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Banking. Still nascent IBC ecosystem requires nurturing, says outgoing IBBI chief Sahoo

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BusinessLine interacts with him to
understand the IBC journey, experiences and
the unfinished agenda of the regulator

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Kolkata, Date: 13/01/2017. M. S. Sahoo, Chairman, Insolvency and Bankruptcy Board of India, Ministry of Corporate Affairs, Government of India. Photo: Ashoke Chakrabarty

FEEDBACK



Kolkata, Date: 13/01/2017. M. S. Sahoo, Chairman,
Insolvency and Bankruptcy Board of India, Ministry of
Corporate Affairs, Government of India. Photo: Ashoke
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On October 1,
insolvency
regulator IBBI
will turn five.
MS Sahoo, who
has been at the
helm of the
regulatory body
since its
inception, and
played a critical
role in hand-
holding to
overcome
several
challenges, will
deputise office on
September 30.
BusinessLine
interacted with
him to
understand the
IBC journey,
experiences and
the unfinished
agenda of the
regulator.

Excerpts:

What is your
overall
assessment of
the IBC journey
so far?

The code has revolutionalised insolvency resolution, established the supremacy of markets and the rule of law in insolvency resolution, and professionalised the process of resolution.

From providing freedom of exit to rescuing companies in financial stress to releasing entrepreneurs and idle resources stuck up in inefficient uses to helping creditors realise their dues and, most importantly, bringing about a behavioural change among the debtors and creditors alike, the list of achievements is a long one.

The improvement in India's rank in

World Bank's
resolving
insolvency
parameter from
136th to 52nd
position in
three years is a
testimony of the
remarkable
journey.

What more can
be done to
improve the
effectiveness

of the IBC
ecosystem?

The IBC
ecosystem is
still nascent,
requiring
nurturing.

Building
capacity of each
constituent of
the ecosystem,
ensuring each
constituent
plays by the rule
book, enabling
enhanced use of
information
utility in
insolvency
proceedings,
establishing
institutional
framework for
valuation

profession,
promoting
robust and
liquid market
for distressed
assets, and
developing best
professional
practices should
help improve
the
effectiveness of
the ecosystem.

Five years on,
has the IBC
system matured
enough, or are

we still riddled
with
implementation
issues?

An economic
law like the IBC
is invariably a
journey and not
a destination.

With the
blessings of the
government and
stakeholders, it
has travelled a
considerable
distance,
addressing the
difficulties that
it came across.
The code has
undergone

course
corrections six
times to address
specific
implementation
issues. The
ecosystem is
richer today
with the
experience of
handling
20,000
applications,
4,500 corporate
insolvency
resolution
processes, 1,500
liquidations,
and 1,000
voluntary
liquidations. It
has passed the
constitutional
muster.

The Apex Court
has settled
several
contentious
issues and
resolved grey
areas.

To my mind,
most of the
implementation
issues have
been resolved,
though the
enforcement of
the law

continues to
deal with issues
of capacity,
conduct and
approach of the
constituents of
the ecosystem.
Fresh issues are
likely to arise as
we embark on
newer
dimensions of
the regime.

What, according
to you,

is the
unfinished

agenda as IBC
chief?

We have just
scratched the
surface. As we
resolved the
first order
issues, much
deeper issues
have come to
light.

Building
capacity of the
ecosystem,
ensuring
everyone plays
by the rule book,
enriching the
processes with
value-added

features,
simplifying the
processes,
operationalising
provisions
related to
individual
insolvency,
promoting
resolvability of
firms, intensive
use of
information
utility to
facilitate
processes,
automating
resolution
processes,
institutional
framework for
valuation
profession,
developing
robust and
liquid market
for distressed
assets, best
practices in
different
aspects, and
planning
resources
matching
responsibilities
of IBBI, among
others, should
form the agenda
for a few

successive
chairpersons.

One of the
challenges faced
by the IBC is the
heavy pendency
of cases at
NCLT. What can
be done to
tackle the
problem?

The government
is seized of the
urgent need to
strengthen
NCLT
infrastructure.
It has appointed
18 new
members in
NCLT recently.
It is equally
important to
consider
measures to
reduce the load.

Disincentivising
frivolous
applications,
limits on time
for arguments
and number of
adjournments,
provision of
administrative
process for
simpler
processes like

fresh start,
reliance on
informal
mechanism for
resolution, may
help in this
regard.

What is your
view on the
perception that
some

promoters are
still gaming

the system?
What needs

to be done on
this front?

Probably reality
is different from
perception.

Though there
have been
attempts by
ineligible
persons to
submit
resolution
plans, and some
have dragged
the matters up
to the Apex
Court, the law
has ultimately
triumphed. I do
not think any
ineligible
person has

acquired or retained a company through a resolution plan. Let us not confuse with withdrawal under section 12A, which, as the Supreme Court has clarified in the matter of Arun Kumar Jagatramka, leads to a status quo ante in respect of the liabilities of the corporate debtor.

What can be done to improve the timeline for completion of

CIRP? The average time taken is more than the statutory limit.

The timeline, compared to pre-IBC days, is extremely good. However, compared to the legislative

intent, it is not
so good. An
insolvency
proceeding is
like an
orchestra, where
each
constituent has
a specific role. If
there is any slip-
up / inadequacy
in the
performance of
any of the
constituents,
the process may
not conclude in
time.

Delay arises
from many
sources: the
promoters and
management do
not allow
smooth
takeover of the
firm by the IP
and may not co-
operate with
him in running
the business;
the committee
of creditors
(CoC) may not
take decisions
promptly; some
stakeholders
may file may file
frivolous

applications,
wasting judicial
time; and the IP
may not
conduct the
process with
promptitude.

While State
strengthens the
Adjudicating
Authority, the
stakeholders
need to conduct
themselves
more
responsibly. The
IBBI is closely
monitoring
market
participants, as
well as
professionals, to
ensure early
closure of
processes.

How do you see
the performance
of the
committee of
creditors in the
last five years?
Should there be

a code of
conduct for
them?

The CoC has
performed
admirably well.

It is now settled
that the
commercial
wisdom of the
CoC is supreme
and not
justiciable.

However, there
have been
instances where
its conduct has
been found
wanting, at
times
threatening the
integrity of the
resolution
process.

In some cases, it
has strayed into
matters that do
not fall into
commercial
domain ,and has
unduly
influenced the
resolution
professional.

Given its wide
powers and
larger
implications of
its actions, it
has become
necessary to
provide for
matching
accountability.

The Standing

Committee of Finance, Adjudicating Authority, regulators and stakeholders, have suggested some form of regulation of conduct of CoC. In consultation with the IBA, the IBBI is working on guidelines to stipulate conduct expected from a CoC.

How far are we in having a separate framework for group insolvency and cross border insolvency?

The Jet Airways and Videocon Industries have highlighted the need for a regime that deals with situations where the assets and creditors are located outside

India, or the fate of one company is linked to that of other group companies. The Insolvency Law Committee has suggested the incorporation of UNCITRAL Model Law on cross-border insolvency into the code, with certain modifications and variations. An MCA committee is working on subordinate legislation required to implement cross border insolvency provisions. An IBBI Working Group has recommended a framework for group insolvency, to be implemented in a phased manner.

Everyone from the government to stakeholders

has been on a steep learning curve and addressing the immediate difficulties arising in implementation of the code. Their hands have always been full. Sometimes urgent matters have taken precedence over important matters. There is a sincere intent to enrich the code, with value-added features such as cross-border insolvency and group insolvency, and to make India a better place to do business.

COMMENTS

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