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ET Q&A

INJETI SRINIVAS
CORPORATE AFFAIRS SECY

FUTURE PLANS 'Prepackaged group insolvencies, which involves agreeing to a resolution plan before declaring bankruptcy, could also be attempted in the future'

'Will Stick to IBC Timeline Soon'

In the next three-four months, resolution timelines under the Insolvency and Bankruptcy Code (IBC) will be better adhered to, said corporate affairs secretary Injeti Srinivas. Prepackaged group insolvencies, which involves agreeing to a resolution plan before declaring bankruptcy, could also be attempted, he told **Karunjit Singh** and **Deepshikha Sikarwar** in an interview. Excerpts:

How do you see progress in resolution time under the IBC?
I think the difficult part is over. Difficult part was actually the practical difficulties you face in implementing a new law. The government was very proactive and two ordinances were brought. Some clarifications and jurisprudence by courts have also settled many of the issues. That was a difficult and time-taking process. That's over. You must understand that those 100 companies where resolution has been achieved and 400-odd firms where liquidation orders have been passed put together have claims exceeding ₹5 lakh crore, which is 50% of the NPAs (non-performing assets) at that time. In a new system when such a load comes, naturally it's put to strain. Most of the ones which went into liquidation, they were stressed for 10, 15, 20 years. I now feel there is a high possibility that in the next three-four months, you will be more or less adhering to the timelines.

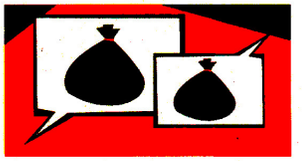
What has been the impact of the court striking down the February 12, 2018, circular on debt recast rules issued by the RBI?
I think that has been excessively debated. There's very little to it actually. When the Banking Regulation Act was amended, a particular section empowered the central bank to direct banks to take specific cases to the NCLT (National Company Law Tribunal) by way of an order. Initially, 12 cases were sent, then maybe 20-odd were sent. Then when RBI dismantled the previous regime and replaced it with the February 12 circular, it created a class concept with a bonafide intention. They wanted to create a system which on autopilot mode would push a case to the NCLT if visible action was not taken within a 180-day timeframe. That was the only intent of the circular. To play the devil's advocate, if each bank says I will use the circular framework, then nobody can stop them.

Do you see a need for some sort of group insolvency framework?
As of now there is no model available anywhere in the world for group insolvency which we can adopt. In some cases, they are taking this approach here... that is a work in progress. The Insolvency Law Committee can look into it. This will require some cooperation between all – a compromise and arrangement between creditors and members of the companies. If all come to a platform and some group insolvency can take place, that is a possible feature. Maybe in the so-called prepack, a group insolvency can also be attempted.

NO GUESSES
Merely because you are a reputed company we cannot assume that you have very high standards of corporate governance

Corporate governance failures are again in the limelight...
We have a state-of-the art Act. It provides for a robust structure of corporate governance, but the issue is whether compliance by firms is merely in form or also in substance, Merely because you are a reputed company or merely because you are a large company we cannot assume that you have very high standards of corporate governance. This has been clearly backed by empirical evidence. You need a system. We try to ensure that this is achieved through disclosure, greater accountability and incentivisation. Now, boards, board committees, auditors, independent directors – all have very well-defined roles. Are they discharging it? Who is evaluating that? These are questions. Recommendations of the Kotak Committee set up by Sebi (Securities and Exchange Board of India) on corporate governance has covered a wide range of issues. We will say okay not four but six board meetings (in a year), more independent directors, separation of the roles of chairman and CEO. By itself these will not deliver because again the issue of form and substance will come. There has to be some sort of maturity and values which our corporates will have to grow. Regulatory institutions also will have to develop greater strength to nip in the bud if you have problems emerging somewhere. For that you need to develop tools. Those tools again will have to necessarily be disclosure based or audit based. This being the issue, I think what MCA (Ministry of Corporate Affairs) has been doing is that it has been repeatedly highlighting the importance of auditors and therefore the NFRA (National Financial Reporting Authority) has been set up.

The role of auditors has again come under the scanner in IL&FS and other such cases.
Auditors have a very crucial role to play, especially of overcoming the problem of information asymmetry for a common investor. By just seeing a financial statement, investors should be satisfied that it is a true and fair view of the firm's financial health. Given that importance and if we want more and more investments to pour into capital markets, this faith in the fiduciary responsibility of the directors and on the professional and statutory responsibility of the auditors is most critical... if a company suddenly collapses then it means that it was a make-believe story. Perpetuating this story and inducing the investor to put in more funds is a fraud. I think auditors will also have to realise that they will have to pay a price for negligence. There are enough provisions in law to take care of such things.



BIG HAUL
Resolution and liquidation orders put together, the claims exceed ₹5 lakh cr, which is 50% of the NPAs at the time

How is the SFIO investigation into IL&FS progressing?
This (SFIO investigation) is being carried out in segments, because IL&FS is very large. I think the IFIN (IL&FS Financial Services Ltd) part is reaching conclusion. Then you have the ITNL (IL&FS Transportation Networks Ltd) part. The employee welfare trust is another segment. They are completing their investigations segment by segment.

Have the investigations revealed evidence of quid pro quo with respect to key managerial personnel?
The likelihood of quid pro quo is apparent in many areas. But proving quid pro quo in the context of criminal law is a big task. Quid pro quo is evident, but now the investigation agency has to prove it beyond doubt.

How is the resolution progressing in IL&FS?
The resolution is progressing satisfactorily. Given that it's a very diverse group with complex structures, I think whatever best is possible is being done. Entities have, on some sort of solvency test, cash-flow solvency, been categorised. Green ones are solvent and healthy. Out of 169 companies, 55 are in green. These are not even using the moratorium cover. They are servicing their debts as usual. We are making efforts to bring in new management through a transparent process. One thing good is that about 10 companies, including some platforms, account for 90% of the outstanding external debt of ₹20,000 crore. Their resolution processes are in an advanced stage. Some amber may become green, because the banks are willing to fully restructure. Another innovative idea which is being attempted by IL&FS and being discussed with creditors is to create an InVit (infra investment trust). About 20-odd roads have a good concession period. The only the issue is sustainability. If the interest rate is slightly brought down or the duration is extended, or a combination of the two, there may be some difference of 10% or so, but there would be no haircut. I think this is the ideal solution. If they can structure it properly into this InVit, then all the creditors can subscribe to it and there will be no haircut and more certainty. That's one option.