RBI vs RTI

The RBI's approach to the question of dealing with the RTI Act does not adequately reflect the various provisions of the law

RAISINA HILL

A K BHATTACHARYA

For the Reserve Bank of India (RBI), the current month of April has not been very pleasant as far as its dealings with the Supreme Court (SC) go. Two orders by the apex court — one on April 2 and the other on April 26 — will make the RBI rethink how it should go about its business of regulating the banks.

The SC's order on April 2 quashed the RBI's circular issued on February 12, 2018, that among other things had framed norms for banks to recognise even one-day defaults by borrowers and take necessary action for insolvency resolution under the Insolvency and Bankruptcy Code. It was a setback for the central bank's drive against resolution of stressed assets.

The RBI is now busy suitably revising the circular to address the concerns expressed by the SC. Understandably, the central bank's top management will be a little worried over how the apex court will view its revised circular and what precautions it must take to prevent incurring any further adverse comments from the apex court. It also remains to be seen how a new circular, as and when it gets issued, is viewed by borrowers and whether that too is challenged before a court of law.

The apex court's order on April 26 is embarrassing for the RBI. The SC held the central bank in contempt of court, but gave it a final chance to provide information pertaining to the annual inspection reports (AIR) on banks under the Right To Information (RTI) Act and withdraw its disclosure policy related to AIRs. The RBI had argued before the SC that the AIR information sought was exempted under Section 8 (1) (d) and (e) of the RTI Act and that it was violative of its own non-disclosure policy. It seems the apex court has held that these clauses for exemption do not apply to the information that was sought by the petitioners under the RTI Act.

What went wrong? First, the RBI's belief that it could seek refuge under its own disclosure policy was misplaced and not backed by the prevailing law. It is true that Sections 45 E and 45 NB of the RBI Act permit the central bank not to share information on a bank's credit and other specified transactions to anybody.

But then the RTI Act has a far bigger scope and applicability. Section 22 of the RTI Act overrides Sections 45 E and 45 NB of the RBI Act. It says: "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Official Secrets Act, 1923, and any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act." In retrospect, it does appear that the RBI was a little imprudent to have cited its disclosure policy in defence of its decision to deny information under the RTI Act. Section 22 of the RTI Act gives it an overriding effect on all other laws.

The larger question is why the apex court was of the view that disclosing AIR information should not be treated as "information including commercial confidence" or as "information available in a fiduciary relationship", revealing which could harm the competitive position of a third party and which are normally exempted from the purview of the RTI Act. A related question is whether the RBI ever considered redacting relevant portions of information in these AIRs that could violate the norms of commercial confidence and fiduciary relationship and then release the rest.

Finally, it is still not clear if the public interest angle was explored by the RBI. The RTI Act stipulates that information that undermines commercial confidence or fiduciary relationship could still be shared under one condition that is, when a competent authority determines that larger public interest warrants the disclosure of such information. The competent authority, which can take such decisions, includes the President or the Governor of a state, Speaker of the Lok Sabha or the state legislature, the Chief Justice of India or the chief justice of a high court and the administrator of a union territory.

It would appear that the RBI's approach to the question of dealing with the RTI Act has not been adequately informed by the various provisions of the law. If Section 22 of the RTI Act overrides everything else, why cite its disclosure policy as a defence? And if some of the information sought under the RTI Act can undermine commercial confidence or fiduciary relationship, why not use the legally available provisions of redacting what could be problematic? By adopting an inflexible position before the apex court, the RBI may have unintentionally created problems for banks and the confidentiality of their commercially sensitive information.

CHINESE WHISPERS

The only father-son constituency

ILLUSTRATION BY BINAY SINHA

Chhindwara, in Madhya Pradesh, has gained a unique distinction in the polls of 2019. It will be the only constituency from where a father-son duo is contesting elections. Chief Minister Kamal Nath is the Congress candidate for the Assembly bypoll, while his son Nakul is a party nominee for the Lok Sabha election. They have been seen in many rallies together and their common election theme is development. Nakul, who is making his political debut in these elections, is fighting the BJP's tribal leader and former MLA, Nathan Shah Kavreti. He has promised to continue the development work that his father started in his constituency.

Cutting out the heat

TWITTER

If you are bothered by the Kolkata heat, take a leaf out of Trinamool MP Abhishek Banerjee's book. In the video *(screengrab above)* that has gone viral, West Bengal Chief Minister Mamata Banerjee's nephew Abhishek can be seen with folded hands and garlands around its neck standing upright against at the back seat of an open jeep while party workers can be heard raising slogans in his support. The only thing is, it is not the real thing — it is just a cut-out of Abhishek. He is seeking re-election from the Diamond Harbour constituency.

Fighting slogan with slogan

With polling for 303 of the 545 Lok Sabha seats over, it is learnt that the Congress party is planning to step up its attack on the government with a range of new slogans. The party's IT and media cell has come up with slogans like "*Vikas ke naam pe sabko dhokla de diya/Do Gujaratiyon ne desh ko khokhla kar diya*" and many versions of the same in regional languages. The reason for putting out slogans in regional languages is to move the fence-sitting sub-urban and rural voter.

Should India open up the debt market?

Global bond indices play a critical role in influencing cross-border flow of debt capital. India isn't there as yet

BANKER'S TRUST

TAMAL BANDYOPADHYAY

On April 1, the bonds of the Chinese government and its three policy banks responsible for financing economic and trade development and state investment projects were added to the Bloomberg Barclays Global Aggregate Bond Index for next 20 months. Following this, as much as \$150 billion could flow into the world's second largest economy, which has been showing signs of slowdown.

With at least \$1.5 trillion of outstanding debt securities, China presents one of the largest central government bond markets in the world. Besides, there are close to \$1.8 trillion of policy bank bonds, highly rated by virtue of the government support. A series of policy changes and reforms to woo foreign money has finally started showing results in the third largest bond market in the world, with several important bond indices starting to include China.

Indeed, global bond indices play a critical role in influencing investment decisions and the cross-border flow of debt capital. Such indices guide the fund managers on allocation of investments. When a country gets into such an index, typically foreign funds flow into that country's bond market surges.

JP Morgan's Government Bond Index–Emerging Markets Global Diversified Index or EMGDI is the most widely-tracked indices for emerging market debt. China could get into that soon. Once that happens, the flow into Chinese debt will be even thicker.

What about India? Ever since we opened up the capital markets to foreign investors, the flow of debt has been just a little over one-third of equity. There have been many years when the debt flow has been negative. For instance, in the 2014 fiscal year, there was ₹28,060 crore debt outflow even as the equity market attracted ₹79,709 crore. Last year, the outflow of debt was even higher — ₹42,951 crore. In the first fortnight of the current fiscal year that started in April, foreign investors sold ₹3,288 crore worth of debt.

The key reason behind this is that India, which has been part of the MSCI Emerging Markets Index that measures equity market performance in global emerging markets, has never featured in any debt index as it does not meet the criterion of "free" investment. In 2013, when the country was facing its worst current account deficit and the value of the local currency against the US dollar steeply eroded, the Reserve Bank of India (RBI) discussed with JP Morgan about getting into the emerging market bond index. But, that did not happen because of the strict regulations on foreign investors' exposure to the Indian debt market in terms of maturity, quantum of investment and the profile of the debt instrument. The scenario has not changed since then.

Even though the equity market was opened up for foreign investors immediately after the early 1990s, the norms for foreign investment in debt were released in 1995 and in 1997, ₹29 crore trickled in

Launched in November 2008, the JP Morgan Global Aggregate Bond Index (JPM GABI) represents nine distinct asset classes (emerging market treasuries or EMGDI being one of them) and consists of at least 5,500 instruments issued from more than 60 countries, denominated in 25 currencies and collectively representing \$20 trillion in market value. Both entry into and exit from such debt instruments are with no strings attached.

The reason for India's conservatism when it comes to foreign flow into the debt market is the fear of sudden outflow that can create excessive volatility. Even though the equity market was opened up for foreign investors immediately after economic liberalisation in the early 1990s, the norms for foreign investment in debt were released in 1995 and in 1997, ₹29 crore trickled in.

For fiscal year 2020, the RBI has raised the foreign investment limit in central government bonds to 6 per cent of outstanding stock of securities, from 5.5 per cent in 2019, but the investment limit for both state loans and corporate bonds remains unchanged at 2 per cent and 9 per cent, respectively. In absolute terms, the limit of investment in central government bonds is being raised from ₹2.23 trillion in 2019 to ₹2.35 trillion in the first half of 2020 and ₹2.45 trillion in the second half. Overall, the total foreign exposure to Indian debt is being raised from ₹6.5 trillion last year to 7.46 trillion this year.

Even this low limit is not utilised by the foreign investors. If we go by the April 1, 2019, data, only 65 per cent of the limit for central government bonds was used. In other categories, the exposure has been far less. Foreign investors' appetite for corporate bonds is particularly muted, because of the lack of a vibrant second market, among other things.

Opening up of the debt market has always been a sensitive issue. There are arguments both in favour and against it, equally convincing. Many say that we need foreign direct investment and portfolio investment in equities but not in debt as it will complicate an inflation-targeter central bank's task. How? Once the dollar flow increases, it will strengthen local currency. Similarly, when there is an outflow of foreign money from the debt market, the rupee will be under pressure.

Also, larger dependence on foreign money will complete integration of Indian debt market with the global markets. This means, if foreign investors want to dump Indian debt to earn more in other markets, the RBI will be forced to tweak the interest rates to keep them happy. That will push up the government's cost of borrowing. Essentially, an inflation targeter central bank will have to reposition itself into a multi-tasker.

On the other side, increasing presence of foreign investors in the debt market will release the pressure on our banks and free up money for lending. By end December 2018, the banks' share in the ₹57.5 trillion central government debt was 40.5 per cent, followed by insurance companies' 24.5 per cent. Foreign investors' contribution was a minuscule 3.6 per cent. When it comes to state government bonds, both banks' and insurance companies' share was around 34 per cent each and that of provident funds, close to 27 per cent. One would need a microscope to detect the trace of foreign money.

Is it time for the RBI to free up the shackles and encourage foreign investors to dive into Indian debt market? After a difficult 2018, for China, 2019 is the year of the pig — representing luck, wealth, and prosperity — and foreign investors are bracing up to reassess China's domestic bonds. Encouraged by the rather unconventional \$10 billion dollar swap auctions to increase liquidity in the banking system, will RBI governor Shaktikanta Das shift his penchant for experiment to the debt market after a new government takes over?

The columnist, a consulting editor with Business Standard, is an author and senior adviser to Jana Small Finance Bank Ltd. Twitter: @TamalBandyo

INSIGHT

The case for impact bonds in India

VIJAY BHALAKI & AKSHAY NATTERI

India is actively taking efforts to achieve the Sustainable Development Goals (SDGs) adopted by the United Nations in 2015. Any effort to achieve SDGs requires robust and sustainable funding. According to a study by TARA (Technology & Action for Rural Advancement), the estimated financing gap for achieving the SDGs, over the mandated 15-year period, stands at a staggering ₹533 trillion. Despite the estimate being preliminary and arguably conservative, it still demonstrates the dire demand for financing to achieve the SDGs.

Government aside, key players such as the private sector could potentially be of aid in achieving SDGs and bridging the financing gap. In a recent survey conducted by the Federation of Indian Chambers of Commerce and Industry (FICCI) among its member companies, a promising 85 per cent of their respondents stated that they were working towards SDGs that are directly linked to their businesses. Many companies are also leading efforts in provision of clean water, sanitation and healthcare, thanks to the Corporate Social Responsibility (CSR) spending requirements stipulated in the Companies Act of 2013. In the 2015-16 financial year, a total of ₹9,822 crores was spent for CSR. However, these efforts remain at a small scale and are often fragmented as government agencies are hesitant to scale up these innovative and new projects.

There are three major reasons that impede the scalability of these projects. The first is the potential risk of failure and the huge political and financial risks involved. Governments deprioritise such projects and hesitate to spend taxpayers' money as the financial and political ramifications of failure could be devastating.

Secondly, many successful projects that have been scaled up often lack a proper system of checks and balances. While it is simple to ensure the effectiveness and efficiency of small-scale projects through close monitoring, such monitoring is not feasible for national or state level projects. This often leads to leakages and an overall deterioration in quality of output. To address this, many funders (government and foreign agencies) have implemented homogenous and rigid practices across the board, causing the third problem, excessive rigidity. The lack of leeway for local project implementors to make changes and adjustments to a project based on local circumstances often leads to a drop in the overall efficiency and effectiveness.

Impact Bonds (IBs) offer an innovative solution to addressing all these issues and have potential to be effective in the Indian context. Simply put, IBs are non-marketable bonds where repayment is contingent on the outcomes of the project they fund.

To understand how it works, let us consider an example of Impact Bond in education. Consider an NGO that has perfected an intervention to improve reading and math skills of rural children in Bihar. Impact Bond comes in as a handy tool for governments to raise capital for scaling up these interventions, without incurring huge risks. The government can issue Impact Bonds to private impact investors to raise upfront capital for the NGO to scale their project. Unlike normal bonds, for Impact Bonds, repayment by the government is only triggered if certain predetermined targets are achieved. The targets would generally be measurable by quantitative metrics (such as average reading scores in standardised tests) that are evaluated by an independent evaluation agency. If the targets are met, the government pays back the principal along with a return to the private investors.

This way, the government transfers risk of failure onto private investors and only pays for successful projects, NGOs get the capital they need to scale up their innovative solutions and private investors get an opportunity to make profits from projects that do social good. This is a true win-win situation for everyone involved.

While any outcome-based financing system removes the risk of failure, many such systems pay only after targets have been achieved. This means that service providers often have little or no working capital and would have to dedicate a lot of time and effort to galvanise financial support for their working capital needs. By providing upfront capital, IBs remove a major headache for the service providers.

Impact Bonds solve the incentives problem too. Given that investors lose all their money if the project fails to deliver, they would want to get constant updates and would scrutinise the progress carefully. This would both improve transparency and add a layer of checks to ensure success. Impact Bonds are outcome focussed and hence promote innovation by giving a substantial degree of freedom to the service providers. No other existing funding contracts provide this mix of benefits, that address most of the major issues that impede funding for large scale innovative social projects.

In order to successfully implement IBs we need mature engagement from both sides, the government and private investors. Of course, one must not get irrationally exuberant and claim Impact Bonds to be the panacea to all issues surrounding the funding of social infrastructure projects. A successful bond would need to be transparent and would need to enlist all relevant details for stakeholders to understand the risks involved and their severity. The lack of a proper understanding of the risks involved can lead to catastrophic failures, denting the overall image about their efficacy. One might wonder if the Indian private and public sectors are ready for such high requirements of transparency and cooperation.

India's government agencies and private sector are arguably capable and ready for Impact Bonds given their long experience with Public-Private Partnerships (PPPs). PPPs are similar to impact bonds in that they enable private players to take the risks related to project implementation and outcomes. In either case, there is a requirement that the private sector players (be it investors or service providers) understand the associated risks and that the government remains transparent throughout the process. Given the uptake of PPPs in India, it would not be far-fetched to expect mature engagement between the government and investors through Impact Bonds.

Impact Bonds provide an incredible opportunity for local, state and central government agencies to leverage India's private sector to source funding for the implementation of innovative solutions to reach SDG targets.

Bhalaki is co-founder & director and Natteri is research associate at Athena Infonomics

LETTERS

For a level playing field

Apropos the report "PM Modi holds mega roadshow in Varanasi" (April 26), just after the Election Commission (EC) announced the dates for the 2019 general election, former DGP of Uttar Pradesh Vikram Singh and environmentalist Shaivika Agrawal had filed a petition in the apex court seeking ban on roadshows and bike rallies. The Supreme Court had quickly dismissed the plea saying "we are not inclined to entertain this". Though there are certain EC restrictions on such shows, neither the Prime Minister nor the leaders of the Opposition parties follow the norms.

We don't know how and when such mega roadshows got into our election campaigns. Let us assume, it was the during the Congress period. So it is a bit strange why PM Narendra Modi, who wants to clean India from various ills germinated by the Congress rule (or misrule), could not make a small beginning by ending such mega roadshows for other parties to follow.

For such a popular leader what is the purpose of such roadshows? Even in 2014, with the money power at their disposal, the Bharatiya Janata Party had managed to organise roadshows for Modi. This time in UP, Chief Minister Adityanath has used the government machinery at disposal. This has only added more colour to the grand show that has turned all TV channels into "NaMo" channels. Leave aside the Congress, which is not short of funds, but what about the other parties who are fighting it out in Varanasi? What kind of level playing field will be left for them?

N Nagarajan Secunderabad

Larger than life

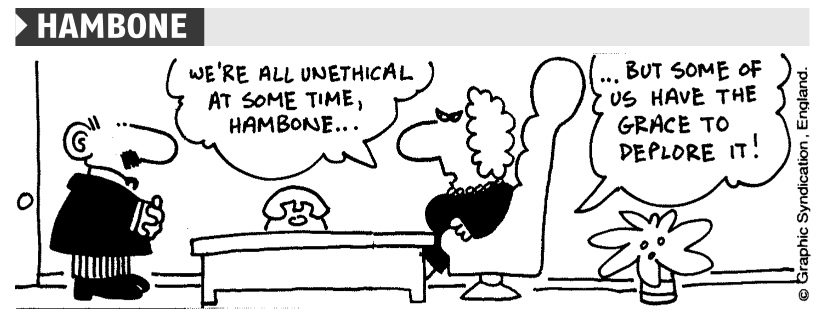
The massive roadshow by Prime Minister Narendra Modi and the cavalcade as part of the nomination gala took Varanasi by storm. Of course, the BJP cannot be blamed or envied for events choreographed and telecast to appeal to a wider audience. The entire spectacle looked staged in order to present the incumbent as a larger-than-life character.

The superficial glitter of the events that eclipsed the real issues revived memories of the India Shining campaign. It is hard to describe the open display of awe and admiration for Modi without alluding to the "personality cult". In Varanasi, clad in a saffron kurta the Prime Minister looked like a quasi-religious figure displaying his piety for public consumption. Maybe he has deemed that his unapologetic Hindutva pitch is necessary to offset the losses in the Assembly polls earlier. It seems bserving religious rituals publicly has become the most effective way of electioneering.

G David Milton Maruthancode

Letters can be mailed, faxed or e-mailed to:
The Editor, Business Standard
Nehru House, 4 Bahadur Shah Zafar Marg
New Delhi 110 002
Fax: (011) 23720201 · E-mail: letters@bsmail.in
All letters must have a postal address and telephone number

HAMBONE



Business Standard
Volume XXIII Number 182
MUMBAI | MONDAY, 29 APRIL 2019

A new Reliance

The focus on consumer-facing businesses has come at a cost

Reliance Industries Ltd (RIL) is going through an interesting transformation, with the new businesses of telecom and retail accounting for a quarter of the company's consolidated revenue. If other businesses such as media are included, the energy business would be a little under 70 per cent. The numbers of the new businesses are not small — retail and Jio brought ₹1.77 trillion in revenue in FY19. Jio caused a disruption in the telecom market and became the third-largest telco with 300 million subscribers at the end of March 2019. Five years ago, retail, despite being the country's largest, was subsumed under "others", and accounted for under 5 per cent of revenue, and telecom hadn't even started. For the shareholder, it has been a profitable journey — the RIL stock is up 170 per cent since Jio's launch in September 2016. RIL's move stems from diversifying against the cyclical nature of the oil business and deploying the huge cash that the business generates in good times. The stock traded in a relatively narrow range for nearly a decade till 2017 barring a swing to a high and a low in 2008. Beyond the new capacities in refining and petchem, there was a need to deploy funds. But the diversifications into oil and gas exploration and shale gas, both related to its core business, were not yielding dividends, leading the company to focus on retail and telecom. RIL now has more aces up its sleeve as it seeks to integrate communication, content and commerce.

However, there are some warning signals. Success in the new businesses has come at a huge investment, with Jio taking up over ₹3 trillion. Jio reported net profit in FY18, but that's largely because of its depreciation policy, where it considers a longer life of an asset compared with its peers. It depreciates only the assets that are being used, which is a fraction of the total. Jio has access to low-cost debt and is capitalised way better than its peers, with a lot of help from its parent, RIL. If it were to follow the same accounting practices and had to bear a similar cost of capital as Bharti Airtel and Idea Cellular, it would not be profit-making, analysts say.

For Jio, RIL has made an attempt to deleverage the balance sheet, transferring its fibre and tower assets to two infrastructure investment trusts (InvITs) along with liabilities of ₹1.07 trillion, but the benefits will accrue only after a new investor comes in. Though this has resulted in RIL's net debt including capex creditors coming down from ₹2.78 trillion in December 2018 to ₹2.02 trillion, not many are impressed, and have termed the exercise as a mere "optical develeraging". Jio will also have to pay lease rental for tower and fibre assets, which may offset the reduction in depreciation and interest cost. The other problem is that given no signs of a tariff increase, an improvement in Jio's profitability is still some time away, while the business will continue to demand further investment, as will the integration of the new businesses. RIL thus has to look at some serious develeraging to keep the debt from piling up further. In that context, the reported move to sell as much as 25 per cent in the refining and petrochemicals business is prudent.

Fix royalty payment

Sebi should increase threshold to 5% of turnover

The Securities and Exchange Board of India (Sebi) has decided to put on hold its mandate to give minority shareholders a greater say in deciding royalty payments by listed companies. Starting April 1, listed companies had to seek approval from a "majority of minority" shareholders for making royalty payments to a related party, with respect to brand usage exceeding 2 per cent of the annual consolidated turnover. The decision to review the move and defer implementation till June 30 was prompted by the adverse feedback it had received on the proposed move. In a board meeting memorandum, Sebi has listed out half a dozen concerns raised by industry. The finance ministry has also reportedly opposed the decision on the grounds that it might hamper ease of doing business and disrupt initiatives such as Make in India aimed at boosting the manufacturing sector. Though flawed, the ministry has been consistent in its approach as it had blocked similar proposals to curb royalty payments in 2015, saying such a move could lead to the outflow of foreign capital. Royalty payments were earlier subject to central government approval if they exceeded 5 per cent of gross annual sales or $2 million. But this was discontinued in 2009.

No one should fault Sebi for its decision to insist on shareholder approval for royalty payment, as cosy related party deals have been the bane of India Inc. While the regulator does not intend to stop brand usages in the country, all it wants to establish is a fair and transparent practice of charging royalty payments. There is no denying that a high amount hurts minority shareholders who do not have a say in determining the royalty fees. A study by proxy advisory firm, Institutional Investor Advisory Services (IiAS) showed that 27 Indian listed companies paid royalties of ₹6,737 crore in 2017-18, which was 16 per cent of their pre-tax pre-royalty profits and more than 25 per cent of their aggregate profit after tax. This is a significant amount. Obviously, minority shareholders bear the brunt of high royalty payments, as this favours one class of shareholder — the promoter — over all others. In the interests of corporate governance, minority shareholders must be informed and their consent taken on the amount and duration of royalty payment and the impact on margins and shareholder returns.

But where Sebi perhaps went overboard is in fixing the royalty payment threshold for seeking the approval of minority shareholders. The regulator's decision was based on the recommendations of the Kotak committee on corporate governance, but the committee wanted this to apply only to royalty payout levels exceeding 5 per cent of consolidated revenues. The regulator, however, went in for a harsher provision by fixing the threshold at 2 per cent. Putting more checks and balances to arrive at royalty payments and wanting the company boards to be more mindful of approving such agreements is a prudent move, but Sebi should be more practical in its approach and move towards the 5 per cent threshold. In any case, a low threshold for triggering need for minority shareholder approval may provoke more international companies to de-list in India and therefore could be counter-productive. The focus, thus, should be on the high-paying ones, who should articulate why they are being charged for brand royalty and what is the criticality, instead of creating a bureaucratic hurdle for all.

ILLUSTRATION: AJAY MOHANTY

It's about jobs in industry

Creating millions of high-quality jobs requires we prioritise labour-intensive industry

INDIA'S WORLD?

NAUSHAD FORBES

On April 1, 2019, in the article "It's about jobs" (*Business Standard*), I argued that India's essential need is to create millions of high-quality jobs, those with the potential for consistent productivity growth. That requires us to get the supply of quality talent right — improving our skilling programme, school quality, and female participation in the workforce. This second article in the series is about demand in industry: We need millions of good jobs in manufacturing companies to absorb the supply of millions of well-educated and trained women and men.

Labour-intensive industry

Most emerging markets have put millions of people in work in low-skilled labour-intensive manufacturing. China, for example, employs over 100 million people in export-oriented labour-intensive manufacturing. As a middle-income country (with a per capita GDP of $10,000), low-wage jobs have been moving out of China, encouraged by uncertainty over trade policy. Vietnam and Bangladesh are picking up millions of such jobs in the thriving garment, footwear and assembly industries. Why aren't they coming to India?

We occasionally make the argument that while large Indian manufacturing firms have not created millions of jobs, our small firms have. A recent CII (Confederation of Indian Industry) MSMEs (micro, small and medium enterprises) survey, the largest ever undertaken, surveyed more than 100,000 small firms on job creation between 2014 and 2018. The great bulk of firms were micro-firms — employing on average three people. The 105,000 firms, among them, added 330,000 jobs in the four years, about 3 per cent annually, with most of the jobs added by micro enterprises. From this we must subtract the average mortality of firms. Small enterprises live a tenuous existence. In the most vibrant entrepreneurial environments — the US, Taiwan and Israel — firms enter and exit constantly, and the government data on employment is consistently adjusted for the entry and exit of enterprises. While large Indian firms have long, lingering deaths (only in India do firms fall "sick" — everywhere else in the world they either exist or don't), small enterprises in India are constantly starting up and vanishing. Think of the churn in your neighbourhood — street vendors, barbers, restaurants and shops. But here, too, there is no good Indian data. The best we can do is to look at typical mortality rates for enterprises in other countries. The Organisation for Economic Cooperation and Development (OECD) reports firm mortality across 23 of its 34 member economies: Firm mortality in 2015, the most recent year available, ranges between 2 per cent and 15 per cent annually, with a median of 7.7 per cent. So while we cannot arrive at an accurate net employment number, it would seem that we need a rate of job creation well above 3.3 per cent in small firms to make up for the enterprises that die each year.

What is true of small industry is even more true of large industry: Between 1991 and 2017, according to the Annual Survey of Industry (ASI) data, industrial output increased five times in real terms. Labour employed in ASI firms increased 1.8 times, by an average of a little over a quarter million people a year. This made firms roughly three times more productive — decent progress for industry, but not for industrial employment. With 15 million people employed in the firms the ASI surveys (those employing over 10 people), India is missing mass-scale industrial employment. In particular, we are missing the huge firms in export-oriented labour-intensive sectors that employ millions in China, Vietnam and Bangladesh. This matches anecdotal observation too. Foxconn's largest factory in China, making i-phones, among other products, reportedly employs 400,000 people — in a single factory — of the 1+ million it employs in the country overall. Samsung employs 100,000 people in its largest phone assembly plant in Vietnam. These giant factories are simply missing in India.

Consider the most labour-intensive sectors. A large garment factory in India employs 3,000-5,000 people whereas a large garment factory in Bangladesh employs 30,000-50,000 people. A company we met in Vietnam on a recent CII visit manufactures *Agarbattis*. They learnt how to make Agarbattis by sending 10 workers to a factory near Chennai for training. They today employ 10,000 people making *Agarbattis*, which they mainly export from Vietnam to India. What does it say when the technology is Indian and the market is India — but the economics says mass manufacture is more efficient 4,000 km away from India?

Labour reform

The mention of labour reform prompts the reaction that this is in the interests of industry and capitalists. This is wrong. Labour reform is in the interests of labour. Labour regulations protect incumbents — those already in permanent jobs in large factories. Making it easier to hire people is the other side of the same coin of making it easier to fire people. We must ensure adequate social safety nets so that those displaced are protected, but providing a flexible labour market could transform our market for jobs. We otherwise prompt behaviour contrary to the national interest — with firms first avoiding labour-intensive manufacturing, and then relying on contract labour where possible instead of direct employment. The result is that our fastest-growing large private-sector employer in the country is Teamlease, a provider of temporary and contract manpower, which currently employs over 100,000 people. In recent years, we reportedly added 7 million jobs in security services and 1 million jobs as private drivers in the National Capital Region alone. These contractual jobs are welcome to those who get them in the absence of alternatives, but they are not the high-quality jobs we need.

This government came to power promising to reform our outdated labour policies. It is unfortunate that this key area has since vanished from the agenda — and is not spoken about at all in this election. If we wish to attract the millions of jobs in garments and footwear and assembly moving out of China, an environment where one can cheaply increase and reduce hiring as needed is essential. We may rightly express concern about the "sweat-shops" making garments in Bangladesh, but given the choice workers have chosen by the million to move off the rice field and into the sweat-shop. Indian workers should have the same choice.

The writer is co-chairman of Forbes Marshall, past president of CII, and chairman of the Centre for Technology, Innovation and Economic Research (CTIER)
Email: ndforbes@forbesmarshall.com

To be concluded

IBC resolution: Towards the inevitable

IRRATIONAL CHOICE

DEBASHIS BASU

Three years ago, I wrote the first of nine articles on the new bankruptcy code. That piece was titled Bankruptcy Law: State – 1; Market – 0. My contention, which sounded cynical at the start of a new process under a supposedly determined government, was that the new Act would unleash more of what has not worked so far — deeper involvement of the state. The successful implementation of the Insolvency and Bankruptcy Code (IBC) depended on a much bigger involvement of the state through a huge new superstructure of registration, certification and supervision.

The process, I suspected, would quickly degenerate into a huge mess no different from what we already had in place. Pre-IBC bankers, borrowers and asset reconstruction agencies functioned within a tangled legal system created by three decades of patchwork solutions, involving debt recovery tribunals and courts. It was a cesspit of seedy deal making, long inaction, stymied resolutions, and tens of thousands of unresolved cases. Everybody felt that a time-bound IBC-supervised resolution pushed through a shiny new legal system — the National Company Law Tribunal — would fetch a radically different outcome.

Well, three years later, my worst fears are turning out to be true. The enthusiasm about the IBC delivering quick resolution is waning. Only 79 cases have been closed through resolution as against 898 ongoing cases. Under the Act, an insolvency case must be resolved in 270 days. If there are no buyers for the asset by then, the resolution professional should simply liquidate the company. However, some 275 cases are dragging on for more than 270 days. The most prominent one, Essar Steel, involving over ₹50,000 crore, has been tediously winding its way through multiple courts for over 600 days.

Meanwhile, the nexus among bankers, promoters and RPs remains intact in most cases referred for resolution. Then there are decisions by the NCLT that have confused everyone. If nothing else, frequent amendments to the law, arbitrary actions by banks and courts, protracted litigation, and corruption will kill the IBC. Consider these issues that I have chosen at random:

- Why is the spectacular crash-landing of Jet Airways out of the IBC process when public sector banks, which are, as usual, deeply in the dock, ought to have reported it four months ago?
- The National Companies Law Appellate Tribunal (NCLAT) recently passed an order that will allow promoters to settle with creditors even after the company has gone into liquidation under the insolvency law. Where does this leave the famous amendment to Section 29A, which was designed to prevent defaulters from getting back control of their companies? Will the government challenge this decision?
- Six months ago, the IBC was amended to include Section 12A, which allows withdrawing insolvency proceedings against a corporate debtor if 90 per cent of the committee of creditors agrees. Since then as many as 80 cases have been withdrawn using this provision, almost double the figure of the past two years. Unaccountable public sector bankers and promoters can continue to have fun. These companies will probably now get fresh loans, which will go bad again. In the Swiss Ribbon insolvency case, the Supreme Court has said insolvency proceedings can be withdrawn before the constitution of the CoC, even after the case has been admitted in the NCLT.
- The data available till September last year shows that financial creditors could get back only 25 per cent of their claims, no better than under the pre-IBC system. I fear this figure will decline further if the data for withdrawn cases (under Section 12A) is counted and their promoters will be the winners.
- After the Supreme Court struck down the Reserve Bank of India's February 12, 2018, circular asking banks to classify a loan as stressed even if there was one day of delay, the pressure on companies to pay and banks to recover has drastically reduced.
- In an extraordinary example of the brazen nexus between banks and promoters, Andhra Bank and other lenders attempted to push through a sharp haircut and one-time settlement with the fugitive defaulters of the Sandesara group of Sterling Biotech, while in Sterling SEZ, where a similar deal was proposed, the NCLT not only sent the company into liquidation but also directed the government to take punitive action against senior bankers for misleading the tribunal with a withdrawal plea.
- According to the IBC, applications have to be admitted within 14 days. The legal infrastructure is so poor that courts have decided that 14 days is not mandatory and so, many cases have reportedly not been admitted for more than a year.
- Liberty House emerged as the successful bidder for Amtek Auto and Adhunik Metals, but has not paid up, undermining the resolution process.
- The government had planned 27 bankruptcy courts, of which only half are functioning.

Meanwhile, more impractical quick fixes are on their way, such as the mediation mechanism. I had mentioned two years ago that the basic flaw of the IBC architecture was that it did not take into account the very Indian possibility that promoters, lawyers and politicians will try to game the system in many obvious ways. I forgot about confusing court judgments. The government's best response to such situations is to continuously try to fix things and end up making a bigger mess. This is exactly what happened to earlier four acts to handle bad loans. It will happen to the IBC too.

The writer is the editor of www.moneylife.in
Twitter: @Moneylifers

The elliptical Mueller report

BOOK REVIEW

DWIGHT GARNER

The New York Times *designated the report by Special Counsel Robert Mueller on Russian interference in the 2016 US elections a "Book of the Times", though it is an official report and not commercially sold, and published the following review by its senior book critic*

In a 1993 *Paris Review* interview, Don DeLillo called the Warren Commission's report "the Oxford English Dictionary of the assassination and also the Joycean novel." He admired the way it captured "the full richness and madness and meaning" of the events surrounding President John F Kennedy's death in Dallas.

At 26 volumes, the report's abundance impressed him, too. "When I came across the dental records of Jack Ruby's mother I felt a surge of admiration," DeLillo said. "Did they really put this in?"

The Mueller report is not that sort of kitchen-sink chronicle. At 448 hungrily awaited pages, it is long but hardly an epic.

It perhaps necessarily lacks both the novelistic sweep of the 9/11 Commission Report and the intimate — "prurient" would be a more exact word — scene-setting of the Starr report on President Bill Clinton. ("She and the President kissed. She unbuttoned her jacket; either she unhooked her bra or … ")

The Mueller report is a dense slab of verbiage. It is not written in bureaucratese, but it is not far from it either. If you were to put a droplet of its syntax under a microscope, you'd find a swirling necktie pattern of small white starched shirts and three-ring binders and paper cups of stale black coffee. Reading between the lines, you might spy tiny handcuffs as well.

Because its language about not exonerating Trump is written in the negative, the most important sections are hard to quote. A typical line is: "A statement that the investigation did not establish particular facts does not mean there was no evidence of those facts." A plausible title for the paperback editions that will soon be in bookstores might be, *We Didn't Not Find Anything.*

Reports by special counsels and select congressional committees are a genre of their own by now. The Mueller report is a thorny, patriotic addition to this curious American shelf.

Its findings, especially those about the president's ostensible attempts to obstruct justice, have been called a road map for further congressional action and other investigators. With its blacked-out redacted passages, the report more closely resembles a reverse crossword puzzle. We will collectively be solving for its inky elisions for some time, perhaps the rest of our lives.

So much of what's in the Mueller report is already known, thanks to what never again should be referred to as "fake news," that reading it is like consuming a short story collection that's already been excerpted in every magazine you subscribe to. But its two volumes nonetheless have the power to shock and appal.

Volume One is a report on Russian interference in the 2016 presidential election. It commences, like a super-sleuth literary or political biography, with tempered gloating about the author's indefatigable fact-finding.

"During its investigation the Office issued more than 2,800 subpoenas," the report declares, and "executed nearly 500 search-and-seizure warrants." This paragraph contains many similar figures. It ends by noting that the special counsel's office "interviewed approximately 500 witnesses, including almost 80 before a grand jury."

The authors wish to be transparent and helpful. For older readers, the report pauses to explain, in footnotes, what an online troll is, as well as things like botnets, spearphishing emails and malware.

The Russians worked diligently to subvert the 2016 election, and the Trump campaign was grateful for the support. There was perhaps no collusion, to use a word that Mueller dislikes. (He prefers "conspiracy.") But there was cheerleading. There was dancing in subversion's end zone.

Through the entirety of the report, Donald Trump is observed to lie, at almost every moment, like Falstaff telling Hal how many thieves he fended off. Others tell untruths for the president, sometimes at his request, sometimes out of loyalty, and get caught in gummy webs of their own devising.

In Volume One, we're reminded of the fake Facebook and Twitter accounts that churned out pro-Trump propaganda. The authors reprint a poster, created by the Russians, for Pennsylvania rallies under the title "Miners for Trump."

Volume Two of the report, like the second volume of Bob Dylan's greatest hits, is the more stereophonic and satisfying. It is more cohesive; the narrative about obstruction flows, and is blunt in its impact.

Saul Bellow said that for a writer, "the fact is a wire through which one sends a current." There are so many heated wires in Volume Two, about the corruption that the president spawns wherever he turns, that the reader will burn his or her fingers.

This is not the place to rehearse all of the details. Yet two scenes are indelible. We will be running up against them in films, plays, novels and histories for the remainder of our terms on earth.

The first is the account, like something out of reports of Henry Kissinger and Richard Nixon in the fevered last days of Nixon's presidency, of President Trump learning from Jeff Sessions that a special prosecutor had been appointed. According to the report, the president "slumped back in his chair and said, 'Oh my God. This is terrible. This is the end of my presidency. I'm f*****d.'"

The second, most resonant, moment occurs when Trump asks his White House counsel, Donald McGahn, "Why do you take notes? Lawyers don't take notes. I never had a lawyer who takes notes."

Throughout the report, the special counsel's team bends over backward to give the Trump administration the benefit of the doubt.

If the Mueller report were to analyse the aftermath of young George Washington chopping down the cherry tree, it would include lines like: "It is possible that Mr. Washington swung his ax 27 times in the direction of the tree because he was attempting to ward off a hornet. It is also possible that the tree begged to be chopped down."

The Mueller report is hardly pleasurable to read, on textual as well as emotional grounds. It is ill-making about the amorality of an administration.