The Supreme Court's judgment in the Essar Steel case last week is being seen as a watershed moment in the journey of the Indian insolvency framework. *BusinessLine* caught up with insolvency regulator IBBI Chairman MS Sahoo, who has played a key role in the evolution and success of this framework, to understand the implications of the apex court judgment. *Excerpts*:

What is your view on the SC judgment on the Essar Steel case?

This judgment explains and settles several conceptual and contentious issues and resolves grey areas. It provides clarity on the roles of various stakeholders — resolution professional, resolution applicant, committee of creditors (CoC), the adjudicating authority (AA), appellate authority, qua a resolution plan. It establishes supremacy of the CoC in commercial matters relating to a corporate insolvency resolution process (CIRP), which includes the manner of distribution of realisations under a resolution plan among the various classes and sub-classes of creditors. Also, it explains the extent of limited review available to the AA, which can, in no circumstance, trespass upon a business decision of the majority of the CoC.

It ends claims popping up after approval of a resolution plan. It resolves the issue of distribution of profits made during the CIRP. It endorses the resolution plan of ArcelorMittal, as amended and accepted by the CoC, for resolution of Essar. It upholds the constitutional validity of the provisions relating to overall timeline and distribution of realisation under a resolution plan, inserted by the Amendment Act of 2019. It takes away excuses of various parties to halt the process of resolution midway and streamlines the processes for timely conclusion of CIRPs. This judgment is in sync with the basic structure of the insolvency law in India and elsewhere.

Do you think the judgment will impact the investment climate in the country?

An investor can factor in risks of investment and business. It, however, needs certainty of processes, timelines and outcomes. Coupled with considerable strengthening of rights of creditors, the certainty of processes, timelines and outcomes, which is ensured by this judgment, the investors would be willing to invest more in credit / loan instruments. The resolution applicants would also

be willing to submit resolution plans. Further, failure of business dampens entrepreneurship if it is onerous for an entrepreneur to exit a business. A certain and reliable CIRP would release the honest entrepreneur from business.

This judgment will promote private investment and entrepreneurship in the economy.

Will the SC move of striking down the word 'mandatorily' in the 330-day timeline brought by the August amendment hinder time-bound resolution?

The Code envisages closure of a CIRP in a time-bound manner. It mandates completion of a CIRP within 180 days, with a one-time extension of up to 90 days. Without disturbing these timelines, the Amendment Act of 2019 provides that CIRP shall mandatorily be completed within 330 days, including any extension of time as well as any exclusion of time on account of legal proceedings. The word 'mandatorily' has been dropped. The effect of this is that a CIRP must ordinarily be completed within 330 days from the insolvency commencement date, including extensions and the time taken in legal proceedings. It is only in exceptional cases that time can be extended, particularly when the AA cannot take up a matter within the requisite period for no fault of the stakeholders. Thus, the timelines of 180 days, additional 90 days and overall 330 days remain sacrosanct. With most of the contentious issues having been settled, extensive learning by the stakeholders over the last three years and enhanced bench capacity of the AA, I do not see any difficulty in time-bound resolution.

Will the interests of operational creditors be safeguarded now?

The Amendment Act of 2019 provides that operational creditors (OCs) shall be paid not less than the amount payable to them in the event of liquidation of the CD or the amount payable to them if realisations under the resolution plan were distributed in accordance with the priority in the liquidation waterfall, whichever is higher. The CIRP regulations require that the amount due to the OCs under a resolution plan shall be paid in priority over FCs. These also require that a resolution plan shall include a statement as to how it has dealt with the interests of all stakeholders, including FCs and OCs of the CD.

Further, the decision of the CoC must reflect that it has adequately balanced the interests of all stakeholders, including OCs. The AA can look at the resolution plan if the interests of all stakeholders, including OCs, has been taken care of.

The OCs are benefitting from other provisions of the Code. 50 per cent of CIRPs have been initiated based on applications of OCs. Thousands of applications filed by OCs have been settled before their admission, indicating realisation by OCs.

SC says that CoC does not act in a fiduciary capacity to any group of creditors. How do you read this? What will be the implications for operational creditors?

It is a fact that the CoC does not act in any fiduciary capacity to any group of creditors, financial or operational, secured or unsecured. It rather has a fiduciary responsibility towards the CD, which it is to rescue, if it is possible to do so. It has a fiduciary duty to ensure that the resolution plan provides for measures, as may be necessary, for the insolvency resolution of the CD for maximisation of the value of its assets. If value is maximised, it benefits all stakeholders. The treatment of creditors, including OCs, must be fair and equitable. That does not mean that they must be paid the same amount of their debt proportionately.

What are your views on the interim framework for resolution of financial service providers under IBC?

The Insolvency and Bankruptcy Code, 2016 (Code) enables the Central Government to use it for insolvency and liquidation proceedings of financial service providers (FSPs) or categories of FSPs, in consultation with the financial sector regulators, in such manner as may be prescribed. The Government has now notified the rules to provide that the framework for insolvency and liquidation proceedings of corporate debtors under the Code shall apply to insolvency and liquidation proceedings of FSPs, with certain modifications. Pending provision of a dedicated framework for the resolution of FSPs, these rules will meet immediate needs of resolution of FSPs.

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