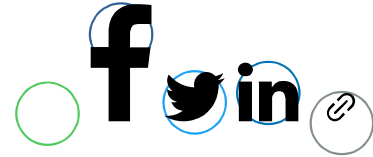


EXCLUSIVE: India's bankruptcy board Chairman explains the evolution of the country's insolvency laws

[SRIRAM IYER](#) | NOV 15, 2019, 16:01 IST



- **India's new bankruptcy law is providing what the country now needs - a way for creditors to gain what they can from the many companies that are going down under.**
- **A three year old law is still evolving and taking shape and at the same time improving India's ranking for ease of doing business.**
- **Here's an exclusive chat with MS Sahoo, the Chairman of the Insolvency and Bankruptcy Board of India.**

India's new bankruptcy law is providing what the country now needs - a way for creditors to gain what they can from the many companies that are going down under. A three year

old law is still evolving and taking shape and at the same time improving India's ranking for ease of doing business. What has been the progress and what is the road ahead? Sriram Iyer, Chief Editor of Business Insider India asked these questions to MS Sahoo, the Chairman of the Insolvency and Bankruptcy Board of India.

These are the edited excerpts:

Are bankruptcy cases moving faster in the last nine months of 2019 --in terms of resolutions, admissions, and settlements?

Sahoo: It is actually an evolving code. It moves along with the evolution of the market practices and ground realities. It made two course corrections earlier and this is the third round. The law now says that the process has to be completed in 330 days mandatorily including the time spent on liquidation.

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The process should be completed in a time bound manner, and please note that nowhere in the world is there this kind of timeline.

Is it going to be realistically possible or will there be loopholes?

I'm sure that there are people who can find ways to delay the things. But we have quite a large number of CIRPs which are getting completed within the timeline. When a new law of such deep reforms that affects the rights of people come into force, it's natural that people would challenge certain provisions of the law. And, the capacity of the NCLT has been more than doubled recently.

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Thirty new members joined at the end of the July. So I'm sure that this timeline is achievable.

Do we now have the requisite numbers that we envisaged at the start of this?

The government coming up with recruitment. So, the government is quite sensitive about meeting the employee needs of IBC.

With the current economic slowdown, will the number of cases increase exponentially?

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“Yes,

bankruptcy cases or insolvency cases also are a little cyclical. So, if many more companies are not able to repay the debts, the stakeholders may like to use this law. In fact, this law is not mandatory on anybody.

It is an optional law. If the stakeholders feel that they have a better remedy under this code, they may use this, if they find they have any other remedy, they're welcome to use other means.

But every stakeholder being a commercial person knows that if he initiates a resolution

process when times are bad and everybody is not doing well, and the process is initiated, he knows the inevitable consequence of this whereby he himself will be *the* hurt most.

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therefore he takes a commercial call whether this is the right time to trigger the process. And, generally market participants being business savvy, they do not recklessly initiate a process for the sake of it unless they see a resolution in sight.”

One cannot deny that it is taking far too long in many cases. Are there any learnings from this?

The outcome in these 150 cases have been that on an average, the financial creditors have got 45% of their claimed amount. They have got it at a cost of less than 1%. And they have got it at a time period of about 320 days.

Compare this with the pre-IBC regime when people were getting about 20% at a cost of 9% in over 5 years. That is the change this has brought in. But this is when you look at it compared to the claim amount. But when you look at it compared to the liquidation value, that is the minimum that a financial creditor can expect to get. Against liquidation value they have got upto 200%.

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Is**India's model better than that of other countries?**

Unlike the model in some countries where it is a 'sell' model. Ours is a resolution model. After selling the company, creditors have got this much. But now look at what has happened on account of the code. We, in fact, do not encourage people to come and use this code. If they can find a resolution elsewhere, they are encouraged to do that.

We have about four times of this number (2,500 cases); about 10,000 matters or so who are people applied, filed an application with the adjudicating authority, and before admission those are withdrawn.

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During that period about 10,000 applications were withdrawn meaning thereby that settlement of lakhs and crores of rupees. People have recovered that much money.

And even beyond this, we know once someone receives a notice from a personal creditor to repay debt, or one who is apprehending that sometime I'll have a default, he is preparing himself much before, so that he doesn't come close to NCLT process.

We know many stories where NPA accounts of banks have become standard accounts. People on their own begging, borrowing and stealing to work out a settlement to either repay the loan by whatever way they are working out the resolution, so that they do not come to this process.

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they do this? They do this for two reasons. One is that, the law now says a person having certain disabilities cannot submit a resolution plan like a wilful defaulter or having a default NPA account for long or has been convicted of a major commercial law violation.

So, if the promoter knows that if an application is made and CIRP commences, in all possibility if he is falling in any of these categories, he'll not be able to submit a resolution plan. Second, even if he submits a resolution plan, his plan may not be the most competitive one or commit of creditors finds somebody else more credible.”

In either case, the company moves out from the hands of the promoters or the current management. And since they do not want this to happen, they take measures much before to avoid going close to NCLT.

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happens is a much larger number which I call as happening in the shadow of the IBC. These 10,000 withdrawals before admission is on account of IBC and this 2,500 is under

the IBC.

The total impact is you have to see the behavioural change it has brought in among the debtors among the creditors, among corporate debtors, among everybody in the system, and everybody knows the consequences are outcome of these and that is why the honourable supreme court told that with this law now defaulters paradise is lost.

But, one set of people where the behaviour hasn't changed are the large borrowers. Do you admit that there's a certain stubbornness in letting law take its own course?"

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Yes,
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have noticed there was a challenge in the matter of Essar Steel, challenge in the matter of Bhushan Steel, Bhushan Power and many such matters have been challenged. And recent challenge as I told you, in the matter of Pioneer when there are 140-150 writ petitions by real estate developers. But you have to see what has been the consequence of all this.

Every provision section 29A, home buyer provision, everything has been upheld and you have seen in all these big cases you are referring to, they are the companies that have moved away from the current promoters to a new resolution applicant. And of the 130 cases as I told has resolutions completed, in almost every case, most of the cases the company has moved away. And that is the proof.

You told me that you have recently interacted with some foreign investors. What is the toughest question that you have faced from them? What is the one aspect of this law that you were not able to answer convincingly?

They want a predictability of the process. If the process has started, it must conclude by 'x'

date and the outcome is known to everybody so there's no uncertainty. They're playing a game being sure that this is what will be the consequence. So, they do not want any kind of uncertainty.

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Do

you fear that due to the current economic slowdown, there will be lack of bidders and therefore the existing cases may slowdown in the next 6 months to a year?

Not really. In fact, for many, this is an opportunity. If there is a current slowdown, valuation is less. So, it's an opportunity for people to buy when things are not going well. So many people take advantage of this and buy cheap at the right time."