Opinion

FRIDAY, NOVEMBER 22, 2019

SOURED AMERICAN DREAM

Union external affairs minister S Jaishankar

Issuing visas is the sovereign prerogative of other states. But at the same time, there are very important economic, business and social interests... tapping into the Indian talent pool is for our mutual benefit

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Half-measures will not fix the economy

The labour reforms are half-hearted, there is nothing on telecom & freeing PSUs needs more than cutting govt stake

WHILE THE GOVERNMENT seems eager to take measures to reboot the economy, the initiatives, in themselves, are not bold, game-changing, or even, as in the case of telecom, helpful. On the contrary, they seem half-hearted, as in the reworking of the Code on Industrial Relations Bill, 2019. Having talked of labour reforms for five years now, the government has done well to make it easier to allow industry to hire fixed-term employees, but little has been done to give industry a free hand to hire and fire easily.

At a time when no company is willing to add capacity, and if it is, it is more likely to use machines rather than labour, retrenchment rules should have been relaxed. Instead, the government has retained the threshold of 100 employees, above which companies will need to take prior approval from relevant authorities. While a provision for changing the 'number of employees' through a notification has been added, industry is unlikely to be convinced. For one, the government keeps tweaking rules, and this doesn't always help industry; how does industry know when the government will raise the threshold and to how much? If companies are to take on risks and invest large sums, they need to be reassured that the rules will be helpful, and will not change. In this instance, the government needed to have announced a higher threshold of at least 1,000. Also, rather than indicating it would support any flexibility in the labour laws offered by the state governments, it should have been more forthcoming, and amended the central law.

It is time the government stopped giving in to trade unions, and took a firm stance, whether on interest rates for small savings schemes, or the EPFO. Arun Jaitley's promise of allowing people to move from EPFO to NPS, and from ESI to insurance has still not been met after all these years. Even when it came to divesting a stake in Air India, the deal didn't take off because it was unwilling to retrench employees and allow AI to be merged with the acquiring airline. Unless it lets go—it wanted a 26% stake till the IPO—and gives the acquirer a free hand, a deal is unlikely. In this context, the complete privatisation of BPCL, Concor, and SCI is a good idea.

More transactions where the government exits the business altogether or, even if it holds on to a small stake, relinquishes management control, are needed. Selling big chunks of equity in PSUs to take its stake below 51% will fetch the government cash, but unless PSU managements are freed—from the 3Cs and L-1-itis—this achieves little.

Given that abnormally high government levies crippled telecom even before RJio came in with its ultra-low prices, and how the ₹1.3 lakh crore AGR burden would have been much smaller had the government scrapped licence fee/SUC in 2010—when it started auctioning spectrum at market prices—it needed to ease the pain for the two older telcos that are still surviving. All that it did, however, was to give a two-year moratorium on the deferred spectrum dues—₹11,476 crore for Airtel, and ₹23,920 crore for Vodafone Idea—when the two have to pay around ₹92,500 crore on account of the Supreme Court's AGR ruling.

> Govt did well to get the power to notify hire-fire rules, but there is no certainty about how quickly it will move & what freedom will be given. The promises of more flexibility in EPFO & ESI was not kept, and pvt coal mining is still not allowed

Apart from the issue of whether the government should have stepped in to prevent RJio's below-cost pricing, it needed to keep in mind that a Vodafone that is close to shutting down has, alone, invested close to $30 billion. Vodafone Idea now has a debt of ₹120,000 crore, and doesn't have the money to pay the AGR dues; if it becomes insolvent, this will also put thousands of people out of work. More important, after this, few MNCs would be willing to commit capital in India.

In fact, the government could turn out to be the bigger loser if Vodafone Idea shuts down as the telco owes the state over ₹150,000 crore by way of AGR and deferred spectrum dues. Also, with several telcos shutting shop, one on the brink of shutting down, and another not doing as well as in the past, industry revenues and demand for spectrum could fall even more than they have over the past few years. Nick Read, the global CEO for Vodafone was not wrong when he told the UK's *Sunday Telegraph* that the government needed to get its "boots off the industry's neck", and allow it to compete. Read may have taken back his comments, but global corporations will not forget them in a hurry.

For a government that was voted to power on the promise that it would rejuvenate industry and revive investment, the NDA's is a sorry track record. Not only have investments altogether collapsed, there are few signs these will come back soon. Biased regulation, half-baked policies, and tax-terrorism cannot create confidence. Far from unleashing animal spirits, the government is killing them.

At least consult on NRC

It is fraught with problems, so needs wider discussion

IT IS NOT clear how the Supreme Court will view another verification of citizens via the National Register of Citizens (NRC) in Assam since it has rejected the government's plea to review the last such exercise, but that is what home minister Amit Shah has said will happen; he told Parliament on Wednesday that an Assam NRC will happen along with a larger exercise for the entire country. But, regardless of what the SC says, the government needs to have a much wider consultation on what is proposed before it goes ahead. To begin with, it needs to have clarity on what it plans to do with those who are identified as non-citizens, or illegal immigrants. Around 19 lakh persons were said to be non-citizens when the NRC exercise took place in Assam, but a large number of them were Hindus, and not the Bangladeshi Muslims that most thought had infiltrated the state in very large numbers; that is why the BJP in Assam rejected the NRC exercise as incorrect. Are such people to be allowed to stay, but not to vote, or will they be deported to where they came from? And, what would happen if, say, Bangladesh refused to accept them; would they be held in prison-type camps? It is not just that the government needs to clearly spell out its plan for non-citizens, this cannot be a unilateral decision; other political parties, and the country's citizens need to be consulted on this separately.

There is also the fear that the move is predominantly aimed at removing Muslims since the Citizenship Amendment Bill promises to give citizenship to Hindu, Buddhist, Parsi, Sikh, and Christian refugees from neighbouring countries like Pakistan, Bangladesh, and Afghanistan. While the home minister on Wednesday assured Parliament that everyone would get a fair deal, irrespective of their religion, the fear of the NRC targeting Muslims has to be addressed, and resolved before the exercise is carried out; it cannot be left for later. Indeed, the NRC can quickly degenerate into a communal one, with non-BJP parties like Trinamool in West Bengal already opposing it. Interestingly, as *The Indian Express* pointed out, in a reply to a Lok Sabha question last year in December, Shah had said that there was no proposal to extend the NRC to states other than Assam.

And, how are the poor and unlettered, and migrants to go around proving their citizenship since, often enough, they don't have the documents required to prove citizenship such as birth certificates or bank/post-office accounts, and then records to prove their link with their parents/grandparents; the latter includes birth certificates, land documents, school-leaving certificates, ration cards etc. Since India has never had citizenship papers, millions will now have to go back to their villages to get these documents. It is possible that, despite all this, it may still be worth it—if, say, illegal immigrants who are not Hindu, Buddhist, Christian, Sikhs, or Parsi are responsible for terrorist activities; but, surely this needs debating? Apart from its usual problems, in recent years, India has been buffeted by the impact of demonetisation and, even though they were well-intentioned, GST, and RERA; why do we want to add the adverse impact of an all-India NRC to this?

TACKLING SLOWDOWN

ADDITIONAL LIQUIDITY COULD BE PUMPED INTO THE RURAL ECONOMY THROUGH THE MGNREGA SCHEME. WAGES COULD BE RAISED IN LINE WITH RESPECTIVE STATE MINIMUM WAGES

Ignite rural demand for quicker economic recovery

AJAY DUA

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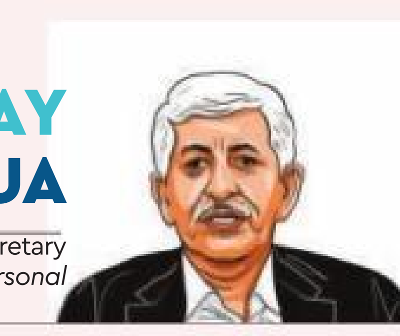
Views are personal



HASTENING ECONOMIC RECOVERY has now clearly taken centre stage, courtesy Union finance minister Nirmala Sitharaman. Since Independence Day 2019, the FM has periodically announced a slew of fiscal and financial measures aimed at revving up the economy. Most importantly, she has since willingly acknowledged the prevailing economic slowdown, and has explained, in various public settings, the purpose and scope of governmental interventions. Prior to this, authorities at the Centre, especially spokespersons of the ruling party and senior office holders of NITI Aayog, had gone overboard denying any economic deceleration, let alone discussing potential solutions and approaches to pull the economy out of the morass it has visibly slipped into.

While the relief measures are likely to have an impact in the long term, they seem unlikely to have any immediate effect. The tax related concessions, including lowering the corporate tax rates from 30% to 20%, and those for new companies from 25% to 15%, should result in greater investments, but only after they first cause greater economic activity. Increasing the depreciation rate from 15% to 30% pa for motor vehicles purchased during the current financial year is unlikely to lead to higher car sales until the primary causes of inventory build-up—rising vehicle-prices and unavailability of auto-finance options—are first addressed. Similarly, an alternative investment fund for troubled real estate projects, or moves to partially cover lenders of funds to struggling NBFCs, are both well-meaning attempts, but would not quickly boost demand or grow consumption—two factors primarily responsible for prevailing conditions.

With capacity utilisation in most manufacturing firms hovering around 70%, and projected to continue to move downwards with IIP and core industries' persistent decline, investment in industrial activity, especially in electrical power, remains stalled. Only an appreciable and sustained pick-up in demand—one not merely due to higher festive season sales—will see manufacturers, infrastructure developers, and service providers undertake expansion or diversification. Hopefully, the government and RBI would also have, in parallel, addressed a few of the banking sector's NPA-related woes.

What is of utmost necessity is building up aggregate demand. With poor competitiveness and a slowing world economy, Indian goods and services are not expected to win new overseas customers. In a domestic-driven economy like ours, the answers have to be found within, and the process of amelioration must begin in our vast rural geography.

There has been a fall of 8.8% in per capita rural spend between 2011-12 and 2017-18 as per a leaked NSO Consumption Expenditure Survey. Similarly, an Azim Premji University paper shows agricultural jobs falling by 27million, or 11.9%, in this period; and, rural youth seeking unskilled jobs in MGNREGA is increasing. In 2018-19, agriculture growth itself had declined to a measly 2%. This impacts the well-being of two-thirds of Indians, who live in rural areas. Declining sale of FMCGs, white goods, two wheelers, and tractors, clearly indicate lowering rural disposable incomes. Despite good rains this year, benefits to farmers would be marginal unless MSP for rabi crops is substantially raised.

Additional liquidity could be pumped into the rural economy through the tried and tested MGNREGA scheme, for which 8.5 crore job-seekers stand registered. Their wages could be raised in line with respective state minimum wages, and the restriction of giving work for 100 days annually temporarily raised to 200, with the limitation of one family member being employed also done away with. The allocated ₹60,000 crore is fast depleting, and with the re-orientation proposed here, substantial additional funds and job-sites are required.

Other available platforms are the successful Gram Sadak Yojana (rural roads) and the Awas Yojana (rural housing). Like MGNREGA, these wages for work and asset-building schemes are not the typical Keynesian payments for digging holes and filling them up. While basic connectivity to nearby marketplaces may have been provided to several villages under PMGSY, only low hanging fruit has been plucked. Covering all 6.5 lakh villages, and making roads truly all-weather and wide enough to carry the load of tractors without pushing two-wheeler users off the roads remains. Scope for building more houses under PMAY is also considerable.

> With poor competitiveness and a slowing world economy, Indian goods and services are not expected to win new overseas customers

PM KISAN, too, is capable of greater usage, and can have quick impact on farmers, tenants, and landless labourers. Hitherto, only the first instalment of ₹2,000 has reached 8 crore beneficiaries. The remaining two instalments, totalling ₹4,000, could be released simultaneously during the current calendar year; next year, the total should be more substantive, perhaps doubled to ₹12,000.

The MSP mechanism also needs a relook. Rather than just basic staples, the poor today seek more proteins and vitamins viz. pulses, vegetables, milk ,eggs, and fruits, and these need to be brought under MSP's purview. With greater assured irrigation facilities today, compared to 40 years ago when the scheme was introduced, farmers' cropping patterns have undergone changes; crops covered by the scheme need to be periodically reviewed to reflect contemporary preferences and priorities. More importantly, the government need not physically buy the produce—only paying the price differential between the assured and open market prices should suffice. The experience of the Bhavantar scheme in Madhya Pradesh could be used to devise the new programme.

The expensive PDS, too, needs drastic modifications. Instead of giving subsidised foodgrains to all 23 crore ration-card holders through a network of 5.4 lakh fair price shops, only those at the bottom end of the poverty line need be made eligible, and they too should be given the option between subsidised food and cash transfers. While effecting such structural reforms will need extensive stakeholder consultations, an immediate way to put more disposable income in the hands of the poor would be to enhance the subsidy as a one-time measure. Given last year's procurement, FCI warehouses are carrying twice the quantum needed as buffer to stabilise open market prices.

The foregoing measures entail greater government expenditure, and there are apprehensions of the fiscal deficit exceeding the projected 3.3%. Recent inflows from RBI and the planned strategic sale of stakes in PSUs such as BPCL and Concor, would only make up for the short-fall compared to the projected tax revenue. Some fiscal space could, however, come from the ~1.5% of GDP locked up as excess appropriation of the budget, and only the remaining would need deficit financing. Yet, this proposed The additional spend outline here remains warranted as the aim is to hasten the process of economic recovery, which, in turn, would make tax revenue more buoyant.

The recent urgency shown by the government to introduce measures for economic recovery are undoubtedly a welcome sign—being decisive, and going deeper by targeting rural demand is now the need of the hour.

A creditor-driven resolution

NCLT can no longer co-opt the role of the committee of creditors by mandating how proceeds should be distributed

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Views are personal

ON NOVEMBER 15, the Supreme Court (SC) paved the way for ArcelorMittal to take over Essar Steel India Limited (ESIL), by upholding the resolution plan originally approved by the committee of creditors (CoC) of ESIL. The National Company Law Appellate Tribunal (NCLAT) had earlier disregarded the scheme of distribution proposed under this resolution plan by ordering, instead, for a pro-rata distribution among creditors. By setting aside this order, the SC has put an end to a long-standing question regarding the extent to which courts can interfere with the decisions taken by the creditors of a corporate debtor.

To ensure a time-bound and efficient resolution of insolvency, the Insolvency and Bankruptcy Code (IBC) 2016, as originally enacted, had envisaged a limited role for the judiciary by giving financial creditors of a financially distressed firm the responsibility to decide whether to resolve its insolvency, and the manner of such resolution. To balance the interests of operational creditors, who are not included in the decision-making process, every resolution plan was required to ensure minimum protection for operational creditors (such that they at least get the amount that would be due to them if the firm went into liquidation).

Although generally the rates of recovery for operational creditors and financial creditors under a resolution plan have been at par, in certain cases, this safeguard was found to be inadequate as the liquidation value of the claims of operational creditors would be nil or insignificant, owing to their lower rank in the liquidation waterfall under IBC. Therefore, to bring parity between the rates of recovery of financial creditors and operational creditors, the NCLAT, in one case, ruled that similarly placed creditors should be treated similarly under a resolution plan. Although not originally envisaged under the Code, this principle of 'fair and equitable' treatment was primarily intended to ensure that a resolution plan does not discriminate against operational creditors. However, being a principle based on equity, it was unclear what exactly constituted a fair and equitable treatment of creditors. Crucially, the NCLAT applied this principle in the resolution plan submitted by ArcelorMittal for taking over ESIL by modifying the distribution scheme of the plan in such a manner that the rate of recovery for every creditor (apart from certain small creditors) was the same.

Curiously, the IBC itself provides a higher priority to unsecured financial creditors than to unsecured operational creditors under the liquidation waterfall. By mandating that every creditor be provided an identical rate of recovery under the resolution plan, the NCLAT essentially disregarded the commercial realities underlying the different types of credit arrangements, which could seriously impact the cost and availability of credit in the economy.

Aggrieved by the order of the NCLAT, the CoC of ESIL moved the SC for reinstating the distribution scheme that was originally proposed under the resolution plan. In the meantime, the provisions of the Code were swiftly amended to put an end to the uncertainty regarding the treatment of operational creditors under a resolution plan by increasing the minimum protection accorded to operational creditors, and expressly providing that this higher threshold would be considered as fair and equitable treatment.

Last week, the SC set aside the order of the NCLAT, holding that it would be contrary to the objective of the IBC to mandate equal treatment of all classes of creditors under a resolution plan as it would incentivise secured creditors to prefer liquidating the corporate debtor instead of resolving its insolvency. By upholding the improved protections provided to operational creditors under the recent amendments, the apex court finally laid down the precise scope of judicial review to be exercised by the adjudicating authority while approving a resolution plan. While emphasising "what to pay and how much to pay each class or sub-class of creditors" under a resolution plan is a purely commercial decision, to be taken solely by the CoC, it also laid down that the National Company Law Tribunal (NCLT) should ensure that the committee of creditors had considered the key features of the IBC while approving the resolution plan. Therefore, although the NCLT can no longer co-opt the role of the CoC by mandating how proceeds should be distributed under a plan, it has the necessary supervisory jurisdiction to ensure that the decisions of the CoC balance the interests of all stakeholders involved, and maximise the value of assets of the corporate debtor.

In practice, a resolution plan can now provide differential treatment to different classes of creditors so long as it is not contrary to the provisions and the objective of the IBC, and the plan distributes proceeds among operational creditors in accordance with the liquidation waterfall. This is indeed a welcome step as it increases the certainty of the insolvency resolution process under the IBC, and gives due primacy to the decision taken by the creditors of a corporate debtor. However, although the scope of judicial review is now sufficiently reduced, it remains to be seen to what extent the NCLT and NCLAT would exercise their "limited judicial review" while ascertaining whether the CoC had duly considered the key objectives of the IBC while choosing a resolution plan.

LETTERS TO THE EDITOR

On ease of termination of contract

It is important to focus on the aspect of job-quality and workforce security to promote a culture of business continuity. Amid widening skill gap, higher sub-contracting, has affected the overall revenue growth in white collared sectors. At a time when digitisation and automation is the emerging norm, the economy counts on organic growth in IT sectors for viable employment prospects. Profitability and effective capacity utilisation appear to be a challenge. Management of operating costs is needed, to boost margins and retain workforce on a long-term basis, that too when hiring and training expenses remain relatively high and demand for sophisticated services is fairly subdued. Regulators ought to ensure that corporates establish a robust business-strategy, implement lean-margin projects which require niche-skills and attract top-talent, adopt agile business-practices to remain cost-effective and generate greater value for stakeholders, instead of resorting to a hire-and-fire model. Despite a favourable export-situation and a potential to offer surplus on account of a lower interest rate, rising uncertainty due to lower utilisation of resources has impacted the overall quality. Firms ought to develop a greater risk appetite and world class infrastructure to remain competitive, as income is stagnating. Enterprises must focus on CRM, increase domestic employment prospects by promoting startups, and deliver defect-free and innovative solutions to preserve the existing client-base and improve head count and volume-based revenues in the business-ecosystem.

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WhatsApp: What happened?

Mobile phone OS is far from secure. The hardware we carry around is dangerously capable of being used to spy on us. That has happened in India. A private cyberarms manufacturer in Israel, NSO, sells a weapon to governments that compromises smartphones. Taking advantage of a fault in the WhatsApp smartphone apps distributed by Facebook, NSO made it possible for buyers of its weapon to take over any phone

INDIA IS WITNESSING a massive cyberattack against civilians. The civilians whose lives have been attacked include prominent rights advocates, politicians and journalists. It is, in short, a cyberattack upon individuals who incarnate democracy and the rule of law. Three points are salient: we are given to believe that this cyberattack comes from our own executive government; the tools used are part of an international trade in cyberweapons that governments including ours permit, encourage and fund; and, most importantly, under Indian law all of this is perfectly legal. As citizens, we are responsible for understanding and acting on these realities. If we fail to safeguard our future by legislating now, we will be responsible for losing our democracy.

Mobile phone operating software is far from satisfactorily secure. The hardware we carry around and are proud of is dangerously capable of being used to spy on us. It contains microphones, cameras and sensors more various and densely packed, gram for gram, than the most sophisticated spy satellites in orbit. So if our software is compromised, our smartphones turn into the most dangerous digital weapons possible. Now the same weapons that nations might use to spy on one another's military, diplomatic and political officials are turned against civil society, judicial and legal advocacy organisations. Their independent digital defence capabilities are effectively nil: they depend on what the phone manufacturers, platform companies and app programmers do. They buy and use the products, and if those products are defective their individual lives and those of their families are at risk. Because they are the working fabric of democracy and the rule of law, our free society can be decapitated by whoever controls the software.

That has happened in India right now because a private cyberarms manufacturer in Israel, called NSO, sells a weapon to governments that compromises smartphones. Taking advantage of a fault in the WhatsApp smartphone apps distributed by Facebook, NSO made it possible for buyers of its weapon to take over any phone completely—just by sending a single message or call to any chosen recipient, no matter what the recipient did with that message.

> **We need to harden our societal defence against cyberattacks. We must legislate to regulate behaviour collection by telcos, platform companies**

This is a fatal technical product defect that Facebook imposed on its users. In India, we have become overnight massively dependent on WhatsApp. That endangered society as a whole—not just all prominent individuals. It is right for Facebook to do both some explaining about precisely what went wrong and some significant apologising. But instead it has sued NSO, trying to shift all responsibility to the weapons manufacturer and away from itself. It will fix the problem that was exploited, and declare itself outraged and innocent. The law will not interfere with that charade of immunity.

This particular weapons manufacturer may shut down. But the international trade in cyberweapons will not be interrupted or inconvenienced. The people of the world want technology that increases their safety and protects their privacy. Governments want to have access to anyone's mind and behaviour in real time, and to use big data tools to scrutinise and predict any segment of society, large or small, they choose. Platform companies want to collect all the information about everybody, by offering them "free" basic services like email and social sharing in return for comprehensively collecting all their behaviour using the spy-satellite capabilities of their smartphones. They will use this behavioural data about everybody to make unimaginable amounts of money by selling advertising. Cyberweapons manufacturers can create software that will allow government to have what it wants and keep people from even knowing that what they want has been destroyed. The platform companies just have to keep making money by collecting everything and not preventing governments from using cyberweapons to destroy freedom.

In self-defence, democracies have to use the rule of law to break up this system. But our law contains no protections whatever against what is happening. The government is not legally prevented from using cyberweapons against civilians in this manner. The law governing surveillance as laid down in the Indian Telegraph Act, Information Technology Act, Rules framed under these Acts, Code of Criminal Procedure 1973 and service licences granted by the Department of Telecommunications to communications service providers—including but not limited to the Unified Access Service Licence, Internet Service Licence and Unified Licence all make it legally possible for the government to carry out surveillance.

There are no means of determining the extent and rigour with which these laws are observed in practice, since all of India's communications surveillance is conducted within an extremely closed environment with no transparency or independent oversight. The concerned enabling Acts and Rules already stipulate the observance of strict confidentiality in the surveillance process, thereby significantly limiting the amount of information that is available to the general public. Government authorities routinely assure citizens that surveillance is conducted only in accordance with law, yet this claim is questionable. That is why it does not matter what political party is in power.

On the contrary, instead of using Rule of Law to prevent the use of such cyberweapons, government of India continues to pressure Facebook to undermine the strong end-to-end encryption in WhatsApp that interferes with their broader ambitions to listen to everything, everywhere, all the time. They still have to target individual smartphones to gain complete access to all the calls and messages. But if governments could attack all WhatsApp messages and all other communications simultaneously by breaking encryption, big data despotism could attack people's freedom wholesale. That way North Korean totalitarianism could be scaled up to work in China. Or India.

We are the democracy most vulnerable to this form of government war on freedom, and we are legally undefended. We need legislation immediately recognising the constitutional situation and providing for the defence of our freedom at each step in the cycle of cyberwarfare being waged against it.

The constitutional principle is that the government is responsible for protecting us against spying on the people, wholesale or retail, by outsiders, and must subject its own domestic digital surveillance to the Rule of Law. The first part means that we need laws against the cyberweapons trade and product liability law. Such laws should ensure that platform companies pay for their negligence in pursuing their own business when they allow cyberattacks on their customers because of design and construction defects in their products. The second part means that we need legislation requiring the government to justify its use of public money to purchase cyberweapons that will be used against citizens. Such legislations should subject all such uses to judicial oversight to verify the legitimate national security interests involved.

We also need to harden our societal defence against such attacks. We must legislate to regulate behaviour collection by the platform companies and telcos. We need laws protecting individuals against market practices that over-collect behaviour data and overempower a few companies that concentrate such data on their platforms. This cannot be fixed by a simplified notice and consent or data protection; we need people protection laws.

Only such legal steps at all levels of the system that is failing us will ensure that the current controversy results in effective defence of freedom. No one should underestimate the seriousness of the threat to democracy or what is at stake.

UNPAID DIVIDEND ACCOUNTS

Return benefits for India Inc

SUBRAMANIAM R IYER

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Balances in unpaid dividend accounts may be treated as savings accounts

THE ONLY REFERENCE to the term "dividend" in the Companies Act 2013 is perhaps in the Section 2(35), which states that the dividend includes any interim dividend. In general terms, the word "dividend" refers to the distribution of profits of a company to its shareholders.

A company usually distributes part of the profits, as deemed appropriate by the Board of Directors, to its shareholders. A distribution made in the course of the financial year is referred to as "interim dividend" while a dividend paid after closing of accounts of a financial year and approval by the shareholders is referred to as "final dividend".

Section 123 of this Act deals with the process of declaration of dividend, including transfer to a separate bank account of the amount of dividend payable. The company issues dividend warrants and posts the same to each shareholder who must deposit the instruments in their bank account to receive the payment. In the case of demat shares, the transfer of funds happens electronically to the designated accounts of the shareholders.

Section 124 of the Act deals with the unpaid dividend account. The law mandates that each company shall, within seven days of the date of expiry of a time period of 30 days from the date of declaration of the dividend, transfer unpaid dividend to a separate account. In addition, various other rules and procedures are defined.

Usually, companies open a separate bank account for each dividend payout into which the exact amount of dividend declared/payable is transferred. All these accounts with banks are current accounts (non-interest bearing).

Dividends remain unpaid for a variety of reasons, including death of original holder (it can take years for getting the shares transferred to the heirs as per the cumbersome processes followed even for the smallest holdings), change of address, incorrect bank details, etc, to name a few.

> **Dividends remain unpaid for many reasons, including death of original holder, change of address, incorrect bank details, etc**

Banks do not permit companies to retain unpaid dividends in fixed deposits. The amount thus outstanding in the unpaid dividend accounts, which may aggregate into hundreds of crores in rupee terms, at the national level, are earning no interest for the companies that have declared and paid dividends. In fact, the funds belonging to the public are lying idle and are only benefiting bankers who enjoy a free float on these sums.

A via media for this situation could be that the balances in unpaid dividend accounts are treated as savings bank accounts, which will enable corporates and hence the shareholding public to earn some returns on these balances while retaining the liquidity required at the bank's end to pay any claims that are received from members. This would be akin to cheques issued by individuals maintaining savings accounts with banks.

As it is, a dividend has a history of receiving the proverbial "step-motherly treatment," and is now subject to tax three times. First it is taxed as profits in the hands of the company, second by the corporates having to pay a substantial percentage of the dividend payout as dividend distribution tax, and third in the hands of the shareholders in excess of the prescribed limits.

It is time that this process is revisited to examine how to generate income for the shareholders of companies from these non-interest-bearing amounts lying in current accounts. RBI, SEBI, MCA should be requested to jointly formulate a scheme that balances the need to give some returns to the corporates while maintaining the liquidity in the account to pay claims immediately.

A good policy on unpaid dividend account balances will definitely "pay dividends" to all the stakeholders, i.e. the companies, shareholders and bankers.

REGIONAL CAFE: TAMIL NADU

How Lotte aims to expand in India

Sensing opportunities in the confectionery business, the South Korean major aims to double its presence in India

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LOTTE CORPORATION, South Korea's fifth-largest business group, decided to enter India sometime early last decade. The opportunity presented itself when it picked up Chennai-headquartered Murugappa Group's confectionery business, Parry's Confectionery Limited (PCL), in 2004. Lotte, which is a huge conglomerate, started as a confectionery company.

Milan Wahi, MD, Lotte India, says, "South Korean auto major Hyundai had already entered the Indian market, and had set up a manufacturing unit in Chennai. There was already a sizeable South Korean population in the city, and it made Lotte's choice of location easier."

However, Lotte did not enter the Indian market with a big bang. "We took a few years to understand the business," adds Wahi. Lotte had to choose the slow and steady path as the subsidiaries are only given seed money and are expected to stand on their own feet.

While it was studying the market, Lotte India decided to launch the Choco Pie in India, which turned out to be a good decision. Until 2014, the company was importing and selling the product. "There was a good response for the Choco Pie. It's a unique product, a snack consisting of two layers of biscuits with marshmallow filling covered by chocolate," says Wahi. Lotto decided to go in for manufacturing the Choco Pie locally.

The Choco Pie was adapted to Indian conditions; it's a vegetarian product. Outside India, animal extracts are used. The chocolate quality was also modified to suit Indian weather. No preservatives are added. Lotte had a confectionery factory in Nellikkuppam, Tamil Nadu, when it acquired PCL. A state-of-the-art new factory was built in 2009 to manufacture the Choco Pie and other products. "We had to raise resources ourselves," says Wahi.

The Choco Pie was originally positioned as a snack for the children. Mothers were targeted. It proved to be very popular and children loved it; soon, it became popular across age groups. In fact, a research done in 2012 showed that, apart from children, young adults and old people liked it. "It wasn't too chocolaty, and we repositioned the product for the entire family. Our advertising says, take a pause to have Choco Pie," says Wahi.

By 2014, the factory was working to full capacity. Sales were booming in the North and the East. "We decided to open another factory in Rohtak, Haryana, which is one-and-a-half times larger than the Chennai factory. Recent research shows that we can target everybody for the Choco Pie. The rural market is good, too. The export market is also growing. We export to the Middle East and South Asia."

Lotto India has a turnover of ₹300 crore. It is a profitable operation. "We have paid back 70% of the loans. We can think of expansion and aggressive marketing," says Wahi. The company has decided to relaunch the Coffy Bite, one of PCL's most successful brands launched 32 years ago. The Coffy Bite had lost out to Kopiko from Indonesia, in the many years of neglect.

Research showed that the Coffy Bite still remains iconic for the 40-plus age group. "Seeing the nostalgic pull the brand enjoys, we have decided to re-launch the Coffy Bite nationwide in a refreshing manner in order to stay relevant and appeal to the current world," adds Wahi. Its Coffee vs Toffee advertising campaign was quite popular. "Tastes have changed. We are slightly modifying the product, making it softer. Packaging has undergone a change, too. But the campaign's focus will be the argument. The newly coined 'Coffier or Toffier' campaign will replace the old one. The Coffy Bite will be introduced in the South first, and we will see how it goes."

Wahi says that now Lotte India has five brands (Choco Pie, Eclairs, Coffy Bite, Lacto King and Caramilk), and each one is powerful on its own. However, Lotte will have to work really hard to expand its presence. Confectionery market in the country is huge, amounting to ₹1,00,000 crore, including gums. The top-three players are Parle, ITC and Perfetti. They spend a lot on brand building, which Lotte had not been able to match till now.

There is also a lot of competition from the unorganised sector, which imports cheap machinery from China and rolls out toffees, sweets and sugar confectionery. "We have been hit by these local players as we can't offer 40-50% margins to the retailers. Lotte has been working on how to move the products to higher value."

In sugar confectionery, the margins are wafer thin. "We have created ₹5 packs, and we get 50% of our income from these. But we are fighting all kinds of other products in this price range, such as biscuits. The ₹5 pack is a ₹40,000 crore market in India. We have to figure out how to make products that sell at ₹5. We also have to be in states like Uttar Pradesh, Bihar and Chhattisgarh, where sweets sell at 50 paise. The price points keep changing," says Wahi.

Lotte has also been hit by the slowdown in the economy. Wahi admits that there are challenges ahead. The company is relying on its strong distribution set-up, with 5 lakh outlets. "Confectionery won't go away in the country. There are huge opportunities. We will double our presence in the next 4-5 years," says Wahi.