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Insolvency suspension necessary during Covid-19 times: IBBI Chief M S Sahoo

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Says there aren't enough 'white knights' to rescue firms in distress

BY K. R. SRIVATS

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In conversation
with
BusinessLine,
IBBI Chief M S
Sahoo shares his
views on the
latest
announcement
of suspending
the Insolvency
and Bankruptcy
Code (IBC)
initiation for a
year and other
challenges.

According to
Sahoo, pushing
firms to
insolvency when
there is nobody
to rescue them
will mean they
will all die,
which
Government
wants to avoid.

He also said that
one of the main
reasons why
suspending the
insolvency and
bankruptcy code
(IBC) is required,
in the current
Covid-19 times,
is that there are
not enough
'White Knights'
to rescue the

firms in distress.

Excerpts:

**How do you
think the
announcements
related to the
stimulus
package would
impact the
economy?**

I limit my observations to insolvency related measures. In view of demand contraction and supply chain disruptions arising from primarily two external variables, namely, Covid-19 and consequential imposition of nationwide lockdown, many companies may have receding top line and bottom line and some of them may default in servicing debt obligations. While the impact of these external

variables on the economy is very deep, similar shocks of a comparatively lower intensity in the past have witnessed a sharp increase in corporate and personal insolvencies all over the world.

Typically, the resolution of insolvency requires a white knight to rescue a firm in distress. When every other firm is under stress at this time, it is unlikely to find sufficient number of white knights to rescue all firms in distress. In recognition of this, Governments all over the world have adopted an accommodative stance. The Government of India, NCLAT, RBI and IBBI have taken

several measures since March 24, 2020, to ameliorate the suffering. The announcements by the Finance Minister on May 17 are quite significant in the sense that these provide a breathing time to firms to recalibrate their operations and business to an all new normal, while ensuring the continuity of business operations and enabling the debtors and creditors to work out resolution of their choice.

The Government has announced the suspension of the IBC initiation for one year. Will the proposed amendments cover/impact applications that were filed prior to the

**lockdown and
are still pending
admission?**

It appears that the intention is to prevent companies to be pushed into insolvency proceeding for their failure to service debt obligations on account of Covid-19 induced stress. Therefore, it is expected that suspension of sections 7, 9 and 10 would disable filing of fresh applications. This will not hit the applications, which are pending admission on the date of commencement of the nationwide lockdown, as they do not relate to defaults arising from Covid-19. In the cases where an application has been admitted, the insolvency

proceeding
would continue
till it reaches
logical
conclusion.

Many countries
around the world
have taken such
a measure in the
interest of
protecting the
lives of
companies
which take years
to build and
mature.

**In the absence
of the IBC
framework for
one year, what
other regime of
resolution is
available for
lenders/creditors?**

It has been
reiterated time
and again that
recourse to the
provisions of the
Code is meant to
be the last resort.
There are several
formal and
informal
frameworks to
address stress.
Nothing stops a
debtor and
creditor to sit

across a table
and work out a
solution. The
parties may
informally and
mutually arrive
at a solution
without
involvement of
Court, or outside
any formal
framework. They
may work out a
solution under
the prudential
framework of
RBI. They may
also use the
route of
compromise and
arrangement
under the
Companies Act.
Those who are
focussed on
recovery, they
have the option
to use the
frameworks
under the
recovery laws.

**Does it mean
that when the
IBC is
suspended for
one year a
company
cannot refer
itself to
insolvency?**

One has to wait for the Ordinance to see the details of suspension that is envisaged by the Government. As it appears, irrespective of suspension, a separate mechanism within the Code for resolution of insolvencies of MSMEs is being envisaged. Further, the applications already filed and the ongoing insolvency proceedings will continue to be dealt under the Code.

Why is there a need to introduce a special insolvency framework for MSMEs?

MSMEs are different from other firms in many ways. Among others, the market for

resolution plans for MSMEs is local, while the entire globe is the market for bigger firms. Almost every MSME is an operational creditor. Further, most of the MSMEs are entrepreneurial ventures. Given the number of MSMEs, the number of entrepreneurs behind them is also very large. Most countries have a special dispensation for resolution of insolvencies of this category of firms. The Insolvency and Bankruptcy Code (IBC), 2016 enables the Central Government, in public interest, to provide a different framework for resolution of insolvency of MSMEs. With the intent to

prevent MSMEs from being pushed into insolvency for 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 ₹1 lakh to ₹1 crore.

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