

INSOLVENCY PROCESS

Don't discriminate among creditors, NCLAT tells banks

● Tribunal chief says will intervene and stop process if this happens

SURYA SARATHI RAY
New Delhi, May 4

THE NATIONAL COMPANY Law Appellate Tribunal (NCLAT) has cautioned lenders to the firms undergoing corporate insolvency resolution process (CIRP) not to discriminate much in the distribution of receivables from the successful bidder among financial creditors (FCs) and operational creditors (OCs). Else, it will intervene and stop the process.

Using parlance from the game of soccer, NCLAT's chairperson Justice SJ Mukhopadhaya said such discrimination in the distribution is akin to a foul in the game of football, and if that occurs, the appellate tribunal will blow the whistle, like a referee does, to stop the foul play.

"In the Essar case, they have given 92.5% of the receivables



Justice SJ Mukhopadhaya

to the FCs and 0% to OCs. What is this? When some raise objections (to such kind of discrimination), the FCs come and say we are losing money because of the delay. Now, I am asking the FCs, why have you discriminated? This is a foul and when you commit a foul, we will blow the whistle and say stop," Mukhopadhaya said at an event organised by industry body Assocham.

The chairperson also drew parallels to a hypothetical '007' style of haircut in which the two sides of the head are almost shaved off, leaving the hair on the middle intact.

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"COC WILL HAVE to be a good barber. The 007 style won't do. I don't like 007 hair-cut. It should be somewhere equal and proportional. It should look like a handsome hair-cut," Mukhopadhaya said.

Responding to a query on whether operational creditors are not getting their dues, Insolvency and Bankruptcy Board of India (IBBI) chief MS Sahoo, who was also present at the event, cited data till December 2018 to say that both operational and financial creditors "on average, got about 48% each of their claims" in those firms where resolutions have been arrived at.

"This (IBC) law is not a recovery law. When you talk about recovery, then you talk about sharing. This law is for preservation of insolvent companies. Section 32 of the IBC, talks about feasibility and viability. So anything that comes under the feasibility and viability is a commercial decision and that the CoC should decide," Sahoo said. "As of now, the Supreme Court has said CoC is the final authority on

NCLT gets nod for appointment of 32 members

KR SRIVATS

New Delhi, May 5

The Appointments Committee of the Cabinet (ACC) has given its nod for appointment of 32 members – 14 judicial and 18 technical – to the National Company Law Tribunal (NCLT). These members have been appointed for a term of three years or till attaining the age of 65 years, whichever is earlier.

The ACC also directed that the Corporate Affairs Ministry will notify the place of posting for these appointees in consultation with the President, NCLT.

Meanwhile, MM Kumar, President, NCLT, said at an Assocham event on Saturday that the government's move to appoint 32 new members to the Tribunal will help speed up the IBC process and achieve resolution in lesser time.

"Now that our strength has increased, We may even be able to complete the process within 180 days as against the current levels of average 300 days," Kumar said. Kumar also made a case for strengthening the institution of resolution professionals in the country.

Dangerous to let viable firms shut: IBBI chief

PRESS TRUST OF INDIA
New Delhi, 4 May

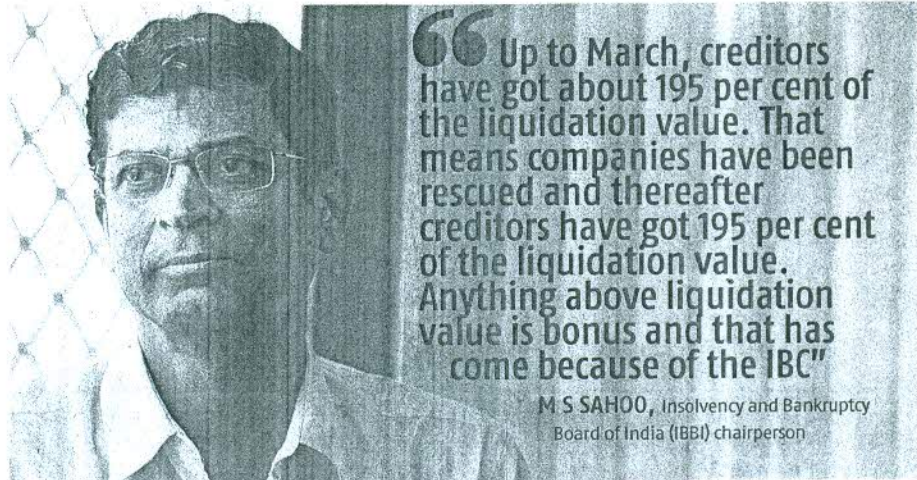
The committees of Creditors (CoCs) should provide all relevant information and share their vision for companies under the insolvency process, Insolvency and Bankruptcy Board of India (IBBI) Chairperson M S Sahoo said on Saturday as he asserted that it would be dangerous to let viable firms to close down.

Amid rising number of stressed assets being referred for resolution under the Insolvency and Bankruptcy Code (IBC), Sahoo said the law also gives opportunities to rectify the mistakes during the insolvency process.

The objective of the law is to rescue viable companies and close down unviable ones, he said. "If due to incompetence (of market participants) the reverse happens, then it is dangerous," Sahoo said here.

The IBBI chairperson also noted that CoCs must provide all relevant information to resolution applicants so that they find interest in the companies.

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M S SAHOO, Insolvency and Bankruptcy Board of India (IBBI) chairperson

ations and it depends on who is looking at it," he noted.

Speaking at an event, National Company Law Appellate Tribunal (NCLAT) Chairperson Justice S J Mukhopadhaya said that financial creditors should not play foul while going through the viability and commercial aspects of a resolution plan.

Citing examples, he indicated that operational creditors should also be getting money and not just the financial creditors in a resolution process.

Responding to a query on whether operational creditors are not getting their dues, Sahoo cited data till December 2018 to

say that both operational and financial creditors "on average, got about 48 per cent each of their claims". About haircuts taken by creditors, he wondered what can be done if the resolution process started very late.

"Today about 370-380 companies have been ordered into liquidation. Most of them, 80 per cent, were in BIFR (Board for Industrial and Financial Reconstruction) or defunct companies. So when there is nothing to really recover, when the liquidation value almost zero, you will have to take haircut," he noted.

According to him, it also needs to be seen how much

one gets in comparison to his claim and in comparison to the liquidation value.

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PRESS TRUST OF INDIA
NEW DELHI, 4 MAY

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OPPORTUNITIES FOR RECTIFICATION

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Despite the adjudicating authority functioning with a very poor infrastructure, the average timeline for resolution of cases is around 300 days, Mr Kumar said.

Under the IBC, the timeline for resolution of a case is a maximum of 270 days.

