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RBI asks banks not to count failed transactions, balance enquiry as 'free ATM transactions'

PTI
MUMBAI, AUGUST 15, 2019

THE HINDU

Non-cash withdrawal transactions which constitute 'on-us' transactions shall also not be part of the number of free ATM transactions

The Reserve Bank on Wednesday asked banks not to count failed transactions at ATMs due to technical reasons as part of "free ATM transactions" permitted every month.

Besides, use of ATMs for balance enquiry and fund transfers too should be not part of the free transactions facility given to a customer. Banks provide certain number of free transactions at ATMs to their customers and beyond that impose charges.

The RBI's clarification in this regard comes after it has come to notice of the central bank that transactions that have failed due to technical reasons, non-availability of currency in ATMs are also included in the number of free ATM transactions.

"It is hereby clarified that transactions which fail on account of technical reasons like hardware and software issues, non-availability of cash, and any other reason attributable to the bank should not be counted as valid ATM transactions for the customer.

"Consequently, no charges therefore shall be levied," the Reserve Bank of India said.

Further, non-cash withdrawal transactions (such as balance enquiry, cheque book request, payment of taxes, funds transfer), which constitute 'on-us' transactions (when a card is used at an ATM of the bank which has issued the card) shall also not be part of the number of free ATM transactions.

Narendra Modi reviews economy with Nirmala Sitharaman, Finance Ministry officials

Sharad Raghavan
NEW DELHI, AUGUST 15, 2019

THE HINDU

PM Narendra Modi, after delivering his sixth address to the nation on the 73rd Independence Day, went into a brainstorming session with Nirmala Sitharaman and Finance Ministry's top officials

Prime Minister Narendra Modi on Thursday held a review meeting with Finance Minister Nirmala Sitharaman and senior officials of the Finance Ministry.

"The meeting was to review the state of the economy and also look into the ways forward for faster growth," an official in the Finance Ministry, speaking on condition of anonymity, told ***The Hindu***.

"The Finance Minister also informed the Prime Minister about the outcomes of the various review meetings she held last week."

Ms. Sitharaman had met representatives from the banking, FMCG, auto, real estate, and steel sectors last week.

While the government itself has been silent on what it plans to do to reinvigorate the economy and help reverse the current slowdown, industry representatives have acknowledged that the Finance Minister had apprised herself of all the issues and was receptive to their suggestions.

The Goods and Services Tax (GST) Council will likely discuss the possibility of a rate reduction for certain categories of automobiles, as also the possibility of restoring the provision of input tax credits for premium under-construction properties in a bid to boost demand in the real estate sector, at its next meeting, Finance Ministry officials had earlier told ***The Hindu***.

Industry representatives, including from the Confederation of Indian Industry (CII), have also sought steps to hasten the transmission of interest rate cuts made by the Reserve Bank of India so that consumers actually perceive the benefit and revive spending.

The government has repeatedly highlighted its aim of transforming India into a $5 trillion economy by 2024.

Centre to frame rules within three months to implement Consumer Protection Act: Paswan

PTI
NEW DELHI, AUGUST 13, 2019

THE HINDU

Minister Ram Vilas Paswan termed the establishment of Central Consumer Protection Authority (CCPA) under this law as a "revolutionary" step, giving much needed teeth to this legislation

The Centre will, within three months, frame rules and set up an authority to implement the newly enacted Consumer Protection Act, Food and Consumer Affairs Minister Ram Vilas Paswan said on August 13.

The Minister asserted that representation of all sections will be ensured while nominating members of the authority, and said rules will be framed after consultations with States, Members of Parliament and other stakeholders.

Earlier this month, the Parliament approved 'The Consumer Protection Bill 2019', replacing the Consumer Protection Act, 1986. The law seeks to revamp the process of administration and settlement of consumer disputes, with strict penalties, including jail term for adulteration and misleading ads by firms.

"Before framing rules, we will hold consultation with MPs later this month. We will also call former Consumer Affairs Secretaries. We will make rules very cautiously to ensure that consumers are safe," he told reporters in New Delhi.

Highlighting the provisions of this law, Mr. Paswan termed the establishment of Central Consumer Protection Authority (CCPA) under this law as a "revolutionary" step, giving much needed teeth to this legislation.

He said the authority can *suo moto* take congnisance of any consumer issues, initiate investigation and take class action suits.

The Minister said that consumers can file complaints from anywhere and they do not need to hire lawyer to represent their cases. For mediation, he said there will be strict timeline fixed in the rules.

Expressing concern over pending cases in district, State and Central consumer forums, which will now be called as 'commission', Mr. Paswan said he would write to all states to fill vacancies in these foras and also provide good infrastructure as well as salaries.

On misleading advertisements, Mr. Paswan said there is provision for jail term and fine for manufacturers. There is no provision for jail for celebrities but they could be banned for endorsing products if it is found to be misleading.

The Minister pointed out that manufacturers are still not following the government rule of 2016 to prominently display on products important information — MRP, quantity, date of manufacturing/expiry and complaints redressal mechanism. He asked the department to prepare a detailed report on action taken by it for non-compliance.

Govt. asks PSBs to find out reasons for rise in NPAs in last 5 years

Manojit Saha
MUMBAI, AUGUST 14, 2019

THE HINDU

Performance review set in motion

The Finance Ministry has initiated a comprehensive consultative process with public sector banks (PSBs) to find out the reasons for the sharp rise in bad loans in the previous five years, apart from outlining national priorities with which these banks have to align themselves.

Touted as a 'bottom-up consultative process,' the Ministry will review the performance of these entities in the last five years.

This will be the first comprehensive review of PSBs after Nirmala Sitharaman took charge of the Finance Ministry in May, that will also provide a direction to the PSBs for the next five years.

Banks have been given a detailed questionnaire in which they have to give their feedback on "the reason for the steep rise in NPAs during 2015-19. How many of these were stressed assets and which were not recognised earlier?" according to a note which had been circulated to the PSBs.

The government also wants to know the reasons for the decline in credit flow in the last five years. In particular, the Ministry wants to know if credit to manufacturing has dropped, and if so, why it had, as the IIP has risen from 2.8% in 2014-15 to 4.6% in 2017-18.

Banks also have to dwell on the number of loan applications they received between April 2014 and March 2019 and as to how many were accepted and rejected.

The consultative process will start from branch level upwards to the State-level and then to the national level.

"The consultation will cover eight thematic papers prepared by domain experts and will also include a review of the banks' performance during the last five years…" a letter from the Finance Ministry to the CEOs of PSBs said.

"The consultative process will be aimed at alignment of banking with national priorities, stimulating ideas and inculcating a sense of involvement among bankers down to the branch level," the letter, which has been reviewed by ***The Hindu***, further added.

One of the themes of the consultative exercise is 'enabling bank credit towards a $5 trillion economy.'

Some of the thematic papers on which the consultation will take place are — increasing digital payments, corporate governance, credit to MSMEs and farm loans among others.

Some national priorities to which PSBs need to align are doubling farm income, Jal Shakti, housing for all, education loans, ease of living and corporate social responsibility, among others.

Banks launch steps to boost KCC loans

Our Bureau Mumbai/ Thiruvananthapuram | August 15, 2019

THE HINDU BusinessLine

The scheme will enable farmers buy seeds and fertilisers, and draw cash for their agri needs

Banks have kickstarted a Kisan Credit Card (KCC) saturation campaign under the auspices of the respective State-Level Bankers' Committees (SLBCs) and District-Level Bankers' Committees (DLBCs) for giving Kisan Credit Card (KCC) loans to farmers who have not been given such loans.

The KCC scheme enables farmers purchase agricultural inputs such as seeds, fertilisers, pesticides, and draw cash for their agricultural and consumption needs.

The scheme comes with an ATM-enabled RuPay debit card with facilities for one-time documentation, built-in cost escalation in the limit, and any number of drawals within the limit, among others.

Besides ensuring saturation, banks will also be taking steps to link Aadhaar immediately as no interest subvention will be given if the Aadhaar numbers are not seeded to KCC accounts. According to the Ministry of Agriculture and Farmers' Welfare, currently there are 6.92 crore live KCCs, against 14.5 crore operational landholdings.

Interest subvention

In order to provide short-term crop loans up to Rs.3 lakh to farmers at an interest rate of 7 per cent per annum, lending institutions – PSBs and private sector commercial banks (in respect of loans given by their rural and semi-urban branches only) – are offered interest subvention of 2 per cent by the government.

Further, an additional interest subvention of 3 per cent per annum is provided to those farmers who repay in time. This also implies that farmers repaying promptly get short-term crop loans at 4 per cent per annum.

This benefit would not accrue to those farmers who repay their crop loans after one year of availing such loans. State Bank of India, in a recent circular, said loan applications under KCC have to be disposed off in 14 days maximum.

The circular told the field units that steps need to be taken to avoid multiple financing under KCC.

The recent initiatives for KCC saturation include adding farmers engaged in animal husbandry and fisheries; removal of inspection ledger folio charges and processing fee of loan under KCC; and raising limit of collateral free agriculture loan from Rs. l lakh to Rs.1.6 lakh.

Moody's downgrades long-term rating of Indiabulls Housing Fin

Our Bureau Mumbai | August 14, 2019

Changes outlook to 'negative' from 'stable'

Moody's Investors Service has downgraded Indiabulls Housing Finance's (IBH) long-term corporate family rating to 'Ba2' from 'Ba1' in the backdrop of renewed pressure on the cost and availability of funds for some finance companies in India.

Change in outlook

The global credit rating agency has also downgraded the company's foreign currency senior secured rating to 'Ba2' from 'Ba1', foreign and local-currency senior secured MTN (medium-term note) programme ratings to '(P)Ba2' from '(P)Ba1'.

Moody's said the outlook has been changed to 'negative' from 'stable' to reflect the possibility that the tight funding conditions may persist for some time, which could further pressure other aspects of IBH's credit profile, such as profitability and asset quality.

According to the agency, obligations rated 'Ba' are judged to be speculative and are subject to substantial credit risk.

Modifier '1' indicates that the obligation ranks in the higher end of its generic rating category, and the modifier 2 indicates a mid-range ranking.

In its ratings rationale, the agency said: "The downgrade reflects renewed pressure on the cost and availability of funds for IBH and certain other finance companies in India. This presents a more challenging external environment than Moody's had anticipated."

Moody's referred to the fact that the company's incremental cost of funding increased 45 basis points (bps) quarter-on-quarter ending June 2019, while the company's balance sheet declined by 7 per cent over the same period.

This rise in funding costs was a key driver for the 28 bps decline in spreads in the same period, although profitability remains comparatively strong relative to its peer group. According to the agency, liquid assets remain high, at around 24 per cent of its balance sheet at June-end 2019. This continues to be a key positive credit driver as it allows the company to be able to withstand some period of impaired access to funding.

"As interest rates on high quality liquid assets have declined, the company's strategy of holding a relatively high pool of liquid assets – a positive rating factor – has become costlier, presenting a drag on earnings due to negative carry.

"At the same time, the firm's progress in improving the quality of its liquid assets has been slower than what was anticipated by Moody's," the agency said. Moody's underscored that the downgrade also factors in deterioration seen in asset quality in the quarter ended June 2019, where stage 3 loans went up by 57 per cent on a quarter-on-quarter basis, albeit from a low base.

"Most of the increase in stage 3 loans has come from its corporate loan segment. This segment is facing significant headwinds for the overall finance company sector, driven by a combination of very tight refinancing conditions and weak borrower profiles.

"This segment will continue to be a key source of asset quality risk for the company," the agency said.

IDBI Bank loss widens to Rs.3,801 cr

Our Bureau Mumbai | August 14, 2019

THE HINDU BusinessLine

IDBI Bank's net loss widened to Rs.3,801 crore in the first quarter ended June 30, 2019, againstRs.2,410 crore in the year-ago period, as it continued to reel under the burden of heavy loan-loss provisions and grappled with asset-quality issues.

In the reporting quarter, the bank made a whoppingRs.7,009 crore loan-loss provision, against Rs.4,603 crore in the year-ago period. Life Insurance Corporation of India (LIC) had acquired 51 per cent stake in IDBI Bank from the government in January 2019.

Net interest income (the difference between interest earned and interest expended) declined 11 per cent year-on-year (y-o-y) to Rs.1,458 crore. Other income, comprising commission, exchange and brokerage, profit on sale of investments, and recovery from written-off cases, was up 30 per cent y-o-y to Rs.833 crore.

Fresh slippages increased by Rs.3,486 crore during the reporting quarter, against Rs.1,781 crore in the preceding quarter.

Recoveries and upgradation stood at Rs.867 crore (Rs.1,089 crore in the preceding quarter). Gross non-performing assets (GNPAs) increased to 29.12 per cent of gross advances as of June-end 2019, against 27.47 per cent as of March-end 2019. The bank said two cases of power projects, aggregating to about Rs.2,000 crore, were downgraded in the reporting quarter on account of a letter received from the RBI.

Due to higher provisioning, net NPAs declined to 8.02 per cent of net advances, against 10.11 per cent. The provision coverage ratio improved to 87.79 per cent as of June-end 2019 from 82.88 per cent as of March-end 2019.

Corporate advances declined 14 per cent y-o-y to Rs.85,230 crore. Retail advances were up 4 per cent y-o-y to Rs.92,185 crore, mainly on the back of growth in housing loans. Global deposits declined 4 per cent y-o-y to Rs.2,30,784 crore.

DHFL crisis: The 'hidden' issues no one is talking about

Radhika Merwin | BL Research Bureau | August 14, 2019

THE HINDU BusinessLine

Possible hiccups in collection of loans sold under securitization and borrowers impacted by the lending freeze, are less talked about issues

Dewan Housing Finance (DHFL) has been back in the news over the past week due to several reasons. Resignation of one of the statutory auditors-- Deloitte Haskins & Sells LLP, ongoing discussions with lenders on the proposed resolution plan, and the company's communique to the exchanges that it may not be able to meet its financial obligations in the immediate future, has brought the focus back on the persisting challenges in the company.

But there are other less-talked about issues that are brewing out of the DHFL mess, which need immediate attention.

According to the company, it has sold over Rs.30,000 crore of retail loans so far to meet its debt obligations, by way of securitization. Most of the sale has been done through the direct assignment route--- transfer of a single asset or a portfolio of assets to financial entities through an assignment deed (essentially bilateral agreement). Normally, the responsibility of the collection of loans still lies with the seller (also called the servicing agent)—DHFL in this case, unless otherwise specified by the buyer (banks) in the agreement. Also, the buyer at any point in time has the right to change the service agent if he so wishes. But given the high servicing cost and complexities, the buyer usually lets the seller take care of the collections.

The big worry in DHFL is: given the persisting issues and uncertainty over resolution plan, who will take care of the collections of these loans sold? Will the ongoing turmoil, impact the credit behaviour of DHFL borrowers, taking a toll on collections. Importantly, how will this impact the future sale of the residual assets of the company?

Also, for borrowers of DHFL (particularly those with loans for under-constructed houses) who have submitted their documents, the company's freeze on disbursements can be a huge cause for concern. If they are unable to raise funds from any other lender to complete the construction of their property, they would be left in the lurch with little recourse. In any case, longevity of the lender and safe retrieval of the title deed and other documents deposited as a security for the housing loan on closure of the loan, are critical.

All eyes now, are on the outcome of the resolution with lenders. Immediate fund infusion and kick-starting of the business of DHFL is imperative, to avoid a crisis at banks (that have bought the retail loans) and to protect borrowers' interest.

Issues at hand

DHFL has been facing a liquidity crisis since September 2018. According to the company's filing in the exchanges, it has paid over Rs 41,000 crores to meet its financial obligations during this period---mainly through a combination of securitisation of assets and repayment collections.

Technically under securitization, assets are pooled and a special purpose vehicle (SPV) is created which issues the tradable securities such as pass through certificates (PTCs) or bonds to buy assets. But under direct assignment, no SPV is created and the company transfers a single asset or a portfolio of assets to financial entities through an assignment deed.

In case of DHFL, how well the company is able to monetise its residual assets going ahead (particularly wholesale assets) needs to be seen. LAP, project loans and SME loans constitute about 43 per cent of DHFL's portfolio (as of Dec 2018). Of the Rs 89,387 crore loan book, about Rs 34,800 crore pertains to project loans, SRA loans (Slum Rehabilitation Authority) and wholesale mortgage loan portfolio.

Kick-starting business

The company's fortunes now ride on its ability to secure funding from bankers and restructure its borrowings/liabilities. The resolution plan that has been submitted by DHFL to lenders seeks moratorium on repayments but no principal haircut to lenders, according to DHFL's August 6 communication to the exchanges.

Access to additional credit line to restart operations will be very imperative. While deciding on the resolution plan, lenders will have to do proper due diligence and audit to ascertain the quality of the assets. If significant mark-downs or write-offs in the value of loans (in particular wholesale loans) need to be done, then lenders should do so and then decide on the resolution plan.

The joint auditors--- Chaturvedi & Shah LLP and Deloitte Haskins & Sells LLP-- had put out several disclaimers and qualifications that could have a material impact on the financial statements of the company for the year ended March 2019.

DHFL in its notes to March quarter results had stated that in respect of loans of about a) Rs 16,487 crore, cheques received from borrowers were initially recorded as receipts, despite the cheques not been deposited in the banks, but were later reversed. b) It had also flagged some lacunae in the documentation of project/mortgage loans amounting to Rs.20,750 crore. C) It had also marked down value of loans (wholesale) aggregating Rs 34,818 crore. In respect of all these, the auditors stated that they were unable to obtain sufficient evidence to support the values of the loans.

Deloitte Haskins & Sells had recently resigned as DHFL's auditor citing reasons relating to the disclaimers laid down by them in the financial statements for the year ended March 2019, which did not allow them to continue as statutory auditors of the company.

Hence before arriving at any resolution plan, the lenders will have to undertake an audit to put these concerns to rest. Also various lenders---bankers, mutual funds, provident fund, retail investors---reaching a consensus will be critical.

Slowdown more evident in rural India; FMCG companies think these 4 concerns are slowing economy

August 15, 2019 | By Pranav Mukul, Anil Sasi
THE FINANCIAL EXPRESS

There is an emerging consensus among FMCG majors that, like their automobile counterparts, the impact of the slump is more evident in rural India and that, in geographical terms, the north is the worst hit

The volume growth, or the increase in number of units sold, of FMCG companies has slowed down perceptibly over the last one year and this trend is evident across companies

The impact of the deepening consumption slowdown is being felt beyond discretionary purchases such as vehicles and durables with fast-moving consumer goods (FMCG) companies manufacturing small-ticket items such as soaps, biscuits and other daily essentials reporting a steady slide in consumer sentiment. There is an emerging consensus among FMCG majors that, like their automobile counterparts, the impact of the slump is more evident in rural India and that, in geographical terms, the north is the worst hit.

The volume growth, or the increase in number of units sold, of FMCG companies has slowed down perceptibly over the last one year and this trend is evident across companies.

For Hindustan Unilever Ltd, the country's biggest FMCG company, there was a 7 percentage point dip in volume growth between the June quarter this year versus the same period last year. Britannia Industries, India's second largest biscuit company, also recorded a 7 percentage point drop while for Dabur India, the slide in volume growth on a year-on-year basis during the April-June quarter was 15 percentage points.

The annual wholesale price inflation in July, according to data released Wednesday, eased to a 25-month low of 1.08 per cent, indicating manufacturers are losing their power to raise prices as the slowdown in the broader economy worsens.

Srinivas Phatak, Executive Director, Finance and IT and Chief Financial Officer of Hindustan Unilever Ltd said at the company's earnings call after the June quarter results that the FMCG major has "taken price reductions across-the-board in the range of about 4 per cent to 6 per cent" in the soaps section in a bid to counter the slowdown and also pass on the benefits of lower input costs to consumers.

Mohit Malhotra, Dabur India's CEO & Whole Time Director said that while the month of April and May were good for the company, they are seeing "a little bit tapering off on the secondaries in the marketplace" in June and "that's got to do with the headwind of the economic slowdown".

The worry is that the slowdown in June is "getting exaggerated… as we are going along… They are feeling the impact of the liquidity crunch in rural because of the agrarian crisis and the rural consumer doesn't have money and it's impacting the consumer staple sector as well," Malhotra told investors in an earnings call on July 19.

There's a geographical split too — while south followed by east is doing better, the west is tailing these two regions and the north is the worst impacted.

This correlates with syndicated data indicators. Market researcher Nielsen noted that the slowdown in growth was more pronounced in rural markets, forcing it to lower its annual sales forecast for India's packaged goods sector.

"Rural is slowing down at double the rate of urban," Nielsen said in its latest quarterly 'India FMCG Growth Snapshot' report. The slowdown in sales of FMCG products in the hinterland, accounting for 37 per cent of spends for the sector, occurred at a sharper pace compared to urban markets. Compared to the third quarter of 2018, FMCG growth in rural areas fell 9.7 per cent.

FMCG, tobacco and paper major ITC Ltd, while announcing its standalone results for the June quarter, admitted that its packaging and printing business was impacted by the "slowdown in the FMCG industry and exports" while in its hotels business, a steady performance during the quarter was largely driven by the recently commissioned hotels even as the performance of existing hotels was "relatively subdued" due to slowdown in the conferences and banqueting segment.

However, unlike the automobile sector – where the consumption slump is accentuated by the inability of companies to drive demand by cutting prices on account of regulatory reasons – FMCG firms have been able to pass on price reductions on account of softened raw material costs in an attempt to push demand.

This demand-led slowdown has been attributed to a possible reduction in household savings – a result of declining urban and rural wage growth. "We find that for the Indian economy there are clearly a host of structural factors that are holding back current consumption. A substantial decline in wage growth (both rural and urban wages) in recent times resulting in lower household savings (a result of conscious policy decisions to correct macro imbalances) has possibly slowed down the growth in real per capita income that is holding back demand," a study by SBI noted. It added that corporate wages – a proxy for urban wages – used to expand in high double digits is now down to single digits "as corporates are more conscious of cost in the midst of a massive de-leveraging cycle". Similarly, it pointed out, rural wages also declined from double-digit growth till 2014-15 to less than 5 per cent in the last three financial years.

Going ahead, while FMCG companies expect a demand pickup in the festive season, they are also implementing cost efficiency measures to rein in profitability. "With a focus on tightening our belt in this phase of low growths, we have accelerated the cost efficiency initiatives to maintain the shape of business. As we move forward, we are quite hopeful that the Government will take requisite measures to boost the economy and get it back on a high growth trajectory," said Varun Berry, managing director of Britannia Industries.

In addition to measures to achieve cost-efficiencies, firms are also actively tracking consumer behaviour to look at tell-tale signs of the slowdown's extent. These include traditional indicators such as customers moving down the value-chain in daily essential items by opting for smaller size of unit purchases in the same brands or cheaper items in a same category. "We'll continue to monitor it (down-trading by customers). To be honest, we haven't seen it, but it's important for us to keep a close eye on that," Phatak pointed out in the July earnings call.

"Rural India has historically been growing around 3 to 5 percentage points faster than urban on account of increasing affordability, availability and demand. However, rural growth is slowing down at double the rate of urban in recent quarters. This has brought rural growth closer to urban growth in

Q219," Nielsen noted in its quarterly update. The rural slowdown is most pronounced in north India, followed by the west. Haryana, Madhya Pradesh, Uttar Pradesh, Maharashtra, and Assam are among the states leading the slowdown.

Nielsen has lowered its 2019 growth forecast for the FMCG sector to 9-10 per cent from its previous forecast of 11-12 per cent, citing macroeconomic factors such as slowing growth and the impact of a deficient monsoon.

It might be prudent for government to take a relook at IBC amendments

August 16, 2019 | By Punit Dutt Tyagi & Swastika Chakravorti

THE FINANCIAL EXPRESS

Recently, DoT formed a committee to examine issues arising out of insolvency of telecom operators, including its rights as a creditor vis-à-vis the bankruptcy process.

The DoT's stand before the National Company Law Tribunal in the Aircel case has been that spectrum cannot be classified as an asset of the telecom company or be sold as part of a resolution process

The recent amendments to the Insolvency and Bankruptcy Code (IBC) aim to address roadblocks to the resolution process, especially the time limit for its completion.

The amendments clarify that resolution, including litigation, must be completed within a maximum of 330 days. Key to the successful implementation of this timeline is the reduction of the amount of litigation arising from the insolvency resolution process.

Indeed, the amendments testify to the government's commitment towards making IBC a success, since it has clarified that a resolution plan, if approved, shall be binding on all stakeholders, including the government. Read in the context of the government's classification as an operational creditor under the "waterfall" mechanism of the IBC, this implies that government departments will have to be satisfied with liquidation value in most cases, unless a resolution applicant agrees to pay more.

Jio’s offer to take over the assets of RCom, including spectrum, had to be shelved in March after the Department of Telecommunications (DoT) demanded that all its past dues be paid before it gave a go ahead to the sale. This forced RCom to initiate bankruptcy process against itself.

The DoT’s stand before the National Company Law Tribunal in the Aircel case has been that spectrum cannot be classified as an asset of the telecom company or be sold as part of a resolution process. Two reasons were offered for this. First, a telecom company is merely granted a licence to use spectrum for a limited period of time and has no ownership rights over it. Second, as per a 2012 Supreme Court verdict, spectrum is a public resource and only the government can auction it.

This stand made industry players jittery, as applicants were planning to bid for the assets of RCom and Aircel sans the spectrum to avoid litigation with the DoT.

The first casualty of DoT’s stand will be the sale of the debtor as a going concern. This will mean that the remaining assets, such as optic fibre, towers and land, will have to be sold in a fragmented manner, fetching far lesser value.

A ‘licence to use’ is commonly understood as limited right to use an asset, subject to terms and conditions and, normally, does not include the right of ownership, or, consequently, the right to transfer. But, is spectrum licence an ordinary licence to use?

While at this stage DoT has asserted that spectrum licence is not an asset of the telecom, in the past, spectrum has been sold by telcos. Sale of 4G spectrum by Aircel to Airtel in 2017 is an example. DoT even allowed spectrum sharing and trading between operators in 2015. Spectrum has also been transferred as an underlying asset in the Idea-Ecsotel acquisition and the more recent Vodafone-Idea merger.

DoT, therefore, may have a tough time justifying its stance against inter-se transfer of spectrum.

What it can do, however, is cancel licences of ailing telecom companies and take back spectrum. Notice Inviting Application issued at the time of auction of spectrum does gives DoT the right to terminate a licence and take back spectrum without refunding its cost. This may, however, not have the desired effect since DoT cannot assure profitable auction of such spectrum.

Per contra, selling spectrum as part of the resolution plan will at least ensure that DoT receives future licence charge.

Recently, DoT formed a committee to examine issues arising out of insolvency of telecom operators, including its rights as a creditor vis-à-vis the bankruptcy process.

Statutory dues lie in the realm of operational debt under IBC. The amendments are likely to boost the confidence of resolution applicants and, hopefully, will save ailing telecom companies, like Rcom and Aircel, from liquidation. DoT is likely to fare no better than other operational creditors since engaging in avoidable litigation will likely lead to erosion of the value of spectrum.

That said, RCom and Aircel owe large amounts to DoT. In one case, DoT has even landed a seat on the Committee of Creditors (CoC), since its dues are more than 10% of the debtor's total debt. However, it remains toothless, since an operational creditor has no right to vote in CoC proceedings.

The government stands to lose large sums as it is forced to take large haircuts on statutory dues. Now, with the amendments in place, a government is 'bound' by the terms of the resolution plan and can stake no claim against the successful resolution applicant, who starts with a 'clean slate'.

It may, therefore, be prudent for the government to relook the IBC, and consider giving voting rights to operational creditors who make their way to the CoC table.

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