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Saving the IBC

The IBC process should not be derailed by investigations into misdeeds of past promoters

The National Company Law Appellate Tribunal (NCLAT) must be commended for taking a stand against the Enforcement Directorate's (ED) attempts to attach properties of Bhushan Power and Steel Ltd as part of investigations into alleged loan fraud and money laundering by the company's former promoter Sanjay Singhal. The tribunal has prevented the investigating agency from derailing the Insolvency and Bankruptcy Code (IBC) and has set a good precedent for other stressed assets under the debt resolution process, where the former promoters are being investigated for alleged financial irregularities. In this case, JSW Steel emerged as the highest bidder with a commitment to pay ₹19,350 crore to financial creditors against an outstanding debt of ₹47,158 crore. Another ₹350 crore would be paid to operational creditors against claims of ₹733 crore. In effect, banks would get 41 per cent of their outstanding dues but nearly double the liquidation value of around ₹9,500 crore. This plan was approved by the National Company Law Tribunal in

September. Simultaneously, the ED attached immovable properties worth ₹4,025 crore of BPSP in a money-laundering case alleging that the company and its former promoter siphoned off funds obtained as loans from various banks and financial institutions. While the ED has the right to pursue investigations against individuals, its action to attach properties that were already sold to the new buyer under the IBC rules completely undermines the entire insolvency process. There are several other companies, including Jet Airways and IL&FS, where individuals who were owning or managing these entities are being investigated for alleged irregularities. The fear of similar action on these companies by investigating agencies at a future date will drive away potential buyers from submitting a bid. It also leaves room for rival players to block winning bidders' efforts to acquire a strategic asset by manipulating the system.

This goes against the *raison d'être* of the IBC, which was set up with the objective of providing a platform for all stakeholders to find new buyers for stressed assets in a time-bound manner, avoiding liquidation and the attendant destruction of value, while saving jobs. If investigating agencies start attaching properties in the middle of this process, it will threaten the functioning of the IBC, leading to value destruction of assets. NCLAT chairman Justice SJ Mukhopadhyaya rightly observed "You (ED) are going to kill the economy of the country. You are playing with fire. No outsider will come and purchase distressed companies."

While the ED has moved the Supreme Court against the NCLAT order, the Centre should step in to give more teeth to the IBC laws. Liabilities arising out of investigations into former owners or management of a stressed company that is undergoing insolvency should be limited to the individuals who have been identified as the perpetrators of a crime. The entire company, its assets, and its new owners should not be held hostage for past sins.

Peace, still a pipe-dream in Afghanistan

US' ambivalence on the role of Taliban and Pakistan's unease over India's involvement in the region are set to complicate matters

SANJAY KAPOOR

The results of the much-delayed presidential elections in Afghanistan will be known soon. If some believe that this could bring to an end the confusion about who governs this strife-torn country and that peace would return, they could go horribly wrong.

First, the contestation over how these elections are being fought promises an ugly spat between candidates once the results are declared. Second, it remains to be seen how the US-brokered mediation with the Taliban plays out in the business of forming the government within the country, and in the equation with neighbours — including India. All of this could all engulf Afghanistan in a fresh round of violence.

In an election with a very low turnout — only about one-third of the eligible voters cast their franchise — there are disagreements on how many votes should be counted and whether the Taliban has the necessary support to be included in the emerging interim order that the US Special Representative Ambassador Zalmay Khalizad is trying to put together.

For the record, President Ashraf Ghani is being challenged by his former CEO, Abdullah Abdullah, who has claimed a win after the polls. The plain truth, though, is that the outcome will depend on the US, which has reintroduced itself in the project of putting together an interim government.

US special envoy to Afghanistan Zalmay Khalizad, who has been negotiating with different stakeholders besides Doha-based Taliban leaders, had thrashed out a deal to be signed by US President Donald Trump before the Afghan elections. The so-

called deal, contrary to what the Taliban says, did not envisage complete withdrawal of some 7,000-10,000 US troops from Afghanistan.

The US were to maintain some bases and a little troop strength. It would have also meant bringing in many mercenaries or security consultants to look after their assets. The Pakistan army was also to be brought on board to ensure that there was no threat to US interests from their proxies. The Taliban was to be part of the new interim arrangement and given some key ministries before it was formalised in an election at a later date. Some Afghans believe that the Taliban's strength is overstated.

Pact with Taliban

Before an agreement could be signed at Camp David ahead of the Afghan elections with the black-robed Taliban, President Donald Trump called off talks due to the killing of an American soldier in Kabul. He claimed that Taliban had not kept its part of their agreement. This is not the only reason. The Taliban failed to make a commitment that their cadres will not operate with Al-Qaeda, an outfit that precedes the emergence of the Islamic State. For long, US Intel bosses had used Al-Qaeda and the Taliban interchangeably, but in recent years they realised — this was articulated aggressively by the Russians too — that the Taliban was an indigenous movement with objectives very different from that of the Islamic State.

The Indian government was cognisant of the fact that conversation between the Taliban and the US was still going on, and Trump's announcement that the deal with the Taliban was off was met with quiet satisfaction in New Delhi. The US government, through Ambassador Khalizad, had been



Poor turnout Only one-third of Afghanistan's population cast their vote REUTERS

keen that India engage with the Taliban, but New Delhi scrupulously stayed away, except for a brief interaction former Indian diplomats Amar Sinha and TCA Raghavan had with the outfit during the Moscow talks earlier this year.

India's distance

New Delhi perceives the Taliban as a Pakistani creation, a fact that finds resonance in declamations of many senior Afghan leaders, including former President Hamid Karzai and Interior Minister Amrullah Saleh, who is the running mate of President Ashraf Ghani.

The fact that the US under President Trump saw merit in dealing with the Taliban has changed the way this rag-tag army is perceived. Populated largely by Pashtun refugees that grew up in the camps in and around Peshawar, they have shown fighting prowess and daring.

The fact that the Taliban was interested in peace and ready to negotiate was first apparent when the lead-

ership agreed to a ceasefire during Eid last year. For the first time in many years, not a bullet was fired. Taliban fighters were seen singing and dancing — practices usually scoffed at by their religious leadership. Since then, the narrative that Taliban wants peace has been aggressively sold to India too.

India, which has deep ties with Afghanistan, has invested about \$3 billion in various public assets like the Parliament building, roads, dams and schools. US President Trump, who wants Indian boots on the ground, has ridiculed New Delhi for investing in libraries and but not doing much to militarily stabilise the war-ravaged country.

Scrupulously, India has stayed away from intervening in Afghanistan and limited itself to a development role. Also, it has found a point of convergence with Afghanistan in Chabahar, a port in Southeast Iran. Chabahar allows India and Afghanistan to sidestep Pakistan and explore new trade routes to

Central Asia. For decades, Pakistan has denied India the overland route to Central Asia.

The major worry for India has been protection of its considerable assets in Afghanistan. After the US invasion in 2001, India has been riding on US policy in this difficult country. Pakistan has been resentful of India's influence and demanded from Washington that it rein in New Delhi.

Claiming a need for "strategic depth" (which meant Pakistan leadership can escape to Afghanistan if it loses to India, and hence it wants a friendly government in Kabul), Pakistan has sought guarantees from the US to find a solution to Kashmir, so that its border with the South Asian neighbour remains quiet and it can continue fighting terror originating from Afghanistan.

The Pakistan factor

During the height of violence around the Durand Line — which separates Pakistan and Afghanistan — the US had brokered a quiet deal which saw Pakistan deploy more troops on its western border. India, too, had scaled its presence. Much is changing now. Pakistan Prime Minister Imran Khan has promised to abandon the concept of strategic depth, but the country is capable of ratcheting up tension in Afghanistan over Kashmir — despite Pakistan's financial crisis and increased scrutiny from the Financial Action Task Force that watches terror funding.

The manner in which Pakistan has been campaigning against India for abrogating Article 370 suggests that future events in Afghanistan will depend on a host of factors — which includes the US and how Pakistan perceives its problems with its neighbours.

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The 'beggar thy neighbour' policy contagion

The West's unconventional monetary policies and tariff hikes are making it tough for emerging economies to bounce back

HIMANSHU ARORA

The recent macro-economic phenomenon of inversion of the yield curve in the US (yield on 10-year US treasuries falling below those of two years) has triggered recession fears. The yield inversion indicates that investors are predicting lower-than-expected inflation and slower growth. In normal times, it may not have been a problem, as the central bank (Federal Reserve) could have used an expansionary monetary policy to stimulate investment spending, and boost economic growth and inflation.

However, at a time when developed countries are adopting the unconventional monetary policy of keeping interest rates low (in the US and the UK) and even negative (Japan, France, Germany and Sweden), the situation differs and is perhaps grim.

The further lowering of interest rates by central banks of the US and the UK may push their economies into a liquidity trap, thereby making monetary policy ineffective.

In such circumstances, an expansionary monetary policy raises the

supply of money. But given that interest rates are already low/negative, the extra liquidity might not have any effect on aggregate demand, production and employment. All these variables would remain at low levels.

Consensus post the global financial crisis of reviving global output through unconventional monetary policy, or standard New-Keynesian stimulus policies, is therefore proving ineffective. Central banks cannot always revive economic output through monetary policy. This means that aggregate demand is not the real problem, and the present global slowdown is the result of negative aggregate supply shocks.

**Secular stagnation**  
What caused the aggregate supply shock?

The failure of the monetary policy strengthens the doctrine put forward by economist Alvin Hansen in response to the Great Depression: that economies are suffering from 'secular stagnation'. He argued that Western economies are experiencing a long-term slowdown due to the lack of investment opportunities, waning impact of the industrial revolution, and age-



Slow growth Structural factors to blame

ing of the population with little or no immigration.

The secular stagnation view was resurrected by economist Larry Summers in 2013, when he argued that it is almost impossible to boost growth by interest-rate policies. Summers said the present slowdown is a result of structural factors. Western economies are suffering from imbalances — high propensity to save, low to invest. The result is excessive savings and a drag on demand, reducing growth and inflation.

Saving and investment imbalances are the result of an increase in inequality, higher share of income going to few corporates, weakening of social safety-nets for displaced workers, ageing and poor population. These are making the median in-

come stagnate, lowering consumption spending and pushing the population towards higher savings (they expect a grim future and that the government will not provide a safety net).

Supply shocks

Reduced investments are the result of the declining working-age population, slower labour force growth, technological disruptions and no new investment opportunities. Due to lack of investment opportunities, the excess savings are getting concentrated into existing assets, creating asset bubbles.

A decade of secular stagnation has pushed the economies (developed and emerging) back into the mercantilist era of 'beggar thy neighbour' policies. The two largest economies — the US and China — are fighting a trade war, which can soon translate into a currency war. International coordination to fight the economic slowdown is at its weakest, not seen since end of World War II. The lack of effective coordination, resurrection of tariff barriers (protectionism), and the US-China trade war acted as a negative aggregate supply shock. These supply shocks could further reduce global growth, exacerbate

stagnation and may result in stagflation. For instance, the US-China trade war may alter the cost of producing goods and services by increasing the prices of imported intermediate goods and technological components, thereby disrupting the global value chains.

Such a shock to the global value chains is likely to push both cost and prices upward. The supply shock will lower the economic output and push up prices — resulting in stagflation. In past episodes of stagflations, the central banks responded by increasing the interest rates. Such an option is unlikely to work in the present era, as the crisis is structural. The reality is, with the world becoming more interconnected, 'beggar thy neighbour' policies will have drastic global effects. When a country intervenes through unconventional monetary policies, the primary effect is exchange rate depreciation. It makes exports hyper-competitive, driving down domestic production and profits in emerging economies like India. Such policies are likely to dampen India's exports and its plan to be a global manufacturing hub.

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FROM THE VIEWSROOM

Banning single-use plastic

Much planning and preparation is needed before implementation

Policies announced in haste are an opportunity gone to waste. It was in the course of his Independence Day speech this year that the Prime Minister made a statement that held out much hope for those concerned about the degradation of the environment. "Can we free India from single-use plastic? The time for implementing such an idea has come. May teams be mobilised to work in this direction. Let a significant step be made on October 2," the PM said, leading to widespread speculation that India would take its first decisive step towards being plastic-free on Mahatma Gandhi's 150th birth anniversary.

In the build-up to the D-Day, newspapers quoting sources in the Environment Ministry carried reports on the fines that would be imposed on those violating the ban on single-use plastic. But October 2 came and went without bringing any cheer to environmentalists. The government, apparently yielding to pressure from the industry — including the powerful FMCG and pharma lobbies — refrained from taking any momentous decision. Instead, it merely promised to sharpen its awareness campaign against single-use plastic.

It is now clear that the government failed in its intent because enough homework had not been done before the deadline was set. Any move to render illegal the use of such a widely-used packing material involves seeking the cooperation of all stakeholders. All this takes several months, and perhaps years, of planning and preparation. In retrospect, the distance between Independence Day and Gandhi Jayanthi was only 48 days — too inadequate to implement any major policy decision.

Incidentally, the government in its World Environment Day pledge in 2018, it promised to phase out single-use plastic by 2022. To meet this commitment, work should begin right earnest. Plastic, as we have learnt, cannot be rooted out in a day or, for that matter, in 48 days.

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BELOW THE LINE



Finally, a bidder

Prime Minister Narendra Modi has been auctioning the gifts he has received in various capacities. One such peculiar gift he got was a pair of mosquito killer machines from Leowin Solutions Pvt Ltd (See *BusinessLine*, October 7).

The pair carried a minimum bid price of ₹3,600. For a long time, there were no bids that came for this queer present, but sometime during the last week, one bid of ₹4,000 has been received. It would be interesting to see if there are any more bids for this unusual gift.

Meanwhile, as the auction deadline approaches (October 24), an official

statement to bidders said that as per the Auction Inviting Authority, the bidding is closed for those gifts/mementos that fetched an offer four times and above its base price.

Feeling left out

The government may want NBFCs to be actively involved in the Grahak Mela (customer outreach) initiative, but most of them were missing in action at the ground level. Only those NBFCs (basically some big boys) who had co-origination agreements with banks were able to make it to the Grahak Melas in the first phase. NBFCs privately rue that both Department of Financial Services (DFS) and the Indian Banks Association (IBA) are just paying lip service to the whole thing.

Everything was done so hurriedly and in a 'hush hush' manner that most NBFCs were left as mute spectators in the first phase of this important initiative, say industry insiders. In the absence of specific directions from the DFS, the IBA was also not keen to

engage with NBFCs, it is learnt. Many NBFCs are hoping they will be co-opted at least during the second phase of the programme this week. It's a classic example of Indian shadow banks receiving shoddy treatment from bureaucracy and big public sector banks.

Never keep the wife waiting

So what if Indian Railways had to cancel the Karva Chauth train? Railway Minister Piyush Goyal took the Mumbai local train to home on Karva Chauth in order to avoid road traffic rush. This prompted tongue-in-cheek comments like: "Wasn't there a chartered flight?", "A perfect husband!", "Et Tu Brute"! For the uninitiated, Karva Chauth is a festival prevalent in North India where wives fast through the day, and eat only after a peek at the moon and the husband.

A businessman called Gadkari

Faced with lower budgetary support, Road Transport Minister Nitin Gadkari is doing all he can to raise

funds for expressways. Sample Gadkari speaking on a private money-making route that just went public: "Several times, officials and politicians ask me about the alignment of a road, so that they can buy land in advance along the route and make a killing. Now, we have decided to buy the land parcels in advance, then raise funds by leasing them to make highways."

Play it like Anurag Thakur

You must give it to former Assocham President and NBFC honcho Sunil Kanoria for bringing cricket analogy to NBFC regulation and supervision at a recent event in the capital. Recognising that Minister of State for Finance Anurag Thakur, who was present at the event, had cricket close to his heart, Kanoria said that one needs to better understand the business models and purpose before framing rules (regulations) for that sector/industry, like in cricket.

Just as the game of cricket has dif-

ferent formats like Tests, ODIs and T20, with each having different rules and serving a different purpose. It should also be understood that banks and NBFCs in India — both part of the financial system — have different roles to play, Kanoria said. It is important to understand each model and provide regulation accordingly.

Kanoria is clearly in the camp which believes that Indian policymakers have failed to understand the business model of a 'non-bank'. "Sowe have a situation where the assets side has converged with the bank, but on the liabilities side, we don't have any avenues opened up. This is creating a systemic challenge."

He added: "NBFCs are like a caterpillar — if it has to evolve and grow very large it has to transform into a butterfly; and the butterfly is like a bank". This remark made those assembled wonder if he was making a case for the RBI to be liberal in allowing NBFCs become a bank?

Our Delhi Bureau