

BusinessLine

WEDNESDAY, NOVEMBER 20, 2019

Crop insurance woes

Testing times ahead for Fasal Bima Yojana as claims are set to mount

For perhaps the first time since its inception in February 2016, the Pradhan Mantri Fasal Bima Yojana (PMFBY) faces the prospect of claims far exceeding the premiums collected. Even as the extent of crop damage remains uncertain on the whole, reports of crop loss in Maharashtra range from 54 lakh hectares, acknowledged officially, to 90 lakh hectares, out of the 140 lakh hectares of cultivated area in the State. Heavy rain also impacted Gujarat, Telangana, Karnataka, Rajasthan and Madhya Pradesh, ravaging maize, pulses, paddy, cotton, soyabean, jowar, bajra, groundnut, sugarcane and horticulture crops. In Maharashtra, farmers have protested paltry compensation for their losses, amidst a growing perception that the PMFBY is tilted towards insurance players (India File, *BusinessLine*, November 19). Meanwhile, it has been reported that four major private insurance players have not bid for the PMFBY this year, citing an unviable business model. This is not wholly convincing. Over the last three years of PMFBY, insurance companies have collected more by way of premiums than they have disbursed through claims. There is nothing wrong with this, if the claims themselves are low. However, if the compensation, yield estimates and premiums have been miscalculated, it is a serious issue. The industry has complained of issues in dealing with the local bureaucracy and political machinery. Overall, a host of implementation issues need to be fixed.

The PMFBY was meant to enhance risk cover for farmers. In 2018-19, 5.64 crore farmers enrolled under the scheme, covering a gross cropped area of 30 per cent. The challenge ahead is to ensure that premiums, assessments of loss and payment of compensation work satisfactorily and transparently for all stakeholders. Farmers must be aware of how their premiums are worked out, and their losses calculated. For instance, some farmers in Maharashtra are of the view that the average yield of a region, against which the actual yield is compared and the loss ascertained, is underestimated. Insurance officials, however, contend that farmers at times act in collusion with State government officials in manipulating the results of crop cutting experiments (CCEs), meant to estimate actual yields; these CCEs, they argue, exaggerate the losses. *BusinessLine* has earlier reported consistently high claims of damage in the case of groundnut in Gujarat, which were not borne out by *mandi* arrivals. These regions also fork out premiums as high as 50 per cent of the sum assured, against the nationwide norm of 18-20 per cent (with the States and the Centre bearing 98 per cent of the cost).

The IRDAI should look into irregularities in premium and compensation. Insurance firms should use their resources to conduct CCEs to their satisfaction. Crop insurance is a tricky business. Yet, it is indispensable for the future of agriculture.

Tweak the triggers for invoking IBC

The low default threshold of ₹1 lakh and assumption of insolvency in all cases can be counter-productive to the resolution process



RADHIKA MERWIN

Recently, Flipkart was dragged by one of its operational creditors – CloudWalker Streaming Technologies – to the NCLT, on the ground that it had defaulted on an amount of ₹26.95 crore. While the NCLT ruled that Flipkart had committed debt and default and ordered for initiation of insolvency proceedings, the Karnataka High Court stayed the NCLT order, providing respite to the e-commerce giant.

Last week, Aviva Life Insurance was admitted into insolvency by NCLT over non-payment of licence fees for use of premises and service tax thereon.

These cases raise some unsettling questions. The Insolvency and Bankruptcy Code (IBC) provides an objective criterion to trigger insolvency—a minimum default of just ₹1 lakh. Can every such default then, even if isolated, lead to a presumption that the corporate debtor is insolvent? Should the adjudicating authority be given judicial discretion to consider other factors as well before admitting a case under insolvency?

Also, in India, once the debtor is admitted under IBC, it is an irretrievable process (barring some leeway to withdraw under Section 12 A of the Code). Hence does the 'creditor in possession' regime work in all cases? For an e-commerce giant like Flipkart, which has a customer base of over 200 million, would banishing the existing management and placing the control of the company in the hands of lenders/resolution profes-

sional, result in efficient resolution? What will be the fate of lakhs of policyholders, if Aviva is dragged into insolvency? There are no easy answers.

Facts of the case

CloudWalker, engaged in the business of import and supply of LED and TVs, had entered into an agreement with Flipkart in December 2016. After the first few orders being delivered and payment made by Flipkart, CloudWalker in its petition stated that Flipkart avoided taking delivery, giving lack of warehouse space as excuse. On June 8, 2019, CloudWalker issued a demand notice under Section 8 of the Code, for which there was no reply by Flipkart. The NCLT had ruled that Flipkart had committed debt and default and there is neither pre-existing nor post-existing dispute made out by Flipkart. Hence Flipkart should be admitted under insolvency.

The Karnataka High Court, however, stayed the NCLT order stating that the latter has jurisdiction only in respect of debts and that CloudWalker's petition before NCLT was with respect to damages.

In the case of Aviva, the insurer had entered into an agreement for office premises with Apeejay Trust, which filed for insolvency on account of non-payment of dues of about ₹27 lakh. Despite Aviva claiming relief from IBC on the ground that it is a financial service provider, the NCLT admitted the case for insolvency, considering the nature of the claim, rather than the business of Aviva.

Low threshold

These cases throw up some key aspects of the Code which need a rethink. Under the Code, aside from a financial creditor, an operational creditor – supplier, employee and workman – can also initiate insolvency proceedings on a default of just over ₹1 lakh. Of the 2,542 cases



The essence of the Insolvency and Bankruptcy Code is value preservation ISTOCK

admitted under NCLT for insolvency proceedings, about half have been initiated by operational creditors.

While it is welcome that the IBC has given more teeth to operational creditors, the low threshold has led to other issues. Aside from the cluttering of cases under NCLT, it could derail efforts of lenders who may be trying to resolve the issue with the borrower.

The biggest worry always has been that an operational creditor could possibly be looking at the IBC only as a 'recovery' tool. After all, it does matter who initiates the process and for what motive or consideration. There is an urgent need to review the very low threshold of ₹1 lakh. Instead of a fixed amount, the trigger point could also be defined as a per cent of overall dues (say 10 per cent of the debtor's total liabilities).

Companies do default from time to time, but all may not be due to a *mala fide* intent of the promoter/management. There may be temporary liquidity issues. Hence this begs the question: Can every default be treated as a case for insolvency?

Presumption of insolvency

In India, the test for commencing CIRP (Corporate Insolvency Resolution Process) does not involve satisfying the adjudicating authority

that the corporate debtor is insolvent. Rather, the Code provides an objective criterion (default of ₹1 lakh). The idea was to ensure an early initiation, as it prevents the ballooning of insolvency to an unresolvable proportion.

But is the presumption of insolvency based on just an isolated failure to pay, justified? The non-payment could be due to the debtor's inability to pay or negligence. It is the former that is critical for assessing the debtor's state of solvency. But how does one draw the connection?

Currently, the trigger point is rigid, leaving little discretion with the adjudicating authority. This needs to be reviewed. The adjudicating authority should be allowed to consider multiple factors, aside from the failure to pay, while admitting a case.

In many other jurisdictions, insolvency of the debtor has to be established for commencing insolvency proceedings. The relevance of 'presumption of insolvency' becomes evident under the UNCITRAL Model Law on Cross-border Insolvency. Article 31 provides that on recognition of a foreign main proceeding, the debtor shall be presumed to be insolvent for the purposes of commencement of a domestic insolvency proceeding.

The Insolvency Law Committee (ILC) that had come out with recom-

mendations on cross-border insolvency last year, had proposed 'a presumption of default' trigger for commencing insolvency proceedings in India.

One-size-fits-all approach

Currently in India, it is a 'creditor in possession regime' where the resolution professional takes over the reins of the company after the powers of the board are suspended. This has been instrumental in bringing about a sea change in the credit behaviour of debtors and also helped in preventing fraudulent and errant promoters from gaming the system.

That said, can the 'creditor in possession' principle fit all cases? In the Flipkart or Aviva case, getting rid of the promoter and giving the control of the company to the resolution professional or creditor may serve little purpose in as far as resolution is concerned.

The essence of IBC is value preservation. In certain cases, it may be essential to alter the 'creditor in possession' process to ensure revival and effective resolution. In these cases, the control of the company may still be considered to remain with the debtor, but under the monitoring of the CoC and resolution professional. This can ensure minimal disruption in the day-to-day affairs of the company as a going concern, without prejudice to the working of the RP.

In the US, the Chapter 11 bankruptcy cases are undertaken on the principle of 'Debtors in Possession'. Here, the debtors are closely monitored, and a Chapter 11 Trustee is appointed if there are concerns over the way the company conducts the Chapter 11 process.

In India, a re-think may be needed to ensure that a frivolous application does not jeopardise an otherwise sound business and leave all stakeholders – including employees and customers – in the lurch. After all, a liquidity issue may not be akin to a solvency risk in all cases.

Pulling out of RCEP wasn't a smart move

Tapping global export opportunities calls for urgent steps to improve competitiveness, rather than blocking FTAs

RITESH KUMAR SINGH

Barring a few exceptions, the Modi government's decision to pull out from RCEP has been welcomed by all, including Opposition parties and India Inc. That is not without reasons.

Post the FTAs (free trade agreements) with ASEAN, Japan and Korea, India's imports have increased more than its exports. Even without an FTA, India is not able to rein in its large trade deficit with China which has been denying genuine market access to Indian merchandise by resorting to non-tariff barriers. ASEAN countries too have been reluctant to open up their services sector despite signing a deal with India.

Given this backdrop, why would India sign a new FTA that may not help its exports but will certainly lead to more imports, especially from China. However, that doesn't mean it's a smart move. Signing a free trade pact is not always about the pull factors. Often, it's more about push factors.

If a country decides not to join an

FTA, it will be subject to tariff disadvantages later on if its major trading partners decide to join it. This is one reason that prompted the previous UPA government to ink a free trade pact with ASEAN. The same logic applies if other 15 members decide to go ahead on RCEP – that is, the relative tariff disadvantages for India will go up. Thus, India will find it even more difficult to export to ASEAN, Japan and South Korea.

Reducing trade deficit

To make matters worse, even without an FTA, there's limited scope for reducing India's trade deficit from China. India's promotion of solar energy, electric vehicles (EV) and digitisation will mean more (and not less) imports from China of solar panels, lithium batteries and electronics.

China remains the most price-competitive supplier of key industrial inputs and equipment, including active pharmaceutical ingredients, electronics and telecom gear for which India doesn't have adequate domestic capacities or alternative suppliers that can match China either in price or scale. Many



Any FTA involves give and take

service industries from real estate and hospitality to retail are dependent on cheaper Chinese merchandise to offer their services at reasonable prices. These realities cannot be ignored.

No doubt, India is a large and growing economy, but it's still not large enough to continue growing at 7-8 per cent without further integrating with the larger global economy. Two regional destinations, South-East Asia and Eurasian regions, still remain largely untapped by India. RCEP could be a key to cracking the South-East Asian market amidst waning prospects in India's traditional export markets, the EU, the US and Middle

East, in particular. Where the UPA failed and the Modi government is doing no better, if not worse, is to address the internal impediments to Indian manufacturing and exports. While product markets have been liberalised, factor markets remain restricted, which is keeping the cost of doing business high. Uncertainties on tax and investment protection continue to remain a big deterrent for investors, especially foreign investors and MNCs which could help push India's exports.

Excessive protection of industrial raw materials such as steel, aluminium, or synthetic fibre is impeding the growth of much more dynamic downstream industries and encouraging import of finished products.

It's not FTAs but India's own internal mismanagement that is hurting its exports. Only 20 (out of 99) chapters at two-digits ITC-HS, account for over 80 per cent of our merchandise exports. Thus, we are leaving 80 per cent of the global export pie largely untapped. Again, most of our exports, including those of manufactured goods, are

commodities and don't have pricing power.

Unless we fix these issues, India will continue to lose in trade whether it signs off to RCEP or not. Benefiting from FTAs or otherwise from global export opportunities calls for urgent internal actions and not blocking FTAs that could actually help our exports at a time when consumption (the major driver of growth) is slowing.

Indian industry will become competitive only if it's exposed to regional and global competition. As of now, most of our industrial sectors starting from airline, cement, steel to tyre and telecom are oligopolistic – dominated by a few sellers. They would be happy operating in protected domestic markets. That will not help our exports but will certainly disadvantage consumers through limited choice, poor quality and high prices. Any free trade pact is always about give and take. RCEP is no exception. The sooner we realise, the better.

The writer, a business economist, is the CEO of Indonomics Consulting Pvt Ltd

FROM THE VIEWSROOM

Health, education should be free

Taxpayers should monitor perks politicians and officials enjoy

It's high time diligent taxpayers paid attention to where their money was being used by the government. And it may not be out of line to insist that taxpayer money be used in providing subsidised, if not entirely free, education and healthcare for all. That's what developed nations do and so should India as it aspires to become a \$5 trillion economy.

The discussion on student fees goes beyond the #taxpayer-swiftlyJNU campaign that was trending on the micro-blogging site Twitter on Tuesday. Taxpayers should instead take a sharp look at other excessive spendings – for instance, the many perks given to policymakers in politics and the administration. Are all of these perks really necessary to dispense an honest day's work? Subsidised housing, canteens, travel, the list goes on.

And we grudge the country's students a little headroom they could use to educate themselves and improve their lives and that of those around them. No one in their right mind would have a problem if the money they are already paying as tax went towards building schools, training teachers, providing quality education and making it safe for children, especially young girls, to go to school in rural areas. The noon-meal scheme, for instance, is among the best support-initiatives by governments, past and present.

It's the same with healthcare. Anyone should be able to walk into a hospital anywhere in the country and find clean, well-staffed units capable of delivering quality basic healthcare. Instead, hospitals are over-crowded, the equipment does not work or is antiquated, the staff are stretched and tired, and the hygiene, let's just say needs much more attention. When education and healthcare institutions cry out loud for financial support, it is insensitive to mix this up with political messaging. Developed countries have managed to successfully channelise funds into free or subsidised quality education and healthcare for its citizens. As a nation, we the people too need to strive towards a similar goal-post.

PT Jyothi Datta Deputy Editor

LETTERS TO THE EDITOR

Send your letters by email to bleditor@thehindu.co.in or by post to 'Letters to the Editor', The Hindu Business Line, Kasturji Buildings, 859-860, Anna Salai, Chennai 600002.

Misjudgment by telcos

This refers to 'Mistakes made by Airtel, Vodafone' (November 19). It is indeed quite astonishing that both the companies made the catastrophic error of judgment of choosing to litigate on the definition of adjusted gross revenue (AGR) instead of paying the dues to the government 'under protest' on an ongoing basis for which they clearly had the financial capacity. It is staggering that they ignored the toxic clause of punitive levies in their contract with the government.

No prudent management can ever assume that judicial decisions will go in their favour. This error of judgment by the companies means that now they have to pay dues and penalties which are way above the actual licence and spectrum fees.

Their balance sheets are under immense stress and they may have to ultimately shut shop. This

would result in thousands of shareholders of these companies losing money. However, the hardest hit will be the customers who probably will have to move to monopolistic service providers and be at their mercy if Airtel and Vodafone shut their operations.

Arjun P Somasundaran
Kozhikode

Parliamentary democracy

This refers to the editorial 'Politics of legislation' (November 19). Democracy is all about debate, discussion and dissent and if any one of this is curbed in parliament, then the parliamentary system can be said to be dysfunctional. And that is precisely the crux of the issue.

In a hurry to get Bills passed and showcase them as achievements, the ruling party has many a times not gone into the nuances of the Bills. After a Bill becomes law, it is often amended. Not only is this a

wastage of time and resources, but also shows the government in poor light. Mere improvement in the ease of doing business rankings will not help bring the economy back on track. Structural changes that help create a more conducive environment for entrepreneurs and watertight laws are essential.

Bal Govind
Noida

Empowering women

This refers to 'For businesswomen the road ahead is still long' (November 19). Both in employment and entrepreneurship, India women have low representation (21 and 14 per cent, respectively). They have become a victim of stereotyping and wrong perception – for example, as low risk-takers, which militate against the fact that their marriage and moving into a new family equip them with abilities to face risk, uncertainty,

stress, failure, and need for adaptability right from a young age.

Outside the family, their education in a male-dominated environment strengthens their resolve to do well. Add to this their creative instinct, a critical competence for entrepreneurship. What they need, therefore, is family support, financial backing (from lending institutions) and social acceptance. Setting aside a certain percentage of bank loans only for women and running special courses for women entrepreneurs in management institutes could be thought of. Once these hurdles are minimised, India will produce many entrepreneurs like Kiran Mazumdar-Shaw and Anu Aga.

YG Chouksey
Pune

JNU protests

This refers to 'Police stop JNU students' march towards Parliament, baton-charge protesters' (Novem-

ber 19). It was unfortunate to learn that a number of JNU students were detained and some injured as they marched towards Parliament demanding a total rollback of the hostel fee hike.

But it may not be out of place to mention that some reasonable hike in the hostel fee should be accepted by the students as the same was fixed long back. Also, it is intriguing to observe that the JNU has, of late, turned out to be more a political fiefdom of the Left parties. Rights and responsibilities always go hand in gloves with each other. Let this once highly-reputed university (named after former prime minister Jawahar Lal Nehru) not be divested of its original purpose of providing good quality education. So, in no case, should it be allowed to become some self-serving political battlefield.

SK Gupta
New Delhi