IBC ordinance aims to prevent unnatural death of viable firms: IBBI chief Sahoo | INTERVIEW

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MS Sahoo, the chairman of the insolvency regulator IBBI, says rescuing a viable company that employs people is far more important than failing to liquidate an unviable one during the current crisis when the market does not have many suitors to turn around stressed assets.

Ordinance does not affect the applications already filed before the adjudicating authority for initiation of the CIRP, and ongoing corporate insolvency resolution, corporate liquidation, and voluntary liquidation proceedings.

In an interview to **FE**'s **Banikinkar Pattanayak**, **MS Sahoo**, the chairman of the insolvency regulator IBBI, says rescuing a viable company that employs people is far more important than failing to liquidate an unviable one during the current crisis when the market does not have many suitors to turn around stressed assets. This was the reason why the government chose to bring in an ordinance to suspend the initiation of insolvency proceedings for defaults up to one year from March 25. He also said while the latest ordinance has suspended insolvency proceedings for fresh defaults to give breather to thousands of firms battered by the Covid-19, it doesn't stop creditors from initiating bankruptcy process against a personal guarantor to a corporate debtor. Edited excerpts:

Q: What was the idea behind suspending insolvency proceedings against new defaulters altogether?

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A: Companies are modern engines of growth. They produce goods and services, and generate income and employment. It takes years of effort to bring up a company. Its life is precious. It dies a natural death when it fails at marketplace on account of competition and innovation. The insolvency law tries to rescue the life a company even from natural death. With demand dwindling and supply chains hit around the globe in the wake of the pandemic, many companies, which were doing well earlier, are reeling under stress. Some of them are at the brink of default, not because of market pressures, but because of force-majeure circumstances. If they are pushed into insolvency, many of them may face liquidation and have unnatural death, for reasons beyond the control of anyone.

The insolvency framework typically aims to: (i) rescue a viable firm,and (ii) liquidate an unviable firm. In the present circumstances, when the market does not have many suitors to rescue failing firms, there are two policy choices: If insolvency framework is suspended, unviable firms would not be liquidated; and if it is not suspended, viable firms would be liquidated. The first choice fails to liquidate an unviable firm, which can be rectified in the following quarter or year. The second choice liquidates a viable one forever, which cannot be undone. Rescuing a viable firm is, therefore, far more important than failing to liquidate an unviable one during the current crisis. Additionally, the second choice provides a breathing space, when many companies, which are failing solely on account of Covid-19, would bounce back on their own as soon as normalcy returns. Or, they would recalibrate their operations and businesses to an 'all-new normal'. They may even explore innovative workouts for resolutions outside the Code. The suspension, therefore, furthers the objectives of the Code.

Q: Some analysts say a blanket relief has deprived creditors of a reliable mode of bad debt resolution and will hit their balance sheets, given the absence of a credible alternative. How do you find this view?

A: Thank you for considering IBC as a reliable mode of bad debt resolution. Let me make it clear that there is no blanket relief for all defaults. The relief is strictly limited to defaults arising during the Covid crisis, and that too, for initiation of CIRP (corporate insolvency resolution process) only. An insolvency proceeding can be initiated for defaults existing before the onset of Covid-19

and for defaults arising after it subsides. The Ordinance does not affect the applications already filed before the adjudicating authority for initiation of the CIRP, and ongoing corporate insolvency resolution, corporate liquidation, and voluntary liquidation proceedings.

I believe, there are several other credible options for resolutions outside the Code. The stakeholders may use statutory, court-supervised compromise or an arrangement under the Companies Act, 2013. They may use the RBI directive for the resolution of stressed assets. They may sit across a table and work out a solution. It is said, necessity is the mother of invention. I believe, the debtors and creditors would explore innovative options in this challenging times. They would focus on what they have rather than what they do not have.

Q: Sections 94 and 95 of the IBC have not been suspended yet. Can't the insolvency process (against personal guarantors to corporate debtors) be initiated now by invoking these sections?

A: The Covid-19 default has been suspended for the purpose of the CIRP, and not for other purposes under the Code, including individual insolvency, and also not for purposes under any other law. Further, sections 94 and 95 relate to individual insolvency. The provisions relating to individual insolvency, except for personal guarantors, have not yet come into force. It is possible to initiate an insolvency proceeding against a personal guarantor of a corporate debtor.

Q: Is a cut-off date (March 25) enough to define Covid and non-Covid default appropriately? Will it encourage wilful defaulters?

A: We will spend years in courts to determine if a default has arisen on account of COVID or otherwise. Instead, the Ordinance has adopted a simple, objective approach. It grants relief in respect of default arising during the Covid period. It does not protect a company which had defaulted prior to March 25, 2020, and default continues or a fresh default arises. It protects a company which did not default earlier but defaulted during Covid period.

I do not see wilful defaults on account of this relief. First, relief is limited to defaults arising during Covid only, that too, for the purpose of initiation of CIRP only. It neither absolves the debtor of the debt nor suspends the liabilities in respect of Covid default under various other laws. Second, it is not fair to assume that the firms, who did not default till March 25, 2020, would default now taking advantage of the suspension, even when they can repay.There are several checks and balances to discourage wilful default, including liability under section 29A.

Q: Given that the economy will take some time to return to normalcy, what happens if a large number of companies default on the expiry of the relief period?

A: I do not see a spike of matters after expiry of the relief period. The Ordinance gives relief to those companies, which did not default prior to March 25, 2020, but defaulted thereafter on account of the pandemic. Once the pandemic subsides, these companies would be viable again.

Q: What is the rationale for suspending Section 10 of the Code that allows defaulting companies to file for insolvency themselves?

A: Companies have not been major users of section 10. Only 2% of the insolvency proceedings that commenced during 2019-20 were initiated by them. Further, a key design feature of the Code is that it balances the rights and interests of all stakeholders. It creates imbalance if only debtor has right to initiate insolvency proceeding, while a creditor does not, and vice versa. Irrespective of whether the debtor initiates or a creditor initiates the proceeding, the outcome is the same, which is perhaps not acceptable in present times.