THE ECONOMIC TIMES | News
English Edition | 20 June, 2021, 04:41 PM IST | E-Paper

Insolvency law changing the way society perceives business failures, says M S Sahoo

Synopsis
Little over five years after its enactment, the Insolvency and Bankruptcy Code (IBC), which provides a time-bound and market-linked framework for resolution of stressed assets, has passed the constitutional muster.


IBBI Chairperson M S Sahoo

Fuelled by a huge unsatiated appetite for freedom of exit, the insolvency law is changing the way society perceives business failures as it becomes a reform by, for, and of the stakeholders, according to IBBI Chairperson M S Sahoo.

Little over five years after its enactment, the Insolvency and Bankruptcy Code (IBC), which provides a time-bound and market-linked framework for resolution of stressed assets, has passed the constitutional muster.

In Sahoo's words, with every judgement of the Supreme Court, the Code has developed deeper and stronger roots, and probably boasts of the largest body of case laws.

In value terms, the Code has rescued 70 per cent of distressed assets through insolvency resolution plans and has released remaining 30 per cent of such assets through liquidations.

Sahoo, who has been at the helm of the Insolvency and Bankruptcy Board of India (IBBI) since its inception in October 2016, said the Code is changing the way the society perceives business failures.

IBBI is a key institution in implementing the Code.

According to the IBBI chief, by rescuing viable businesses through the insolvency process, closing unviable ones through liquidation, and facilitating voluntary liquidations, it is releasing the entrepreneurs from honest business failures.

"Firms, which may fail to withstand market pressures, would need to use the Code for either a re-organisation of business or a clean and dignified exit.'Failing in succeeding' will soon be the new mantra for budding entrepreneurs in the country. Days are not far ahead when we will celebrate failure," Sahoo told PTI in an e-mail interview.

Since the provisions of the Corporate Insolvency Resolution Process (CIRP) came into force on December 1, 2016, a total of 4,376 CIRPs have commenced till the end of March this year.

Out of the total, 2,653 have been closed, including 348 CIRPs that ended in approval of resolution plans. As many as 617 CIRPs were closed on appeal or review or settled, while 411 were withdrawn and 1,277 ended in orders for liquidation, as per IBBI's latest quarterly newsletter.

Citing the takeaways, Sahoo said that a huge unsatiated appetite for freedom of exit "made the Code a reform by, for, and of the stakeholders, and prohibition on undesirable persons to wrest control of a stressed company ushered in fair debtor-creditor relationship.

Significant improvements in the score for resolving insolvency made doing business in India easier and emergence of new markets for resolution plans, interim finance and liquidation assets are among others.

While pointing out that six amendments and dozens of subordinate legislation have kept the Code relevant with the changing needs and addressed implementation difficulties, Sahoo said that mostly importantly, "the rule of law got institutionalised in an anarchic stressful situation when the claims of all creditors together is inconsistent with the available assets of the company".

All said, there are also misses but not many.

Apart from the few missing elements such as cross border and group insolvency to complement corporate insolvency, Sahoo said that though the work has begun, an institutional framework for grooming a cadre of valuers is sometimes away.

"As compared to previous regime which took nearly five years for conclusion, the process under the Code yielding a resolution plan takes on average 400 days. It, however, falls short of intended 180/270 days," he said.

He also pointed out that economic legislation is typically a skeleton structure and "judicial pronouncements provide flesh and blood to it" as well as resolve grey areas.

"While conceding the freedom to experiment to the legislature, the apex court proactively settled the jurisprudence, explained several conceptual issues, settled contentious issues, and resolved grey areas, at an unprecedented pace, bringing in clarity as to what is permissible and what is not," he emphasised.

The Code has also helped in building a cadre of 3,500 insolvency professionals, three insolvency professional agencies, 80 insolvency professional entities, 4,000 registered valuers, 16 registered valuers' organisations, and one information utility.