Enter new oil retailers

The move to allow new players in fuel marketing can be more effective if refinery pricing is made transparent

RAISINA HILL

AK BHATTACHARYA

A few days before Diwali, the Union government took a major step towards liberalising its policy on retail marketing of petroleum products. It is the biggest decision taken in this area in the last 17 years. In 2002, retail marketing of petroleum products was thrown open to the private sector provided the applicant would commit to investing at least ₹2,000 crore in the petroleum sector. Last week's decision has allowed any entity to undertake retail marketing of petroleum products provided its net worth is valued at over ₹250 crore.

The expectation is that many non-petroleum players would be interested in retail marketing of petrol and diesel. Global giants like Total and Saudi Aramco may enter the Indian market. Even big retail chains could consider opening fuel outlets. This is because the earlier condition that a new player must have investments in the petroleum sector has been scrapped. But how successful will this policy liberalisation be?

It is clear that the retail policy liberalisation of 2002 did not yield the desired outcome. In 2002, the retail marketing network for petrol and diesel was monopolised by public-sector oil companies. There were 18,924 retail outlets then. In the last 17 years, these companies have added 39,000 outlets, taking the public-sector fuel retail outlets to 57,924.

In contrast, the private-sector initiative has been poor in spite of the policy liberalisation in 2002. In these 17 years, only 6,700 fuel retail outlets were opened by the private sector, including 5,128 by Nayara Energy Limited (earlier known as Essar Oil), 1,400 by Reliance Petro and 145 fuel outlets by Shell India. The absence of a market-linked pricing system for many products during much of this period was one of the reasons for the private sector's lukewarm response.

Thus, the demand for more fuel marketing outlets has been largely met by the state-controlled petroleum marketing companies. The compound annual growth rate (CAGR) in the sales of petrol and diesel in the last 17 years is estimated at 6 per cent. The CAGR of fuel retail outlets in the same period is just 7.5 per cent. And this growth could be maintained largely because of the public-sector oil retail outlets.

Last week's decision followed the government accepting the recommendations of an expert committee that examined how the 2002 policy liberalisation impacted the oil marketing network. The committee had concluded that while the government should retain its power to authorise the entry of new players in the oil marketing sector, it should now relax those rules by letting any entity with a minimum net worth of ₹250 core to set up fuel retail outlets. In line with the committee's findings, the government also set a condition that the new players will have to set up at least 5 per cent of their retail outlets in notified remote areas within five years of the grant of authorisation.

There are, however, many questions over the effectiveness of the new policy. Monitoring how the new players will fulfil their obligation of setting up 5 per cent of the new fuel retail outlets in notified remote areas would introduce an element of discretion that can always become problematic and lead to politicisation in the grant of authorisation of new fuel retail outlets. The chances of such obligations-based policy incentives being misused are also quite high. Past instances of how the scheme for import concessions linked to export obligations was misused and poorly monitored should not be forgotten.

Similarly, there is room for further liberalisation in the new policy. There is no reason why the new players should not be allowed to sell petroleum products, obtained from different refineries, from the same outlet. As long as the new outlets maintain transparency and provide disclosure on which refinery's fuel the consumer is buying, there is no reason why they are being mandated to sell fuel purchased from different refineries only through different outlets.

The more troubling question is that if the objective of the policy liberalisation is to usher in more competition in fuel marketing, then the government should also take the next step to remove opacity in the way public sector oil refineries are pricing petroleum products. Effective competition will be introduced once the new players, which have no access to their own refineries, can actually buy the fuel from the existing refineries. Such purchases will be difficult without a transparent pricing mechanism at the refineries.

Yes, the new players can import petrol and diesel and sell them at a price that can create competition for the public-sector oil refineries. But why not use this opportunity to introduce more reform in retail oil pricing by India's state-controlled refineries. A consequence of such transparency would also facilitate the next move to allow different public-sector refineries to compete with each other on the final price at which they sell the petroleum products through their outlets. Once such reforms are introduced, the effectiveness of the latest move to allow new players to set up fuel outlets would improve enormously.

CHINESE WHISPERS

Backdoor politics

As the Bharatiya Janata Party (BJP) faced criticism for taking support from Haryana Lokhit Party leader Gopal Kanda, an accused in criminal cases, it was the friendship between Jannayak Janata Party (JJP) chief Dushyant Chautala *(pictured)* and Minister of State for Finance Anurag Thakur that helped it save some blushes. Chautala and Thakur are known to be good friends. He visited Thakur's residence on the evening of vote counting on Thursday to wish him on his birthday. It was by then apparent that the BJP was set to fall short of a majority. According to sources, the discussion veered towards politics and Thakur could sense that Chautala would be amenable to an alliance. Next day as the BJP faced criticism from within and outside about Kanda and understood the difficulties it would face managing so many independents, Thakur let it be known to the party leadership that Chautala would be willing to join the government. BJP President Amit Shah returned from Gujarat early, and Thakur got Chautala to meet Shah, ensuring that the two enter through the back gate of Shah's residence in Delhi to evade television cameras. The deal was struck and conveyed to the media at a press conference later on Friday evening.

Enterprising think tank

In an example of how think tanks affiliated to political parties can reach out to experts from all walks of life, the Rajiv Gandhi Institute for Contemporary Studies will host Ministry of MSME (micro, small and medium enterprises) Secretary Arun Kumar Panda for a book launch and panel discussion in the first week of November. Panda will launch *Story of Indian MSMEs: Despair to Dawn of Hope*, written by B Yerram Raju, who is adviser at the Telangana Industrial Health Clinic. The event will also have a panel discussion on the issues in access to social equity. National Small Industries Corporation Director P Udayakumar, among others, will participate in the discussion.

Swinging fortunes in Kerala

Voters in Kerala have given both the ruling Left Democratic Front (LDF) and the opposition United Democratic Front (UDF) reasons to cheer in the recently concluded by-elections in five constituencies. The ruling LDF won two seats, and UDF won the remaining three. The LDF wrested two seats from the Congress and managed to narrow the margin in the Ernakulam constituency, which is a Congress bastion. The UDF retained two seats. In Aroor, it managed to elect Shanimol Usman, who was the only Congress candidate in Kerala to lose the Lok Sabha elections last May. The BJP seems to be the only party left out in the cold by the voters. K Surendran, who led the BJP's Sabarimala campaign, bit the dust in Konni and was pushed to third position.

How safe is your money with Indian banks?

Either the DICGC cover should be raised or we need an independent resolution body to protect depositors. The FRDI Bill can ensure that

BANKER'S TRUST

TAMAL BANDYOPADHYAY

Till Infrastructure Leasing & Financial Services Ltd and Diwan Housing Finance Corp. Ltd stole the limelight in the second half of 2018 for all the wrong reasons, ballooning bad loans in the Indian banking system held centre stage. The mis-governance of a multi-state urban cooperative bank (UCB), which was run by a real estate developer, leading to its collapse, has changed the narrative. Since the Reserve Bank of India (RBI) clamped down on the bank and restricted withdrawal of deposits (capped at ₹40,000 now), at least four depositors have died because of stress and the fear of losing their life's savings. There is panic all around and everyone seems to be wondering how safe is depositors' money in the Indian banking system.

All deposits are insured but not for the entire amount. If a bank fails, a depositor (irrespective of the number of deposits) can get up to ₹1 lakh from the Deposit Insurance and Credit Guarantee Corporation (DICGC), a wholly-owned subsidiary of the RBI. The post-Independence banking crisis in West Bengal had set the ball rolling but the deposit insurance scheme came into force in 1962 after the collapse of Palai Central Bank, triggering a run on all banks in Kerala. The insurance cover, ₹1,500 in 1962, rose to ₹1 lakh in 1993 after its fifth revision. Since then, the amount has not changed. Adjusting for inflation, the value of ₹1 lakh in 1993 is ₹5.74 lakh now.

The insurance cover in most other countries is far higher. For instance, up to 500,000 pesos ($9,500) is insured per depositor in the Philippines; the equivalent sum in China is 500,000 yuan ($70,000) and in Thailand it is about 5 million bahts ($160,000). In developed markets such as the UK, the first £85,000 of one's savings is protected if a bank/building society goes bust; for a joint account, the limit doubles. The banks in Europe offer €100,000 compensation to the savers and the Federal Deposit Insurance Corporation (FDIC) in the US insures up to $250,000 per depositor. In neighbouring nation Sri Lanka, the cover is for ₹2 lakh per depositor; in Bangladesh, ₹1 lakh.

The ₹1 lakh limit covers at least 90 per cent of the accounts (barring government deposits, all other accounts are mandatorily covered) and 29 per cent of the deposits but it is pretty low vis-à-vis most other countries in relation to per capita income.

In 2008, when the collapse of Lehman Brothers Holdings Inc. plunged a large part of the world into recession, there were discussions on raising the insurance cover but the RBI refrained from doing so as it did not want to create an impression that the Indian banking system was unsafe. Indeed, not a single commercial bank has been allowed to fail ever since India embraced economic liberalisation in 1991. There have been cases of a few banks teetering on the verge of collapse but on every occasion the RBI stepped in and stitched together mergers of the weak banks with the stronger peers to protect depositors.

Between 1963 and 1992, DICGC offered full insurance cover to the depositors of seven commercial banks and another 20 banks' depositors got part of their money. Cooperative banks started coming under the cover in the late 1960s. Since then the depositors of 351 such banks have received ₹5,118 crore as full or part payment from the DICGC, which takes care of depositors when a bank goes bust or when a bank gets merged or reconstructed by the regulator.

Clearly, the depositors of cooperative banks need the maximum protection. There are 1,545 UCBs with a ₹4.7 trillion deposit portfolio and 44 of them are present in more than one state. How does DICGC raise the cover? It charges Re0.10 or 10 paise premium per Rs100 in deposit as insurance premium. DICGC's reserve ratio or money available with it as a percentage of insured deposits is just 2.7 per cent. Ideally, it should be 4-4.5 per cent. So it needs to raise the premium. Under its Act, it can be raised to Re0.15.

Should it be raised for all or DICGC should opt for risk-based premiums — the more vulnerable the bank, the higher the premium? There could be a hybrid model too where after a certain limit, the graded system kicks in. While the high street banks may not like the idea of subsidising the UCBs forever, there is a flip side to the risk-based premium arrangement. The riskier banks will have to pay more and this will affect their already fragile health. Also, even though the premium will be based on the confidential rating of a particular bank, people will know how much the bank is spending for the insurance cover from its balance sheet and other regulatory filings and this will affect its deposit flow. Incidentally, Bangladesh has opted for risk-based premia — 0.10 per cent for the so-called problem banks, 0.09 per cent for early warning banks and 0.08 per cent for others.

What's the ideal level of insurance cover? Certainly, a depositor's full exposure to a bank should not be guaranteed as there is a moral hazard — once the full amount enjoys insurance cover, a bank will not be meticulous in its health care.

The FDIC, an independent federal agency insuring deposits in at least 5,400 US banks and thrifts, also examines and supervises certain financial institutions for safety and soundness, performs certain consumer-protection functions, and even manages receiverships of failed banks. DICGC does not do anything beyond offering the cover.

An independent resolution corporation can take care of all this. In fact, the Financial Sector Legislative Reforms Commission has recommended creation of such a body but this has been kept on hold. The Financial Resolution and Deposit Insurance (FRDI) Bill, which has envisaged this, is pending before a Joint Parliamentary Committee. The objective of the Bill is resolution of deposit-taking bankrupt financial intermediaries, while the Insolvency and Bankruptcy Code takes care of the resolution process for ailing non-financial firms. Media reports suggest that the finance ministry has started work on reviving the Bill more than a year after the proposed insolvency law for financial institutions was withdrawn by the government.

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

INSIGHT

Big data. Humanised.

How it can help vulnerable people get a handle on their health and their lives

AMBI PARAMESWARAN

What is big data anyway? There are many definitions. The simplest one I came across says that big data stands for information that goes beyond what could be squeezed into a large spreadsheet. Big data cannot be filled into a spreadsheet simply because it is no longer numbers. It includes words, visuals, pictures, videos and more. Add to that the enormous amount of information we share on social media platforms, Google searches, blog posts, online reviews, personal photographs, videos etc and you have the big mass that is big data, I was told.

At a recent seminar hosted by IIM Calcutta Alumni Association Mumbai Chapter, Professor Ram gave us a new definition. She should know; she is Anheuser-Busch Endowed Professor of MIS, and Entrepreneurship & Innovation in the Eller College of Management at the University of Arizona. In her scheme of things, big data needs to be seen through just two simple lenses. One, big data has led to 'datafication' of what till now that was not in the realm of data. Take for example the smart watch you are wearing. By merely wearing it you are able to convert a lot of signals from your body that has always existed into data. You can count the steps you took yesterday, measure your pulse rate, and even take real time measurement of your blood pressure.

Two, big data is so defined because it comes with "time and geo stamp". We are collecting a lot of data that is not just data but it comes with a clear marker about when it was collected and where it was collected. Take real time traffic measurement that is happening on Google maps. The data is getting collected real time with clear geographical tags (Google has some catching up to do on predicting travel times in Indian cities like Mumbai; for that it probably needs Big Big Data that goes into the realm of divinity).

The question is, how do you use all this big data. Professor Ram shared two interesting examples with us.

The university was approached by a leading Dallas hospital to see if the MIS department could predict the admissions that can be expected in the emergency room. A well-manned emergency room can save lives. But it is expensive to have additional medical or para-medical staff on standby. The data analysis took several steps. First was the simple analysis of past three years' emergency room records. To their surprise the researchers from the university found that the most critical cases were not from gun shootings or traffic accidents but from domestic accidents, cardiac and asthma cases. They narrowed down to study asthma since that department was keen on finding out more. Their search for predictive links led them to many places including Google searches, weather data, pollution data (particulate matter in the atmosphere) and even Twitter postings relating to asthma attacks.

Researchers collected tweets posted between October 2013 and June 2014 and narrowed down to 3,810 tweets that mentioned asthma attacks. They could

link this data with incidence of asthma-related emergency department visits. By mining the tweets and linking it to emergency room visits and atmosphere data, the researchers could build a robust model. As they say in the article published in IEEE Journal of Biomedical and Health Informatics, "Rapid progress has been made in gathering non-traditional digital information to perform disease surveillance. We introduce a novel method of using multiple data sources for predicting the number of asthma-related emergency department visits in a specific area. Twitter data, Google search interests and environmental sensor data were collected for this purpose... Our model can predict the number of asthma ED visits based on near-real-time environmental and social media data with approximately 70 per cent precision".

In yet another case the researchers were posed the question of addressing student drop-outs in the under-graduate programme at the University. In the US only 60 per cent of the students graduate within six years. Current approaches such as student grades and demographic information was of limited value, especially since a student often decided to drop out within the first 12 weeks of starting at a University. How does one predict who would drop out and who needed help? The academic research had shown that two key factors predicted if student would continue or drop out -- the ability to make social connections and regularity of activity. How does one measure these two in a non-invasive manner?

Professor Ram's team had at its disposal the data from student identity cards (smart cards) which were used for entry into the mess halls, library, dorms, class room buildings etc. This data was being collected live, real time by the university. By mapping card transactions that occur very near in time and at the same location, researchers could make inferences about a student's implicit friends group and social networks. They could also build a model around the regularity of the students activities, in an anonymous fashion. According to Ram the model that was build was able to predict at the end of the first 12 weeks the potential for a student to drop out to the extent of 85-90 per cent accuracy. By providing selective help, the University was able to hit a retention rate of 86.5 per cent, the highest in its history. While questions of privacy remain, here is a case where big data was used to help a very vulnerable cohort manage their lives better.

As you would have learnt by now, big data is not just about Big Brother watching you. When used sensibly, it can save lives and help build better future citizens. One human bit at a time.

The author is an independent brand strategist, author, and founder Brand-Building.com. Email: ambimgp@brand-building.com

LETTERS

All's well that end's well

The recent Supreme Court judgment upholding the definition of adjusted gross revenue (AGR) as set by the government has brought finality to the issue. The inclusion of various non-telecom revenue in the AGR has long been disputed by telecom service providers (TSP). However, the final word from the apex court has settled the issue of AGR definition completely. This also means the TSPs will have to shell out a big amount to the government as spectrum charges and licence fee pending for years.

The telecom industry is going through its worst crisis ever. With the aggressive entry of Jio a few years ago, the tariffs hit rock bottom, resulting in huge losses for most incumbent players. The industry is beset with a debt burden of ₹7 trillion. Payment of licence fee/spectrum charges by TSPs because of the judgement would exacerbate the situation. Under the circumstances, the regulator and the government must look for ways to protect the industry.

Hopefully this will bring the industry back on the path to profit.

Sanjeev Kumar Singh Jabalpur

What's the priority?

This refers to "BSNL, MTNL to merge, to get ₹70,000 crore in deal" (October 25). First and foremost, the government must state whether the aim of the merger is to make the entity profitable or is it to extend the telecom services to every nook and corner of the country — even inaccessible and non-profitable locations. If the answer to the question is to make the organisation profit oriented, the following steps should also be considered. First, the government should permit the shut-down of around 13,000 telephone exchanges in rural areas that are incurring a loss of ₹3 lakh on an average per month. Else, 100 per cent compensation must be allowed. Second, the BSNL management must function independently without any hindrance. Third, allow BSNL to participate in the auction of spectrum, adhering to all the terms and conditions, such as repayment holidays, applicable to private operators. Also allow the company to choose the circles that are profitable.

If the government's aim is to have a strong arm to protect telecom customers from exploitation, monopoly and pressure tactics from private operators and to fulfill the dream of digital India, then it should not be so keen on profitability. Some balance, without burdening tax payers, is welcome.

Venu K P via email

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

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Faith in the stock market

Banks and NBFCs continue to remain cause for concern

Equity prices have displayed unusual patterns in Samvat 2075. Between November 7 last year and October 26, the Nifty and Sensex have gained over 9 per cent each. But while the headline indices have done well enough, the mid- and small-cap indices have suffered capital losses, and the majority of listed stocks have lost ground. As a result, most equity investors have suffered and that has perhaps been a contributory factor in the weak consumption patterns witnessed this festive season. Despite this and the steady stream of negative news on the corporate and macro-economic front through the past 12 months, most investors appear to have kept faith with the stock market. Equity mutual funds have received stable inflows and assets under management continue to grow. Overseas investors have retained their optimism about the Indian economy, with foreign portfolio investors (FPIs) continuing to contribute substantially to both the equity and debt segments. This is at least partly due to political continuity, with the BJP retaining its grip on governance by winning handsomely in the Lok Sabha elections this year.

Apart from weak consumption, the worries in Samvat 2076 centre round the pattern of default that has become increasingly common in the debt market. The NBFC and banking sector continues to cause concern with fresh cases of default unearthed with depressing regularity. What's more, credit-rating agencies have clearly failed to identify risks, with many of the defaults emanating from entities with high ratings. This has caused a crisis of confidence in the debt segment. Lenders have turned cautious. Debt funds have been forced to rejig schemes and book losses. Investors have pulled back from the income segment. Even as the Reserve Bank of India has adopted an easy money policy, with an accommodative stance and a sequence of six successive policy rate cuts, it has not managed to turn sentiment around. That could be the central bank's most challenging task in the months to come — both consumption demand and credit offtake will depend to a large extent on the return of confidence.

Corporate results and macro-economic growth have now been poor for the past five quarters. Corporate advisories and macro-estimates from investment banks and multilateral institutions suggest that there could be an uptick in the earnings pattern in the next six months, given a reasonable monsoon. Corporate earnings may receive a boost now, if only due to the low base effect. A few factors now favour investors looking at India. One is that global energy prices remain weak, limiting the outgo of forex on that account. Another positive is that inflation remains benign, giving the central bank room to ease monetary policy further if there is need. The economy continues to grow, albeit at a slower pace. Given a large economy like India, there will always be pockets of resilience and interesting investment plays for those who look hard enough. But investors would also like to see signs that the government is looking at a combination of tax code reforms and the simplifying of corporate regulations to encourage investment and consumption. Investors have had to hold their nerve through almost two years of lacklustre equity returns after the markets peaked in early 2018. The data indicates that most of them have kept faith with the markets despite all the bad news. That gives hope that Samvat 2076 would provide more joy than what Samvat 2075 did.

Now, the hard part

Stable policy must back the EoDB momentum

India has made creditable progress in the World Bank's Ease of Doing Business (EoDB) rankings, clocking in at number 63 in 2019 from 77 in 2018, and bettering its position on seven of the 10 parameters. The EoDB has been one index in which the National Democratic Alliance government has recorded consistent improvements. Since 2014, the country has jumped 79 notches up the rankings, a reflection of one of Prime Minister Narendra Modi's key initiatives. The principal drivers of this improvement has been the Insolvency and Bankruptcy Code, which saw India move up 56 ranks on the parameter "Resolving insolvency" between 2018 and 2019. Technology has also played its part, with the move towards e-filing of construction permits, property registration, and paying taxes accounting for improvements on these parameters. Taken together, these are impressive achievements and in that sense, India has earned its position on the list of "economies with the most notable improvements" for the third year in a row at number nine. The cautionary note, perhaps, is that it shares this listing with countries that can be scarcely described as open, liberal economies — Saudi Arabia, Bahrain, and Kuwait, all monarchies, Pakistan, a failed state, and China, a dictatorship.

The obvious anomaly in India's eye-catching EoDB performance is that little of this is reflected in growth and employment-accelerating investment. Stripped of reinvested and other capital — a definition that was introduced during the United Progressive Alliance — growth in foreign direct investment (FDI) has been anaemic at best, and in 2018-19 it actually shrank, albeit by a marginal 1 per cent. The data on industrial investment proposals recorded by the Secretariat of Industrial Assistance shows that the number of proposals and investment, though rising, is still to reach even the modest 2013 levels, an indication that investor confidence has never matched the buoyancy of the EoDB rankings. Exports have scarcely grown. Though the improvements in the disaggregate rankings are commendable, they are in, a sense, low-hanging fruit. Weaknesses on three EoDB parameters on which India has made no progress or done worse — enforcing contracts (163, no change), getting credit (22 to 25), protecting minority investors (7 to 13) — suggest themselves as the more difficult agendas that the government needs to tackle on a war footing. They reflect the serious flaws in India's judicial system and a crisis in the financial sector. Recapitalising zombie state-owned banks, merging poor and well-performing banks without detaching them from government interference, and proposing to amalgamate defunct public sector telecom companies do not reflect the kind of bold, reformist mindset that India had come to expect from this regime.

The mismatch between India's EoDB performance and economic growth is also the result of variables that are not captured by the index. Maverick economic policy must rank as the principal failing: The twin shocks from the 2016 demonetisation and the accelerated timetable for introducing a poorly designed goods and services tax in mid-2017 followed by rising protectionism are all part of the problem. The most recent example of sending, at the behest of a domestic lobby, investigatory letters to foreign-owned ecommerce majors Amazon and Flipkart for details of their festive season sales is unlikely to enhance investor confidence. In short, the government needs to look beyond the EoDB for sustained economic growth.

ILLUSTRATION BY BINAY SINHA

Opening bell for class-action suits

The Companies Act does not prescribe a maximum cap on the damages that may be awarded

CYRIL SHROFF & AMITA GUPTA KATRAGADDA

A steep sudden fall in share price can now trigger much more than uncomfortable investor calls for the management of a listed company. Recent moves by the government have resulted in game-changing developments for the securities regime in India, making listed companies vulnerable to class-action lawsuits by investors on the back of big losses in share value.

The scope of issues that can attract a class action under Section 245 of the Companies Act, 2013, is fairly wide, and includes any matters pertaining to the conduct of management that is prejudicial to the interests of the company or its shareholders. A sudden stock price drop often links to a specific event, action or inaction by the company, and allows shareholders to quantify the loss suffered for compensation purposes. If the identified event is proven to result from a wrongful act or a breach in fiduciary responsibility or a lapse in the duty of care and loyalty for instance, it could result in significant monetary compensation payable by the listed company and its directors/auditors to investors. From international experience, the typical corporate actions that attract securities class litigation include misrepresentations in financial documents/prospectus (Facebook, Lyft, Alibaba and Wells Fargo), false forward-looking statements (Electronic Arts Inc.), accounting standards violations (Petrobas, Enron and WorldCom), internal control weaknesses (Costco and LendingClub), misleading/delayed disclosures (Fiat Chrysler and Yahoo), related-party transactions (Altisource Portfolio Solutions), regulatory issues (Danske Bank) and acquisition/merger integration issues (DaimlerChrysler, AOL Time Warner and Bank of America).

An application for a class action must be made by the requisite number of shareholders/depositors before the National Company Law Tribunal (NCLT). In May this year, the government notified the regulations whereby a "class" for listed companies can now be formed by the lesser of: (A) 2 per cent of the issued share capital, (B) 100 shareholders, or (C) 5 per cent of the total number of shareholders. The government is also reportedly considering a proposal to extend financial support to minority shareholders seeking to pursue class-action lawsuits. At the admission stage, the NCLT will review the application to determine whether the action requires a "class action" and whether the applicants are acting in good faith. If the action is admitted, the NCLT will order a public notice to be issued to all shareholders, after which the matter will be heard on merits. A shareholder, who forms part of a "class", would need to seek the permission of the NCLT to opt out of the proceedings.

We expect that certain procedural and substantive legal defences will be frequent fliers in class actions. The procedural side includes defences that the minimum representation of members is not met, the applicant is not acting in good faith, or that the cause of action is personal and not of a "class". A frivolous or vexatious suit could attract a penalty on the applicant which could extend to up to ₹1 lakh. On the substantive defences, arguments and evidence would need to demonstrate that the corporate action was not unlawful, wrongful or prejudicial, or entitled to the benefit of the defence of the "business judgement rule". The individual liability of directors may be defended based on the lack of knowledge, recorded dissent, satisfaction of the duty of care, loyalty and diligence, etc. Often, the company's defence may seek to ringfence the wrongful act to a single "rogue" actor by demonstrating that the internal controls of the company were otherwise robust. A key point to note is that "market practice" or "everyone does it" is unlikely to hold water as a valid defence. For instance, in an action in the United States in the matter of Vaalco Energy Inc., it was observed that "Just as 'all the other kids are doing it' wasn't a good argument for your mother, the idea that 175 other companies might have wacky provisions isn't a good argument for validating your provision".

The Companies Act does not prescribe a maximum cap on the damages that may be awarded. Given current Indian jurisprudence, it is unlikely that there will be punitive damages to the extent that have made class actions headline news in the United States, though we would have to wait and watch. While the liability of the company itself may be limited because of the nature of a body corporate, there are no obvious limitations on the liability of the directors, auditors and experts.

The US securities holders of Satyam received a settlement of $125 million pursuant to a class action in the US. In contrast, the Indian shareholders received no compensation and were only left to observe the regulatory actions taken against the company and its auditors. This situation will likely not repeat. Investors now have rights of restitution that will change the principal-agent relationship, as well as the power balance between shareholders and management. Going forward, we also expect that there will be an activist arbitrage that will come in, that will become a much more sophisticated and essential product in India, and that governance matters and liability concerns will take up more mind space for directors, management and auditors.

Cyril Shroff is managing partner of Cyril Amarchand Mangaldas. Amita Gupta Katragadda is a partner in the firm's disputes, governance and policy practice

Why govt is responsible for PMC

IRRATIONAL CHOICE

DEBASHIS BASU

It is a month now that the Reserve Bank of India (RBI) has suspended the fraud-ridden normal functioning of the Punjab and Maharashtra Cooperative (PMC) Bank. The RBI has appointed an administrator who, with all due respect to his other skills, has not run a bank, far less a bank that has been hit by a massive fraud. His job, assisted by three others bankers, is not to find a solution, but follow procedure. If the past is any guide, this will turn PMC Bank into a zombie bank, neither living, nor dead.

I gather that some ₹27 crore a month is needed, just to keep PMC Bank's 137 branches open across six states while the administrator and his advisors move slowly through the thicket of rules and procedures. The cost of its zombie-like existence, nearly ₹1 crore a day, will steadily eat up depositors' money. The longer the bank remains in this state, the more money it loses, because the core banking business of lending money has been halted.

This is what happens every time a cooperative bank is put "under directions" from the RBI. Kapol Cooperative Bank became a zombie bank on March 31, 2017, with a withdrawal cap set at ₹3,000 per depositor. The bank will remain "under directions" till January 2020. Rupee Cooperative Bank became a zombie bank on February 22, 2013. The depositors don't have access to their money but the staff gets its salary. The RBI has allowed the bank to release some money for exceptional cases.

The 103-year-old CKP Cooperative Bank was put under directions on May 2, 2012. The RBI-appointed board of administrators ran the bank until April 2015, after which a new board was elected. The depositors converted a part of their money into share capital in 2015. The bank is still "under directions" after several extensions over the years. Every few months more zombie banks join the list: The Needs of Life Cooperative Bank, Kolhapur-based Youth Development Cooperative Bank, Shivam Sahakari Bank of Ichalkaranji, The City Cooperative Bank, Mumbai, Maratha Sahakari Bank, Karad Janata Sahakari Bank all "under directions" of the RBI.

Why is the government responsible?

This process harms depositors, the stakeholders who matter the most. They are victims of fraud, committed by politicians in most cases; in PMC Bank's case it was a business house. But who is responsible for allowing rampant crony capitalism, fraud and political influence to destroy the savings of millions of depositors in one cooperative bank after another? It is the government (Ministry of Finance or MoF, and the RBI). Consider this:

- The government has overtly encouraged the growth of cooperative banks. At no time has it made customers aware of any additional risk in such banks, over scheduled commercial banks.
- On an average one cooperative bank fails every few months. The RBI has not learnt any lessons from previous failures and has not taken any steps to prevent cooperative bank failures.
- The RBI never made customers aware that it was not regulating them in the same manner as other commercial banks.
- Cooperative banks were allowed to provide many of the services that commercial banks provide. PMC Bank, for instance, was permitted to open non-resident accounts and have foreign currency dealings. It could give bank guarantees, enter into forward contracts, and issue credit cards. All these permissions came from the RBI, presumably after adequate due diligence.
- In permitting specific cooperative banks to issue credit cards or sell mutual funds and insurance, the RBI signalled that they are fit and proper.
- By allowing bank interest to be paid without tax-deducted at source, the MoF encouraged depositors with lower income (below the minimum taxable total income) to invest in fixed deposits of such banks. They were naturally keen to avoid the trouble of filing tax returns and then claiming refunds.
- The revolving door between the RBI's urban banks department and advisory positions at cooperative banks is scandalous. Senior RBI officials who are sitting on critical information about shady cooperative banks become advisors to the same banks after retirement. Why, senior RBI officials are even gracing the boards of large crooked finance companies.
- For the past 25 years, every single payout of deposit insurance has been to cooperative banks while the bulk of the premium is from scheduled commercial banks. Both the MoF and the RBI have known how cooperative banks work and yet have done nothing about it.

These are only a few of important issues; lack of space prevents me from going into more. I am also quite struck by how callous the RBI has been in handling a failed bank. If a bank has intangible assets, it can be a takeover target. If so, it needs to be treated as a going concern with strategies that are appropriate for it. Instead of a retired central banker, it should be led by someone with deal-making skills that lead to takeover of assets or mergers. If it doesn't have such assets, it is a gone concern. Such banks need a hardcore banker who can call back the loans, salvage what he can, liquidate investments, pay back the depositors and shut down the bank. In either case, speed and direction is the key. But both MoF and the RBI remain apathetic. They would rather convert all failed cooperative banks into zombie banks. This is another reason why they should take full responsibility for their inaction and compensate the depositors.

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

Timothy Egan makes room for the Holy Spirit

BOOK REVIEW

MATTHEW THOMAS

If you're looking for something to believe in, you could do worse than Timothy Egan's particular blend of intelligence and empathy. In his ninth book, *A Pilgrimage to Eternity*, this self-described "lapsed but listening" Irish Catholic makes the 1,200-mile journey from Canterbury to Rome along the Via Francigena "on foot, on two wheels, four wheels, or train — so long as I stay on the ground," as he attempts to decide what he believes. If this book doesn't quite settle the question of belief for you, it will at least fortify your faith in scrupulous reporting and captivating storytelling.

Egan was educated by Jesuits and is a "skeptic by profession." He says he has arrived at a point in life where he is "no longer comfortable in the squishy middle" and so he undertakes this journey willing to be led to deeper belief. He writes, "Until atheism can tell a story, it will always have trouble packing a house."

But this isn't just a book about religion: It's also one about family. Egan is visited in his travels by his son, his daughter and, finally, for the last leg, his wife. He writes of how the two of them tried to expose their children to the basics of major religions and then "let the free market of ideas settle the debate as they thought it through." Now full-fledged adults, Egan's children have "a reasonable person's skepticism toward the supernatural claims of religion." Egan expresses some misgivings about his own flexibility as a parent, wanting his children "not to foreclose on the idea that a great faith, though flawed, can contain great truths."

His journey can also be enjoyed as a travelogue, complete with the kinds of absurdities that happen on any long trip. For instance, Egan learns that *Canterbury Tales* is not sold at Canterbury Cathedral; the book is too bawdy. When he arrives at the Abbey of St. Paul in Wisques, Egan must pass an amusing entrance exam. In a series of rapid-fire questions, the abbot asks, "How are things in America?"

Egan answers, "Troubled."

"Why is that?"

"Trump."

"What's wrong with him?"

"Everything."

"I'll show you to your room," the abbot says, satisfied.

Then there are the meals — many good, some spartan. And the mishaps: Egan doesn't properly tape his toes in the Alps and carries on, blistered and mangled, until his discomfort finally forces him into a car. At this point, the reader shares his sense of relief and defeat.

Along the way, Egan sets a goal for himself: To get enough stamps in his pilgrim passport to earn a special seal from the Vatican at the end of the journey. Considerable energy builds around the lengths he goes to to get those stamps. When he finally lands the hard-won certificate, he says: "It's official. I know how the Scarecrow felt when he got his brain."

"A Pilgrimage to Eternity" is also a stunningly comprehensive history of both Christianity and Western Europe. It's all here: from St. Maurice, "believed to be 'the first black saint'" (wrote Henry Louis Gates Jr.), and the 1,500-year-long uninterrupted prayer at the abbey named for him; to the 1518 Treaty of London forever outlawing war between Christians (it lasted "barely two years"); to Mencken on Puritanism: "The haunting fear that someone, somewhere may be happy." In fact, there's so much history that the plot can sometimes feel like an excuse to get the background in, though one hardly complains; Egan is so well informed, he starts to seem like the world's greatest tour guide. You follow along as much to hear him talk as to see the sights. It feels as if there's nothing he hasn't digested for the reader, and his extraordinary reliability is reminiscent of that of the monks he describes so evocatively throughout the book.

Egan doesn't shy away from contentious subjects. He calls for more women in the church's hierarchy. "The desire among women to be a guiding part of this faith is great," he writes. "There are more than 50 per cent more nuns and sisters in the world than priests." He's sick of the church's censorious attitude about sex — little basis for which can be found in Jesus' teachings — and harbours a healthy skepticism about Mary's perpetual virginity and Jesus' celibacy. He sees misogyny in this history, and in the revisionist denigration of Mary Magdalene, and traces this thread from St. Paul — an "early celibate" — to SS. Jerome and Augustine, who preached celibacy after long careers of debauchery, and to St. Benedict, who "feared sex so much that whenever he was aroused he threw himself into a patch of nettles or a bed of thorns." Of the 1968 Vatican encyclical against birth control, Egan writes that it "is almost universally ignored by Western Catholics — and has little basis in the philosophy of Christ."

Egan also turns a critical eye on those who treat refugees poorly. For instance, he describes how the police in St.-Omer, France, "fired tear gas at volunteers" who were distributing food and clothing to refugees. Representatives of Secours Catholique, the charity behind the effort, pleaded, "Didn't Christ say we have an obligation to help 'the least of these brothers of mine'?" The authorities' response: Such assistance would only encourage the refugees to stay. Egan writes, "A religion whose leaders once called on followers to wage savage war against faraway cities held by people of a different religion now fights to feed and protect forsaken members of that same faith from those same faraway cities."

After traveling through England, France and Switzerland, bedraggled and untouched by strangers, Egan finally receives a hug from a woman in Italy. She is no longer a Catholic — but she still asks Egan to say a prayer for her when he sees Pope Francis. "I like this pope," she says.

The woman would never know if Egan failed to utter that prayer, but he keeps his promise at a Mass at St. Peter's Basilica. *Of course he does*, you think at the end of this marvelous account. Reading it, you feel yourself in the presence of goodness — the kind you might simply have to decide to believe in.

PILGRIMAGE TO ETERNITY
From Canterbury to Rome in Search of a Faith
Timothy Egan
Viking; 384 pages; $28