‘We are on track to ensure time-bound resolution ’

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MS Sahoo, Chairperson of the Insolvency and Bankruptcy Board of India.

MS Sahoo, Chairperson of the Insolvency and Bankruptcy Board of India. | Photo Credit: Ashoke Chakrabarty

For the 1,000-odd cases admitted by the National Company Law Tribunal (NCLT)

under the Insolvency and Bankruptcy Code (IBC), time-bound resolution has been a challenge. Are these just teething troubles or are there other key issues plaguing the system? MS Sahoo, Chairperson of the Insolvency and Bankruptcy Board of India, tells *BusinessLine* about the various issues and challenges in the IBC process and how they are being addressed. Excerpts:

One of the crucial aspects of the Insolvency and Bankruptcy Code (IBC) was time-bound resolution. But for most of the big cases, the 270-day deadline has lapsed and resolution process is still ongoing. Isn't the initial intent of the IBC getting diluted?

Please appreciate that India is probably the only country which seeks to achieve resolution within a timeframe. Also, see this in the context that the track record of similar processes under erstwhile regimes in India was dismal; the ecosystem for the implementation of the IBC is brand new, and India did not have the experience of an incentive-compliant, market-led, and pro-active mechanism for insolvency resolution.

Further, it is not that every resolution is getting delayed. What is important is whether earnest efforts are being made to overcome difficulties coming in the way of time-bound resolution. The government promulgated two ordinances in quick succession to address the emerging issues. Courts and tribunals are settling the matters very fast.

The Supreme Court delivered the judgement on October 4 in the case of Essar within a week of conclusion of the hearing. While urging the authorities to follow the model timeline provided in the regulations, the Supreme Court held the resolution period of 180/270 days to be mandatory.

An aggrieved resolution applicant must not approach the Adjudicating Authority (AA) until the resolution plan approved by the committee of creditors is submitted to the AA for quasi-judicial determination.

It also held that the AA does not have the jurisdiction to interfere at an applicant's behest at a stage before the quasi-judicial determination of a resolution plan.

Thus, mandatory timeline for stakeholders, along with restraint on resolution applicant to approach the AA, will expedite the process. Further, the government has advertised for 36 positions of members, which will more than double the capacity of the AA.

So do you think the sheer size of the number of cases – over 1,000 now under Corporate Insolvency Resolution Process (CIRP) – is leading to clutter and delays?

'1,000 under CIRP' does not capture the load on the system. 1,000 cases have been admitted for resolution process. While admitting 1,000 cases, probably 4,000 were dismissed by the AA.

Dismissal of a matter takes as much time as an admission. In addition to load, everyone – IBBI, insolvency professionals, committee of creditors – is learning while doing.

Usually, a reform (securities reform, competition reforms) takes about 5 years to stabilise.

Section 29A has led to a number of cases being filed in NCLT, questioning the eligibility of competing bids.

The Supreme Court, in the case of Essar, observed that a purposeful and contextual interpretation of section 29A is imperative to find out the real individuals or entities behind the submission of a resolution plan.

Hence, great care must be taken to ensure that only capable and credible people take control of the company in the interest of sustainable resolution.

We cannot assign the company to an undesirable person just to expedite the process. 29A is not the only issue. Several issues arise and they are being sorted out expeditiously.

What are the other issues

at the approval stage?
Let me give two recent examples. A resolution plan treated all FCs equally and the AA approved it. However, one of the FCs challenged it on the ground that dissenting FCs have been paid on a par with the FCs who agreed with the plan, against the provisions in the regulations.

The Appellate Authority vide order dated September 12, in the case of Central Bank of India versus Resolution Professional of the Sirpur Paper Mills Ltd and Ors, found those provisions inconsistent with the provisions of the code.

The IBBI has substituted those provisions on October 5 to provide that the amount due to OCs under the resolution plan shall be paid in priority over FCs. Similarly, the AA vide, in its order dated September 29, in the case of Nikhil Mehta & Sons versus AMR Infrastructure Ltd, took note of the unique problems in real estate companies where FCs are scattered all over the country and are not organised.

Accordingly, the AA ruled that in case of such companies where FCs in class(s) comprise 100 per cent voting share, a resolution may be passed with 50 per cent voting share.

The regulations earlier defined dissenting creditor to mean a creditor who voted against the resolution plan or abstained from voting for the resolution plan. By an amendment to the regulations on October 5, the IBBI removed all references in the regulations to dissenting creditors.

In most cases, minority shareholders have been left in the lurch, as the resolution plan entails a steep reduction in capital. How do we safeguard their interests?

The code believes that a limited liability firm is a contract between equity and debt. As long as debt is serviced, equity – represented by a board of directors – has complete control of the firm.

When the firm fails to service the debt, control of the firm shifts to creditors, represented by a committee of creditors (CoC)for resolving insolvency.

If a company has gone for insolvency and has no value left in it, nothing much can be done for shareholders. Such a scenario is true for cases that have been under BIFR for long.

That is why the code allows for insolvency proceedings to be initiated at the earliest default of the threshold amount, when the value for shareholders is almost intact. In such cases, the resolution plan should not curtail the rights of shareholders.

Wherever such curtailment is absolutely required, it must be reasonable and not more than required.

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