

'Many SMEs may turn insolvent'

THE global financial crisis and recession in developed economies have hit the Indian economy hard. Companies are feeling the heat of dwindling orders, and large-scale job cuts look likely. **Sumant Batra**, a leading bankruptcy expert and vice-president of INSOL International believes that the SMEs would bear the brunt of the current downturn. Excerpts from a conversation with **Gireesh Chandra Prasad**.

Is the global financial crisis likely to trigger insolvencies in India?

While its impact on financial institutions, capital markets and financial services is immediate and very visible, some sections of the real economy such as export houses would suffer gradually and under the surface and the impact on them would be visible only in months to come. Such companies are already facing diminishing support from foreign markets due to closure of stores there and drop in orders. We will see a number of insolvencies in the coming months among SMEs.

Is our insolvency system equipped to handle the aftermath of the crisis?

No, we are not. Japan's Nomura purchased Lehman Brothers' Asia-Pacific business in less than 72 hours of the troubled investment giant filing for bankruptcy protection in the US. Such quick response helps get better value for assets and rescue the company before it loses its clients and staff to rivals. Pre-packaged deals, where a company facing bankruptcy finds a buyer first, negotiates and agrees on a price and seeks the approval of the bankruptcy court for the fire sale of assets is not possible in India. In the US and UK, the administrator or the receiver appointed to rescue or restructure a failed business is given the liberty to do whatever in his judgement is the best for the company. This is not possible in India.



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The Indian bankruptcy regime is in a flux. We are moving into a new system, which is two years away. The current system, led by the company courts and BIFR, has two broad deficiencies. Firstly, there is no role for private sector insolvency practitioners. As a result, the skills otherwise available in the private sector, in providing speedy and efficient resolution including finding a buyer, negotiating, structuring deals, organising finances, dealing with multiple stakeholders, etc., is not used in the system. Secondly, the judiciary is not equipped with the kind of approach and skills needed to handle highly technical and complex insolvency matters in an expeditious way.

What are the steps that could be taken immediately to help investors, lenders and companies facing insolvency?

There is an urgent need to sensitise all stakeholders including the judiciary to be able to act according to the needs of the time. An amendment to the present Companies Act of 1956 was made to engage independent insolvency

professionals in the revival, restructure and liquidation of insolvent companies. That has not been implemented due to challenge to other amendments pending in the Supreme Court. Perhaps the apex court could allow that part to be implemented. Secondly, banks should play a more constructive role wherever there is a potential for reviving a company. Where the promoters are seen to be unable to bring the company out of difficulty, banks should facilitate sale of assets to asset reconstruction companies or to distress asset funds.

What are the policy and regulatory lessons to be learnt from the current crisis?

India has been a victim of the ripple effect and the present downturn is a natural hazard of globalisation. It is also clear that better coordination is needed among various regulators. We also have examples of companies trading in derivatives. Was it fair to take large positions on complex products without telling the shareholders the risks involved? Nobody seemed to care about the risks involved in leveraging every dollar multifold. People looked at short-term gains without understanding the risks involved. The integrity of rating agencies and professional advisors to corporate houses is also one area we could improve upon.

How long will the bad times last for companies, dependent on foreign capital?

It is true that now PEs are not investing in India. Those who have put funds together are refraining from investing, while those in the process of putting funds together are finding it difficult to mobilise resources. However, in spite of the integration with the rest of the world, it is a resilient economy. The current tectonic shift in global finance will eventually provide the thrust for India to move to the global central stage. In fact, there might be an opportunity in this crisis if managed well.