Will promoters block the path?

As efforts are on to solve the NPA issue expeditiously, the promoter's role assumes importance

LALATENDU MISHRA

There is widespread apprehension that company promoters who have led, or will lead, their firms to bankruptcy may try to manipulate the system to retain control directly or indirectly.

The concern has risen among experts even as as the provisions of the Insolvency and Bankruptcy Code (IBC) have kicked in. The Centre had brought in the IBC to resolve India's significant nonperforming assets (NPA) problem. The RBI had said that 12 large NPA accounts be recommended to the the Na-Company Tribunal under the IBC.

Forensic consultants also said lenders, aided by the resolution mechanism, must go after promoters to recover as much monies as possible, including through unmasking of corporate veils, searching for assets globally and establishing proof of funds diversion and initiating criminal proceedings to create deterrence.

Forensic audits are being undertaken to establish any fund diversion and identification of benami properties of promoters in India and abroad, confirm investigators involved in the process. Efforts are also underway to trace fund transfers through shell companies.

This comes at a time when wilful defaulters reportedly have dues worth ₹92,376 crore, which is about an eighth of the total ₹8 lakh

'60% haircut'

Crisil, in a recent report with Assocham, said banks may have to take 60% haircut worth ₹2.4 lakh crore to settle 50 large NPA accounts.

While firms may have genuinely run into problems due to market conditions, there are also wilful defaulters. There are also defaulters who try to take advantage of the current situation and slow recovery environment to get away without repaying banks. Since the Indian business environment is typically promoter-driven, it will not be easy to achieve resolution without involving him/her in some way, said industry watchers and consultants.

"Can one incentivise the promoter to really step aside and let the insolvency pro-



Promoting non-resolution? There are defaulters who take advantage of the slow recovery environment and try to get away without repaying banks, say consultants. • GETTY IMAGES/ISTOCK

fessional take control of the business?"asks Reshmi Khurana, MD Kroll India, which provides intelligence, investigation and advisory service.

"No promoter would like to lose control. So, these 12 cases are going to be very important test cases of how the insolvency professionals and promoters and creditors behave with each other," she

As more cases are being referred to National Company Law Tribunal (NCLT), some questions that have been raised include: will Insolvency Resolution Professionals (IRP) remain independent and not be influenced by promoters; should the promoter be allowed to go scot free; and, should he/she be roped in by the IRP to ensure business continuity.

As the clamour to penalise defaulters grow, forensic consultants said there was no single solution to make promoters accountable

'Fine balance needed'

"A fine balance needs to be worked out," said a professional involved in the pro-

"A number of these ambitious borrowings were led by promoters who may have misjudged the market and hence borrowed too much and defaulted wilfully. At the end of the day, the promoters were running the company and if they have today led to the poor environment, then they have to

be held accountable,"

This is why these 12 cases that have been referred to NCLT are so important in terms of setting a precedent. Will all the promoters get a free pass and get more money and be allowed to continue? I don't think so," the professional said, requesting anonymity.

In case of fraud where promoters have siphoned off money, consultants suggested strong action, including a iail term. In case of genuine distress and mismanagement, the cases must be dealt with separately.

As the (NPA resolution) process has gained momentum, banks have hired the services of investigators to get complete details on all the assets held by the promoters in case of personal guarantees or assets of the companies, affiliates and related parties in other cases. The process also includes lifting the corporate veil whereby an offshore entity can be located. This, they said, would help give the complete picture of the promoters' assets.

'New buyer, a front?'

"We typically work with banks and other creditors to understand the background of potential buyers. One of the key concerns of banks today is that the potential buyers should not be linked to the promoters in a way that presents a conflict of interest," said Ms. Khurana.

"The banks want to un-

derstand the link between the new buyer and the promoters." She said banks can flex their muscle to find out about assets which had been diverted out of India, "They should not limit their world to India only. Promoters may have diverted funds intentionally. They may be running companies internationally that are not in distress.

ted to their source." "Banks can treat recovery of assets as they would in any commercial dispute and must go after [them] in full force," she said.

It's important to link the ap-

plication of the funds diver-

Analysts said courts should make it clear that their forum will not be misused by promoters trying to manipulate the system. The NCLT should be the sole adjudicating authority, they said. Since there is apprehension that promoters would drag the cases on for years so that the other party would lose interest, 'the timeliness of this process is very important.'

The challenge, consultants said, was to find out assets which were not attached or known. In many instances, the assets are outside the country and under others' names. "How do we create deterrence that sets an example so that promoters do not turn hostile and don't manipulate the system?" asked a consultant.

Similarly the independence of the Insolvency Resolution Professional is very important. Confirming the apprehension, a Crisil-Assocham report said, "The challenges include intercredit conflicts, and the ability of large corporates to delay the recovery process."

Asked if all the monies can be recovered from the promoter, Rajeev Suneja, partner, Deloitte India, said, "It is very important to differentiate between the promoter and the company and differentiate between a wilful defaulter and a defaulter."

"The promoter's liability is limited to the capital he has infused in the company unless he has agreed to give personal guarantees. While the resolution professionals work towards finding a resolution for the company, the personal guarantees of the promoters remain to the extent as agreed... in the resolution plan," Mr. Suneja said.

Personal guarantees

He said promoters could be made responsible to the extent that they had given personal guarantees. If it was established that the promoter, who was also managing the affairs of the company, had wilfully taken action to harm the company for personal benefit, then, potentially, action could be taken against such promoters, he said.

Sanjay Doshi, partner, KPMG in India, said the entire intention behind the IBC was to try achieve resolution in a time bound manner and not let the company close unless a workable resolution was not available. "This is a process aimed to get all stakeholders to work in a time bound manner and the resolution [which] will benefit all. Initiation of the process does not mean the company is going for liquidation. The approach is to solve the problem," Mr. Doshi said.

He said the promoter had the responsibility to support resolution process. "Management turning hostile was the biggest challenge in one or two cases. Earlier, we did not have any strong resolution mechanism. The law will take time to settle down," he said Kunta Sur, partner (risk &

regulation), PwC said lenders had lost the art of evaluation of credit. "The lack of depth in the methodology of credit approvals has led to this situation.'

GUEST COLUMN

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Data show new tax regime widely adopted

Transport and logistics sector has seen benefits



Guide, facilitator: The legacy image of the taxman is changing for the better. • GETTY IMAGES/ISTOCK

S. MAHALINGAM

The Goods and Services Tax (GST) is one of the biggest tax reforms in India. Though only a few weeks old, the latest tax is now firmly embedded in the millions of transactions happening all over the country every day, since the historic first of July, 2017, a watershed in Indian taxation history.

The key to the successful implementation of the GST was through a consultative forum which worked towards consensus among States with diverse interests in a federal structure. The goal of GST, which is 'one nation, one tax, one market,' a shot-in-the-arm for the country's ease-of-doing-business initiatives, is laudable.

Disruptions are inevitable in the short term, but in the long term, GST is likely to achieve improvements in the system efficiency, simplification and rationalisation of taxes, and the shift of business activity from the unorganised to the organised segwidening of tax base, along with traceability of transactions, is bound to add to the exchequer despite reduction in tax burden on the consumption of common goods.

Uniform interface, a first GSTN or the GST Network, cutting through traditional silos, has established for the first time a uniform interface for the taxpayer and a common and shared IT (information technology) infrastructure between the Centre and the States. A complex exercise involving the integration

of the entire indirect tax ecosystem, the tax regime has brought all the tax administrations (Centre, State and Union Territories) to the same level of IT maturity with uniform formats and interfaces for taxpayers and external stakeholders. Commendable and unprecedented handholding has been seen, with the taxman engaging in conversation with enterprises, chambers of commerce and industry bodies such as the CII, right through the transition, and more continually through social media responses.

The legacy image of the revenue officer or taxman is gradually shifting from being intimidatingly adversarial to being a persuasive guide and facilitator.

Initial data streaming indicated widespread adoption of GST by trade and industry. New registrations approved in GST crossed a million before the end of the initial month, and about two lakh applications were in process. GST has impacted the transport and logistics sector: movement of trucks has increased; time required to cover distances has come down drastically, and pollution levels have come down with increased truck speeds.

However, to reap the advantages of GST, concerns of business enterprises and industry sectors would need to be addressed. To name a few, the healthcare industry has sought that services be zero-rated rather than exempt so that providers can avail of input tax credit; hybrid vehicle manufacturers

ask for 28% without cess; power distribution projects under various government programmes, earlier quoted inclusive of taxes as applicable then, are now subject to higher costs, and so these should be brought aligned to previous rates; and urgent intervention of the GST Council is requested towards huge losses to be suffered by units located in the exemption areas on account of non-availability of credit of excise duty which is inbuilt in the manufacturing cost of the opening stock of goods in the GST regime.

Indian industry is hopeful that the Centre will look into the problems flagged by different sectors of industry and work to quickly resolve the same, ironing out interpretational issues.

More important and imperative, even as we celebrate 70 years of Independence, is to leverage GST to effect 'social reformation', a transformation that would usher in greater transparency of supply chain, inclusiveness of MSMEs in business, wider dispersed development, accelerated employment and affordable quality living for economically weaker sections of the population. (The author is chairman,

Economic Affairs & GST Sub-Committee, CII Southern Region)

This is the first instalment of a six-part series on GST implementation but across industries. The series has been facilitated by the Confederation of **Indian Industry**

EXPLAINER Zip past toll barriers

What is FASTag?

It is a device that uses Radio Frequency Identification (RFID) technology for making toll payments directly from the prepaid account linked to it.

It is affixed on the windscreen of your vehicle and enables you to drive through toll plazas without waiting as you would for a cash transaction. The tag has a validity of 5 years and after purchase, it only needs to be recharged or topped up. The service is applicable to all kinds of vehicles but use of the service is currently voluntary.

The tag can be linked to the MyFastTag mobile app. Purchase and top ups can be done through the app. If your car manufacturer has prefixed an RFID sensor, the same can be linked to the app for use at toll plazas.

All lanes in 371 toll plazas in the country will be FASTag-enabled by October 1. All these plazas will have a dedicated FASTag lane by September 1.

How is it beneficial?

■ It helps quicken your passage through toll barriers and helps avoid use of cash. Long queues of vehicles waiting while cumbersome cash transactions happen at the counter can be avoided. Here, it helps reduce use of fuel and pollution due to high waitingtimes at the barriers.

It can also help the government identify the quantum of road use and types of vehicles passing through, aiding budgets for road widening and other infrastructure expenses. Theoretically, it could help increase accruals to the government as some operators managing toll plazas

have, in the past, have been suspected of under reporting their revenues.

How do I use it? ■ At the toll plaza, get into

the FASTag lane (the FASTag logo or symbol would be evident) at an approximate speed of 25-30 kmph and maintain at least a 10-metre distance from the vehicle ahead of you. Allow the vehicle ahead to pass through the boom barrier. If the RFID Tag in your vehicle is read by the reader installed in the designated lane and authenticated adequately, you will see a green traffic light, allowing you to pass through, as the barrier stays open. Don't stop your vehicle once you reach the canopy/reader and after the green signal appears and the boom barrier opens.

Taking too much time may lead to the barrier lowering before you pass through. If the RFID tag is not validated for some reason, the traffic lights will turn red and the toll plaza staff shall help validate the tag with a handheld reader. If the tag is not valid or is blacklisted, the vehicle owner shall pay in cash.

How do I buy, recharge?

■ Initial purchase of and top-ups for FASTags is through the mobile app or from the websites of the issuer banks, NHAI and IH-MCL. The device will be delivered home by courier. Offline purchase is also possible through Common Services Centres near toll plazas. Starting from the pilot phase that started last year, more than 6 lakh FASTags have been sold.

(Compiled by K. Bharat Kumar)

Artificial intelligence imperils India Inc. jobs The IT services industry alone is set to lose 6.4 lakh low-skilled positions to automation by 2021, according to reports

PEERZADA ABRAR BENGALURU

When Vishal Sikka, the then CEO of Infosys and now vicechairman, arrived in a driverless golf cart at the firm's Bengaluru Campus recently. it showed the world how artificial intelligence or AI may become the new world order in the years to come. The software, 'driving' the

Infosys together with IIT-Delhi. The vehicle can be used on a pre-determined 'This is an example of the kind of things we are using to teach our employees," said

cart, had been developed by

Mr. Sikka. "We built the autonomous systems in the cart to teach our employees to build autonomous driving technology."

Impact on IT

Technology leaders are drumming up the thought that the emergence of new technologies such as artificial intelligence (AI) and automation are going to be the new drivers of employment, especially for India's \$150 billion information technology (IT) industry that now employs about four million people.

Over the past two years, Bengaluru-based Infosys, which crossed a revenue of \$10.2 billion in the 2016-17 fiscal, has revamped the way it trains staff. Last quarter, the company completed training 3,000 people in AI technologies."We are training our existing employees for these new skills," said Mr. Sikka. He said with the advances in automation technology, more 'commoditised' jobs were going away and one had to move towards next-generation jobs

and new areas of opportunities. In April, the firm also released next generation AI platform, Nia which, it said, tackles business problems such as forecasting revenues and understanding customer behaviour. The other applications include deeply understanding the content of contracts and legal documents, understanding compliance and fraud.

Several miles away from the Infosys campus in Electronics City, former U.S. chief data scientist D.J. Patil, along with tech entrepreneur Nandan Nilekani, ex pressed concern over the impact of AI and automation on the jobs in the country, during a fireside chat event. Mr. Patil said in India, though there were large IT players, certain types of coding jobs were specially developed towards software testing or heavily around small, added features such as upgrading. "I am very concerned that those are the jobs that are going to be replaced by automated processes," said Mr. Patil in an interview.

The first chief data scientist to the U.S. Government, appointed by the Obama Administration, advised young professionals to prepare and train themselves in new technologies in areas such as artificial intelligence, cybersecurity and healthcare. Mr. Nilekani, who spear

headed India's massive unique identification project, emphasised that young professionals needed to prepare for life-long learning and not be dependent on just getting a degree for the of employment. "Things are changing and... changing very rapidly," said Mr. Nilekani. "The future is

Hard facts Automation threatens 69% of the jobs in India, while it is 77% in Job cuts expected 260,000 Infrastructure Management China, according to a World Bank research report A large number of non-customer facing roles at the Job cuts expected low-skill level in countries such as India may be automated and consolidated across a smalle Job cuts expected number of workers



New job roles that will

dominate the IT workforce are within digital domains such as big data and artificial intelligence. • REUTERS

life-long learning, anytime, anywhere learning."

Job losses

Automation threatens 69% of the jobs in India, while it's 77% in China, according to a World Bank research. "If it (automation) is not

planned well and addressed holistically, it is a disaster in the making," said K.R. Sanjiv, chief technology officer of IT services firm Wipro, during a discussion on the 'rise of machines and future of human labour' at a recent event organised by the Confederation of Indian Industry (CII) in Bengaluru.

"There is no doubt about that. It is going to affect 60%-70% of the current jobs. They will either get marginalised or totally eliminated," he said adding the transition will happen in a decade and not in 50 or 100 years.

This month, the company revealed that its strategic investment arm, Wipro Ventures, had invested an undisclosed amount in Vienna, Austria-based firm Tricentis. The firm offers a range of products and services to help companies automate testing of their software. Indeed, India's IT services

industry is set to lose 6.4 lakh low-skilled positions to automation by 2021, according to U.S.-based HfS Research. It said this was mainly because there were a large number of non-customer facing roles at the lowskill level in countries like India, with a significant amount of "back office" processing and IT support work likely to be automated and consolidated across a smaller number of workers.

According to online professional training company Simplilearn, the era of digitisation and automation will create newer career choices for IT professionals. The new job roles that will dominate the IT workforce are within digital domains such as big

data, artificial intelligence,

Internet of Things (IoT), cloud computing and cybersecurity, according to the report "How Automation is Changing Work Choices: The Future of IT Jobs in India" released this month by Simplilearn.

While there is a risk to jobs due to these trends, the good news is that a huge number of new jobs are getting created as well in areas like cybersecurity, cloud, big data, machine learning and AI," said Kashyap Dalal, chief business officer, Simplilearn, in a statement. "It is clearly a time of career pivot for IT professionals to make sure they are where the growth

Drones, robots

The impact of automation is not just limited to the country's information technology industry but other areas as well such as agriculture.

Tata Group is exploring use of automation to improve the lives of the workforce and bring in efficiency. Piyush Mishra, technology leader - food security, Tata Services, said that the group was working on a precision technology agriculture where an unmanned aerial vehicle or a drone can be used for aerial spraying on farms.

"We wanted to see the challenges faced by farmers," he said. "In addition to labour, it (spraying) has multiple impacts on farmer life from health to efficiency and productivity," said Mr. Mishra at the CII event. He said that Tata was also working in the area of soft-robotics, where, instead of using traditional robots, wearables and other techniques can be leveraged not to replace the workers on the factory floor but to assist them. "For example, enabling labourers to do more strenuous jobs with fewer energy inputs," said Mr. Mishra.

Companies like Skylark Drones, a Bengaluru-based startup is providing its unmanned aerial vehicles to enterprises for services such as land surveying, power line inspection and monitoring of construction, pipelines and crop health.

"You can access places which you couldn't enter earlier. You don't have to put humans in situations which are life threatening," said Mrinal Pai, co-founder, Skylark Drones, at the CII event.

His co-panelist Arati Deo, managing director, Artificial Intelligence at professional services company, Accenture, said the need of the hour was planning ahead and making sure the talent pool has the skills that would be needed "as these systems (AI, automation) evolve."