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Regime for individuals will be in place quickly: IBBI chairman M S Sahoo

Interview of M S Sahoo, chairman, Insolvency and Bankruptcy Board of India



M S Sahoo, Chairman, Insolvency And Bankruptcy Board Of India (IBBI)

N Sundaresha Subramanian |

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M S Sahoo, chairman, Insolvency and Bankruptcy Board of India (IBBI), is a trained lawyer and a veteran of regulatory policy, in his fifth regulatory job. Even for a person with such diverse experience and stints in the finance ministry and institutions such as the National Stock Exchange, Securities and Exchange Board of India, Institute of Company Secretaries of India and the Competition Commission of India, the first year at India's youngest regulator has been one of great learning. In an interview with *N Sundaresha Subramanian*, he speaks about the year gone by and the one ahead. Edited excerpts:

Take us through the year's journey at the IBBI.

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It is the journey of the Insolvency and Bankruptcy Code. It has been a very fast, focused and passionate journey, full of enthusiasm and learning. The government led the journey from the front and soon converted it to 'Share the Journey'. In Ernest Hemingway's novel "The Sun Also Rises", there is a dialogue: "How did you go bankrupt?" The response is: "Gradually and then suddenly". Insolvency and bankruptcy reforms have been in the works for 25 years, it took shape all of a sudden in early 2016. Enactment of the Code and its implementation have been very swift, with no parallel to my knowledge inside or outside the country.

What has been the impact on the ground?

There are three main ways the Code impacts. The first is prevention. The inevitable consequence of the process deters debtors from default. Second, it encourages debtors to settle default expeditiously. It is understood that they are settling defaults as soon as they receive a notice from an operational creditor or an application is filed with NCLT. Reportedly, over 250 cases have been settled by the Mumbai Bench of NCLT alone, even before the admission stage. The number of such cases settled by all benches of NCLT and even before the application reaches them is any body's guess. Two cases have been settled at the level of the Supreme Court. Third, the impact of the Code through resolution and liquidation is yet to be seen. There are some early signs; one needs to see a few more cases to arrive at a finding.

**Were the Code and adjudicating bodies found wanting on the homebuyers' issue?
Will the Jaypee Infratech case set a precedent?**

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A law is made in a given context and with available knowledge. Deficiencies come up as it is put into practice and the law is re-written to address these. Take the example of the Act or the Competition Act, rewritten substantially in the first few years. I do not know, but do not rule out if the Code is wanting in some manner. There are three sources of law, namely, statutory law, case law or precedents, and customs. We need to allow all three to evolve with experience and address if something is wanting somewhere. As regards the adjudicating authority, it has held that the homebuyer is undisputedly a stakeholder and the resolution professional is expected to consider and take care of his interests along with other stakeholders. It is important to note that the objective of the Code is insolvency resolution of the corporate debtor for maximisation of the value of its assets and to balance the interests of all stakeholders.

Related party transactions, for example in the case of Synergies Dooray's, have raised concerns. What is your take?

I do not have any take on this. I am told this has been adjudicated by the NCLT while approving the resolution plan and is now sub judice before the NCLAT on appeal.

Any comments on poor recovery...

The Code is not a mechanism for recovery; it is a resolution mechanism. It expects creditors to get their default amounts from future earnings of the firm, rather than from sale of its assets. Corporate debtors with long-pending defaults, particularly those which have been to BIFR as well or have no business for years, came up for insolvency resolution in the initial days of the implementation of the Code. The outcome in these matters may not be very attractive, as compared to book value or

default amount, and some of them may even go into liquidation. It will, however, be attractive as compared to liquidation value. A few years down the line, corporate debtors would come up for resolution at the earliest instance of default of Rs 1 lakh, that is, when they have reasonably good health and hence the outcome then would be attractive.

What are the things you would want to do in the next year?

Two things. First, we are looking forward to implementing a regime for individual insolvency in a phased manner. In the first phase, we would implement the insolvency regime in respect of individuals, who are guarantors to corporates undergoing the resolution process. That can be done fairly quickly as the adjudicating authority for this is NCLT. Next would be individuals who are doing some kind of business — proprietorship or partnership firms. Second, we will facilitate corporate insolvency transactions. Many resolution and liquidation transactions will mature in the next few months and those may throw up some irritations and deficiencies in the regulatory framework. We would address them expeditiously. To the extent within our purview, we would promote a conducive environment for the development of markets for interim finance, resolution plans and liquidation of assets. We would focus on building capacity of IPs and keep a close watch on their conduct. We would facilitate operationalisation of information utilities so that authentic information is available to the adjudicating authority and insolvency professionals to complete the transactions expeditiously.

At least one of them would be ready?

Yes. We have just registered one Information Utility or IU.

There is going to be an increase in cases. Can NCLT handle this?

We have been hearing this for about a year. The adjudication infrastructure has disposed of over 700 matters. There has been no compromise in quality or quantity. The infrastructure needs to develop in sync with workload and it has been happening.



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