

# 'IBC is an option; stakeholders may not use it even if freeze not extended'

India's landmark insolvency law, now in its fourth year, has had a journey with many twists and turns. Insolvency and Bankruptcy Board of India Chairman **M S SAHOO** in an interview with **Ruchika Chitravanshi** talks about achievements, evolution, and challenges of the IBC. Edited excerpts:

**The Insolvency and Bankruptcy Code is now a four-year-old law. How do you look back at this journey and what have been the big achievements?**

Yes, it has been four years and still it seems we have just started. It has established the supremacy of markets and reinforced the rule of law in resolution of insolvency. From providing freedom of exit to rescuing companies in financial distress to helping creditors realise their dues and most importantly, redefining debtors-creditor relationship, the list of achievements of the Code is long.

The Code is resolving stress in about 95 per cent of companies that reach the Adjudicating Authority. An entrepreneur should not be stuck up in a business if he/she is failing to deliver.

The Code cleans up non-performing assets (NPAs) and puts companies in capable and credible hands. It played a significant role in arresting the growth of NPA and reducing the level of NPA from 11.5 per cent in 2017-18 to 8.2 per cent in 2019-20. Though recovery is incidental to rescue of companies under the Code, it has emerged as the dominant mode of recovery. The resolution plans are recovering over 40 per cent of the claims of creditors and nearly 200 per cent of liquidation value of firms. With the Code in place, as the Supreme Court put it, the defaulter's paradise is lost.

**Many contentious issues have been resolved by the Supreme Court in the past four years.**

Almost every provision of the law as well as the amendments went through intense judicial scrutiny. While conceding the freedom to experiment to the legislature, the apex court proactively settled the contentious issues and resolved grey areas, at an unprecedented pace. The court rulings have imparted clarity to the roles of various stakeholders in the



resolution process and as to what is permissible and what is not. As the Code passed the constitutional muster, it is endowed with rich jurisprudence and probably the largest body of case laws.

**How do you see IBC's role in the light of the government's Sashakt scheme for resolution of stressed assets?**

Market economy is all about choice. The firms must have many options to choose from. There is a space for the Code, Sashakt, scheme of arrangement under the Companies Act, restructuring under the prudential framework of RBI, and even informal arrangements, each of which has unique advantages in certain circumstances. However, the primary objective of the Code is resolution, and if someone is interested in recovery, the Code is not an option. Further, the Code is a powerful option in terms of what it can provide for through a resolution plan and the outcome which is binding on everyone.

**Do you think there has been an over-tinkering of the law?**

An economic law is essentially empiric and evolves continuously through experimentation to provide solutions to emerging needs. The Code is no exception; it kept responding to emerging market needs, which arose from difficulties in implementing the provisions of the Code, unanticipated situations, and the changes in the economic environment.

**Banks are seeking extension of freeze on NCLT proceedings till June. What do you think of this?**

The law enabled extension of freeze till March 24 and this has been done. Any further extension needs to be evaluated very carefully, as in a market economy, every measure has potential to affect someone's interest, positively or negatively. In any case, the Code is an option; the stakeholders may not use it even if freeze is not extended.

**Very soon, the suspension on CIRP would come to an end. What do you anticipate in terms of IBC activity?**

There is a continuous churning in the market, which changes the fortunes of businesses. Covid-19 has increased the intensity and speed of churning, creating new sunrise and sunset businesses. Some businesses would shrink or close, some would expand, and new ones will open, and jobs and resources would move across firms and sectors, which will necessitate the use of the Code. The Code would remain a jewel in the Indian statute book for provision of freedom of exit. To service the evolving needs of the economy, it would continue to have new products and add new features to existing products, while staying focused on time bound rescue of businesses.

**Will there be an increase in the number of IBC cases?**

The number of applications for initiating insolvency is likely to increase, but rise may not be significant. It is because the stakeholders are continuing to resolve stress through several options available, including corporate insolvency resolution process in respect of stress other than Covid-19 stress, the RBI's prudential framework, etc. They are exploring innovative options for resolution of stress while taking several cost-cutting measures to avoid stress. Further, (a) the viable companies would have normal business operations after the pandemic subsides; (b) higher threshold of default for initiation insolvency proceedings keeps most MSMEs out of insolvency proceedings; and (c) Covid-19 period defaults remain outside insolvency proceedings forever.



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