Minimum wage likely to be fixed for children's education, medical costs

New set of rules proposed to calculate it; threshold for workers could see increase in next three months

SOMESH JHA
New Delhi, 3 November

DRAFT CODE ON WAGES RULES, 2019

- **Govt frames draft rules** for fixing minimum wage for railways, mines, oil, aviation and telecom, banking and insurance sectors along with CPSEs, govt-owned ports & private contractors engaged by the central government
- **For the first time,** 25% of minimum wage component will include expenses of a worker's family on education of children and medical needs
- **States free to adopt the rules** framed by the Centre for other set of industries
- **The minimum wage rates will now** be fixed by a committee
- **The government will also set** a national floor for minimum wages

The manner in which the minimum wages for workers is fixed is going to see a big change. The Union government has proposed a set of rules which was adopted while setting the minimum wages for its own officials (in 2016) by the Seventh Pay Commission. As a result, the minimum level for workers is set to go up in the next three months, a senior labour and employment ministry official said, requesting anonymity.

The ministry has made a set of rules prescribing the way in which it will fix the level. And, it will cover the cost to a worker's family of children's education, medical requirements and recreation. This is part of the draft Code on Wages (Central) Rules, 2019, for which public comments have been invited by the ministry.

The rules are part of the Code on Wages Act, 2019, passed by Parliament and notified in August this year, which proposed to give minimum wages to all workers across the country, instead of only a set of industries.

The central government has proposed to follow in toto the Supreme Court's advisory in a ruling in 1992, popularly known as the Raptakos judgment, and recommendations of the 15th Indian Labour Conference, made in 1957. According to the SC advisory, which will be adopted, minimum wages for workers are to be so fixed that 25 per cent of it constitutes "expenditure for children's education, medical requirement, recreation and expenditure on contingencies".

Along with it, while setting the level, the government will keep in mind the expenditure of a worker's family (of three) towards food, clothing, house rent, fuel and electricity, say the draft rules. Most of the components in the wage are proposed to be linked to expenditure on food and clothing. For instance, housing and rent expenditure will constitute 10 per cent of food and clothing expenses. The cost of expenditure by a worker's family on food with net intake of 2,700 calories per day for three family members and clothing (66 metres cloth per year for the whole family) will be the most important criteria, being followed in present day practice as well. Fuel and electricity cost would constitute 20 per cent of the minimum wage.

To be sure, these proposed norms will apply only to the railways, mines, oil, aviation, telecom, banking and insurance sectors along with central public sector enterprises, government-owned ports and private contractors engaged by the central government. The norms for all sets of industries will be notified by respective state governments, as in the Code on Wages Act, 2019. The manner of calculating the minimum rate of wages was not prescribed in government rules so far and has been a bone of contention for employers and employees, often leading to litigation. For various reasons, including court cases, it took the Delhi government more than three years to notify a hike in the minimum wage for workers by 37 per cent, after it had started the process in August 2016.

There are two schools of thought on fixing the minimum wage. Either go with a renewed approach in line with realities, keeping economic factors in mind or stick to the historical norms, which are sufficient and were not followed in letter and spirit till date.

"The approach followed by the central government in the draft rules is the right way to go. This was followed by the seventh pay commission, too. It's a progressive way to recognise that the minimum wage determination process does not change because of time and space. It will definitely lead to a hike in minimum wage," said K R Shyam Sundar, labour economist and professor of human resources management at XLRI-Xavier School of Management.

However, Anoop Satpathy, fellow at the VV Giri National Labour Institute, says the draft rules do not take into account socio-economic considerations and labour market realities.

"The parameters of fixing the minimum wage should be contemporary and evidence-based. It should be delinked to the food component and non-food expenses should be based on actual expenditure by workers. Economic considerations, including labour productivity and impact on employment, should also be key factors," says Satpathy, who had headed a government-appointed committee on fixation of minimum wages.

WTO panel rejects India's arguments

EXIM MATTERS

T N C RAJAGOPALAN

A World Trade Organization (WTO) panel has concluded that India is maintaining prohibited export subsidies that must be withdrawn in the coming months. Our government might appeal.

The United States had alleged India gives prohibited subsidies through the Export Oriented Units (EOU) Scheme and via sector-specific schemes, examples being the Electronics Hardware Technology Parks (EHTP) Scheme, Bio-Technology Parks (BTP) Scheme, Merchandise Exports from India Scheme (MEIS), Export Promotion Capital Goods (EPCG) Scheme, Special Economic Zones (SEZ) Scheme and Duty Free Imports For Exporters Scheme (DFIS) that refer to nine entries in exemption notification 50/2017-Cus dated June 30, 2017.

The Government of India argued in vain that the support extended through these schemes was not of prohibited subsidies. And, also failed to get eight years to phase these out. Ingeniously, India claimed capital goods are inputs that get consumed in the process of manufacture of export products. Not surprisingly, the panel dismissed that. The contentions that EOU and SEZ are special schemes to boost employment oriented manufacturing and not promote export gained no traction. On some relatively insignificant issues, the US allegations were also rejected.

The panel adopted a three-step methodology. One, to identify the tax treatment that allegedly constitutes a financial contribution and the objectives behind it, then identifying the benchmark for comparison i.e the fiscal situation which it is legitimate to compare with and comparison of the applicable treatment with the benchmark. Every scheme was evaluated with this methodology before arriving at the conclusions. The panel has asked India to withdraw the prohibited subsidies under the EOU/ EHTP/BTP Schemes, EPCG Scheme, and MEIS within 120 days, the prohibited subsidies through five entries under DFIS within 90 days and the income tax and other benefits under the SEZ scheme within 180 days.

Exporters can rest assured that there is no threat to the Advance Authorisation Scheme, Duty Drawback Scheme and four specified entries under DFIS. Also import of inputs required for export production under the EOU and SEZ schemes may continue. However, going by the reasoning adopted, whether the proposed Refund of Duties and Taxes on Exports Products scheme will survive sharp scrutiny is a matter of doubt, unless the rate calculations are very precise.

The commerce ministry must go back to the drawing board, re-evaluate its policies, engage in intense consultation with stakeholders and come up with workable and sustainable strategies to promote exports in a way that is compatible with the disciplines under various WTO agreements. It has to look for massive simplification. For example, doing away with monitoring the realisation of export proceeds against each shipment, eliminating any role for regional offices of the Directorate General of Foreign Trade in issuing advance authorisations or monitoring fulfilment of export obligations and so on.

A careful study of protectionist measures and rather liberal use of non-tariff barriers and anti-dumping or safeguard measures, especially on primary products, and how they affect the downstream user industries is necessary. Whether the policy of maintaining high customs duty rates, along with a plethora of exemptions, should give way to a lower import duty regime with fewer exemptions is also worth consideration.

Exporters should also focus more on improving the competitiveness. And, on reducing the dependence on tax incentives that mostly get passed on to foreign buyers through lower prices.

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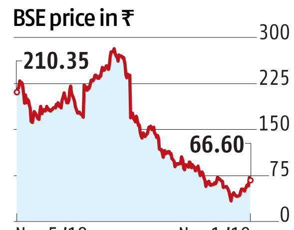
Asset quality a never-ending issue at YES Bank

With elevated credit cost guidance and addition to stressed assets, share under pressure; faster-than-anticipated capital infusion now seems critical

HAMSINI KARTHIK
Mumbai, 3 November

SHARE MOVEMENT

BSE price in ₹



Compiled by *BS* Research Bureau

Every 'torpedo' fired hit us, says bank

YES Bank, which reported a surge in NPAs in the September quarter, feels its stressed loans situation could have been much better but for "torpedos" that hit the private sector lender. These "torpedos" which hit his ship include exposures to Cafe Coffee Day, Altico Capital, CG Power and Cox and Kings, the bank's chief executive Ravneet Gill has said. "Every torpedo that got fired hit us," he told a select group of reporters over the weekend. Meanwhile, a top official said, YES Bank is aiming to finish a $1.2 billion (about ₹8,462 crore) equity raising exercise by December and willing to give new investors a board seat. PTI

The problem with YES Bank, analysts say, is that it hasn't met its asset quality forecasts ('guidance') even once in the past three quarters. "Of course, the operating environment is unpredictable, but if the bank can't give us a clear picture of what's in store, calling the bottoming out of its asset quality stress is nearly impossible," says one with a foreign brokerage.

Operationally, the September quarter (Q2) was far from comfortable, with net interest income falling 9.6 per cent year-on-year (yoy) and profit before tax more than halving to ₹122 crore, thanks to a 42 per cent yoy increase in provisioning cost to ₹1,336 crore.

Tougher to digest was movement of asset quality and the guidance in this regard. For instance, despite having done a fair estimation of stress, 40 per cent of slippage, meaning, loans which turned bad during the quarter, came from poorly-rated ('BB' and below) accounts.

YES Bank made additions to these weak-rated accounts, taking their share to 14 per cent of the total loan book in Q2, a sequential increase of 150 basis points (bps) It has also turned watchful on real estate loans, seven per cent of its loan book. About 33 per cent of its commercial real estate loans are already classified as non-performing or those with weak credit profile. Less than a third of its realty loans enjoy a rating of 'A' or above, and 45-50 per cent of the exposure is 'BBB' rated, a notch better than those with weak rating.

Given the environment for real estate, there is a risk of credit profile deterioration for these accounts as well. The worst blow, though, came in the form of credit cost guidance or the anticipated loss due to credit risk. This doubled from 125 bps to 250 bps in Q2, essentially indicating that the asset quality pain might not ease in one or two quarters as envisaged earlier but could go deeper. Analysts at PhillipCapital assume slippages to peak at ₹21,700 crore and gross non-performing assets to swell to 9.3 per cent of advances for FY20, which is another 200 bps increase from Q2's 7.3 per cent.

In this context, it is possible that a big chunk of the mega fund raise currently underway is utilised to further cleanse the loan book/balance sheet, rather than being deployed for growth. Q2 did see marginal bettering in common equity tier-1 (CET-1) capital sequentially, increasing to 8.7 per cent from eight per cent in the previous quarter, thanks to the first round of equity raising and pruning of the loan book.

The bank has got a $1.2 billion binding offer from a US-based investor and also got offers worth $1.85 billion from private equity and domestic investors, including mutual funds. However, if the fresh capital, at least the binding offer, doesn't flow into the bank in the ongoing quarter, the December quarter results could be messier than Q2. "We believe that heavy capital injection may ease the current pressure on the capital but unabated stress flow will keep the financials bleeding and call for prolonged (equity) dilution risk for investors," warn analysts at Emkay Global Financial Services.

Details on the pricing of the offers and, consequently, the amount of equity dilution are not available.

Govt may extend Ajay Tyagi's term

SHRIMI CHOUDHARY
New Delhi, 3 November


Ajay Tyagi

The Securities and Exchange Board of India (Sebi) Chairman Ajay Tyagi's term is ending in February next year, but sources say the government is likely to give him a two-year extension.

Tyagi took charge from his predecessor, U K Sinha, on March 1, 2017, for five years. But, the government had cut his tenure by two years, without giving any details. The order said his term will be for a three-year period.

Sources in the government said the concerned department has been intimated about the selection process, and if the Centre decides not to give Tyagi an extension, it might soon put out notification inviting applications.

According to the rules, the Appointments Committee of the Cabinet, headed by the Prime Minister, decides the appointment of Sebi chief for a five-year term, or up to the age of 65. Some Sebi members appointed recently have been given five-year terms.

In his first two years, Tyagi, a Himachal Pradesh cadre IAS officer, has implemented challenging stock market reforms and taken action against high-profile corporate entities. Within a month, he passed an order in the long-pending matter against Reliance Industries and imposed a penalty of over ₹1,000 crore. Another benchmark order was against National Stock Exchange in connection with co-location matter, directing the exchange to deposit ₹1,200 crore in an investor fund and barring it from accessing capital market for six months, along with claw back of salaries paid to its two former chief executive officers for lapses. Sebi, under his leadership has dealt with several cases involving, Infosys, Tata Sons, ICICI bank, Religare among others.

Tyagi was also instrumental in executing the new corporate governance code for mutual funds, aimed at improving transparency and bringing down cost.

The former bureaucrat has also raised its voice against certain decisions of government such as transferring 75 per cent of surplus fund to the government kitty and on proposal of amending minimum public's shareholding norms.

He is known as quiet worker, who keeps a low profile. He had played a key role in merging Sebi with erstwhile commodity regulator Forward Markets Commission.

He was a joint secretary in the ministry of environment and forests, before joining the finance ministry in November 2014 as an additional secretary. During that time, he had spearheaded foreign direct investment (FDI) reforms and measures.

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Southeast Asian...

Trade war impact

Negotiators were meeting into the evening on Sunday to try to come to an agreement, Thai government spokeswoman Narumon Pinyosinwat told reporters on Sunday.

"We don't have a conclusion yet. Once there is one, it would be announced," she said. "Commerce ministers are still discussing outstanding issues. The signing is expected around February next year."

Thai Prime Minister Prayuth Chan-ocha told the formal opening of the Asean summit on Sunday that the 16 nations in the potential trade bloc ought to come to agreement this year to stimulate economic growth, trade, and investment. He highlighted the risks of "trade frictions" and "geostrategic competition" in the region.

Some countries have raised the possibility of moving ahead without India on forming a bloc that also included Japan, South Korea, Australia, and New Zealand. But Thai Commerce Minister Jurin Laksanawisit told *Reuters* on Sunday that India had not pulled out.

Another advantage for Southeast Asian countries from having relative heavyweight India in the trade pact would be less domination by China.

Long-standing rivals China and India, which fought a border war in 1962, clashed verbally in recent days over India's decision to formally revoke the constitutional autonomy of Kashmir. The US decision to send a lower level delegation to the summits this year has raised regional concerns that it can no longer be relied on as a counter-weight to China's increasing regional might.

Instead of President Donald Trump or Vice President Mike Pence, the US will be represented by Commerce Secretary Wilbur Ross and White House National Security Advisor Robert O'Brien.

Drugs under...

The first meeting took place around June. The SNCM has sought industry feedback on cancer drugs, penicillin preparations, cardiology medicines, and also anti-microbial resistance. Prices of some key cancer drugs and diabetes and cardiology medicines may be cut.

Also, the list of antibiotics may be updated, taking out the ones to which the Indians have become resistant and adding new ones.

60% of firms...

That left only 0.7 per cent in the 30 per cent category in this year's Budget.

Currently, the total tax burden after surcharges and cess on large companies come to 34.94 per cent. The September offer reduced this to 25.17 per cent. The finance minister had also announced a cut in corporation tax rate to 15 per cent, from 25 per cent, for new manufacturing companies. With cess and surcharges, this comes to 29.12 per cent at present and with the new rate structure that would be cut to 17.01 per cent. These companies also need not pay any MAT.

However, those opting for the lower tax regime will not be allowed to claim accumulated MAT credit.

"It is not necessary that companies with accumulated MAT credit will not move to the lower tax regime. They are weighing the benefits and will take a call based on that," said the official.

Despite unavailability of MAT credit, early indicators suggest several companies have moved to the lower tax regime.

According to an earlier report in *Business Standard*, combined tax outgo for the September quarter was down 3.1 per cent year-on-year. As a result, the average effective rate of tax for the sample of 200 firms had declined to 22.9 per cent during the quarter, from 28.5 per cent in the year-ago quarter. The tax cut boosted post-tax earnings by ₹3,900 crore, equivalent to 5.6 per cent of pre-tax profit in the quarter.

Revenue Secretary A B Pandey recently told *Business Standard* the principle behind the new regime is that one comes with a clean slate. "Claiming MAT credit earned during the earlier regime means that you are also claiming certain exemptions. The idea is to have a simplified tax regime," he'd said.

Pandey added a large number of companies had a tax rate over 22 per cent." They will take advantage (of the scheme). If some companies do not, as they are already in a beneficial regime, net revenue outgo will be slightly less than (the estimated) ₹1.45 trillion," he had said. Former Reserve Bank of India governor C Rangarajan and D K Srivastava, chief policy advisor at consultancy EY India, have estimated forgone revenue at ₹98,579 crore on account of the corporation tax rate cut.

New FEMA...

The restrictions may also make it impossible for their exchange-traded funds to invest, according to the assigned weight of the underlying benchmarks, and put the brakes on fresh money coming into their fund of fund schemes, which invest in other MF schemes — typically international funds.

"Investment in Indian shares by MFs classified as investment vehicles, and where the sponsor or the investment manager is a foreign-owned or controlled company, shall be regarded as indirect foreign investment, and trigger compliance with FEMA sectoral caps, pricing, and reporting norms," said Tushar Sachade, partner, PwC India.

Franklin Templeton, BNP Paribas, Invesco, and Mirae Asset are among the seven asset managers identified as foreign by the Association of Mutual Funds in India (Amfi). Nippon India MF (formerly Reliance MF) has become the eighth foreign fund house after Nippon Life Insurance of Japan completed buying 75 per cent stake in the asset manager last month.

It is not clear if other fund houses such as HDFC MF or ICICI Prudential MF will also be considered to be foreign-controlled or owned, according to the FEMA definitions. Standard Life Investments, for instance, holds 29.94 per cent in HDFC MF for the quarter ended September 30, 2019. Another 52.76 per cent is held by Housing Development Finance Corporation, which itself is largely a foreign-owned entity, with 72.52 per cent held for foreign portfolio investors (FPIs).

Emails and text messages sent to officials of several of these fund houses did not immediately get a response. "We are assessing the situation and seeking a legal clarification on the issue," said Swarup Mohanty, chief executive officer, Mirae Asset MF.

"Today, I can have an overseas fund with foreign money investing in the domestic market and be treated as an FPI. However, if I am a domestic fund and the money is pooled from domestic investors, the investment will treated as foreign direct investment (FDI) and be subject to all kinds of restrictions just because the manager is foreign-owned. The intent of the notification is not clear and may lead to significant unintended consequences," added another senior fund official.

A fund's ability to invest in certain Indian stocks will be impacted, said Tejesh Chitlangi, senior partner, IC Universal Legal. "Banking stocks, for instance, have a 74 per cent FDI/FPI cap, and if this limit is exhausted, these funds will not be able to invest in them. Earlier, there was no such restriction," he said.

Let's say a foreign fund classified as an investment vehicle wants to buy shares of HDFC Bank, which caps foreign ownership at 74 per cent. Assuming the cap is breached, the foreign fund will not be able to make further purchases. Domestic funds, on the other hand, will be able to buy the bank's shares as they face no such restrictions.

Reporting norms will get triggered as well, leading to an increase in compliance requirements. MFs making downstream investments will have to notify the Department for Promotion of Industry and Industrial Trade and the Reserve Bank of India, within 30 days of investment, even if the equity instruments have not been allotted. The funds will also have to meet the applicable pricing guidelines and valuation norms at the time of making such investments.

"The reporting requirements for indirect foreign investment could be onerous and practically difficult to comply with. The ability of portfolio companies to raise foreign capital could be diminished as well, to the extent of investment by such impacted MFs," said Sachade.

To be sure, not all foreign fund houses may get immediately impacted by the change in FEMA norms. As of today, Mirae Asset and Principal MF are the two foreign fund houses with equity assets in excess of 50 per cent of the overall portfolio, the data from PRIME Database shows. This number ranges between 38 per cent and 44 per cent for BNP Paribas, Franklin Templeton, and Invesco. The actual percentage of equity assets for all the foreign-controlled fund houses, however, could be much higher if the equity portion of hybrid schemes, fund of funds, and other schemes are taken into consideration.

It is not clear how the 50 per cent in equity criteria will be arrived at for the purpose of classifying the funds as investment vehicles. "FEMA may take into account overall investment in equity across all schemes to compute the equity portion," said Chitlangi.

Plastic's loss..

With demand comes the need for more labour and that is what jute mills are struggling with. Industry estimates suggest a shortage of around 21,000 workers.

"The demand is such that mills warrant 100 per cent capacity utilisation, but they are running at 70-75 per cent capacity utilisation due to labour shortage," said D C Baheti, executive director, Gloster. Last year, jute workers saw an increase in minimum wages ₹100 per day, taking the average wage to ₹500.

"We will increase the payout further to attract workers. We want to provide a good working environment," said Baheti.

How the wheel has turned full circle. The last time the jute industry was in the news was in 2014, when H K Maheshwari, chief executive officer, Northbrook Jute Company in Kolkata, was beaten to death by angry workers wielding iron rods, grilles and concrete slabs over working hours being curtailed because of stock issues. No one is talking of any curtailing now.