed exceptional cooperation from them and soon it became a reform by the stakeholders, of the stakeholders and for the stakeholders. They became emissaries of the reform and carried the message to every nook and corner of the country. Other initiatives of the IBBI include putting the entire regulatory framework and the ecosystem in place expeditiously. It has made regulations to govern transactions relating to corporate insolvency resolution, fast track resolution, corporate liquidation, and voluntary liquidation, and relating to service providers, namely, insolvency professionals, insolvency professional agencies, and information utilities. It has put in place a mechanism for registration and monitoring of service providers. These enabled commencement of transactions under the Code by 1st December, 2016 within 60 days of the establishment of the IBBI on 1st October, 2016.

The country was waiting for this reform since long. Hence, there was no particular challenge, at least no insurmountable challenge. There were usual challenges of setting up a new organisation, organising people and technology, etc. Thanks to the Institute of Cost Accountants of India which made premises available for immediate use by the IBBI. Ministry of Corporate Affairs extended all possible assistance to address any and every challenge the IBBI encountered. Help came from all possible corners, including other regulators. For example, SEBI exempted acquisitions under resolution plans under the Code from making public offers under the securities laws.

Further, we needed insolvency professionals (IPs) to start transactions. We did not have these professionals as such. We needed innovative, immediate solutions. Fortunately, we had statutorily regulated professionals, namely, chartered accountants, company secretaries, cost accountants, and advocates, who have been carrying on somewhat similar work. We allowed these professionals with 15 years of practice experience to register as IPs, but their registration was valid for only six months. This gave us the time to plan a more systematic solution. We developed a Limited Insolvency Examination and allowed professionals with 10 years of experience and graduates with 15 years' managerial experience to pass the examination and then register as IPs. We are now in the process of formulating a National Insolvency Examination.

Dr. Harpreet: What will be the role of IBBI in the ease of doing business, promote entrepreneurship and consequently macro-economic impact of Indian economy.

Dr. M.S. Sahoo: The IBBI is a part of ecosystem that is responsible, along with market participants, for implementation of the insolvency reform. Hence it will pay its assigned role under the Code to facilitate reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner.

We want growth. Growth comes to a large extent from competition and innovation. In competition, efficient firms drive out inefficient firms. In innovation, new order drives out old order. Higher the intensity of competition and innovation, the higher is the incidence of failure. The Code addresses honest failures by resolving insolvency at the earliest opportunity in a time bound manner and facilitating the least disruptive exit, if resolution is not feasible, and thereby promotes entrepreneurship.

It enables the optimum utilisation of resources, all the time, either by (a) preventing use of resources below the optimum potential, (b) ensuring efficient resource use within the firm through resolution of insolvency; or (c) releasing unutilised or under-utilised resources for more efficient uses through closure of the firm. It is believed that if the resources, that are currently unutilised or underutilized or rusting for whatever reason, can be put to more efficient uses, the growth rate may well go up by a few percentage points, other things remaining unchanged. It liberates resources stuck up in inefficient and defunct firms for continuous recycling, and thereby has changed the script from 'Hopeless End' to 'Endless Hope'.

Dr. Harpreet: Do you deem institutional infrastructure in India for adjudication as sufficient for handling the Corporate Insolvency Resolution Process?

Dr. M.S. Sahoo: This issue has quantitative as well as qualitative dimension. As regards quantity, it is usually a chicken and egg problem. As the core of the Code is utilisation of resources, we would not like huge adjudication infrastructure lying idle and waiting for transactions to come up. The infrastructure needs to develop in sync with workload and it has been happening. The adjudication infrastructure has disposed of over 650 matters by now and mostly within the prescribed time. As regards quality, the adjudicating authority and judiciary are in the forefront of this reform. Rich jurisprudence is evolving fast and a large number of issues has been settled. Hon'ble High Courts and the Hon'ble Supreme Court have been disposing of matters in days. In the matter of Industries Ltd. vs. ICICI Bank & ANR, the Hon'ble Supreme Court observed: "... we thought it necessary to deliver a detailed judgment so that all Courts and Tribunals may take notice of a paradigm shift in the law. Entrenched managements are no longer allowed to continue in management if they cannot pay their debts."

Dr. Harpreet: Many stakeholders perceive that the Insolvency and Bankruptcy Code, 2016 helps as an effective recovery tool. What are your take on that?

Dr. M.S. Sahoo: In the matter of Prowess International Pvt. Ltd. Vs. Parker Hannifin India Pvt. Ltd., the Hon'ble NCLAT settled this by the observation: "It is made clear that Insolvency Resolution Process is not a recovery proceeding to recover the dues of the creditors. I & B Code, 2016 is an Act relating to reorganisation and insolvency resolution of corporate persons, partnership firms and

individuals in a time bound manner for maximisation of value of assets of such persons and to promote entrepreneurship, availability of credit and balance the interests of all the stakeholders including the Government dues.” The Code envisages resolution within the firm as a going concern. It expects the creditors to get their default amounts from future earnings of the firm rather than from sale of its assets. That is why the Code prohibits any action to foreclose, recover or enforce any security interest during the resolution period and thereby prevents a creditor from rushing in to recover his dues. That is why it enables any financial creditor to trigger the resolution process even when the firm has defaulted to another financial creditor and does not envisage termination of the process even if claim of the party concerned is satisfied. In the matter of *Parker Hannifin India Private Limited Vs. Prowess International Private Limited*, the Hon'ble NCLT observed that once admitted, other creditors have a right to file their claims. The nature of insolvency petition changes to representative suit and the lis does not remain only between a creditor and the corporate debtor. Therefore, they alone do not have the right to withdraw the insolvency petition because the disputes between them have been settled.

Dr. Harpreet: Do you think we are ready with the institutional infrastructure to handle the insolvency cases, particularly individual insolvency cases, once notified?

Dr. M.S. Sahoo: Proof pudding lies in eating. As stated earlier, the adjudicating authority has disposed of over 650 applications for corporate insolvency resolution process (CIRP). There are about 1000 insolvency professionals. Debtor and creditors alike are undertaking corporate insolvency transactions. About 250 CIRP, including 11 of the 12 big accounts identified by the RBI, are on. At least one CIRP has completed its life cycle with approval of resolution plan by the Hon'ble NCLT, Hyderabad Bench on 2nd August, 2017. We will follow a calibrated approach to implement individual insolvency regime and develop institutional infrastructure in sync.

Dr. Harpreet: Information Utility would have information data base relating to financial creditors. What impact the information utility would make in efficient insolvency resolution process?

Dr. M.S. Sahoo: Information utilities, which constitute a key pillar of the insolvency and bankruptcy ecosystem, would store financial information that helps to establish defaults as well as verify claims expeditiously and thereby facilitate completion of transactions under the Code in a time bound manner. They will provide ready-to-use information to resolution professionals and adjudicating authority to conclude processes expeditiously.

Dr. Harpreet: As a regulator you have seen the performance of insolvency professionals since January 2017? What is your advice for the insolvency professionals especially with respect to the governance and ethical aspects relating to corporate insolvency resolution process?

Dr. M.S. Sahoo: An insolvency professional exercises the powers of the Board of Directors of a corporate debtor under CIRP. He runs the corporate debtor as a going concern and facilitates development and approval of resolution plans. Admittedly, he has huge responsibility. He is of course suitably empowered to do so. He needs to remain independent and impartial and must not allow any kind of conflict of interest. He has to complete certain tasks in a time bound manner.

Dr. Harpreet: Bankers are one of the major stakeholders and part of committee of creditors in approving the resolution plan? Do you think the bankers are equipped enough with restructuring strategies?

Dr. M.S. Sahoo: Fortunately, the bankers are key beneficiaries of the transactions under the Code and hence have the necessary motivation. They are highly sophisticated professionals. The entire process is under their control. They would do wonders if they move away from accounting figures on the books and take business decisions in a time bound manner, as required under the Code.

Dr. Harpreet: 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?

Dr. M.S. Sahoo: The Code provides a market mechanism whereby the stakeholders are enabled to trigger and complete CIRP. Once a CIRP commences, an interim resolution professional manages the operations of the corporate debtor as a going concern. He may need access to interim finance if the corporate debtor does not have adequate liquid resources to support its operations during the CIRP period. The Code further requires a resolution professional to invite resolution plans from resolution applicants. In case the insolvency of the corporate debtor cannot be resolved, a liquidator needs to sell the liquidation assets for the highest possible value. The market mechanism would help in receiving interim finance and resolution plans and disposing of liquidation assets.

Dr. Harpreet: The Banking Regulation (Amendment) Act 2017 is one of the major amendments, authorising Reserve Bank of India (RBI) to direct banking companies to resolve specific stressed assets by initiating insolvency resolution process under the Code where required, by inserting Section 35AA and Section 35 BB of Banking Regulations Act, 1949. How do you foresee the impact of this amendment on initiation of Insolvency Resolution Process by banks and its impact on NPAs?

Dr. M.S. Sahoo: This has provided an impetus to the resolution of many large cases which have been stuck for many years. In a sense, this is another dimension of Swachh India. This will clean up the system and address the twin balance sheet problem to a large extent. This will tempt other stakeholders to use the Code, when they see banks using it.