Opinion

TUESDAY, JANUARY 7, 2020

PRESENT TENSE

Chief minister of West Bengal Mamata Banerjee

"I, too, was involved in student politics at one point in time, but never before have I witnessed this sort of an attack on students... Yesterday's was a fascist surgical strike on the student community"

JNU violence is a big blot, must jail the culprits fast

An SC-monitored probe will also help establish whether the JNU administration or the police were lax in their handling

GIVEN THE CONFLICTING views on the identity of the masked men who were allowed to unleash a reign of terror for several hours in the capital's Jawaharlal Nehru University (JNU), perhaps a fuller picture will only emerge after a full inquiry; did the police not surface for hours because the JNU authorities didn't let them in, and who switched off the street lights outside the campus which allowed the miscreants to escape? Home minister Amit Shah asked the Delhi police to conduct a full inquiry into the events on Sunday itself, but given the doubts being raised over the role of the police force itself, perhaps a Supreme Court-monitored probe is a better idea; the JNU authorities claim to have lodged police complaints for several days running before the incident and one video that has gone viral shows the police standing by while the masked goons—with hockey sticks etc—are walking by. It is possible that the video is a fake or is morphed or, like the grab of the policemen pouring some liquid into a bus at the Jamia Milia protests some weeks ago, it is being portrayed out of context; indeed, *India Today* had found that the bus the policeman had supposedly burned was safe and sound in the bus depot. A Supreme Court-monitored probe will have more credibility, so ideally the government should order one; more so since, with the Delhi election schedule just announced, the violence will be given all manner of political colour.

The JNU authorities' role also needs to be examined in detail since, even going by the press note released by the university, it is largely to blame for letting matters reach where they did. Indeed, the fact that a completely justified hike in hostel fees was portrayed as a right-wing government trying to suppress a left-liberal student body just shows how poorly things were handled by everyone including the central government; it didn't help that a few years ago, the JNU vice-chancellor made it clear that he thought the student body was anti-India when he asked the government to install a tank in the university so as to inculcate nationalism among the students. Sunday's note by JNU talks of how, on January 3, masked students stopped the registration for the new semester by disabling the university's servers; "a police complaint was filed immediately identifying the students", the note says. The university fixed the servers but, it says, the same thing happened the next day when the students "damaged the power supplies, broke the optical fibres and made the servers dysfunctional again"... the authorities filed a police complaint again and "for the past few days, the group of agitating students also closed the buildings of some Schools" and "during the last couple of weeks, these agitating students also vandalised the admin block and ransacked the office of the Vice Chancellor... police complaints were filed".

If, as the JNU authorities claim, the problem has been escalating for so long, what was the police doing all this while and, more important, if the police did little, why didn't the authorities escalate the matter; there is, till now, no convincing explanation from anyone of why the police never stopped the violence given how centrally located JNU is. While the probe, should it be ordered, will examine these two issues, the police need to trace the culprits and several media reports have linked some WhatsApp messages inciting violence to people associated with the ABVP. While the ABVP has officially denied any hand in the violence, some of those quizzed by the media said their phones had probably been misused to send out messages; the messages are a reality, whether they are linked to the ABVP or someone else is something the police have to investigate. What has happened is a blot on India's reputation and, apart from containing any further violence—and not just in JNU—the government owes it to the country to ensure an impartial inquiry.

Making the ailment chronic

Proposal to cap prices of non-scheduled drugs a bad idea

THE DECEMBER 2019 move to allow a one-time hike of 50% in the price-caps of 12 drugs—consisting of 21 drug formulations—in the essential list made it seem like the government was finally reading the signals from the market right, that high-API (active pharmaceutical ingredients) costs were pushing up costs for manufacturers, and thus, the price cap effectively would translate into poor availability of these drugs. Given how the draft pharmaceutical policy of 2017 recognised that price caps pushed up cheap imports—"price cap on drugs forced the manufacturers... to obtain the cheapest raw material with the basic minimum efficacy/quality"—at the cost of domestic API manufacturers, you would have imagined the NITI Aayog-headed Standing Committee on Affordable Medicines and Health Products (SACMHP) would steer India away from pharma price-policing. But, the government seems to be too reluctant to give up control—*The Indian Express* reports that the National Pharmaceutical Pricing Authority (NPPA), along with the department of pharmaceuticals, is finalising a proposal to limit the trade margins of non-scheduled drugs and medical devices that are not supposed to be under the price control. In practice, however, the government has moved to control prices of medical devices such as cardiac stents while non-scheduled medicines remain under a quasi-price-control regime, with yearly increase of their prices capped at 10%. The NPPA has also used the special powers under the Drugs (Price Control) order 2013 to slash ceiling prices of some non-scheduled drugs.

Given how political parties treat drug prices as a sensitive issue—in 2015, a standing committee of Parliament had recommended that most drugs should be brought under price control—the government will perhaps never see reason on the need to junk the price control regime. And, pain-balm "one-time" increases will likely be its preferred route to contain fallout. But, what it needs to realise is that price-controls are a bad idea, and by refusing to junk it—indeed, by seemingly willing to expand it further—it will make shortage and poor quality of drugs meant for the domestic market a chronic affliction. Apart from hitting domestic API manufacture hard, the price-control regime has also meant that Indian pharma production has become more export focussed, evident from the trend of a falling share of the domestic market in drug-company revenues since capping came into force. The Drugs (Price Control) Order 2013 provides for price-hikes, but only based on revisions in the WPI, without considering the actual cost of manufacturing such as the rising prices of APIs. So, even the relief from periodic hikes may not be timely. This will only be to the detriment of the patients—what good is affordability if there are not enough drugs to serve the demand, or, as bad, their efficacy is quite poor because quality has been shortchanged to keep them light on the pocket?

RightTURN

Isro is doing well by forging partnerships with telecom players to promote NAVIC

ALTHOUGH ROPING IN private players to build on native technology is not new to India—both Isro and NPCI have undertaken initiatives—the space agency is going one step further. A report in the *Economic Times* says Isro is trying to get Xiaomi on board to roll out its navigation technology, NAVIC. Isro has already made a deal with Qualcomm to create NAVIC-enabled chips, a tie-up with Xiaomi will ensure that Indian phones become NAVIC-enabled. Although most chips do come integrated with the American GPS, NAVIC-enabled phones would make India one of the few players offering it for commercial use. While Isro is building the technology for defence on its own, roping in private players will help expand its base much faster. Besides, it will popularise the technology, which will help scale it globally.

The Indian government also has a part to play in helping NAVIC succeed. While tie-ups will ensure that technology is available for start-ups and businesses to list and build upon this innovation, without the requisite infrastructure, this would not be possible. Take the case of Google Maps. While the service has been successful in India, it still encounters problems as the government does not allow Google to survey Indian areas. If NAVIC is allowed these capabilities, it will surpass Google in local transportation. Besides, it would also help the government in better delivery of public services and planning for infrastructure projects. By tracking traffic data, it will be better able to plan city infrastructure, and make cities and transportation smarter.

IMF PRESCRIPTION

GIVEN FURTHER MONETARY POLICY ACTION WILL DEPEND ON THE INFLATION RISK, IT MAY NOT BE OF MUCH HELP. BUT, AS IMF RECOMMENDS, REVENUE PROJECTIONS MUST BECOME MORE REALISTIC

Slowdown: Monetary policy to the rescue?

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Views are personal

THE ARTICLE IV Consultation document of the IMF released in December, is much more optimistic than the recent commentaries on Indian economy. This is partly due to its analysis of the slowdown of the Indian economy. The policy prescriptions are based on the data available until October, and do not include the estimates of the second quarter GDP. While noting that the first quarter growth, at 5%, was low, it expects growth to rebound in the remaining quarters on the presumption that investment and private consumption will firm up in the second half of the year. This is supposed to transpire due to the lagged effects of accommodative monetary policy, actions to facilitate its transmission, ensuring liquidity, greater clarity on corporate and environmental regulatory uncertainty, and additional support by the government to augment rural consumption through programmes like PM-Kisan.

The IMF report presents two scenarios for the future—one baseline and another with reforms. Under the former, growth is expected to accelerate to a medium term potential of 7.3% on continued commitment to inflation targeting, gradual macro-financial and structural reforms, including the lagged effect of earlier reforms such as implementation of the Goods and Services Tax (GST) and the Insolvency and Bankruptcy Code (IBC) as well as measures to liberalise FDI flows, and further improve the ease of doing business. In the second scenario, it recommends a package of reforms to boost inclusive growth which will help spur productivity and employment. The three pillars of reform are, (i) ongoing clean-up of bank balance sheets complemented by strengthening of PSB governance and regulation, and oversight of NBFCs, (ii) a fiscal consolidation anchored to reduce general government debt toward 60% of GDP as recommended by the FRBM Review Committee—this is to be achieved by increasing revenue productivity of the tax system by expanding the tax base, especially on personal incomes and rationalising subsidies to achieve expenditure compression—and (iii) reform of the markets to enhance labour market flexibility, formalising the economy, improving employment opportunities, enhancing competition and reducing the scope for corruption.

The IMF report states that the downside risks to growth can arise mainly from the inability to undertake structural reforms, shortfalls in revenue collections, slowness in cleaning up the balance sheets of the PSBs and corporates as assumed in the baseline scenario. Subdued credit growth arising from risk aversion from the banks and external factors like rising protectionism and the possibility of oil price increase are other factors. Even so, it appears, the IMF team did not foresee the sharp decline in the second quarter growth of GDP to 4.5%, the lowest in 26 quarters, and it won't be long before it allows a downward revision of growth for the year.

The report is clear in stating that the government should continue to pursue the medium-term fiscal consolidation towards reducing general government debt to 60% of GDP. It unequivocally states that fiscal stimulus should be avoided at the present juncture to reduce fiscal dominance which has led to financial repression. Besides, it recommends that immediate focus should be to make more realistic revenue projections, enhance fiscal transparency and make the budgetary coverage more comprehensive to avoid off-budget borrowings. It cautions that although the central government has adhered to the headline fiscal target and the states in the aggregate have, in fact, improved their fiscal position, the public sector borrowing including those of central and state government enterprises, and local governments has remained high.

Some of the downside risks reviewed in the IMF report have already been realised as the growth rate in the second quarter plunged to 4.5%. With both investment and private consumption as ratio of GDP, declining, and exports virtually stagnant, the only way to trigger a virtuous cycle of investment and growth, in the present juncture, may have to come from public investments. The cleaning up of the balance sheets of the banks and corporates has been a slow process and is still in the works. The important question is whether its recommendations on fiscal stimulus would have been any different if it were known that the growth in the first half of the fiscal would be just about 4.8%, and 5% for the whole year, as has been revised by the Reserve Bank of India.

> The IMF report is clear in stating that the government should continue to pursue the medium-term fiscal consolidation towards reducing general government debt to 60% of GDP

A clear reading of the report indicates that IMF is not likely to recommend any slippage in fiscal consolidation path even if it recognises the constraints pointed above. The report is categorical in stating that the "fiscal space is at risk" and there is no scope to provide fiscal stimulus at this juncture. The only concession it seems is that the Central government's extended deficit (including off-budget liabilities and financing from the NSSF) should be held constant at 5.4% of GDP. According to the report, the growth impetus should essentially come from monetary policy and structural reforms.

Considering that the space for further monetary policy actions depend on the inflation risk, and the unlikely immediate impact of both monetary policy and structural reforms, the prognosis is that we are not likely to see a quick turnaround, and returning to the medium-term potential growth rate of 7.3% is not likely. In fact, excluding public administration and defence, the first half of 2019-20 has seen the GVA growth of just 3% and without the fiscal stimulus, acceleration in the medium-term looks doubtful. Even the much promised strategic disinvestment has not been forthcoming. It is important that the government should speed up this process to accelerate public investment in the remaining months of the year. Perhaps, given the exceptionally subdued environment, some stimulus may be unavoidable.

Irrespective of whether it is decided to provide fiscal stimulus or not, its recommendations to make the revenue projections more realistic, and enhance budget transparency and budget coverage are noteworthy. It is important to clearly bring out the actual fiscal deficit and, taking that as the base, lay down a credible consolidation path to reduce debt. The experience shows that the government, on its own, does not seem to care for realism in projections nor bother about transparency and comprehensiveness in coverage. It is precisely for this reason that the time is opportune to think of an institutional monitoring mechanism by establishing an independent Fiscal Council reporting to the Parliament by amending the FRBM Act as recommended by the 14th Finance Commission. Besides monitoring the progress in fiscal consolidation, the Council can report to the Parliament on three important issues namely, evaluating the realism of the forecasts, bring out off-budget transactions to ensure greater transparency, and realistically estimating cost of various schemes and programmes announced by the government from time to time.

Continuing troubles with growth

The rupee has fallen sharply and is, once again, threatening ₹72 to the dollar. There is just one more support (at ₹73), which, if taken out, could open up another all-time low

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Views are personal

WITH GOLD AT its highest level since 2013 and oil prices rising, and threatening more, are we on the brink of a structural shift in the easy risk mood that has been driving global markets? Significantly, the volume of global government bonds that are "earning" negative yields has been falling over the past couple of months—from an incomprehensible $17 trillion to under $11 trillion now. While that is still a mind-boggling number, it is beginning to appear that there is a shift in sentiment, with even central banks recognising that things can't go on like this.

The Swedish central bank, which was the first to issue bonds at negative yields, has abruptly brought their new issue yields up to zero. Since, this is neither in response to a potential inflation fear nor are there any signs of a significant change in growth, it would appear that they have come to recognise that negative interest rates are, on balance, negative for the economy. Savers are suffering, and investors are not anywhere near charged up enough to utilise these mouthwatering borrowing rates.

Could global bond markets have reached a saturation point?

Closer to home, all of this is beginning to impact the rupee. While equity inflows have been robust (if tapering a bit in December), debt inflows have been negative for the past two months, indicating that investors are getting a little more risk conscious about India. Perhaps, as a result of the more or less continuous demonstrations against the government's policies.

The rupee has fallen sharply and is, once again, threatening ₹72 to the dollar. There is just one more support (at ₹73), which, if taken out, could open up another all-time low.

While on the one hand this would benefit exporters, it would certainly not be a positive for the economy, particularly considering the huge ECBs that have been raised so far this year—more than $30 billion between April and November, a jump of over 40% as compared to the same period in the previous year. Obviously, difficult domestic liquidity conditions multiplied by ultra-low global rates have driven more and more companies to take on more risk.

If, indeed, the rupee does tank, this would weaken the balance sheets of many companies and push more and more of them to get even more risk-averse, and the long dreamed of investment cycle will be further delayed.

Of course, if truth be told, expecting any kind of significant private investment in India today is a hemp-filled pipe dream. Irrespective of the financial environment (which is, in any case, somewhat dire), the primary criterion for any investment, whether greenfield or brownfield, is a belief in sound management of the business environment.

And, whatever his other attributes, nobody could credit Modi with having either an economic plan or a credible team with one. His entire approach to the economy, as to everything else, appears to be—I know what to do, so just suck it up.

Well, as he is finding out with the nation-wide protests, people are sick and tired of following his backward-looking path. While there have been a few (both anti and pro) politically driven rallies, the bulk of the protests have been spontaneous. My son, who till now has never shown any political inclinations, has (so far) been to two of them.

To profile him, he was born half Sindhi and half Punjabi; he celebrates Diwali with great joy, as also Holi and Christmas; he loves Ganpathi (even though he finds it difficult to be vegetarian for two days) and he celebrates Ramzan Eid in his own way. With great discipline (more than mine), he doesn't drink alcohol during the holy month—quite a performance for a party boy. I guess the best way to describe him is that he is a modern Indian.

He told me that the protestors he met were both lower middle class—many of them conservative Muslims—and upper middle class Indians (like him) of various religious persuasions, all of whom are affronted by the threat to their belief of India. And all of them are looking to a modern future, which is certainly not what Modi-Shah are selling.

As a young cab driver from Uttar Pradesh told me the other day, "*Yeh kya Adityanath ko CM banaye hain. Mujhe uske jaise thodi hona hain? Mujhe Hrithik Roshan jaisa banna hain*".

This is the real India.

While corporate leaders (other than Rahul Bajaj) remain, perhaps understandably, unwilling to say anything, the *havaa* in the economy remains foul, and if we have to contend with a suddenly sharply lower rupee, things could get even worse. Perhaps, in a stroke of tragic poetry, Modi will end up presiding over India's return to a neo-Hindu rate of growth (of 3-3.5%).

More and more, I am beginning to believe that growth will remain handicapped till Modi leaves office.

LETTERS TO THE EDITOR

Mob attack at JNU

The brutal attacks on JNU students and teachers by masked goons armed with lethal weapons, in collusion with the JNU administration and Delhi police, appalled the public. The image of JNUSU president Aishe Ghosh bleeding profusely from a gash on her head was no advertisement for *Beti Bachao, Beti Padhao*. Like Banquo's ghost, the image of India's beti would haunt the ruling dispensation for years. It is futile to try to shift the blame to the left-leaning students when they were the victims of mob attack at the JNU. ABVP's grouse was that the left ruined the JNU campus and turned it into a Naxal citadel. The pre-planned cowardly attack on JNU students and teachers was a corollary to the manifest failure of the Hindutva forces to fight them ideologically. It was a sequel to the students' just protest against fee hike and their campaign to save the Constitution. Fracturing the skulls of young compatriots on a university campus with iron rods, albeit to the accompaniment of chants of *Bharat Mata Ki Jai* and *Jai Shri Ram*, cannot, by any stretch of the imagination, be glorified as an act of patriotism. But, for the imprimatur and tacit approval of the higher-ups in the university and the Modi government, the masked attackers would have been apprehended and not allowed to disburse and get off scot-free. It is frightening that state violence and state-sponsored violence are increasingly becoming the 'new normal' in New India. It is important to become aware that the rampage on JNU campus was just a foretaste of what was to come under the *Hindu Rashtra*.

— G David Milton, Maruthancode

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TATA-MISTRY NCLAT VERDICT

Raises more questions than it answers

The decision of the NCLAT vis-a-vis the conversion of the company being declared 'illegal' is likely to not stand good in law

ON DECEMBER 18, 2019, the National Company Law Appellate Tribunal (NCLAT) overturned not only the order of the NCLT in the matter but, through a broad exercise of powers under Section 242 of the Companies Act, 2013, declared the order passed by the RoC, MCA for conversion of Tata Sons from a public limited company to a private limited company as illegal.

A careful perusal of the order leads to the conclusion that, while delivering the judgment, the NCLAT failed to strike a 'just and proper' balance between the rights of the minority and the majority shareholders, which is the *sine qua non* of efficient corporate decision making. It has also missed an opportunity to address law relating to oppression vis-a-vis unfair prejudice, a concept under the Companies Act, 2013.

The removal of Cyrus Mistry, merely four years after his appointment in December 2012, was followed by one of the biggest showdowns in the corporate world in recent times. Minority shareholders of Tata Sons Limited, i.e., Cyrus Investments Private Limited and Sterling Investments Corporation Private Limited (jointly holding 18%), filed a Company Petition before the NCLT claiming the removal to be illegal, and alleged oppression and mismanagement in the conduct of affairs of Tata Sons by the Tata Trusts. The NCLT, Mumbai bench vide its order dated July 12, 2018, dismissed the Company Petition, denied all reliefs, and rejected all allegations. The grounds for such a dismissal appeared to be well within the set fundamentals of Indian corporate laws, whether it is the supremacy of Articles of Association or respecting corporate democracy.

In what was expected by this stage, an appeal was filed before NCLAT challenging the order passed by the NCLT. The NCLAT, however, passed an order in favour of Mistry. In its 172-page judgment, while reversing the order passed by NCLT, it made certain observations which are worthy of academic scrutiny. The ruling is bound to have far reaching consequences for corporate law and corporate governance.

Acts undertaken which were "prejudicial" and" oppressive": In one of the most contentious issues, the NCLAT observed that Article 121 of the AoA of Tata Sons was "prejudicial" and" oppressive" to the interest of minority shareholders. It provides that the majority decision of the board of directors should necessarily include an affirmative vote of the nominated directors of Tata Trusts. The NCLAT observed that Article 121 dilutes the rights of the minority shareholders to have a say, even if the decision taken is not in the best interest of the company and is harmful to the minority shareholders.

Such an interpretation undermines the sanctity of the fundamental principles of corporate law—the rule of the AoA for governance of a company. This position has been tested and upheld in a slew of judgments. The present order by the NCLAT seeks to casually overturns it, thus opening doors to ambiguity and uncertainty.

In addition to the above, the NCLAT, has quite interestingly, classified a press statement issued by Tata Sons Limited post the removal of Mistry as an "oppressive act". NCLAT concluded that the press statement was detrimental in nature. Change of an Executive Chairman of a holding company of over 100 entities, many of which by NCLAT's own observation are listed companies, surely requires clarity in its decision making. In what should have been viewed as a forthcoming act of transparency to avoid speculation has instead been classified as an act of oppression, merely because it sought to explain the rationale. This move may, in my view, discourage corporate houses from making any public statements unless compelled by law, which in turn may lead to speculation.

Use of Article 75 of AoA of Tata Sons: NCLAT has stated that Article 75 of the AoA is "prejudicial" and "oppressive" as it grants Tata Sons the right to transfer the 'ordinary shares' of any shareholder, including those of the minority shareholders, by passing a special resolution in the presence of nominated directors of Tata Trusts.

Notably, Article 75 was part of the Articles for several years and it appears that no objection was raised, until the initiation of the proceedings before the NCLT. Therefore, the NCLAT has erred in concluding that the rights under Article 75 are prejudicial and oppressive, since the articles of the company are agreed between the shareholders. Further, this also goes against the fundamental principles of contract law wherein a contract entered into with the consent of the shareholders (in the form of AoA) is upheld and given effect to by the courts instead of terming it unfair.

Conversion from Public to Private: The NCLAT, further held that the Company did not follow the prescribed procedure under Section 14 of the Companies Act 2013 and relied on a purportedly outdated 2013 notification. Additionally, the members of 'Tata Trust' who have an affirmative voting right over the majority decision of the board of directors, acted in a manner prejudicial to the minority members and the company itself.

However, there seems to be a lacuna in the reasoning here. The NCLAT presumes that the decision was prejudicial, however, it does not provide a reasoned order on this aspect, explaining the presence of any such prejudice. Further, the NCLAT has not applied any existing jurisprudence explaining how and under what circumstances the decisions are prejudicial.

The conversion decision is not prejudicial since the outcome of conversion process would have been the same, i.e., Tata Sons would become a private company, irrespective of the procedure adopted. Further, the substantive rights and interest of the minority members and the company are dependent on the outcome and not the procedure adopted to reach such an outcome. Therefore, assuming that indeed the correct procedure was not followed, considering that the NCLAT failed to explain as to how the procedure adopted did not evidently affect substantive rights of the minority member and the company, there is a risk that any procedural non-compliance maybe directly be classified as an act of oppression.

This decision of the Company must also be seen in light of the approval by the RoC for the conversion. The required documents were submitted to the RoC, which is the governing authority, and all the records were made accessible to the public. Further, the decision of the RoC was not challenged by any director or shareholder. Therefore, it is a fair consideration that had such a conversion been prejudicial to the minority members or the company itself, it would not have been permitted by the RoC, or challenged at the time of conversion by any of the directors. It is also clear that the Company was converted from a public company to a private company only after the approval of the RoC, and after giving due notice. Any procedural lacuna cannot be classified as an act of oppression especially when such a process bears the affirmation of the regulatory body. This contra observation of the NCLAT sets a dangerous precedent and a risk of virtually questioning every order passed by a the regulatory or the quasi-judicial authority.

The decision of the NCLAT vis-a-vis the conversion of the company being declared 'illegal' is likely to not stand good in law.

Reinstatement of Mistry as an Executive Chairman: Interestingly, the NCLAT ordered Mistry's reinstatement as an Executive Chairman even though the appellants had never sought this relief either before the tribunal or the appellate tribunal. The NCLAT appears to have clearly gone beyond the scope. In addition to the above, NCLAT declared in effect that the appointment of Chandrasekaran as the executive chairman illegal. Assuming that the NCLAT is correct in determining that the removal of Mistry was illegal, does not imply that the appointment of Chandrasekaran was illegal and void, unless it is established before the court that the procedure to be followed under the Companies Act for appointment of Chandrasekaran were not adhered. The NCLAT has failed to observe anywhere in its order that the appointment of Chandrasekaran was not in accordance with the procedure set out under the Companies Act and considering that due process was clearly followed, this order is not only without any basis but also fails to address as to what happens to all the acts carried out by Chandrasekaran.

It is hoped that the Hon'ble Supreme Court would put to bed the host of issues arising from the present order while also reinstating the fundamentals of corporate law. However, given the nature of the proceedings and the twists and surprises which keep springing in this saga, one can only wait and watch.

Article is an academic comment and should be not construed as an appreciation or criticism of the judgment.

PRIVATISATION EFFORTS

Air India plan may not take off

SATYENDRA PANDEY

Former head of strategy at GoAir. Views are personal

Failing privatisation, the only other option is to shut down Air India. Restructuring is highly unlikely

THE YEAR 2019 saw repeated proclamations on Air India disinvestment. Statements were made on the quality of the asset and that there would be several parties interested in acquiring the airline. The message seems to have changed now, failing privatisation a shutdown of the airline is inevitable.

Ironically, Air India is positioned in fastest growing aviation market globally and has a well-defined traffic niche. With a 13% domestic marketshare and a 19% international marketshare, it has a valuable slot and traffic rights portfolio along with an institutional expertise which it has gained over decades. Add to that membership in the Star Alliance. Yet, it has failed to leverage these advantages and has reached a stage where a turnaround simply cannot be effected.

Alarm bells should have been sounded after the failure to attract bidders in the first round. This did not happen. Rather there were new route announcements and arguments that "buyers must see beyond the balance sheet." The debt restructuring also did not quite help. While debt has indeed been halved by moving the balance to a special purpose vehicle (SPV) it is far too large to attract potential buyers. Add to this the contingent liabilities and the parties lined up to file Public Interest Litigations (PILs) will most certainly delay the integration or rationalisation of the asset.

While analysing past mistakes and fixing accountability is certainly warranted, it does nothing for investors. Because financial investors look for future claims on cash-flow while strategic investors will look for control. In the present scenario, neither is available.

The Indian carrier needs an investor that balances political and social expectations with financial feasibility. Failing that a shutdown of Air India is indeed inevitable

As expected, investor interest has been muted and, thus, the process of attracting bids is being done all over again with no clear strategy or back-up plans in case privatisation does not go through. This while the fleet still has aircraft sitting idle for want of parts; where cash-losses are increasing; and where the overall morale continues to be low.

A standalone restructuring at this time has become unviable. Because it will consume cash. To give an idea of just how much, balance sheet restructuring at this point will require anywhere between ₹10,000 to ₹14,000 crore, annually. This does not include the additional investment in fleet, product and network estimated conservatively at about ₹700 crore. Alongside this investment, to compete, Air India will further need to cut its costs by ₹10,000 crore annually.

And if the numbers weren't challenging enough, the airline requires motivation, management and cessation of control which has simply not happened. In terms of optics, a restructuring at this point will essentially indicate that the government has failed to privatise the entity. Going by the political atmosphere it will be yet another point that is taken up and amplified ten-fold. Which also begs the question, why such announcements are being made in the first place?

If one adheres to the narrative that failing privatisation the only other option is to shut down Air India, a restructuring does not seem to be on the cards. It does not help that there is a slowdown in growth. Consumption is on the decline, the rupee has depreciated at a compound annual rate of 5% over the last decade and the government is staring at a gross fiscal deficit as tax revenues are unable to cover planned expenditures. Against this backdrop, Air India continues to bleed with the the civil aviation minister himself indicating that losses are in the range of ₹20-26 crore a day.

A once prized asset sees itself at crossroads. It is calling out for white-knight investor with access to large amounts of patient capital and the wherewithal to swallow an acquisition of this size and complexity. An investor that balances political and social expectations with financial feasibility. Failing that a shutdown of Air India is indeed inevitable.

$5 TRILLION ECONOMY

Looking north-east for growth

The NE can be a major contributor to India's goal of a $5-tn economy

SANJEEV ROHILLA

CEO, NabFoundation, a Section 8 company floated by NABARD. Views are personal

THE CITIZENSHIP AMENDMENT Act actually made many sit up and look at India's map more closely to check out the North East Region (NER) for the first time ever. After all, this region with just about 4% of its total population has been on the social and political fringes of India's consciousness for the longest time. It took over two decades for the 'Look East Policy' announced in 1991 to graduate to 'Act East Policy' in 2014.

The NER development story is indeed nothing less than a jigsaw puzzle with constantly shifting angles. And yet, a smooth economic take-off by NER is central to India's moving closer to the $5-trillion-dream. Hydropower potential of nearly 50,000 MW, natural gas reserves of 190 billion cubic metres, coal reserves of over 900 million tonnes and oil reserves of over 500 million tonnes. Surrounded by five countries, NER shares a phenomenal international border of 5,182 kilometres, a rare proximity with a sky full of heady economic rewards. But this marathon has a more than fair share of handicaps to overcome.

The north eastern region continues to be a net importer of food grains even for its own consumption. Even with 33% of country's water resources, the region reels from acute water distress. Infrastructure indices are at abysmal levels. The complicated system of land ownership and its transfer impedes growth of enterprise. On the credit front, the 40% CD ratio has confounded NER for decades and the real reasons are not simply limited to an indifferent banking sector. They lie elsewhere: in hamlets with sparse populations located in deep valleys and mountains, patchy road network, poor governance, faulty network connectivity and power deficit.

The RBI's "Report on State Finances: A Study of Budgets 2017-18 And 2018-19" shows that visible fiscal pressures are emerging for NER states on the expenditure side, particularly on account of pay revisions and interest payments. Limited borrowing capacities and a limited supply of central funds raises bigger challenges. Revenue mobilisation remains the key to attaining the budgeted targets; but limited credit off-take and business opportunities mean that this is going to continue to haunt NER states for some time.

Thousands of farmers still can't access small ticket loans for poultry, dairy and piggery projects. With a less than 1% share of the total credit flow in India, sustained gaps in credit to lakhs of small and marginal farmers has haunted the entire region for decades. Of about 5,23,000 SHGs here just about 27,000 (5%) have been credit linked! The NABARD All India Rural Financial Inclusion Survey 2016-17 (NAFIS) revealed that all NER states except Arunachal Pradesh and Manipur have lower indebtedness against a national average indebtedness of 47% reflecting high financial exclusion.

The private sector driven growth model does not fit into the NER canvas because the Sixth Schedule makes it well-nigh impossible for 'outsiders' to come in and take a long-term position. Innovative PPP models may be the solution with the state governments facilitating access to land on a long-term basis to the private sector, and village councils becoming a part of the partnerships from the very inception. Big industry is not the solution, but small localised solutions leveraging the core unique strengths of NER can be viable options.

The entire region with rich soil types, sufficient rainfall and diverse agro-climatic conditions is home to unique organic agri-produce with untapped export potential. This produce, its grading, packing, processing and marketing will be the dynamic key differentiators for NER someday.

Then there is the immense potential of tourism. Most footfalls are restricted to Sikkim. Mizoram, Meghalaya and Nagaland are virtually untapped destinations. For these states, with limited financial resources to launch aggressive marketing campaigns, social media-based advertising campaigns and strategic tie-ups under CSR may just be the answer.

On the credit front, banks need to partner with other service providers to expand their reach through innovative tie-ups in this difficult region. Small finance banks with their entire business model centred around financial technology can prove to be the connecting links. It is imperative for state governments to use funds judiciously and build adequate road infrastructure to further the agenda of both bank credit, as well as, network connectivity.

Mainstreaming NER into the $5 trillion economy and doing it all in an equitable manner will need not just political will but serious coordinated action by multiple stakeholders. The centre can only cover this much ground with policy framework and funds allocation. The state machinery, banks, corporates, civil society organisations, agriculture universities and extension agencies will all need to step in to drive the NER growth engine.

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