

Lenders to use IBC for big accounts

May resort to debt recovery tribunals or Sarfaesi Act for the smaller ones

NAMRATA ACHARYA & ISHITA AYAN DUTT
Kolkata, 24 November

Lenders are likely to opt for the Insolvency and Bankruptcy Code (IBC) for debt resolution of big accounts, but may choose debt recovery tribunals or the Securitisation and Reconstruction of Financial Assets and Enforcement of Securities Interest (SARFAESI) Act for smaller ones.

In the three years since the IBC came into existence, much of the legal wrangle around various points of the law — Section 29A, supremacy of financial creditors over operational creditors, the timeline and so on — has been put to rest via court rulings.

And the latest Supreme Court ruling, making way for ArcelorMittal's takeover of Essar Steel, has brought significant clarity to the entire process.

"There are no issues with the IBC as a framework. The issue was with various stakeholders challenging its legal provisions in courts. The Essar judgment will lay to rest several such issues and will lead to faster resolution of stressed assets," a senior official at State Bank of India said. Ashok Kumar Pradhan, managing director and chief executive officer of United Bank of India (UBI), too, asserted that the Essar judgment had brought clarity to the Code. He pointed out, moreover, that what might work in favour of the IBC is that resolution under the inter-creditor agreement (ICA) had not proceeded at the desired pace.

"In the case of the ICA, banks were required to make an extra 20 per cent provision post-180 days. Now a lot of foreign players will be interested in asset reconstruction companies (ARCs), which is good for the sector," he said.

However, for smaller accounts — ₹15-20 crore — banks are more inclined

to opt for debt recovery tribunals as the IBC can prove to be a long, winding and expensive route.

As Pradhan elucidates, while the IBC might be viable for big accounts because of the huge cost involved in appointing resolution professionals and the overall cost of CIRP (corporate insolvency resolution process), "for smaller accounts, banks will stick to options like debt recovery tribunals and the SARFAESI Act."

A K Goel, managing director and CEO at UCO Bank, said that for smaller accounts, the National Company Law Tribunal (NCLT) should be the last resort. "If we can support a small company by way of restructuring, then that should be the aim. After that, the option of invoking the SARFAESI Act should be explored. However, the problem with SARFAESI is that in a large number of cases, the borrowers get stay orders from DRTs, which again derails the process," said Goel.

Mrutyunjay Mahapatra, managing director and CEO of Syndicate Bank, said, "There is a consensus among bankers that the NCLT is not suitable for smaller accounts. Also, the way the NCLT is unfolding, a lot of cases in DRTs are expected to get expeditiously settled. This is because the DRTs are getting declogged as bigger cases are being referred to NCLT."

IBC cases have tripped on deadlines largely on account of legal tangles, with a significant number having breached the stipulated deadline of 270 days and even the revised timeline of 330 days.

Experts agree, however, that the Supreme Court ruling in the Essar Steel case has cleared many contentious issues around the IBC — from a test of eligibility under Section 29A to the supremacy of financial creditors.

Kumar Saurabh Singh, partner, Khaitan & Co, said, "First, the RBI direc-



STATUS REPORT

Status of CIRPs as on September 30, 2018

	No. of CIRPs
Admitted	2,542
Closed on appeal/review/settled	186
Closed by withdrawal under Section 12A	116
Closed by resolution	156
Closed by liquidation	587
Ongoing CIRP	1,497

CIRP: Corporate insolvency resolution process

Source: IBBI

tion to banks on using the Code for resolution of debt was challenged in Gujarat High Court. But the court said that the NCLT had jurisdiction over these cases. That was the first positive."

Singh also said that the three IBC cases of Essar, Electrosteel and Bhushan Steel had settled several thorny issues in Section 29A of the Code. The Essar Steel case tested the eligibility of the resolution applicant under Section 29A on whether a defaulting promoter could bid; in Electrosteel and Bhushan Steel, resolution applicants were tried under clause (d) of the Section.

The provisions of Section 29A state that a person will not be eligible to submit a resolution plan if such a person, or any other person acting joint-

ly or in concert with such person, has been convicted of any offence punishable with imprisonment of up to two years or more.

"That was an inter-bidder fight. Then post-resolution, the hierarchy of distribution of proceeds came up. Now that has been put to rest with the role of the Committee of Creditors (CoC) having been defined. This should help in expediting the process of resolution under IBC," said Singh.

In the Essar Steel case, the NCLT had put various classes of creditors — financial, operational, secured and unsecured financial creditors — on a par. This was set aside by the Supreme Court, putting the apprehensions of secured financial creditors to rest.

Vidisha Krishan, partner, M V Kini

Ruling in Essar case a watershed in insolvency law, says IBBI chief

The Supreme Court ruling in Essar Steel matter is a "watershed moment" for the insolvency jurisprudence and takes away excuses of parties to halt resolution process midway, according to IBBI Chairperson M S Sahoo. The Insolvency and Bankruptcy Code, 2016 envisages closure of a corporate insolvency resolution process (CIRP) in a time-bound manner. The chief of the Insolvency and Bankruptcy Board of India (IBBI) noted that in three years, the Code "boasts of a vast and rich jurisprudence", adding that with every court judgement, the insolvency law is developing deeper and stronger roots. On November 15, the Supreme Court paved the way for ArcelorMittal's takeover of Essar Steel for ₹42,000 crore under the insolvency resolution process, which had been pending for long, mainly due to legal challenges.

PTI

WTO dysfunction gives us a breather



EXIM MATTERS

T N C RAJAGOPALAN

Last Tuesday, our government appealed against the ruling of a World Trade Organization (WTO) panel that some provisions of our export promotion schemes amount to prohibited subsidies that must be discontinued in the next few months.

Effectively, this stalls implementation of the ruling. Under WTO rules, the panel recommendations must be adopted by its Dispute Settlement Body (DSB) within 30 days — unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the latter decides by consensus not to adopt the report. Where a panel report is appealed, the Appellate Body of the WTO must issue its decision within 30 days from the date the party to the dispute formally notifies its intention to appeal. When the Body considers that it cannot provide its report within 30 days, it should inform the DSB in writing of the reasons for this, with an estimate of the period within which it will give the report — in no case, however, should its proceedings exceed 60 days. The appellate report must be adopted by the DSB and unconditionally accepted by the parties to the dispute, unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the members, says the WTO agreement on dispute settlement.

In practice, the time limits are breached more often than not but, mostly, the dispute settle mechanism has worked very well. However, America, especially under the Trump administration, is unhappy with the process of re-appointment of

Appellate Body members, its alleged judicial overreach, rigid adherence to precedents, interpretations that significantly restricted the ability of WTO member-states to counteract trade distorting subsidies, disregard for time limits and so on. Instead of addressing these issues constructively, the Trump administration has blocked the appointment of Appellate Body members. As a result, there are now only three members instead of the seven it is meant to have. Of the three, the terms of two expire by mid-December. So, unless new members are appointed, the Body is likely to be completely dysfunctional, as every appeal is to be heard by at least three members.

Since its inception in 1995, the WTO dispute settlement mechanism has resolved an impressive number of trade disputes, earning a reputation as the "crown jewel" of the global trading system. Today, however, the dispute settlement mechanism is in crisis as WTO members have failed to negotiate updates to the rulebook, including rules on dispute settlement itself. As a result, the Appellate Body increasingly is asked to render decisions on ambiguous or incomplete WTO rules. Without enough members to review the panel rulings, the vaunted dispute settlement system is heading to a halt and soon the WTO might lose its system of final appellate review, and its panel rulings would become unbinding.

So, our government can recalibrate its Foreign Trade Policy without regard to the panel ruling on its export promotion schemes and recommendations to withdraw the allegedly prohibited subsidies. This could mean merely rebranding the present export promotion schemes in some form or the other.

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India, China spar over legacy of medicinal system

PRESS TRUST OF INDIA
New Delhi, 24 November

India and China are at loggerheads over the legacy of one of the oldest systems of traditional medicine, known as Sowa-Rigpa, which has similarities with Ayurveda. India has sought recognition of the ancient medicinal tradition as its "intangible cultural heritage", a claim contested by China at a global forum, sources said.

Sowa-Rigpa is a traditional Tibetan system of medicine practised in India's Himalayan belt. It is popular in Sikkim, Arunachal Pradesh, West Bengal's Darjeeling, Himachal

Pradesh and the Union Territory of Ladakh.

"India has approached the UNESCO seeking enlisting of the Sowa Rigpa as its 'intangible cultural heritage'. China has raised objection to it," an official said. An Indian delegation is strongly pushing the country's application based on detailed documents and evidence provided by the AYUSH Ministry which has been working closely with the Ministry of External Affairs on the matter, officials said.

The move comes in the backdrop of the Modi government promoting the traditional medicine system, one of the oldest surviving medicine systems in the



The Cabinet on November 20 approved the setting up of the National Institute for Sowa-Rigpa in Leh as an autonomous organisation under the Ministry of AYUSH

world. The Union Cabinet on November 20 approved the setting up of the National Institute for Sowa-Rigpa (NISR) in Leh as an autonomous organisation.

This is perhaps one of the first decisions taken by the Union Cabinet on Ladakh's development after it became a Union Territory on October 31 following the bifurcation of Jammu and Kashmir. The theory and practices of Sowa Rigpa are similar to that of Ayurveda and include a few principles of the traditional Chinese system of medicine.

The fundamental text book 'Rgyud-Bzi' of Sowa Rigpa is believed to have been taught by Buddha himself and is closely linked with Buddhist philosophy.

The establishment of the NISR as an autonomous body under the Ministry of AYUSH has been approved at an esti-

mated cost of ₹47.25 crore.

According to an official, setting up of NISR would provide an impetus to the revival of Sowa-Rigpa in the Indian sub-continent and provide opportunities for students of the traditional medicinal system not only in India but also from other countries.

It will be an autonomous national institute under the Ministry of AYUSH with the mandate of undertaking interdisciplinary education and research programmes in Sowa-Rigpa in collaboration with premier national and international institutes and facilitate integration of different systems of medicine.

NTPC likely to raise green bonds worth ₹10,000 crore

PRESS TRUST OF INDIA
New Delhi, 24 November

State-run power giant NTPC is likely to raise around ₹10,000 crore through green bonds for acquisition of the government's stake in THDC India (THDCIL) and North Eastern Electric Power Corporation (NEEPCO), a source said.

Proceeds from green bonds are used to finance clean and green and environment-friendly infrastructure. Since THDCIL and NEEPCO are hydro-power generators, any investment in these two firms would fall in the category of green bonds.

"The company is most likely to raise over ₹10,000 crore via green bonds to acquire government stake in THDCIL and NEEPCO. The acquisition is likely to be before the end of this fiscal as the government intends to achieve its disinvestment target of ₹1.05 lakh crore," the source told PTI.

"The company has not started the process to appoint a valuer to fix the value of the central government stake in THDCIL and NEEPCO," the source added.

Earlier this week, the Cabinet Committee on Economic Affairs (CCEA) approved a proposal of the finance ministry for divestment of central government stake in THDCIL and NEEPCO. Government of India's shareholding of 74.23 per cent in THDCIL will be divested along with transfer of management control to NTPC.

STATSGURU

Is mobile tariff hike justified?



From the first week of December, Airtel and Vodafone-Idea are expected to raise their tariffs, and users will need to pay more. But is the tariff hike necessary? Telecom companies don't have too many options.

Almost every Indian has a mobile phone now (chart 1), though all do not use data. This has resulted in an explosion in data consumption (chart 2). An average Indian now uses 10 GB data per month.

This is a direct result of the price war between Reliance Jio and the two incumbents. Telcos reduced their tariffs so much that they earn only ₹75 per user per month, nationally and across the industry (chart 3), for all the data that we use: From streaming YouTube videos and video calls over WhatsApp. Leading telcos quote their ARPU above ₹100, owing to their own calculations.

Mobile data has become so affordable that an average Indian pays only 0.6 per cent of his/her monthly income on it (chart 4). But things have been tough for telecom companies: They ended up paying ₹1 trillion over five years on spectrum charges and licence fees (chart 5). This does not include what Airtel and Voda-Idea need to pay as dues.

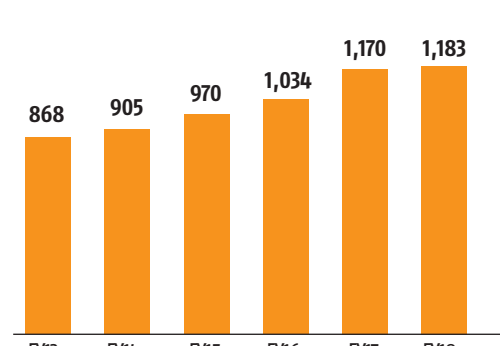
Further, for better quality data and voice calls, they need to invest in more towers. India has one tower for nearly 3,000 people, worse than most Asian peers (chart 6).

Tariff hike, however, may not pinch consumers much. A 15 per cent hike would require consumers to pay nearly ₹15 more per month, but would make company finances more sustainable (chart 7).

ABHISHEK WAGHMARE

1: INDIA HAS FULL NATIONAL CONNECTIVITY

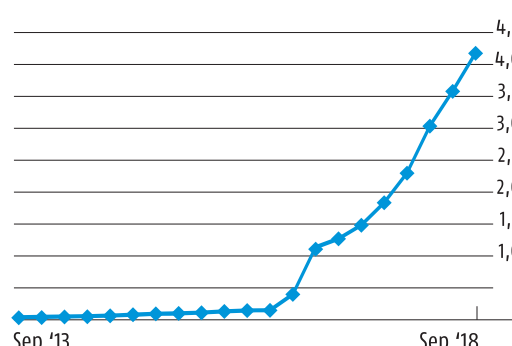
Wireless subscribers (million)



Source: TRAI annual and quarterly reports

2: EXPLOSION IN DATA CONSUMPTION

Nationwide consumption in thousand TB



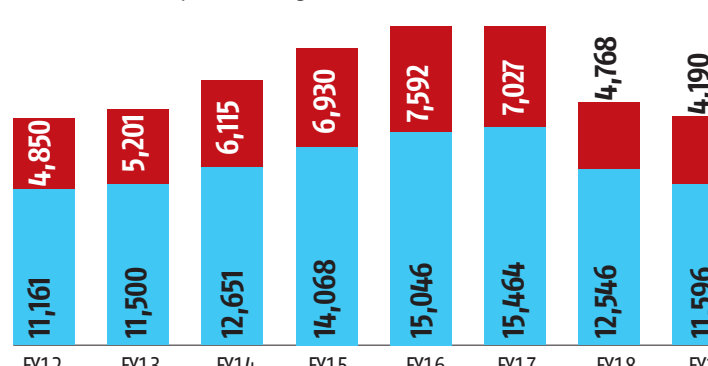
Source: Scraped from a TRAI white paper (2019)

ILLUSTRATION: AJAY MOHANTY



5: FEES AND CHARGES: ₹1 TRILLION IN FIVE YEARS

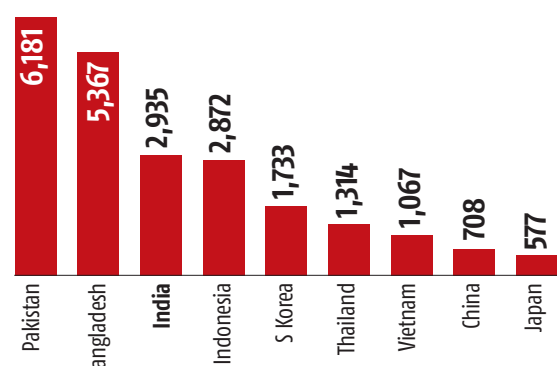
■ Licence fees ■ Spectrum charges



Source: COAI

6: INDIA'S TOWER INFRA NEEDS TO GROW

People served by one tower

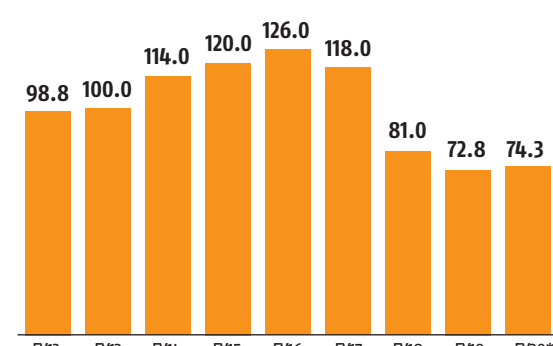


* End of 2018

Source: TRAI reports

3: REVENUE UNDER STRESS WORSENS

Average revenue per user (₹)

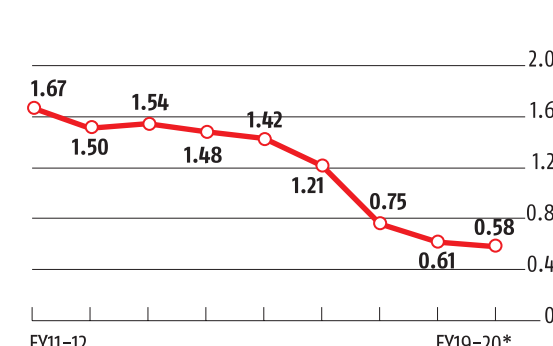


* Apr - Jun

Source: COAI

4: BUT AFFORDABILITY HAS INCREASED

ARPU as share of per capita income (%)



* Apr - Jun

Source: COAI, Ministry of Statistics and Programme Implementation

7: IMPACT ON CONSUMER WILL BE MINIMAL

Measure Impact

- Tariff hike 15%
- User cost increases by ₹16/month
- Ebitda* rises by 25%
- Annual cash flow* rises by ₹5,400 cr

*While Ebitda is for one major telecom company, cash flow is for another; Ebitda: Earnings before interest, tax, depreciation, and amortisation. Source: Analyst reports

Compiled by BS Research Bureau