IBC has delivered 169% recovery: IBBI Founder Chairperson MS Sahoo

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The Insolvency and Bankruptcy Code (IBC) has transformed the insolvency resolution regime in several fundamental ways, says M.S. Sahoo, former distinguished Professor, National Law University Delhi, and founder chairperson of the Insolvency and Bankruptcy Board of India (IBBI). In an interview to Business Today, he says the IBC has firmly established the primacy of market mechanisms in resolving business stress. It has also ushered in a new era of professionalism in insolvency resolution. Third, it has catalysed the emergence of a robust, though still maturing, market for distressed assets. Edited excerpts:

Recent court rulings, particularly the one on Bhushan Power and Steel Ltd (BPSL), have raised concerns over the efficacy of the IBC. Do you think there needs to be a relook at its functioning?

The concerns arising from the BPSL ruling relate more to the implementation of the IBC than to any inherent flaw in the law. They reflect how market participants conducted the resolution process and how the judiciary applied the relevant provisions. The ruling underscores the need for all stakeholders, including market participants, regulators, and even the judiciary, to align with the economic mandate of the Code and internalise the time value of money. However, the implications extend far beyond the IBC. It sends a disquieting signal that any commercial transaction, regardless of how long ago it has been implemented or how many layers of regulatory or judicial approval it has received, remains vulnerable to being overturned ex post.

It is time the law, policy, and institutions recognised the finality of commercial transactions. Once a transaction has been approved by the competent authority, that approval must attain finality. If irregularities are discovered post facto, those responsible must face swift and proportionate civil,

regulatory, or criminal consequences. But the underlying transaction must be left undisturbed.

As per official data, timelines for resolutions under the IBC continue to exceed statutory limits. How can cases be fast-tracked?

The Code envisages time-bound resolution as essential to preserving value. However, in the March 2025 quarter, 107 resolution processes concluded, taking an average of 788 days, far exceeding the intended 180 days. Delays are pervasive across the process: from admission to approval of resolution plans, to recovery through avoidance transactions, to release of assets via liquidation. Almost every stage, and every participant, contributes to the drag. While all stakeholders must tighten processes, the most critical bottleneck remains the pace of disposal by the adjudicating authority (the National Company Law Tribunal, or NCLT). The AA (adjudicating authority) faces acute capacity constraints, in terms of bench strength, domain expertise, infrastructure, technology, institutional culture, and case management. Originally constituted with 63 members to administer company law, it now bears the additional burden of adjudicating complex matters under the IBC without any addition to the number. To fast-track insolvency proceedings, several reforms are necessary. The law must impose strict and enforceable timelines for all participants and authorities, with clear consequences for non-compliance. If, upon expiry of the prescribed period, the AA simply closes the process in a few cases, the market will swiftly realign its conduct; and Section 66(2) of the Code is a potent but underutilised tool. It holds directors personally liable for the consequences of delayed commencement of insolvency proceeding.

M.S. Sahoo, Former Distinguished Professor, NLU Delhi, and Founder Chairperson of the IBBI

Realisations remain low at 32.8% for financial creditors. Is there any way to improve this?

The widely cited figure that financial creditors realise only 33% of their claims under the IBC is misleading. This is derived from a comparison of recoveries against claims, where the numerator excludes several key sources of realisation such as gains from equity holdings post-resolution, proceeds from reversal of avoidance transactions, and recoveries from guarantors, while the denominator includes inflated elements such as fully written-off non-performing assets, accrued penal interest, and both principal loans and associated guarantees. This results in a distorted recovery rate of 33% against claims, a figure at odds with the World Bank's estimate of 72%

recovery from the IBC process. Even this flawed 33% estimate outperforms any other recovery mechanism in India. A more economically sound approach is to link realisations to the asset value of the company, rather than outstanding claims. After all, the market prices what a company has, not what it owes. On this basis, the IBC is delivering an impressive 169% recovery relative to the asset value of resolved companies, a 69% surplus, which is effectively a bonus for creditors. To contextualise further: companies rescued through the IBC typically had assets worth only 17% of their liabilities at the commencement of proceedings. Creditors were thus staring at an 83% haircut at the outset. Through the IBC, this expected loss has been reduced to an average haircut of 67%.

How can the NCLT be revamped for quicker resolutions?

A unified and dedicated AA for handling insolvency, liquidation, and bankruptcy proceedings of corporates and individuals is ideal to promote specialisation. Given that insolvency proceedings are not adversarial in nature and that commercial decision-making lies outside the AA's mandate, a single-member bench is sufficient. To build deeper expertise, members should be given longer tenures and supported with adequate legal and research resources. The selection process must prioritise technical competence and specialised knowledge, rather than institutional affiliation or background. Modernising both the apparatus and the procedure of the AA is imperative. Administrative staff should scrutinise filings for completeness, accuracy, and compliance, allowing members to focus on core adjudication. Adjudication rules must consciously avoid the trappings of conventional courts. Simpler processes that do not involve significant disputes, such as voluntary liquidation and the fresh start process, should be dealt with administratively, outside the AA. Likewise, mechanisms like pre-packaged resolution and mediation or conciliation, which require minimal adjudication, should be actively encouraged.

While some of these reforms will require structural changes, immediate relief lies in increasing the strength of the AA. A back-of-the-envelope estimate, applying the US model to the current caseload, assuming two-member benches, suggests that it needs about 360 members, compared to the current strength of 63.

The government is working on several amendments to the IBC. Do you think these will be of help?

The proposed amendments, including provisions for group insolvency, cross-border insolvency, and creditor-led resolution, are welcome and necessary for strengthening the framework. Introducing new tools is important, but equally critical is the full and effective implementation of the provisions that already exist. The limited coverage of the IBC remains a major structural gap. India has an estimated 1.7 million companies, 170 million proprietorships and partnerships (100 million agricultural and 70 million non-agricultural), and 1.4 billion individuals. Yet, the IBC is currently available only to corporate entities, covering a mere 0.1% of potential beneficiaries.