Opinion

THURSDAY, JULY 18, 2019

INTERNATIONAL JUSTICE DAY

Chief Minister of West Bengal, Mamata Banerjee

"Bangla Govt is committed to framing good laws for people and ensuring good justice for all. 19 human rights courts have been set up in Bangla in the last eight years"

Environmental approvals can't be mere tokenism

Bombay High Court suggests both GoI & Maharashtra indulged in mere tokenism while clearing coastal road

THE FIRST MAJOR reclamation of land in Mumbai, the Bombay High Court judgment on the coastal road project does well to note, took place in 1708, to construct the causeway between Mahim and Sion. The second major reclamation took place in 1772, and connected Mahalaxmi and Worli; in more recent times, in the 1960s, the first Backbay Reclamation Company was formed to reclaim the whole of Backbay... So it has to be a diehard environmentalist who will argue that no development activity—like the coastal road—should be allowed if there is even a little damage to the environment. There is always a trade-off between the benefits of development and the losses to the environment; and the job of the environmental appraisal is to examine the cost-benefit after ensuring as many remedial measures as possible are taken to mitigate the damage.

What is worrying, going by the court judgment that struck down the Coastal Regulatory Zone (CRZ) clearances given by the Maharashtra Coastal Zone Management Authority (MCZMA), the Expert Appraisal Committee (EAC) of the Union Ministry of Environment and Forests (MoEF) and the MoEF itself to the coastal road project, is that the procedure used seemed quite cavalier; since the goal appeared to be to clear the project, even basic precautions were given the go by. Since the CRZ didn't allow the construction of a coastal road, in June 2013, the MCZMA asked MoEF to change the rules to allow this. The MoEF did this in June 2015, but while doing so said the proposed construction mustn't affect the 'tidal flow' in the area; when the Maharashtra government objected to this since the 'tidal flow' would clearly be affected, the MoEF dropped this clause as well. While this does seem like the MoEF bending over backwards, interestingly, the court found no fault with this as, it said, the public interest—reducing congestion in Mumbai by building a coastal road—had to be kept in mind.

What the court objected to, and rightly so, was that even a basic environmental impact assessment (EIA) was not done. Indeed, when the MoEF, in July 2016, pointed to certain problems with the proposal, Mumbai's municipal corporation submitted a fresh application to MCZMA, this time by breaking up the project into two; even though the project would only be complete after both parts were complete, the clearance was sought for the first part so as to ensure the evaluation done was only partial. In January 2017, the MCZMA recommended the truncated project be cleared, the EAC concurred in March and, in May, the MoEF cleared the project. But, as the high court points out, even various consultants to the project said that a detailed environmental impact assessment (EIA) had not been done; a peer review by Frischmann Prabhu of the EIA said this "does not include an environmental and social data sheet or screening checklist". Hardly surprising that the court was constrained to say this was "lip service to the requirement of the law". Indeed, while the CRZ allowed a coastal road but said it was to be built only when there was a desperate need for it, the court said the authorities who argued Mumbai's impossible congestion needed a coastal-road solution didn't even consider whether the metro being constructed in the city would take care of the problem. It is possible the Supreme Court will overturn the high court verdict, but it is difficult to understand how even basic procedures such as a detailed EIA were given the go by.

The right prescription

An Ayushman Bharat database is a good step

SETTING UP A health-data repository of Ayushman Bharat beneficiaries, especially with Aadhaar linkage—a health ministry panel recently recommended this, as per *The Indian Express*—is a significant step forward towards not just better public health management and fraud prevention in the government's flagship health insurance scheme but also nurturing an ecosystem of health-related enterprises, creating jobs. The National Digital Health Mission (NDHM) that the panel proposes mirrors the goals of the National Health Stack that the NITI Aayog had talked about last year; data collected from Ayushman Bharat will be managed and analysed digitally, and a system of personal health records would be created. Aadhaar linkage would mean that every health-related detail is entered into a beneficiary's record even if she avails of the healthcare coverage at different places; but, given, the committee notes, Aadhaar can't be used in every context as per existing regulations, linking an element of the PHI to Aadhaar—name of patient and that of her immediate family along with personal details like gender, date of birth, or mobile number or e-mail ID, etc—will be a must if the mission goals are to be realised.

The government must learn the right lessons from Rajasthan's Bhamashah experience—a PSU insurer burnt its fingers, thanks to fraudulent claims in the absence of a robust verification such as a Aadhaar-based one, and walked out. The insurer's pain, though, helped flag the fraud. With as many as 14 states and three UTs out of the 33 that are implementing Ayushman Bharat having chosen the trust-only model (nine have opted for insurance-only and seven have opted for trust-&-insurance), frauds will bilk the government since checks at the level of the insurer will be absent—having a third-party administrator, too, doesn't help if fraud is effected with the connivance of the administrator or happens due to its failure to monitor rigorously. Apart from fraud reduction, an Aadhaar-linked health-data repository offers many positives. This will allow a beneficiary to migrate—the scheme targets BPL families, many of which see members frequently move from city to city for jobs—without having to worry about safe-keeping and physically carrying around her health records. Such portability is also an advantage for the government, given it means a disease trail to study contagion, if the case is such, is there for it to follow. Consolidated health data means healthcare professionals will be able to serve the beneficiary better, more so, if they are aided by artificial intelligence and big-data analytics. Data analytics can also be used by the government to map disease/location specific healthcare expenses to check over-billing, to settle claims faster and even in epidemiology to study endemic diseases that can be used to hone community medicine intervention. With the appropriate privacy safeguards, data mined from such a wide pool of patients as the one Ayushman Bharat serves presents an enormous advantage to medical research in the country.

ReformHURDLE

Monetisation of FCI warehouses seems good, but stalls real reforms

WITH THE CENTRE proposing a leasing out of the covered warehouses of the Food Corporation of India (FCI), the carrying costs of the public sector grain-procurer is likely to come down. The FCI's annual carrying cost is set to rise 43% to ₹16,411 crore in FY 20. As on July 1, it was holding a total of 37.5 million tonnes (mt) of rice and wheat, against a total covered warehousing capacity of just 12.7 mt. The total central pool stock stood at 74.2 mt, against the buffer+strategic reserve requirement of 41.1 mt. The excess is estimated to amount to an economic cost of over ₹1.25 lakh crore. Given the rot at uncovered storage facilities, the wastage that happens due to FCI procurement and holding is appalling. Against such a backdrop, the FCI leasing out its storage facilities to private players for management, a boost for storage efficiency, and using these for a fee should seem a great idea, especially since it is to use the lease money to build new warehousing infrastructure. But, it isn't, as it disincentivises FCI from undertaking real reforms.

Thanks to poor cost management, exacerbated by the need for fulfilling the Food Security Act (FSA) provisions and to redeem the Centre's pledge to double farmers' income by 2022, FCI has had to borrow from the National Small Savings Funds as the Centre has deferred subsidy payments repeatedly. In such a scenario, scaling back FCI operations drastically, by giving direct cash transfers to both FSA beneficiaries in areas with easy access to markets and farmers, is advisable; at the very least, allowing the FCI to sell off the excess stock could help relieve its pain. But policy support for such measures is absent. The benefits of a systemic overhaul far exceed those of ad hoc measures, and if the FCI/Centre opts for just band-aid solutions, the problem just lingers.

PENNING DEVELOPMENT

THE DECLINE AND THE RECENT RISE OF THE HUMBLE FOUNTAIN-PEN OFFERS AN ACCOUNT OF INDIA'S ECONOMIC TRANSITION

India's economic journey: A fountain-pen story

BIBEK DEBROY

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Views are personal

RECENTLY, AN AUTHOR came to present me with a copy of her new book. As I always do in situations like this, I asked her to sign it for me and was pleasantly surprised when she produced a fountain-pen. I know a doctor who is in his 80s. Medical prescriptions are known for their illegibility. This doctor's prescription is a sight to behold and yes, he swears by a fountain-pen. In old, 19th century files, I chanced upon some correspondence and the calligraphy (there is no other word for it) is something to treasure. (This might not even have been a fountain-pen. The letters were probably written with a nib-pen, with the nib being dipped in an ink-pot, there being nothing to store ink inside the pen.) There are plenty of accounts of India's economic transition. Such accounts become more alive if one uses real-life examples and I think someone should write a piece on the decline and recent rise of the fountain-pen. In initial years of school, we weren't allowed to use pens. It had to be pencils, also used in classes on cursive writing. At some point, we were allowed to graduate to fountain-pens, ball-point pens being nowhere in the picture. To emphasise what I said about real-life examples, I think Britain's war-time rationing is described phenomenally well in Richmal Crompton's "Just William" series, much better than any academic's laboured depiction.

When William was in school, it was the era of ink-pots and blotting paper. Our school-days were a little later. Blotting paper was still around, but you didn't need to carry ink-pots to school. The fountain-pens could store ink, but they didn't yet possess syringes or suction mechanisms that could suck the ink up. Instead, every morning, you used an eye-dropper to fill the pen with ink. Don't ask me for names of these fountain-pen brands. Obviously, they must have had names, but these names weren't brands in the sense we use the word "brand". There were certainly branded fountain-pens, Parker for one. But they weren't for us. Though fountain-pens weren't branded, the ink certainly was. It was, and had to be, Sulekha. Sulekha Works, started initially in 1934 in what is now Bangladesh, was identified with self-reliance and the Independence movement, and had the implicit blessings of Mahatma Gandhi. Therefore, every bottle of Sulekha ink arrived with the mandatory picture of Gandhiji. Temporarily, Sulekha Works closed down, but has started again. When I looked at the types of Sulekha ink now available, I was surprised at the choice—Black, Blue Black, Crystal Violet, Emerald Green, Flaming Orange, Master Brown, Moss Green, Royal Blue, Scarlet Red, Shocking Pink and Turquoise Blue. In our school-days, Royal Blue was the default option, though I think Black was around.

Lamenting the inferior quality consequent to self-reliance, I have heard the late Abid Hussain say, many years ago, "We produced fountain-pens that were more fountains than pens." For fountain-pens, this sounds a bit harsh. But yes, those fountain-pens didn't screw on properly. They leaked, smudged our fingers and stained our pockets, evidence we were studying hard. Nibs got clogged. They had to be taken out, cleaned and re-inserted, or replaced with new nibs. As we moved up in school, technology changed and was regarded as a great marvel. You no longer needed eye-droppers. A suction mechanism arrived on the side of the pen, eventually overtaken by a syringe at the bottom. No more smudged fingers, though occasional staining of pockets continued. For a reason I no longer recall, the default choice for ink became Quink, not Sulekha. I suspect it had to do with quality and choice. To appreciate the Abid Hussain comment, do realise trade and technology policy were involved. That's the reason I said fountain-pens are a good case study for tracking evolution of economic policy. For instance, import of ink was on the prohibited list, because domestic installed capacity was more than estimated demand. After all, there was a shortage of foreign exchange. Therefore, ink meant domestic brands (such as Sulekha or Camel), joint ventures (JVs) with foreign equity participation (Pilot, Quink) or completely foreign brands (Waterman). Ditto for fountain-pens and there were only two JVs with foreign participation—Pilot, Waterman. Trade policy, technology policy and licensing restrictions affected choice in the market.

> **Fountain-pens are a good case study for tracking evolution of economic policy. For instance, import of ink was on the prohibited list, because domestic installed capacity was more than estimated demand**

While we were still in school, early ball-point pens arrived. Because of the reasons mentioned, they weren't as good as ones around now. But, in any event, they were prohibited in school. They were believed to ruin the handwriting, as those early ball-point pens no doubt did. Until we passed out of university, it was fountain-pens all the day. Our children grew up with whiffs of liberalisation and technology improved for both, fountain-pens, as well as ball-point pens. They weren't allowed to use ball-point pens in school, but the default ink now became Camel, though it was now available in cartridges. At some point, ball-point pens were recognised for legal purposes. Many people will probably give up writing by hand and either type, or dictate to their favourite form of technology. However, for those limited few who still prefer to write by hand, I am happy the fountain-pen still survives. I don't mean the high-end pens alone; there are several brands that are relatively cheap. As for ball-point pens, those with liquid ink clearly shouldn't be damned as much as the earlier versions were.

Repairing the GST

Reaping the best benefits of GST requires that laws and compliance structures be made simpler, more uniform, and standardised

RAHUL RENAVIKAR

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Views are personal

IN THE RECENTLY announced Budget 2019-20 papers, lies buried a data point on the India GST. In a span of two years from its introduction, the initial euphoria and charm has faded away completely, and the GST numbers have been reduced to reflect a decrease in the expected collections. Yes, rates of many items were slashed and there were many course corrections made all along. The government needs to be commended for being flexible and agile on that count. However, there are symptoms which require urgent repairs. Falling GST collections is a matter of great concern for the economy, given that the GST is a consumption tax, and other things being equal, less tax means less consumption, which means lower growth of the economy.

It has been time and again noted that the GST, though simple as compared to the erstwhile indirect taxes regime, is still complex. Given the federal structure of our country, we were compelled to introduce a dual GST where the central and state governments have equal right to levy GST on supply of taxable goods and/or services on intra-state transactions. On the inter-state transactions and transactions involving imports, an IGST is levied by the central government, proceeds of which are equally shared between the Centre and the states. While this looks very simple as a concept, practically, it is the same old structure, where a taxpayer having a pan-India presence has to obtain as many SGST/UTGST registrations, and track all of them separately besides the one CGST and IGST. This was the case in the erstwhile VAT regime as well, where the same taxpayer was required to follow as many VAT laws. The only solace is that the SGST laws and procedures are uniform across the country, unlike the case with state VAT laws. Indeed, this has made life easier for the taxpayers, and has reduced the anxieties and uncertainties surrounding tax compliance procedures. However, payment of GST, filing of returns, etc. remain to be undertaken state-wise and not at one go, which has a shadow of complexity overhanging from the erstwhile VAT era.

Besides this, let's see what other issues are plaguing the India GST structure. At the forefront, is the input tax credit mechanism. It is a known fact that the key highlight of any value added tax system is the ability of the taxpayers to claim input tax credit of almost all the goods and services procured for supplying taxable goods and/or services. The tax paid on the input side ought to be available as a set-off against the liability on the output side. Such is the simple theory which works wonders in other tax jurisdictions. We all know that the solution is simple. However, the process to arrive at that solution is extremely complex. This is applicable to almost 99% of the problems faced by Indian citizens. Rather than taking efforts to re-invent the procedures and policies, and adopt best practices, we end up spending time and money on following archaic rules and procedures, and then appealing in a court of law, which, with a large pendency of cases, itself is burdened. A simple provision allowing input tax credits of almost everything (with a small negative list) that businesses procure and the expense of which is debited to P&L account, will go a long way in putting to rest all the litigation and confusion surrounding the input tax credit claims.

> **There is an urgent need for having a National Authority for Advance Ruling in the first place, which will ensure uniform interpretation of GST law**

The next area is the conflicting views taken by various state GST authorities on the interpretation of GST law while pronouncing the Advance Rulings under the respective state GST laws. While in the recent Budget, there has been an announcement of setting up of a National Appellate Authority for Advance Rulings which will roll out the procedures for filing of appeals and rectification of orders, there is an urgent need for having a National Authority for Advance Ruling in the first place, which will ensure uniform interpretation of GST law. It is too much of a task for a taxpayer to first obtain the Advance Ruling from various states on the same issue and then approach the National Appellate Authority for getting relief in the event of any adverse order.

A leaf may perhaps be taken from the book of a federal country which has introduced a VAT system recently. The United Arab Emirates (UAE) implemented VAT beginning from January 1, 2018. The Federal Tax Authority ('FTA') of the UAE recently announced their first year performance. They had rolled out a very simple VAT structure and followed it up with a simple VAT return form. The result was for everyone to see and applaud. They were able to collect around $7.35 billion as VAT, which turned out to be 2.25 times the budgeted VAT collection for the first year! The strategy to keep VAT law and VAT compliance simple has yielded positive results. And, this is just the beginning for them.

India's rank in the 2019 Ease of Doing Business Report released by the World Bank jumped 23 positions to 77 despite the fact that the rank in Paying Taxes slipped from 119 to 121. While paying taxes is just one part of doing business in a country, the potential to improve India's rank in Paying Taxes is immense. Hence, the government should not delay the implementation of a simpler GST return any further. The trade and industry, though at the receiving end, all along have been very supportive of the reform process and would continue to do so, provided relief is granted to them at the earliest.

LETTERS TO THE EDITOR

Weakening exports

The shrinking of merchandise exports by 9.7% this June coupled with subdued domestic investment activity and weak domestic demand reflecting the weakness of prime drivers of economic growth is a worrying development. Contraction in exports and slowdown of economy might prompt Monetary Policy Committee(MPC) of RBI to go for further rate cuts , but given the trade wars between US and other countries and wave of protectionism engulfing the global economy, prospects of grabbing additional market share stands slim for our exporters. At this juncture, any move to raise tariffs on imports, signalling our embrace of protectionism will do more harm than good to our efforts towards the integration of our economy with global supply chains. Efforts towards rationalising tariff structure so as to facilitate our faster integration with global supply chains brooks no delay.

— M Jeyaram, Sholavandan

China's loss

China's GDP shrink appears to stand out. China made a magnificent foray in the 1990s, into export oriented MSMEs, leveraging the purchasing strength of other economies and manipulating its own currency. Even its relatively superior per capita income accruing from a sustained 9% plus growth can not absorb the entire shortfall in export demand. The ensuing sag in its economy will show up its hitherto suppressed socio-political fault lines. Either by default or design, Trump has posed a plethora of problems to China, far too early. The Trump tariff war has unsettled most trade algorithms for quite a while. Given this whether the US gains from China's predicament, or for that matter any other major economy, will stay a moot question.

— R Narayan, Navi Mumbai

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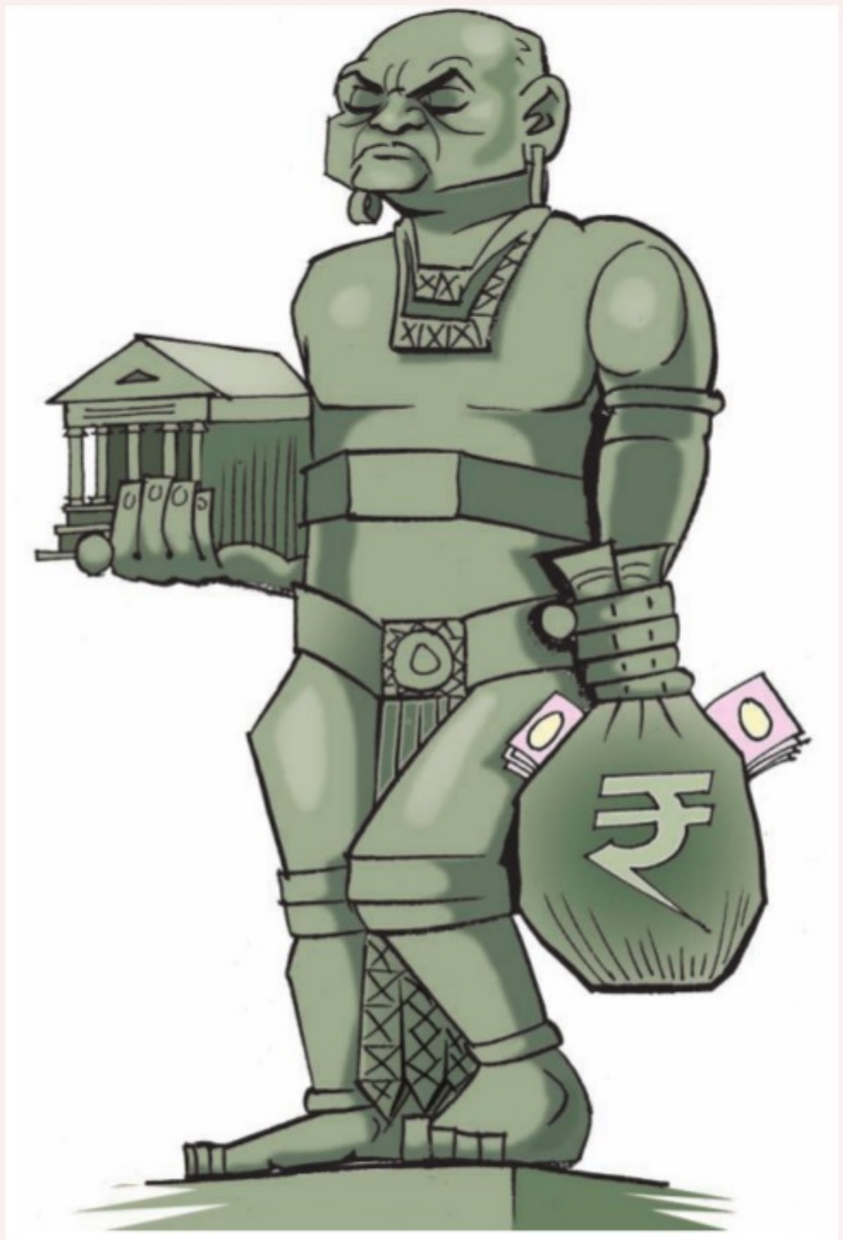

ILLUSTRATION: ROHNIT PHORE

LIQUIDITY MANAGEMENT FRAMEWORK

Inside the black box of RBI LMF

The LMF should clear the enigma over the definition of banking system liquidity levels—what should be construed as ample liquidity, tight liquidity or neutral liquidity

SOUMYA KANTI GHOSH & SOUMYAJIT NIYOGI

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THE RESERVE BANK of India (RBI) has formed an internal group to review the Liquidity Management Framework (LMF), the report of which is due any time now. The objective of the group is to review the existing LMF and suggest measures. In addition, the group will (1) simplify the current framework, and (2) clearly communicate the objectives, quantitative measures and toolkit of liquidity management by RBI.

It is important to know what 'liquidity' and 'liquidity management' entail for a central bank.

As far as liquidity is concerned, all liquidity is not the same, even though we imperfectly use it interchangeably. For instance, 'banking system liquidity' is not the same as 'market liquidity'. The current condition of all NBFCs perhaps not having adequate access to liquidity has more to do with crisis of confidence and, therefore, choking market liquidity, which is completely different from banking system liquidity. In fact, market liquidity refers to a condition when borrowers and investors transact with each other at an optimal cost in a seamless manner. The optimal cost captures credit profile of the borrowers and term premium of borrowings. In a situation when the term or credit premium goes up abruptly, it hampers normal market equilibrium conditions. One must note that the perception of risk is no less important than the actual inherent risk. It is also possible that a large section of investor class turns heavily risk-averse and stops lending to a specific entity or a sector, or it may be applicable to overall asset class (mortgage

The LMF is a result of evolution over the years with complexities arising out of interaction between various entities within a country or outside, through trade and capital flows

back securities during the Global Financial Crisis of 2008). And here the role of a central bank as a market clearing agent is indirect and tactical, but clearly avoiding moral hazards.

Apart from banking system liquidity and market liquidity, there is also the concept of 'balance sheet liquidity'. This typically refers to moneyness or how fast an entity can convert a portion (the higher, the better) of assets into cash or cash equivalent with least deviation from the recorded value. In a stylised balance sheet, the assets side starts with fixed assets and ends with cash and cash equivalent. The order designed is in line with the liquidity profile of each item, fixed assets being the least liquid at the top, compared to cash and cash equivalent at the end.

On the other hand, liquidity management by central banks typically refers to the framework, a set of instruments, and the rules that the monetary authority follows in managing systemic liquidity, consistent with the ultimate goals of monetary policy (Bhattacharyya and Sahoo, 2011). In this regard, central banks modulate liquidity conditions by varying both the level of short-term interest rates and influencing the supply of bank reserves in the interbank market.

The LMF is a result of evolution over the years with complexities arising out of interaction between various entities within a country or outside, through trade and capital flows. In the Indian context, the domestic liquidity framework has undergone a paradigm shift. The existing form is an explicit target-based approach, where the framework is ensuring short-term equilibrium in primary liquidity market close to the policy rate, i.e. the repo rate. In the last 10 months, RBI has infused around ₹4 trillion of primary liquidity into the system (through Open Market Operations purchases and foreign exchange swap). Therefore, the overall banking system liquidity has turned surplus from deficit. However, there have been many instances where the liquidity condition has been subjected to critical appraisal.

We expect that the forthcoming liquidity framework should spell out the various contours of liquidity as explained above. Often, the market is confused over the appropriateness of liquidity conditions as it typically considers market liquidity and banking system liquidity in the same vein. Perhaps the report could consider publishing a comprehensive summary table of 'market liquidity' just like the 'resource flow' to the commercial sector.

This apart, the LMF should also clear the enigma over the definition of various banking system liquidity levels—for example, what should be construed as ample liquidity, tight liquidity or neutral liquidity. Previously, many a times, the market got perplexed with the communication and the action, as there was no formally-adopted framework in recent times.

Moreover, a key pillar of the liquidity framework is the various tools being used in managing day-to-day liquidity and its appropriateness with the expectation of durable and non-durable liquidity. There is no doubt that the central bank has better information than the market participants. And here lies the role of information dissemination. The success of a liquidity framework is premised on information dissemination on a regular basis. This helps develop market expectations with the *ex ante* action from the central bank. In turn, that is instrumental for developing term money market. Notably, a detailed analysis in the monetary policy report on the liquidity contour has become a key input for the market. Now, the list and management of various tools and their appropriateness with the liquidity condition will further iron out.

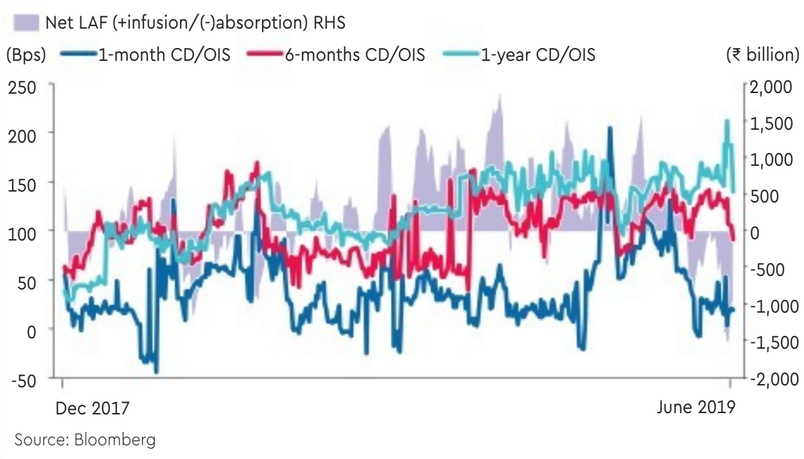
Interestingly, banking system liquidity has currently turned surplus due to RBI's OMO purchase, capital flows and a stable cash in circulation. In line with the considerable improvement in banking system liquidity, the spread between Bank Certificate of Deposits (CD) and Overnight Index Swap (OIS) has moderated. We believe that such surplus liquidity has been working effectively in ensuring that the system moves to a lower-term structure of interest rates.

Last but not the least, the committee should iron out the efficacy of call money as a nominal anchor for liquidity and monetary policy transmission.

We all look forward to the report with bated breath.

Daily spread between CD and onshore OIS

Rising spread corroborating pressure on deposit and long-term liquidity



Source: Bloomberg

BUDGET 2019

Running between the wickets

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Nuances in tax laws appear to continue with fitments of fundamentals

IN CRICKETTERMINOLOGY, Budget 2019 appears to have geared towards sound batting as against explosive hitting. The emphasis has not been towards any particular sector. Neither on reduction in rate of tax to spur demand. The nuances in tax laws appear to have continued with fitments of fundamentals.

The Aadhaar Act stood the scrutiny before Constitution Benches of the Supreme Court. In *K Puttaswamy vs UOI*, it was held that the Aadhaar Act is not in violation of rights enshrined in the Constitution. In another challenge, in *Binoy Viswam vs UOI*, quoting of Aadhaar number in PAN application in the income tax return was upheld. The Budget has now proposed usage of Aadhaar and PAN interchangeably for income tax purposes, and authentication by submission of proof of Aadhaar number across customs and GST laws.

The direct tax proposal aimed at the super-rich by way of surcharge has taken FPIs, operating as AOPs, by surprise. The recent downward spiral in markets is attributed to this. The debate on whether FPIs were intended to be covered by this provision continues. It is settled jurisprudence that tax laws are strictly construed. If certain FPIs find themselves within the contours of the law, tax would follow, unless clarified otherwise. The stand of the Revenue appears it is not targeting FPIs, and FPIs have an option to convert into corporate entities to avail lower rate of tax. The buyback tax introduced in the Budget on listed companies may result in revisit of such arrangements. The Budget proposed a concessional rate of tax of 25% on corporates with a turnover of less than ₹400 crore in FY18. Start-ups were in the news on share premium issues and tax implications thereon. The Budget has kept start-ups, who file requisite declarations, away from detailed scrutiny on share premium transactions.

The Budget has shown resilience of a test batsman where the positives lie in nuances, and has kept away from a flurry of boundaries that become interim talking points

There was clamour on divergent views taken by the Advance Ruling Authorities sitting in different states on identical questions. The Budget proposed a National Advance Ruling Authority to set such divergent views to rest. The Budget has also green-lighted transfer of any amount of tax, interest, penalty, fee available in the electronic cash ledger of CGST Act to that of IGST/SGST/UTGST Act. It has sought to rationalise the computation of interest on delayed furnishing of return to be effectively levied on the cash payment of tax. The Budget proposed a class of registered persons mandated to provide electronic payment modes to the recipient of supply of goods or services made by him. The insertion in the law appears to be geared towards digital payments and availability of transparency to the Revenue authorities to track payments. There is also an amnesty scheme to get rid of legacy indirect tax litigation.

Industries such as automobiles were seeking rate relaxation. One argument was that high-end cars are not required to be treated along with sin goods and applied GST at the highest slab of 28%. Other sectors also demanded rate rationalisation. There was expectation that reduction in rates may stimulate demand and drive the economy. But GST revenue collection in the recent past has looked promising only in spurts. With this, the Revenue and the GST Council appear not to have gone for any significant rate rationalisation.

The course adopted towards working the fundamentals may have jettisoned any big takeaway from the Budget. Headline news of rate reduction, particular sectoral benefits that become talking point for industry, eludes this Budget. However, the Budget has sought to ease many practical difficulties that were being faced by the industry. From the perspective of everyday working, the Budget may have a positive effect on trade.

The Budget appears to have shown the resilience of a test batsman where the positives lie in minute nuances. The Budget has kept away from a flurry of boundaries that become interim talking points. It could have been apt if certain relaxation in tax rates were provided to get behind the trade for generating the necessary stimulus. The Budget may have missed a run or two there. Barring the FPI conundrum and buyback arrangements, the Budget appears to have worked at addressing fundamental issues around tax laws.

MCA & SEBI

Yet another *gathbandhan*

The MoU will succeed if the exchange between the two regulators is coordinated well, with time being of essence

L BADRI NARAYANAN & GUNMEHER JUNEJA

Narayanan is partner and Juneja is legal analyst, Lakshmikumaran & Sridharan

IN WHAT APPEARS to be a step towards tackling fraud in India Inc, the Securities and Exchange Board of India (SEBI) and the Ministry of Corporate Affairs (MCA) executed a formal memorandum of understanding (MoU) on June 7, 2019. The purpose of the MoU is to ensure seamless linkage and collaboration between SEBI and the MCA. This will be in addition to the existing mechanism of partnership in place between the two. SEBI explains the rationale behind this move as the increasing need for surveillance in the context of corporate frauds affecting important sectors of the country.

Existing measures

The Companies Act, 2013, which deals mainly with unlisted companies, and the SEBI Act, 1992, which governs capital markets and listed companies, have separate mechanisms inbuilt for investigations.

Under the Companies Act, investigation into the affairs of a company can be made when the central government is of the opinion that the same is necessary based on: (1) registrar's report after inspection, (2) a special resolution of the company that its affairs ought to be investigated, (3) public interest, and (4) the order of a court or the Company Law Tribunal. The Serious Fraud Investigation Office (SFIO) is the office in charge of such investigations. Where a case has been assigned by the central government to the SFIO, no other investigating agency of the government can proceed with any investigation for any offence under the Companies Act.

Under the capital markets regime, SEBI can order for investigation in case it has reasonable ground to believe that: (1) the securities of a company are being dealt in a manner detrimental to the investors and, or, the securities market, or (2) any intermediary or any person associated with the securities market has violated any of the provisions of the SEBI Act, rules or regulations or directions issued by SEBI.

With respect to collaborative efforts, *inter alia*, the Coordination and Monitoring Committee (CMC), set up in 1999, was formed to identify and monitor the state of 'vanishing companies' and take appropriate action under the Companies Act and the SEBI Act. The time period 1993 to 1995 had witnessed new companies tapping the market and collecting funds from the public through public issue of shares/debentures. Some of these companies defaulted in their commitments made to the public while mobilising funds, and subsequently 'vanished'.

While both the MCA and SEBI have strived to work together previously, coordination between the two regulators has room for improvement. The CAG Report in 2005 criticised the MCA for lack of coordination of activities and data-sharing with other regulatory bodies such as SEBI and RBI—for instance, the report highlighted that 303 companies were found working as NBFCs in Shillong, Odisha and Rajasthan without registration with RBI.

Mandate of the MoU

The MoU strives to facilitate sharing of data and information between SEBI and the MCA on automatic and regular basis. It assumes a holistic approach to solve fraudulent cases—as between the two regulators there is a database of listed entities and all other registered firms/companies.

The MoU also refers to the constitution of a Data Exchange Steering Group, which will meet periodically to review the data exchange status and take steps to further improve the effectiveness of the data-sharing mechanism.

The way forward

The message is clear—to clean the muddle created by fraudulent practices within the corporate sector. While there exist other mechanisms, such as the CMC, the mandate of the MoU appears to be broader than merely working on one type of fraud or incident.

With corporate fraud issues having come up in various sectors in the past, including pharmaceuticals, finance and airlines, the burden on the economy is high enough to take immediate and strict action. Fraud in the corporate sector inevitably puts stress on other sectors. The private sector plays an important role in the growth of the economy, and a robust mechanism to fight fraud is required to advance the economy. The MoU marks the beginning of a new era of cooperation and synergy between the two regulators.

However, just as there have been issues pertaining to coordination in the past, any scope provided by the MoU will only come to pass if the exchange between the two regulators is coordinated well and is seamless, with time being of essence.

Lack of coordination, or rather confusion, could also happen due to certain overlapping subjects covered by the SEBI Act and the Companies Act. These especially came into play, at least on paper, after listing regulations were revised in order to incorporate the recommendations of the Kotak Committee on Corporate Governance. The regulators could consider working on such issues together and provide clarifications in a uniform manner.