# Stakeholders are getting higher than liquidation value: IBBI chief Sahoo

*I am more than happy with the progress in implementation of the Code, as well as the performance of the stakeholders and agencies involved in the resolution process, says IBBI Chairman, M S Sahoo*

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

Veena Mani | Indivjal Dhasmana |

Last Updated : Jun 08 2018 | 7:11 AM IST

The government promulgated an ordinance to amend the Insolvency and Bankruptcy Code (IBC) on Wednesday after two years of the enactment of the Act. **M S SAHOO**, chairman of the Insolvency and Bankruptcy Board of India, talks to **Veena Mani & Indivjal Dhasmana** on the ordinance and implementation of the Code. **Edited excerpts:**

**The ordinance to amend IBC says that if 90 per cent of lenders approve, the petition should be allowed to be withdrawn from the National Company Law Tribunal (NCLT). Is it fair to first go for NCLT and then withdraw the case?**



Insolvency is an outcome of the market. Hence, the Code envisages resolution of insolvency through a market process — that is, by stakeholders. If the decision-making authority approves a proposal with 90 per cent of voting powers, it should be possible.

**How will homebuyers be represented now in the committee of creditors?**

There are situations where there are numerous financial creditors. Details have to be worked out to ensure their participation in the CoC.

**ALSO READ:** IBC delisting norms: Small shareholders ask Sebi for review

**More From This Section**

**More needs to be done on ease of doing business: UKIBC COO Kevin McCole**

**Board should set the tone to fight financial crimes, says Anurag Jain**

**India, Russia mus multipolar world**

**What do you have to say about the progress since the Code's inception?**

Over 800 corporate debtors, including the (first list of) 12 big accounts identified by the Reserve Bank, have been admitted into the resolution process. Of these, about 70 have been closed on appeal or review. About 130 have completed the first phase, ending with orders for either resolution or liquidation. About 200 corporate debtors are undergoing voluntary liquidation.

Work on an individual insolvency (resolution) framework has also begun. Regulation and development of the valuation profession has begun as well. Valuation examinations for three asset classes have commenced. There are about 1,800 IPs (insolvency professionals), 80 IPEs (insolvency professional entities), six registered valuer organisations, three IPAs (insolvency practitioner associations) and one IU (information utility). An enforcement and adjudication framework in respect of service providers is in place.

On recognising the progress in implementation of the reform, the World Bank improved India's ranking from 136 to 103 on the 'Resolving Insolvency' parameter in its 'Doing Business 2018' report.

**You seem a bit unhappy with the committees of creditors under the Code?**

I am more than happy with the progress in implementation of the Code, as well as the performance of the stakeholders and agencies involved in the resolution process. However, I believe in the Olympic spirit of 'faster, higher, longer'. We should take full advantage of the Code.

**ALSO READ:** IBC one-year report card: Recovery rates of bad loans will get worse

**Default by a firm enables its stakeholders to trigger the resolution process. Why does a firm default?**

There might be deficiencies in the organisation, strategy, business model, management, financing, technology, operations, product portfolio, etc. In such cases the firm is viable and the insolvency can be resolved. The resolution plan should address the deficiencies that contributed to default, so that a resolution is sustainable. If products of a firm are not selling, a resolution plan providing for only haircuts (loan write-offs) might not help much.

**Creditors continue to take deep haircuts?**

Firms with long-pending default, particularly those which have been to BIFR (the erstwhile Board for Financial and Industrial Reconstruction) or have no business for years, came for insolvency resolution in the initial days of the Code's implementation. The outcome in these cases might not be very attractive as

compared to the claim amount and some might end up in liquidation. It is, however, attractive as compared to the liquidation value.

Synergies Dooray (the first case where a resolution plan was approved) had been into BIFR for over a decade. The creditors realised only six per cent of their claims but six times of the liquidation value. In the case of Bhushan Steel, the creditors realised 64 per cent of their claims, and 2.5 times the liquidation value. One needs to look at what is realised vis-à-vis what is realisable under the circumstances. The resolution process gives good outcomes when the process is initiated at the earliest and completed at the earliest. A few years down the line, we will see firms coming for resolution at the earliest instance of default, when in reasonably good health. The outcome, then, would be attractive.

**ALSO READ:** IBC not being used to full extent; lenders need to do more: IBBI chief

**There is a lot of litigation in cases filed under the Code. For instance, there is a dispute on who a financial creditor is and who an operational creditor. Is it demoralising?**

It is the right of stakeholders to fight for their entitlement. When they have different views about this, particularly under a new law, they need the support of tribunals and courts to sort their differences. Courts and tribunals have sorted several contentious issues which are relevant at the stage of admission into CIRP (corporate insolvency resolution process) and, consequently, the process of admission is now fairly streamlined. A slight delay in a few matters at present means faster progress of all matters in the future. I am confident the issues at the stage of approval of a resolution plan would also get sorted out soon.

Yes, there have been disputes about the status of a creditor. But, the tribunals have quickly resolved such disputes. If you are referring to home buyers, the Insolvency Law Committee has dealt with it.

**Recently, the disciplinary committee sought action against a resolution professional for charging high fees. How do you decide what is an exorbitant fee?**

The law requires an IP to charge a fee which is a reasonable reflection of the work necessarily and properly undertaken by him. Therefore, a fee, which is higher than

what is reasonable under the facts and circumstances is exorbitant and illegal. What is reasonable depends on the context and it is unreasonable to define what is reasonable. A simple way is to look at industry practice -- how much is charged by an IP for a process having similar workload and similar complexity. Further, if the parties negotiate a fee very different from the prevailing level, it casts doubt as to why one is willing to pay or receive so differently.

**ALSO READ:** IBC's blind spot: Rights of operational creditors need to be spelt out

**Would you consider making firms enroll as insolvency professionals? We have seen a tussle between two IPs and their parent BPO company. If firms are registered, such tussles might not happen?**

The Code, read with the Regulations, allow only a natural person having the required qualification and experience to be enrolled as a member of an IPA and thereafter registered as an IP with IBBI. This is also the practice in respect of other professionals such as advocates, chartered accountants or doctors in India and for insolvency professionals in matured jurisdictions like the UK. An IP is, however, allowed to take support services from an Insolvency Professional Entity of which he is a partner or director.

**In many cases, 270 days (the time limit for approving a resolution plan) have passed and they continue to seek resolution. Would you consider extending the moratorium period?**

I do not think so. At one time, 60 days were considered inadequate for transfer of shares. Now, 60 seconds is considered too long. As the stakeholders learn and the process is streamlined, even 180 days could prove long.

**Also Read**

Lanco creditors to seek time extension to complete insolvency process

Market economies need responsible, ethical professionals, says MS Sahoo

Insolvency regula resolution profes time



First Published: Jun 08 2018 | 7:11 AM IST

## Explore News

Stock Market LIVE | Stocks to Watch Today | Latest News LIVE | Gold-Silver Price Today | Baazar Style Retail IPO | Share Market Today | Ex-Dividend Today | Premier Energies IPO Allotment | Pending Cases in SC | Business Standard at 50

HOT STOCKS

Suzlon Energy Share Price | Adani Enterprises Share Price | Adani Power Share Price | IRFC Share Price | Tata Motors Share Price | Tata Steel Share Price | Yes Bank Share Price | Infosys Share Price | SBI Share Price | Reliance shares |

TOP SECTIONS

Latest News | Company News | Market News | India News | Politics News | Cricket News | Personal Finance | Technology News | World News | Industry News | Education News | Opinion | Shows | Economy News | Lifestyle News | Health News |

Today's Paper | About Us | T&C | Privacy Policy | Cookie Policy | Disclaimer | Investor Communication | GST registration number List | Compliance | Contact Us | Advertise with Us | Sitemap | Subscribe | Careers | BS Apps |

KEY EVENTS

ICC T20 World Cup 2024 | Business Standard at 50 | Paralympics 2024 | Jammu Kashmir Elections 2024 |